Supreme Court No. 93704-4
(Court of Appeals No. 73422-9-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JAHROD JIMMA,

Petitioner.

PETITION FOR REVIEW

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

Washington Court of Appeals Decisions

United States Supreme Court Decisions

Federal Court of Appeals Decisions

Constitutional Provisions

Other Authorities

A. IDENTITY OF PETITIONER AND OPINION BELOW

Pursuant to RAP 13.4(b)(2) and (3) Jahrod Jimma asks this Court to accept review of the August 1, 2016 opinion of the Court of Appeals in State v. Jimma, 73422-9-I decision terminating review designated in Part B of this petition. Copy attached as Appendix A.

B. ISSUES PRESENTED FOR REVIEW

Jahrod Jimma was a passenger in a car whose driver was stopped for speeding. The police officer took advantage of the initial seizure and commenced an unrelated criminal investigation against the driver and three passengers. The officer wanted to build a marijuana possession case against someone in the car, so he pressured everyone in it. Mr. Jimma succumbed and admitted he was carrying the contraband. When he turned over some marijuana to the officer, he was arrested, and when he was searched, a handgun was discovered.

A person is in custody for purposes of Miranda if he reasonably feels deprived of his freedom of action in any significant way, such that he would not believe he is free to terminate the interrogation. Where a police officer stopped the car that Mr. Jimma was a passenger in and without Miranda[1] warnings twice commanded the occupants to disclose "where

[1] Miranda v. Arizona, 384 U.S. 436, 16 L.Ed.2d 694, 86 S.Ct. 1602 (1966).

the marijuana was," did the trial court violate Mr. Jimma's Fifth Amendment rights by admitting his self-incriminating response?

Should review be granted to address this important constitutional question?

Article I, section 7 of the Washington Constitution protects individuals' privacy rights and the Fourth Amendment of the United States Constitution protects individuals from unreasonable searches and seizures. Police officers cannot detain an individual without specific facts that create a reasonable suspicion the individual is engaged in criminal activity. Here, Officer Miller indiscriminately detained all four of the occupants of the car, even though the officer did not know whether it was the driver, or one of the three passengers, who was in possession of marijuana.

Did the officer violate Mr. Jimma's state constitutional right to privacy and the Fourth Amendment by detaining him in the absence of individualized suspicion that he was the one committing a criminal offense?

Should review be granted to address this important constitutional question?

C. STATEMENT OF THE CASE

Jahrod Jimma appeals his convictions for unlawful possession of a firearm in the first degree and possession of marijuana. CP 151-61. The recitation of facts pertaining to the traffic stop in the attached Opinion is largely correct, but contains some important omissions, primarily about the level of authority and control exerted by the arresting officer.

After pulling over her car, Officer Miller commanded the driver to produce her license, registration, proof of insurance. 1RP 24, 26-27, 53. He took her ID card from her. 1RP 34, 60. With the driver's ID in his possession, Officer Miller turned his attention to the passengers. They were all quiet and no one was acting suspiciously. 1RP 54-55.

Officer Miller smelled unburnt marijuana but had no reason to believe anyone in the car had recently consumed the drug. 1RP 54. He questioned the passengers and driver as a group. 1RP 30-32, 55, 56.

He expected answers from all of them. 1RP 56. When first questioned, "all four denied having marijuana." 1RP 32.

At that point, Officer Miller suspected someone in the car was lying to him, but he did not know who. 1RP 57-58. He told the four occupants that he "had been doing the job for quite a while... been a narcotic canine handler... knew what the smell of marijuana was... knew that there was marijuana in the vehicle." 1RP 33, 56.

He pressured the group by letting them know he thought they were lying to him. 1RP 57-58. To get them to stop denying that there was marijuana in the car, he may have gone as far as to say he had authority to get a search warrant. 1RP 56. He had done so in past similar situations: "I may have said it, I may not have, I don't know." 1RP 56.

