

71032-0

71032-0

NO. 71032-0-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

MARK MOE,

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

The Honorable Anita Farris, Judge

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred when it refused to suppress unlawfully seized evidence.

2. The trial court erred in its oral ruling when it assumed appellant was not seized until the conclusion of a discussion regarding whether appellant had an outstanding warrant.

3. The trial court erred when it entered written finding of fact 1(g), under "Undisputed Facts," describing the conversation between Officer William Koonce and appellant concerning appellant's warrant status.<sup>1</sup>

4. The trial court erred when it entered written conclusions of law 4(e) and 4(g) and consistent conclusions in its oral ruling.

5. To the extent defense counsel contributed to the trial court's error concerning the timing of appellant's seizure, counsel was ineffective in violation of appellant's Sixth Amendment rights.

Issues Pertaining to Assignments of Error

1. Police may not seize individuals without a warrant unless they have particularized suspicion of criminal conduct. An

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<sup>1</sup> The court's written findings and conclusions are attached to this brief as an appendix.

individual is seized if, under the circumstances, a reasonable person would not feel free to leave or otherwise terminate the encounter with police. In this case, two police officers approached appellant and one of the officers – with whom appellant had prior contacts – accused appellant of hiding from him and accused him of doing so because of an outstanding warrant. Was appellant seized at this moment because a reasonable person would not feel free to simply walk away or otherwise terminate the encounter?

2. The trial court found that officers had reasonable suspicion to detain appellant based on a particular response to questions about the warrant. Where this response was obtained only *after* an improper seizure, is it irrelevant to the question of reasonable suspicion?

3. Did the trial court err when it concluded officers had reasonable suspicion of criminal activity when they seized appellant?

4. Are the trial court's key conclusions contrary to the record and applicable law?

5. Was defense counsel ineffective for failing to properly recognize the moment at which appellant was unlawfully seized?

B. STATEMENT OF THE CASE

The Snohomish County Prosecutor's Office charged Mark Moe with one count of possession of a controlled substance: heroin. CP 109-110. Moe moved to suppress evidence of the heroin, arguing it was the product of an unlawful seizure. CP 74-83.

The hearing on the defense motion revealed that on the evening of February 8, 2013, Lynnwood Police Officers William Koonce and Zachariah Oleson were on patrol together in a single vehicle. RP<sup>2</sup> 2-3, 30. Koonce and Oleson drove through the Meadow Lynn Mobile Home Park, an area known for criminal activities. Koonce had made many arrests there over the years on warrants or for narcotics-related activities. RP 3, 15-16.

According to Koonce, one trailer in particular is associated with criminal activity, and officers "normally stop or contact anybody that's there at that particular trailer." RP 4. When Koonce and Oleson arrived, three individuals were working on a car parked in the driveway associated with that trailer. RP 4, 6. Koonce parked the patrol car, and the officers approached. RP 4-5.

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<sup>2</sup> "RP" refers to the verbatim report of proceedings dated May 9, 2013.

According to Koonce, one of the individuals, whom Koonce suspected was Mark Moe, appeared nervous and attempted to hide his face by turning his head to the side and pulling up his hooded sweatshirt. RP 5-7, 18-19. Moe then scooted underneath the car, as if working on it from that vantage, but Koonce believed this was simply an additional attempt to hide his identity. RP 6, 17. Koonce had arrested Moe in the past, primarily for outstanding arrest warrants. RP 9, 12. He had received information within the past month, although he could not recall from where, that Moe "was back in felony warrant status within the Department of Corrections." RP 9, 21-23, 28-29.

While Oleson stood a few feet back, Koonce briefly made small talk with the other two individuals until Moe came out from under the car, at which time Koonce recognized it was indeed Moe. RP 6-7, 18, 31. Koonce said, "Hi Mark," and asked why he had been hiding. Moe denied hiding. Koonce asked if Moe was hiding because he had warrants. Moe denied any warrants. RP 8, 10. Koonce then asserted that Moe would not be hiding if he did not have a warrant. He then added, "Look, you either know you're checking in with DOC or you don't." RP 8, 10. Moe responded by

dropping his head and indicating it was possible he might have a warrant, but he did not know. RP 8, 10, 27-28.

