

# Drug evidence suppressed where observing officer not present for arrest

Generally, a police officer does not need a warrant to arrest a suspect if the officer has probable cause to believe the suspect has committed a misdemeanor in his or her presence.

However, what if the misdemeanor was allegedly committed in front of a different officer than the one who actually arrests the suspect? The Washington Supreme Court case of *Washington State v. Ortega* provides an answer to this question.

## **An "arrest" from a second-story window**

Officers were investigating drug activity in the Belltown neighborhood of Seattle. One officer was stationed on the second floor of a building, observing activity below, while two other officers were in patrol cars.

The officer on the second floor believed he observed the defendant attempting to make contact with passersby, and suspected he might have witnessed several drug transactions, although he could not see what was exchanged

between the parties. The officer believed he had probable cause to arrest the defendant for drug-traffic loitering and informed the officers on the street.

Out of the view of the officer on the second floor, the street-level officers arrested the suspect. The officer then searched the defendant incident to the arrest and found crack cocaine and cash in his pockets. The officer on the second floor did not confirm that the street-level officers had arrested the correct suspect until after the defendant was arrested.

The defendant was found guilty of possession of cocaine with intent to deliver, and the defendant appealed.

### **Was the officer "present" for the offense?**

The Washington Supreme Court noted that the Washington Constitution provides even greater protection from warrantless searches than does the United States Constitution. A warrantless search is considered unreasonable unless it falls within several carefully delineated exceptions to the warrant requirement, such as a search incident to arrest, as allegedly applied in this case.

However, the court found that the language of the Washington statute related to arrest without a warrant was unambiguous. Under the plain language of the

statute, only an officer present during the offense can arrest a suspect for a misdemeanor.

In this case, the officer who arrested the defendant was not present when the acts that allegedly established probable cause for drug-traffic loitering were committed. The officer observing from the second floor was not the "arresting officer," and did not arrive at the scene until after the arrest and search had occurred. Thus, the arrest was unlawful and the search incident to that arrest violated the Washington State Constitution. The related evidence would be suppressed.

### **Suppression of illegally obtained evidence**

If evidence being used against you was obtained through an illegal search, such evidence should also be suppressed. If you have been charged with a crime, you should seek an experienced criminal defense attorney who will fight to exclude such evidence and protect your rights and freedom.