

## **Put This in Your Pipe**

**By: Monte E. Hester; Jan 2003**

In State v. Heritage, 20617-3-III (2002), a juvenile was convicted on stipulated facts of possession of drug paraphernalia after her motion to suppress seized evidence (a pipe) and her incriminating statement was denied.

The findings of fact indicated that two non-police security guards observed a young man smoking a marijuana pipe in a park in the company of other juveniles. They approached, telling him what they had observed. They also told them they were not police officers and no one was going to be arrested. The security officers told the entire group, which included the defendant, that they needed to ask them questions and that they would get them on their way.

The security officers asked the young man they had observed smoking if it was his pipe, which he denied. Then they asked the group whose pipe it was, adding that in their experience a pipe being used to smoke marijuana might belong to a person in the group other than the one observed smoking. The defendant replied "It's my pipe."

The security officers immediately called the Spokane Police who within five minutes had her under arrest.

The defendant moved to suppress, arguing that the security officers were state actors and their questioning and detention were unlawful.

The trial court, in denying the motion, said the security officers were not police officers, couldn't arrest, were not agents of the state and had the status of private citizens.

The appellate court found that the security guards were employees of the City of Spokane and were acting within their official capacity and not as "private citizens." The court concluded that the evidence supports the conclusion that a reasonable person – particularly a juvenile – in the defendant's situation would believe her freedom was significantly restrained. Thus the defendant was in custody for Miranda purposes.

Since she was not advised of her Miranda rights before she made the incriminating statement, the statement should have been suppressed.

This case also contains a great analysis of factors to be considered in assessing whether or not a person's freedom of action is curtailed so as to require Miranda warnings, including consideration of the state's contentions that this stop was a "Terry stop."

End