Moe was placed in handcuffs while Koonce called in to determine his warrant status. RP 10-11, 23, 32. Koonce received confirmation of a warrant, Moe was advised that he was under arrest, and he was searched. RP 11, 23, 32. During that search, officers located heroin in the front right coin pocket of his pants. RP 11-12, 32. Moe also had two syringes in his sock. RP 33-34.

Defense counsel argued the State had not established reasonable suspicion to seize Moe prior to confirmation of the warrant. CP 77-81; RP 44-46.

In an oral decision, the Honorable Anita Farris found that officers had reasonable suspicion to seize Moe prior to confirmation of the warrant based on the combination of Officer Koonce's information regarding a warrant (which Judge Farris treated as an anonymous tip given its unknown source), Moe's efforts to hide his identify, and Moe's failure to deny he had a warrant, which Judge Farris treated as confirmation he had not been reporting to DOC and, therefore, a warrant might exist. RP

53-54. Consistent written findings and conclusions were subsequently filed.<sup>3</sup> CP 69-73.

Moe waived his right to a jury trial and proceeded by bench trial based on stipulated evidence. CP 43-68. Judge Farris found him guilty and imposed a residential Drug Offender Sentencing Alternative requiring three to six months' residential treatment. CP 18-19, 46. Moe timely filed a Notice of Appeal. CP 1-14.

C. ARGUMENT

THE COURT WAS REQUIRED TO SUPPRESS ALL EVIDENCE STEMMING FROM THE UNLAWFUL SEIZURE.

Under the Fourth Amendment to the United States Constitution and article 1, § 7 of the Washington Constitution,<sup>4</sup> a warrantless search and seizure is per se unreasonable unless the State demonstrates that it falls within one of the jealously and carefully drawn exceptions to the warrant requirement. State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996) (quoting

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<sup>3</sup> Judge Farris also suppressed, under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), certain statements made by Moe. RP 54-56; CP 72.

<sup>4</sup> The Fourth Amendment provides, "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ."

Arkansas v. Sanders, 442 U.S. 753, 759, 99 S. Ct. 2586, 61 L. Ed. 2d 235 (1979)). The State bears the burden of showing that a search or seizure falls within one of these narrow exceptions. State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984).

One of the narrow exceptions to the warrant requirement – relied upon by the State in Moe’s case – is the "Terry investigatory stop," discussed in detail in Terry v. Ohio, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). "To justify a seizure on less than probable cause, *Terry* requires a reasonable, articulable suspicion, based on specific, objective facts, that the person seized has committed or is about to commit a *crime*." State v. Duncan, 146 Wn.2d 166, 172, 43 P.3d 513 (2002) (emphasis in original) (citing Terry, 392 U.S. at 21). "Specific and articulable facts" means that the circumstances must show "a substantial possibility that criminal conduct has occurred or is about to occur." State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

Critically, Judge Farris failed to correctly identify the moment at which Moe was seized under Terry. Although the written findings and conclusions do not address timing, Judge Farris’ oral

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Article 1, § 7 provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

ruling indicates an assumption Moe was seized when Officer Koonce ordered him detained and Officer Oleson placed him in handcuffs. RP 51 (“at that point Officer Koonce detained the Defendant, did essentially a Terry detention . . . .”). In fact, however, the seizure occurred earlier.

A person is seized under article 1, section 7 "when, by means of physical force or a show of authority, his or her freedom of movement is restrained and a reasonable person would not have believed he or she is (1) free to leave, given all the circumstances, or (2) free to otherwise decline an officer's request and terminate the encounter." State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003) (internal quotations and citations omitted). The question of when a seizure occurs is a legal one and review is de novo. State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997).

