No. 43576-4-II

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

Jeanne Barringer,

Appellant.

Lewis County Superior Court Cause No. 12-1-00119-1

The Honorable Judge James Lawler

Appellant's Opening Brief

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ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Evidence seized without a warrant is inadmissible at trial, unless the prosecution establishes an exception to the warrant requirement. In this case, police detained Ms. Barringer for 2½ hours prior to obtaining her consent to search her purse. Did the trial court err by admitting illegally seized evidence in violation of Ms. Barringer's rights under Wash. Const. Article I, Section 7?

2. An investigatory seizure must be limited in duration, and officers must use the least intrusive means available to dispel or confirm their suspicions. Here, Ms. Barringer was handcuffed and held for 2 ½ hours while the officers searched the vehicle, searched her person, subjected her, the vehicle, and her purse to a drug sniffing dog, and conducted a strip search, all with negative results. Did the lengthy detention violate Ms. Barringer's right to privacy under Wash. Const. Article I, Section 7?

3. Consent to search must be freely and voluntarily given. Here, the police pressured Ms. Barringer into consenting to a search of her purse by detaining her for 2 ½ hours, ignoring her refusal to give consent, and making groundless threats to obtain a warrant. Did the trial court err by admitting illegally seized evidence in violation of Ms. Barringer's rights under Wash. Const. Article I, Section 7?

STATEMENT OF FACTS AND PRIOR PROCEEDINGS

On the evening of February 29, 2012, a Chevy Blazer left a snow-covered roadway outside Morton (in rural Lewis County) and landed in the ditch. RP (5/30/12) 5-6, 9, 10, 13-15, 22; CP 5. The SUV was occupied by Jeanne Barringer and Michael Hartley. RP (5/30/12) 6, 15; CP 5. Neither was injured. RP (5/30/12) 6; CP 5. A tow truck was called. CP 5.

At 7:42 p.m., Morton Police Officer Perry Royle arrived. RP (5/30/12) 5; CP 5. After ensuring that both occupants were ok, Royle asked what happened. Ms. Barringer told him that she drove off the road, and provided Royle with her driver's license.[1] RP (5/30/12) 6-7; CP 5.

Trooper Nathan Hovinghoff arrived at 7:53 p.m. CP 5. Hovinghoff had received the call at around 7: 26 p.m., but it had taken him nearly 30 minutes to arrive, because of the snow. RP (5/30/12) 13-14. Royle gave Hovinghoff Ms. Barringer's license. RP (5/30/12) 6-7.

Hovinghoff retained Ms. Barringer's license, and questioned her about the vehicle and the accident. RP (5/30/12) 16-17. She told him the SUV was registered to Hartley's girlfriend, admitted that it was not insured, and told him that she'd driven off the road. RP (5/30/12) 16.

[1] The vehicle did not have insurance. CP 5.

Hovinghoff had seen Hartley driving the vehicle several hours earlier;[2] he claimed that Hartley "was trying so hard to look inconspicuous that he really stood out." RP (5/30/12) 17. He did not describe Hartley's behavior, or what made him conclude that Hartley was trying to look inconspicuous. RP (5/30/12) 17. Hovinghoff asked Royle to run Hartley's information, and he learned that Hartley's license was suspended. RP (5/30/12) 18; CP 5-6. He separated Ms. Barringer from Hartley and asked her if Hartley had been driving. She admitted that he had, and explained the circumstances.[3] RP (5/30/12) 18. Hovinghoff did not arrest her for having provided a false statement. See RP, generally; CP 6-11.

After Ms. Barringer confirmed that Hartley had been driving earlier, Hovinghoff arrested him. RP (5/30/12) 18; CP 6. Hartley initially denied driving. RP (5/30/12) 18. He said he "couldn't get in any trouble" and offered information to "make a deal" with the trooper. RP (5/30/12) 19. He told Hovinghoff that he'd driven Ms. Barringer to Rochester to purchase methamphetamine and that she'd had $1,000 in cash. He claimed that she now had an ounce of methamphetamine on her person or in the Blazer. He did not witness the alleged transaction, and never saw

[2] Hovinghoff did not testify to a specific time. Accordingly, Finding No. 1.7 is unsupported in that respect, and should be vacated.

[3] Apparently Hartley's male ego was a factor. RP (5/30/12) 18.

the methamphetamine. RP (5/30/12) 19-20. He also told Hovinghoff that there was a marijuana pipe in the Blazer. RP (5/30/12) 33.