As discussed above, after Officer Koonce said, “Hi Mark,” indicating he recognized Moe, he then accused Moe of hiding, which Moe denied. Koonce did not accept that answer, however, and he asked if Moe was hiding because he had warrants. Moe denied any warrants. RP 8, 10. Koonce did not accept that answer, either, asserting that Moe would not be hiding if he did not have a warrant. He then added, “Look, you either know you’re

checking in with DOC or you don't." RP 8, 10. Moe was seized at this point.<sup>5</sup>

Moe's case is controlled by State v. Barnes, 96 Wn. App. 217, 978 P.2d 1131 (1999). In Barnes, an officer spotted the defendant, whom he knew and had arrested before, approached him on the street, and questioned him regarding an outstanding warrant based on information the officer had received within the two weeks previous. Barnes denied that he had a warrant. Barnes, 96 Wn. App. at 219. While the officer checked on the warrant's status, Barnes became "fidgety," resulting in a pat down search that revealed crack cocaine. Id. at 220.

The Barnes court held that the encounter "ceased to be consensual" as soon as the officer "communicated his belief or suspicion that lawful grounds existed to detain" the defendant based on an outstanding warrant. Id. at 223 (citing State v. Soto-

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<sup>5</sup> Finding of fact 1(g) does not accurately summarize Koonce's interaction with Moe. It does not reflect the proper order of Koonce's accusations and Moe's denials, it leaves out Moe's denial that he was hiding, it leaves out Koonce's accusation that Moe would not be hiding unless he had a warrant, and it can be read to suggest Moe admitted he might have a warrant prior to being pressed on the issue by Koonce. See CP 70. This Court should rely on Koonce's actual testimony rather than this incomplete and misleading summary. For this reason, Moe has assigned error to this finding.

Garcia, 68 Wn. App. 20, 25, 841 P.2d 1271 (1992) (reasonable person would not feel free to leave after officer asked him if he had cocaine on his person)). The Barnes court also took into consideration Barnes' prior experiences with law enforcement and this officer in particular, which were germane to his "reasonable expectations and his reasonable evaluation of his options in the circumstances." Id. Because the officer did not have reasonable suspicion at the point of Barnes' seizure, evidence of the cocaine was suppressed.<sup>6</sup> Id. at 224-225.

The same is true here; once Officer Koonce communicated his suspicion that Moe was hiding from him and doing so because of an outstanding warrant, which would be grounds for arrest, the contact became a detention under Terry. This is further supported by Koonce's history of arresting Moe (on outstanding warrants no less). RP 9, 12. Objectively, a reasonable person would not have

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<sup>6</sup> In contrast to Barnes, in State v. Bailey, 154 Wn. App. 295, 298, 224 P.3d 852, review denied, 169 Wn.2d 1004, 236 P.3d 205 (2010), the defendant, without prompting from the officer, indicated he "likely had an outstanding warrant." Division Three found that Bailey had not been seized. Bailey, 154 Wn. App. at 300-302. In dicta, the court also indicated Bailey's statement that he likely had a warrant provided reasonable suspicion for a seizure. Bailey, 154 Wn. App. at 301. Moe's case is like Barnes and not Bailey.

felt free to simply leave or otherwise terminate the encounter once Koonce mentioned a warrant.

The remaining question is whether officers had any legal authority justifying the seizure. Judge Farris found reasonable suspicion based on a *combination* of several factors: (1) the anonymous tip that Moe had a warrant, (2) the history of criminal activity in the trailer park, (3) Moe's nervous manner and attempt to hide his identity from officers, and (4) Moe's failure to deny there might be cause for a warrant for failure to check in with DOC. CP 71-72.

Judge Farris properly recognized the insufficiency of the anonymous tip,<sup>7</sup> history of the trailer park,<sup>8</sup> and Moe's nervousness

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<sup>7</sup> “[A]n anonymous tip, standing alone, seldom demonstrates the informant’s basis of knowledge or reliability. If suitably corroborated, however, the tip can have sufficient indicia of reliability to provide an officer with reasonable suspicion to make an investigatory stop.” State v. Cardenas-Muratalla, \_\_\_ Wn. App. \_\_\_, 319 P.3d 811, 815 (2014) (citing Florida v. J.L., 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000)). The record is devoid of any information concerning the basis of knowledge or reliability of the individual from whom Officer Koonce heard that Moe might have a warrant.

<sup>8</sup> That Moe was in a high crime area, even at night, could not justify his seizure. See Brown v. Texas, 443 U.S. 47, 49, 51-53, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979); State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010); State v. Larson, 93 Wn.2d 638, 642-643, 611 P.2d 771 (1980); State v. Richardson, 64 Wn. App. 693,

and attempt to hide his identity.<sup>9</sup> CP 71. It was these circumstances *plus* Moe's responses to questions about the warrant that ultimately convinced Judge Farris the State had carried its burden. See CP 70-71 (conclusion 4(e)) (other circumstances "with the defendant's admissions provided reasonable suspicion and made this a valid Terry detention").

Specifically, Judge Farris relied on the fact that, after Koonce told Moe he would know if he had been checking in with DOC, Moe responded by dropping his head and indicating it was possible he might have a warrant. RP 8, 10, 27-28. Judge Farris treated the absence of a denial in this regard as an admission by Moe that he had not been reporting and, therefore, likely had a warrant. CP 71-72 (conclusion of law 4(e)).

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697, 825 P.2d 754 (1992); State v. Ellwood, 52 Wn. App. 70, 74-75, 757 P.2d 547 (1988).

<sup>9</sup> An individual's reaction to police can be a relevant consideration. See State v. Pressley, 64 Wn. App. 591, 825 P.2d 749 (1992). But many such reactions are ambiguous. See State v. Soto-Garcia, 68 Wn. App. 20, 26, 841 P.2d 1271 (1992) (looking away as officer approaches not reasonable suspicion of wrongdoing), abrogated on other grounds, State v. Thorn, 129 Wn.2d 347, 917 P.2d 108 (1996); see also State v. Gatewood, 163 Wn.2d 534, 540, 182 P.3d 426 (2008) (startled reactions to police presence, including widening eyes and walking away, do not even amount to reasonable suspicion). Moe's decision to avoid eye contact or any other contact with officers was ambiguous.

Thus, ultimately, it was this response concerning the possibility of a warrant that convinced Judge Farris there was reasonable suspicion. The fatal flaw in this analysis, however, is that Moe's response (his perceived admission) came after he had already been unlawfully seized because it followed Koonce's allegations Moe was hiding from him due to a warrant. See RP 8, 10, 27-28. The fruits of an unlawful seizure cannot be used to justify that seizure. See State v. Brooks, 3 Wn. App. 769, 774, 479 P.2d 544 (1970).

Moreover, any evidence or statements derived directly or indirectly from this illegal seizure must be suppressed unless sufficiently attenuated from the initial illegality to be purged of the original taint. Wong Sun v. United States, 371 U.S. 471, 484-88, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963); State v. Warner, 125 Wn.2d 876, 888, 889 P.2d 479 (1995); State v. Chapin, 75 Wn. App. 460, 463, 879 P.2d 300 (1994), review denied, 125 Wn.2d 1024 (1995). The courts apply a "but-for analysis." State v. Aranguren, 42 Wn. App. 452, 457, 711 P.2d 1096 (1985). But for the unlawful seizure, there would have been no discovery of the heroin in Moe's pocket, no criminal charge, and no conviction. See Ellwood, 52 Wn. App. at 74-75 ("coerced continued presence at scene" requires

suppression of controlled substance evidence found incident to arrest on outstanding warrant).

One last issue merits discussion. Defense counsel argued the motion to suppress based on an assumption Moe was seized when handcuffed, rather than recognizing he was seized earlier in the investigation (a mistake Judge Farris also made). See CP 78; RP 44. This raises the specter of invited error. But invited error is trumped by ineffective assistance of counsel. State v. Aho, 137 Wn.2d 736, 745, 975 P.2d 512 (1999); State v. Doogan, 82 Wn. App. 185, 188, 917 P.2d 155 (1996); see also State v. Rainey, 107 Wn. App. 129, 135-136, 28 P.3d 10 (2001) (counsel may be ineffective in handling of motion to suppress) .