According to Hovinghoff, Ms. Barringer "is known to associate herself with drugs." RP (5/30/12) 51. He learned this "[p]robably over pancakes at the cafe with other deputies or officers." RP (5/30/12) 51. He was not aware of any specific information implicating her in criminal activity. RP (5/30/12) 51.

Hovinghoff had Ms. Barringer get out of the Blazer again, and asked her when she'd last used drugs. She told him she didn't use drugs, and hadn't for months. CP 6. She denied having any drugs in the SUV, and consented to a search of her person.[4] CP 6. Hovinghoff searched her and found nothing.[5] CP 6-7.

Hovinghoff told Ms. Barringer she was being detained for drug possession, and handcuffed her. CP 7. When he did so, Ms. Barringer

> immediately kind of sat down fainting, kind of had a panic attack. She sat on the ground for a while in the snow.
> RP (5/30/12) 23.

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[4] Hovinghoff told her she could refuse, restrict, or revoke consent, and that anything discovered could be used against her. CP 6-7.

[5] The court's findings indicate that Hovinghoff "conducted a pat-down search of the outside of the Defendant's clothing..." CP 7. Hovinghoff did not reveal how he conducted the initial search of her person. RP (5/30/12) 22-23. Accordingly, Finding No. 1.15 is unsupported by the evidence in that regard, and should be vacated.

Hovinghoff read her Miranda rights (apparently while she was still breathing heavily and having her panic attack.) RP (5/30/12) 23. Ms. Barringer did not explicitly waive her rights. See RP, generally; CP 7.

Hovinghoff secured Ms. Barringer in a patrol car, and then obtained Hartley's consent to search the Blazer. He asked Ms. Barringer if he could search her purse; she declined to give permission. CP 7. Hovinghoff told her that he could apply for a search warrant, that a judge would decide whether to grant the warrant or not, and that there was some possibility he wouldn't be allowed to search. CP 7; RP (5/30/12) 27. Hovinghoff seized Ms. Barringer's purse and secured it in his car. CP 7; RP (5/30/12) 27.

Hovinghoff then searched the Blazer and found nothing—not even the marijuana pipe that Hartley had claimed would be there. CP 7; RP (5/30/12) 27. He told Hartley that he hadn't found any methamphetamine in the Blazer; Hartley suggested "that she probably had it inside of her, referring to her privates." RP (5/30/12) 28.

When a tow truck arrived and towed the Blazer away, Hovinghoff had Ms. Barringer transported to the towing company's parking lot as well. RP (5/30/12) 10, 28; CP 8. At 8:57 p.m., Hovinghoff asked for a K-9 unit. While waiting for the dog to arrive, he started writing a search

warrant for Ms. Barringer's purse. CP 8. The K-9 unit arrived after half an hour (at 9:27 p.m.) CP 8.

The drug-sniff dog was led around and inside the Blazer, and around multiple bags, including Ms. Barringer's purse. The dog did not alert on any of the items, and did not locate the marijuana pipe Hartley claimed police would find in the Blazer.[6] CP 8; RP (5/30/12) 33.

A female officer named Deputy Shannon arrived at the tow company's parking lot at 9:30 p.m.; she and Hovinghoff reinterviewed Hartley. CP 8. At 10:11 p.m., Hovinghoff obtained Ms. Barringer's consent for a strip search, after again advising her of her right to refuse consent. CP 9. Ms. Barringer, still in handcuffs, was transported in a patrol car to the Morton Police Department, where her handcuffs were removed. She squatted over a toilet, and Shannon observed her genitals while she urinated. Shannon then looked inside Ms. Barringer's pants, and patted her down. She may also have looked in her bra or "shook it out." CP 9; RP (6/1/12) 8-9, 17. Shannon found nothing on Ms. Barringer's person. CP 9; RP (6/1/12) 18.

Hovinghoff released Hartley and resumed working on his search warrant request. CP 9. Ms. Barringer was transported back to the tow

[6] This apparently did not cause Hovinghoff to question Hartley's veracity. RP (5/30/12) 33.

company parking lot. CP 9. She remained in the back of Royle's car along with Deputy Shannon, who asked her what Hovinghoff might find in her purse. CP 9; RP (6/1/12) 9-10. When Ms. Barringer told Shannon that she had a small amount of marijuana that she used for medicinal purposes, both Shannon and Hovinghoff told her they would not care about that. CP 9; RP (5/30/12) 35; RP (6/1/12) 9-10.