Both the federal and state constitutions guarantee the right to effective representation. U.S. Const. Amend. VI; Wash. Const. art. 1, § 22. A defendant is denied this right when his or her attorney's conduct "(1) falls below a minimum objective standard of reasonable attorney conduct, and (2) there is a probability that the outcome would be different but for the attorney's conduct." State v. Benn, 120 Wn.2d 631, 663, 845 P.2d 289 (citing Strickland v. Washington, 466 U.S. 668, 687-88, 80 L. Ed. 2d 674, 104 S. Ct.

2052 (1984)), cert. denied, 510 U.S. 944, 114 S. Ct. 382, 126 L. Ed. 2d 331 (1993). Both requirements are met here.

No reasonable attorney would have failed to argue that Moe was seized prior to acknowledging he might have a warrant. The case law describing when a seizure occurs is well established. Counsel should have made the proper argument, particularly in light of State v. Barnes, a 15-year-old decision. And assuming this Court finds invited error, Moe suffered prejudice because his own attorney contributed to the court's mistake and the proper argument would have resulted in suppression of the evidence.

D. CONCLUSION

Moe was unlawfully seized. All evidence obtained during the subsequent search must be suppressed and his conviction vacated.

DATED this 18<sup>th</sup> day of April, 2014.

Respectfully submitted,

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## **APPENDIX**

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON  
IN AND FOR THE COUNTY OF SNOHOMISH

The State of Washington,

Plaintiff,

vs.

MARK M. MOE,

Defendant.

13-1-00339-7

CERTIFICATE PURSUANT TO  
CrR 3.5 OF THE CRIMINAL RULES  
FOR SUPERIOR COURT AND  
FINDINGS FOR CrR 3.6

The undersigned Judge of the above court hereby certifies that a hearing has been held in the absence of the jury pursuant to Rule 3.5 and of 3..6 of the Criminal Rules for Superior Court and now sets forth:

1. The Undisputed Facts

- a. On 2/8/13 at around 7:30pm Lynnwood Officers Koonce and Olesen were on general patrol and driving through the Meadow Lynn Mobile Home Park located at 6202 202<sup>nd</sup> St. SW, Lynnwood, Washington, in Snohomish County.
- b. The officers were familiar that this park has previous associations with criminal activities. The officers saw 2-3 people working on a car parked near one of the trailers.

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1 c. Koonce got out of the car and Olesen followed him as they went to the car which was  
2 parked a few feet into the driveway of one of the trailers.

3 d. The defendant pulled up his hood and got under the car as the officers approached.  
4 Olesen observed that he was under the car for a longer time <sup>when officers were present,</sup> ~~that~~ <sup>o</sup> would be normal (a  
5 few minutes). When he did get out from under the car he did not look at the police.

6 e. Koonce recognized the defendant as they had prior contacts and Koonce had  
7 previously arrested him. Koonce called the defendant by his name and the defendant  
8 was nervous and responded.

9 f. Koonce had information that the defendant had a warrant for his arrest for not  
10 checking in with DOC. However, he cannot recall where he got that information or when  
11 he obtained it. He testified that it was less than one month – but could have been  
12 anywhere from one to three weeks old.

13 g. Koonce asked the defendant why he was hiding from him and whether or not he had  
14 a warrant. The defendant initially denied that he had a warrant and then stated that he  
15 wasn't sure if he had warrant. Koonce told the defendant that he should know if he had  
16 a warrant as he ~~was~~ <sup>would know if he was</sup> checking in with DOC or he wasn't. The defendant hung his  
17 head and then stated maybe. <sup>While the defendant said he did not</sup>  
<sup>know if a warrant was at, he did not deny he was failing to report to DOC.</sup>

18 h. Based upon the surrounding circumstances, the admissions of the defendant and the  
19 grounds for the warrant, Koonce directed Olesen to detain the defendant. Within 30  
20 seconds Koonce called in to check on the defendant's warrant status.

21 i. Within 3-4 minutes the defendant was confirmed to have a warrant for his arrest. The  
22 defendant was arrested and searched incident to arrest.

23 j. Olesen asked the defendant if he had weapons or anything sharp in his possession  
24 that could hurt him. The defendant stated that he had a rig in his socks. <sup>o/c</sup> A rig is a street  
25 term for needles used for injecting drugs. Olesen also found heroin in the defendant's  
26 pocket.