Hovinghoff again advised Ms. Barringer of her right to refuse consent to search her purse, and told her that she could restrict or revoke her consent at any time. Ms. Barringer told him he could search, but then asked him not to look in the front pocket of the purse. CP 10. Hovinghoff replied

> "Well, the consent would be for the whole purse." If she didn't want to give consent for [the] whole purse I would just apply for a search warrant.
> RP (5/30/12) 36.

Ms. Barringer then said he could search the purse. Hovinghoff found methamphetamine and a broken glass pipe in the front pocket of the purse. CP 10. At 10:38 p.m., Ms. Barringer was arrested for possession of methamphetamine. CP 10. At no time did Hovinghoff arrest her for providing a false statement. See RP, generally.

Ms. Barringer was charged with possession of methamphetamine, and she moved to suppress the evidence. CP 1; Motion to Suppress, Supp.

CP. The trial court denied her motion and entered Findings of Fact and Conclusions of Law. CP 4.

Ms. Barringer waived her right to a jury trial and agreed to a trial on stipulated facts. Order Waiving Jury Trial, Supp. CP; Stipulation to Facts, Supp. CP. She was convicted and sentenced, and she timely appealed. CP 12, 20; Finding of Guilty, Supp. CP.

ARGUMENT

THE ADMISSION OF EVIDENCE SEIZED WITHOUT A WARRANT VIOLATED MS. BARRINGER'S FOURTH AMENDMENT RIGHT TO BE FREE FROM UNREASONABLE SEARCHES AND SEIZURES AND HER RIGHT TO PRIVACY UNDER WASH. CONST. ARTICLE I, SECTION 7.

A. Standard of Review

The validity of a warrantless search is reviewed de novo. State v. Gatewood, 163 Wash.2d 534, 539, 182 P.3d 426 (2008). A trial court's findings of fact are reviewed for substantial evidence; conclusions of law are reviewed de novo. Id. In the absence of a finding on a factual issue, an appellate court presumes that the party with the burden of proof failed to sustain their burden on the issue. State v. Armenta, 134 Wash.2d 1, 14, 948 P.2d 1280 (1997); State v. Byrd, 110 Wash.App. 259, 265, 39 P.3d 1010 (2002).

B. The state and federal constitutions prohibit warrantless searches and seizures, absent proof of an exception to the warrant requirement.

Both the Fourth Amendment and Wash. Const. Article I, Section 7 prohibit searches or seizures undertaken without a search warrant. State v. Eisfeldt, 163 Wash.2d 628, 634, 185 P.3d 580 (2008). This "blanket prohibition against warrantless searches is subject to a few well guarded exceptions..." Id, at 635. Without probable cause and a warrant, an officer is limited in what she or he can do. State v. Setterstrom, 163 Wash.2d 621, 626, 183 P.3d 1075 (2008). Furthermore, where police have ample opportunity to obtain a warrant, courts do not look kindly on their failure to do so. State v. Ferrier, 136 Wash.2d 103, 115, 960 P.2d 927 (1998).

The state bears the heavy burden of showing that a search or seizure falls within one of these narrowly drawn exceptions. State v. Garvin, 166 Wash.2d 242, 250, 207 P.3d 1266 (2009). Before evidence seized without a warrant can be admitted at trial, the state must establish an exception to the warrant requirement by clear and convincing evidence. Id.

C. The officers violated Ms. Barringer's rights under the Fourth Amendment and Article I, Section 7 by detaining her for 2 ½ hours on suspicion of drug possession.

The Fourth Amendment and Article I, Section 7 apply to detentions that fall short of formal arrest. State v. Martinez, 135 Wash. App. 174, 180, 143 P.3d 855 (2006); Davis v. Mississippi, 394 U.S. 721, 726-727, 89 S.Ct. 1394, 22 L.Ed.2d 676 (1969). A seizure occurs following an officer's display of authority whenever a reasonable person would not feel free to leave or otherwise disregard the officer's request. State v. Beito, 147 Wash. App. 504, 509, 195 P.3d 1023 (2008). To justify a warrantless seizure, the police must be able to point to specific and articulable facts giving rise to an objectively reasonable belief that the person seized is engaged in criminal activity or is armed and presently dangerous. State v. Xiong, 164 Wash.2d 506, 514, 191 P.3d 1278 (2008).

An investigatory detention is unlawful unless the state shows that the officers' actions were (1) justified at their inception, and (2) reasonably related in scope to the circumstances which justified the interference in the first place. State v. Rankin, 151 Wash.2d 689, 704, 92 P.3d 202 (2004). The reasonableness of the detention depends on a balance between the public interest and the individual's right to personal security free from arbitrary interference by law officers. State v. Dorey, 145 Wash.App. 423, 434, 186 P.3d 363 (2008).

If the results of the initial detention dispel the officer's suspicions, then "the officer must end the investigative stop;" it is only if "the officer's initial suspicions are confirmed or are further aroused [that] the scope of the stop may be extended and its duration may be prolonged." State v. Acrey, 148 Wash.2d 738, 747, 64 P.3d 594 (2003). Furthermore, the degree of intrusion must be appropriate to the kind of crime under investigation and the likelihood that the suspect is dangerous. See, e.g., State v. Williams, 102 Wash.2d 733, 740, 689 P.2d 1065 (1984)

1. The 2 ½ hour detention was unreasonable under the Fourth Amendment.

Under the federal constitution, courts consider three factors "in determining whether intrusion upon a suspect's liberty is so substantial that its reasonableness is dependent upon probable cause and hence cannot be supported by suspicion alone: (1) the purpose of the [detention], (2) the amount of physical intrusion upon the suspect's liberty, and (3) the length of time the suspect is detained." State v. Belieu, 112 Wash.2d 587, 595, 773 P.2d 46 (1989).

When detaining an individual for investigative purposes, the police must use the least intrusive means available, and the detention "must be limited as to [its] length." Belieu, at 599; Dorey, at 434. The length of an investigatory detention can, by itself, render the detention

unconstitutional. U.S. v. Place, 462 U.S. 696, 709, 103 S.Ct. 2637, 77 L.Ed.2d 110 (1983). The Supreme Court has said that

> [T]he brevity of the invasion of the individual's Fourth Amendment interests is an important factor in determining whether the seizure is so minimally intrusive as to be justifiable on reasonable suspicion. Moreover, in assessing the effect of the length of the detention, we take into account whether the police diligently pursue their investigation.

Id; see also Williams, at 741-742. In Place, the U.S. Supreme Court held that a 90-minute seizure of luggage was per se unreasonable. In Williams, the Washington Supreme Court held that a 35-minute detention "appear[ed] to approach excessiveness." Id., at 741.

Here, the police detained Ms. Barringer for 2 ½ hours on suspicion of drug possession.[7] During that time, they retained her identification and her purse, handcuffed her, searched her person, transported her away from the scene of the accident, held her in the back of a patrol car, subjected her (and her purse) to a drug-sniff dog, and transported her to and from the Morton Police department. CP 5-10.

Throughout all of this, she was kept waiting—for the drug-sniff dog, for Deputy Shannon, and for the search warrant that was never requested. Throughout the 2 ½ hours, the police turned up no additional

[7] The police may have had probable cause to arrest Ms. Barringer for obstructing, or for making a false statement to a public servant, both of which are gross misdemeanors. CP 11; see RCW 9A.76.020; RCW 9A.76.175. However, Hovinghoff never made a custodial arrest for either of these crimes. See RP, generally.

information that increased their suspicions: each time the police intensified the degree of intrusion, they came up with nothing incriminating. CP 5-10. They were unable even to verify Hartley's claim that they'd find a marijuana pipe in the Blazer. RP (5/30/12) 27, 33; CP 7, 8.

These repeated failures should have dispelled Hovinghoff's suspicions, and he was therefore required to "end the investigat[ion]." Acrey, at 747. Instead, he insisted on keeping Ms. Barringer and her property in custody, escalating the intrusion as he prolonged the detention, even though his "initial suspicions [were not] confirmed or... further aroused" (as required to justify such escalation). Id; CP 5-10.

The detention here was unreasonable under the Fourth Amendment. First, the officers' purpose was to investigate the relatively minor felony crime of simple possession. Ms. Barringer—who had no felony record—was not suspected of a violent crime, and nothing suggested she was dangerous. There was no reason for a lengthy and intrusive detention. See Williams, at 740.

Second, the detention was highly intrusive. As noted, Ms. Barringer's property was retained, and she herself was handcuffed, restrained in a police car, transported, searched, subjected to a drug-sniff

dog, and strip searched before consenting to a search of her purse. Each step in the escalation yielded nothing suspicious.

Third, the detention was unreasonably long. It exceeded the 90-minute seizure of luggage in Place, and the 35-minute detention in Williams. Each time the police intruded further without result, their suspicions should have been dispelled, and the detention ended. Acrey, at 747.