1 k. Koonce then lectured the defendant about the dangers of heroin and the defendant  
2 responded to this lecture by making statements including saying the charge would be  
3 plead down to a misdemeanor.

4 l. The defendant was not properly advised of his rights.

5 m. The defendant was booked in the jail.

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7 **2. The Disputed Facts**

8 a. There were no disputed facts.

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10 **3. Court's Conclusions as to Disputed Facts**

11 a. There were no disputed facts.

12  
13 **4. Court's Conclusions as to Confessions Voluntary and Admissible or**  
14 **Involuntary and Inadmissible With Reasons in Either Case and Admissibility of**  
15 **the Controlled Substance obtained From the Search**

16 a. The approach by police to the men working on the car<sup>as</sup> part of a social  
17 contact.

18 b. The information that Koonce had about the defendant's warrant is treated as  
19 an anonymous tip because he cannot recall where or exactly when he obtained  
20 that information. Alone, this is not enough for a Terry detention.

21 c. The area, which had a history of criminal and drug activity, is also not  
22 sufficient for a Terry detention.

23 d. The nervous manner of the defendant and his actions<sup>to hide his identity</sup> are not, standing alone,  
24 sufficient for a Terry detention.

25 e. However sections b. through d. with the defendant's admissions provided  
26 reasonable suspicion and made this a valid Terry detention. The statement of  
the defendant in response to Koonce's investigation of the tip, the fact that the

*and did not deny there would be reason for a warrant to issue for DOC, but contacting DOC*

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defendant would know if he had been checking in with DOC, and his actions and manner created reasonable suspicion and allowed the police to detain the defendant for the several minutes required to confirm the warrant. The facts make the defendant's statement an admission.

f. The court finds that both Olesen's testimony about the defendant being under the car and Koonce's testimony about the defendant's actions and statements to be credible.

g. The defendant was properly detained and then properly arrested a few minutes later when confirmation of a warrant was received. The defendant was then searched incident to that arrest. The controlled substance is admissible.

h. Although the defendant was not advised of his Miranda rights, his statements to Koonce before his arrest were not a product of a custodial interrogation and are admissible for purposes of CrR 3.5.

i. Once arrested, Olesen asked the defendant if he had any weapons or sharp items that would hurt him and the defendant replied. This is an exception to the Miranda requirements and is admissible.

j. The defendant's statements to Koonce following his lecture on the danger of drugs were subject to Miranda. This statement was after his arrest and would be reasonably likely to elicit an incriminating response. The defendant had been arrested at that time. As a result this statement is suppressed because he had not been properly advised of his Constitutional Rights.

k. The court specifically reserved the issue on whether or not the suppressed statements were coerced and whether or not they could be used for impeachment. That matter may be brought back before the court if necessary. If that occurs the parties need to make more complete argument or brief the issue.

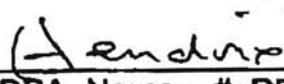
1 DONE IN OPEN COURT this 15 day of May 2013.

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Judge Farns

Presented by:

Copy received by:

<sup># 28585</sup>  
  
\_\_\_\_\_  
«DPA\_Name», #«DPA\_Bar\_Number»  
Deputy Prosecuting Attorney

  
\_\_\_\_\_  
Sarah Silbovitz, # 4924  
Defense Attorney

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE**

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STATE OF WASHINGTON	)	
	)	
Respondent,	)	
	)	
vs.	)	COA NO. 71032-0-1
	)	
MARK MOE,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 18<sup>TH</sup> DAY OF APRIL 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE  
3000 ROCKEFELLER AVENUE  
EVERETT, WA 98201  
[Diane.Kremenich@co.snohomish.wa.us](mailto:Diane.Kremenich@co.snohomish.wa.us)
  
- [X] MARK MOE  
3009 FEDERAL AVE  
EVERETT, WA 98201

**SIGNED** IN SEATTLE WASHINGTON, THIS 18<sup>TH</sup> DAY OF APRIL 2014.

X *Patrick Mayovsky*