In addition, the state failed to prove the police acted diligently. The record does not establish why Royle was unable to conduct the investigation on his own (instead of waiting for Hovinghoff to arrive), why Hovinghoff took so long to complete his warrant application, or how long the warrant process normally takes. See RP, generally.

Under these circumstances, the detention was unreasonable. Williams, at 741-742. Ms. Barringer's conviction must be reversed, the evidence suppressed, and the case dismissed with prejudice. Id.

2. The police did not have probable cause to arrest Ms. Barringer for drug possession.

Under the Fourth Amendment, a lengthy detention may be justified by the existence of probable cause.[8] Belieu, at 595. In this case, the

[8] This approach is not permitted under Article I, Section 7, as argued elsewhere in this brief.

police lacked probable cause to believe Ms. Barringer possessed controlled substances.[9]

Probable cause exists where the officer has reasonably trustworthy knowledge of facts and circumstances that "are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed." State v. Sanchez, ___ Wash. App. ___, ___, 288 P.3d 351 (2012). If probable cause is based upon an informant's tip, the state must establish both the informant's basis of knowledge and the informant's credibility. Id (citing State v. Jackson, 102 Wash.2d 432, 688 P.2d 136 (1984)). Although the credibility determination is relaxed when the informant is a named citizen, the same is not true of a criminal or professional informant. State v. McCord, 125 Wash. App. 888, 893, 106 P.3d 832 (2005).

Here, the officers' suspicion was based entirely on Hartley's tip. Even if Hartley had an adequate basis of knowledge,[10] the prosecution never established his credibility.[11] Although named, he was not a named

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[9] The police may have had probable cause to arrest Ms. Barringer for obstructing or providing a false statement; however, they did not arrest her on that ground. CP 11; see RP, generally.

[10] This, in itself, is questionable. Hartley did not witness any transaction or see any drugs. CP 8.

[11] The officers' subjective belief in Hartley's credibility is irrelevant, because the determination of probable cause is an objective one. Findings of Fact Nos. 1.12 and 1.28

citizen informant—he sought to barter information to avoid getting in trouble, and thus was clearly motivated by self interest. Cf. State v. Duncan, 81 Wash. App. 70, 78, 912 P.2d 1090 (1996) ("The earlier domestic dispute colored her information with self-interest," and thereby precluded a finding of veracity.)

Furthermore, the prosecution did not establish whether Hartley had prior criminal convictions.[12] See RP, generally. In addition, Hartley made clear that he would make extreme allegations without any basis, as when he suggested that Ms. Barringer had hidden drugs within her body. RP (5/30/12) 28. Finally, the police were unable to confirm any of Hartley's information, and, in fact, found proof that affirmatively refuted his claim that they would find a marijuana pipe in the Blazer. RP (5/30/12) 27, 33; CP 7, 8.

Under these circumstances, Hartley was not reliable. The information he provided did not amount to probable cause. Sanchez, at ___. Accordingly, Ms. Barringer's conviction must be reversed, the

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have no bearing on the issue of probable cause (insofar as they pertain to the officers' subjective belief in Hartley's credibility); accordingly, the findings should be vacated.

[12] It is clear from the record that he had previously been associated with others involved in criminal activity. RP (6/1/12) 16-17.

evidence suppressed, and her case dismissed with prejudice. Williams, at 740-742.

D. The lengthy detention prior to formal arrest violated Ms. Barringer's rights under Article I, Section 7.

The right to privacy protected by Article I, Section 7 does not tolerate legal fictions. Thus, for example, in Washington, a search incident to arrest cannot precede the arrest, despite the existence of probable cause.[13] See, e.g., State v. O'Neill, 148 Wash.2d 564, 585-586, 62 P.3d 489 (2003). Similarly, a pretextual traffic stop is unconstitutional, even if police have another legitimate basis for the stop.[14] State v. Ladson, 138 Wash.2d 343, 351, 979 P.2d 833 (1999).

Here, Hovinghoff opined that he had probable cause to believe that Ms. Barringer for making a false statement; the trial court also found a basis to arrest on that ground. CP 11. However, Hovinghoff did not arrest her for falsely claiming that she had been the driver. Accordingly, even if Hovinghoff did have probable cause to arrest for that offense, the lengthy detention cannot be justified on that basis under Article I, Section 7. Once

[13] This is in contrast to the federal rule, which permits the search to precede the arrest. U.S. v. Powell, 483 F.3d 836, 838-842 (D.C. Cir. 2007) (citing Rawlings v. Kentucky, 448 U.S. 98, 100 S.Ct. 2556, 65 L.Ed.2d 633 (1980)).

[14] By contrast, the federal constitution allows pretextual traffic stops. Whren v. United States, 517 U.S. 806, 116 S.Ct. 1769, 135 L.Ed.2d 89 (1996).

his investigations into the accident and the false statement were complete, Hovinghoff's only interest was in pursuing the possession allegation. The false statement could not serve as a pretext to further this investigation; to allow such a pretext would violate Article I, Section 7. *See O'Neill*, supra; Ladson, supra.

Furthermore, the pre-arrest detention was too intense and too long to be permissible under Article I, Section 7. Place, supra; Williams, supra. Except for her refusal to allow a search of her purse, Ms. Barringer was cooperative, and nothing suggested that she posed a threat to anyone. She should not have been handcuffed and detained pending the officers' investigation. Williams. Nor should Hovinghoff have forced her to wait for the arrival of a K-9 unit and a female officer. Id.

Accordingly, the state failed to meet its "heavy burden" of establishing (by clear and convincing evidence) that the initial seizure and detention were conducted with the authority of law required by the state constitution. Garvin, at 250. The officers violated Ms. Barringer's state constitutional right to privacy. Evidence obtained by exploiting this illegal detention must be suppressed. Id.

E. The prosecution failed to prove that Ms. Barringer freely and voluntarily consented to a search of her purse.

Consent is an exception to the warrant requirement. State v. Schultz, 170 Wash.2d 746, 754, 248 P.3d 484 (2011). However, before consent can justify a warrantless search, it must be both "meaningful" and "informed." Id, at 754, 758. The state bears the burden of proving that any consent was voluntary. State v. Reichenbach, 153 Wash.2d 126, 131, 101 P.3d 80 (2004). A search is unlawful if premised upon consent coerced "by explicit or implicit means, by implied threat or covert force." Schneckloth v. Bustamonte, 412 U.S. 218, 228, 93 S.Ct. 2041, 36 L.Ed.2d 854 (1973). A suspect has the right to refuse consent, or to limit the scope of any search. Ferrier, at 118-119.

In this case, Ms. Barringer unequivocally refused consent to search her purse. CP 7. After she refused consent, the police continued to detain her (and her property) and sought permission for numerous other searches (including a strip search). Furthermore, when Ms. Barringer sought to limit the scope of any search, Hovinghoff told her that "the consent would be for the whole purse," and that if she limited her consent, he would apply for a warrant. RP (5/30/12) 36. This threat to obtain a warrant was groundless, given Hartley's lack of credibility, the failure to corroborate any of the information provided (including the failure to find the

marijuana pipe he'd said would be in the Blazer), and the steps already taken which should have dispelled suspicion.[15]

Under these circumstances, the prosecution failed to prove that Ms. Barringer's consent was freely and voluntarily given. Schultz, at 754, 758; Reichenbach, at 131. Her conviction must be reversed, the evidence suppressed, and the charge dismissed with prejudice. Id.

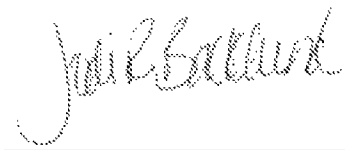
[15] A threat to obtain a search warrant may invalidate consent in the absence of grounds for issuance of a warrant. State v. Apodaca, 67 Wash. App. 736, 739-40, 839 P.2d 352 (1992) overruled on other grounds by State v. Mierz, 127 Wash.2d 460, 901 P.2d 286 (1995).

CONCLUSION

For the foregoing reasons, Ms. Barringer's conviction must be reversed, the evidence suppressed, and the charge dismissed with prejudice.

Respectfully submitted on December 24, 2012,

BACKLUND AND MISTRY



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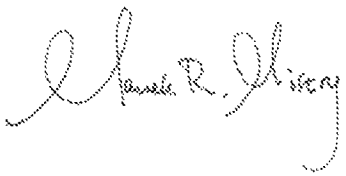

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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Jeanne Barringer
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With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

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I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Olympia, Washington on December 24, 2012.

Jodi R. Backlund, WSBA No. 22917
Attorney for the Appellant

BACKLUND & MISTRY

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- ○ Personal Restraint Petition (PRP)
- ○ Response to Personal Restraint Petition
- ○ Reply to Response to Personal Restraint Petition
- ○ Petition for Review (PRV)
- ○ Other: _____

Comments:

No Comments were entered.

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A copy of this document has been emailed to the following addresses:

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