Officer Miller asked about the substance "a second time." 1RP 33, 58. It was only then that Mr. Jimma admitted he had some and handed over a baggie to Officer Miller. 1RP 33, 58. At the officer's next order, Mr. Jimma produced a driver's permit showing he was twenty years old and was arrested for unlawful possession of marijuana by a minor. 1RP 33-34, 59. Searching him pursuant to this arrest, Officer Miller found a handgun. 1RP 59. Officer Miller did not read Miranda warnings to Mr. Jimma until after he was placed in the back of the patrol car. 1RP 39.

Mr. Jimma argued that Officer Miller's conduct violated the Fourth Amendment and Article I, Section 7. CP 1-55; 1RP 67-70. The State conceded that Mr. Jimma had been seized, but argued that Officer Miller had conducted a lawful Terry[2] detention. 1RP 71. Mr. Jimma argued that both his admission and the act of handing the marijuana to the officer should have been suppressed because Officer Miller had conducted a custodial interrogation without providing the Miranda warnings. CP 60.

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[2] Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

At trial, the State introduced into evidence: a) Mr. Jimma's statements admitting ownership of the marijuana, b) the drug itself, and c) the handgun recovered after the search incident to arrest for possession of marijuana. 2RP 44, 54-55; 85. The jury convicted of possession of marijuana while under the age of 21 and of unlawful possession of a firearm in the first degree. CP 106-07. The Court of Appeals found the seizure was lawful and also that no Miranda warnings were required.

E. ARGUMENT

1. **Review Should Be Granted Because The Trial Court Violated Mr. Jimma's Fifth Amendment Right To Remain Silent By Admitting His Self-Incriminatory Statement Given To Law Enforcement During A Custodial Interrogation Without The Benefit Of Miranda Warnings.**

a. Police officers must provide Miranda warnings prior to subjecting a suspect to a custodial interrogation.

The Fifth Amendment provides, "No person ... shall be compelled in any criminal case to be a witness against himself...." U.S. Const. amend. V. A suspect must be advised of his Fifth Amendment rights before a custodial interrogation. Miranda v. Arizona, 384 U.S. at 444-45. In this case, it is undisputed that the officer asked incriminating questions – "where is the marijuana" – and the issue is whether Mr. Jimma was in custody during the interrogation. Even though this questioning occurred at

the roadside and not in a police station, the trial court erred in ruling he was not in custody and so did the Court of Appeals.[3]

An individual is considered to be in custody for purposes of Miranda any time "the defendant's movement was restricted at the time of questioning." State v. Lorenz, 152 Wn.2d 22, 36, 93 P.3d 133 (2004). Warnings are required when the suspect is "in custody at the station or otherwise deprived of his freedom of action in any significant way." Orozco v. Texas, 394 U.S. 324, 327, 89 S.Ct. 1095, 22 L.Ed.2d 311 (1969) (quoting Miranda, 384 U.S. at 477) (emphasis in original).

The question is "whether a reasonable person in [the defendant's] position would have felt deprived of his freedom of action in any significant way, such that he would not have felt free to terminate the interrogation." Id.; State v. Heritage, 152 Wn.2d at 218; United States v. Craighead, 539 F.3d 1073, 1082 (9th Cir. 2008).

It is true that "[a] detaining officer may ask a moderate number of questions during a Terry stop to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect 'in custody' for the purposes of Miranda" and "Washington courts agree that a routine Terry stop is not custodial for the purposes of Miranda."

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[3] This Court reviews the trial court's determination of the custodial question *de novo*. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997).

State v. Heritage 152 Wn.2d at 218. In general, ordinary traffic stops of a driver are "presumptively temporary and brief," do not leave the motorist "completely at the mercy of the police," and consequently do not place the driver 'in custody' for the purposes of Miranda. Berkemer v. McCarty, 468 U.S. 420, 437, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984).

But, if "subjected to treatment that renders him 'in custody' for practical purposes, [a motorist]will be entitled to the full panoply of protections prescribed by Miranda." Id. at 440; see also Pennsylvania v. Bruder, 488 U.S. 9, 10 n. 1, 109 S. Ct. 205, 102 L. Ed. 2d 172 (1988) (per curiam) (admonishing lower courts to be vigilant in ensuring that police do not "delay formally arresting detained motorists, and ... subject them to sustained and intimidating interrogation at the scene of their initial detention.")

When a police officer makes a traffic stop, both the driver and passenger are seized within the meaning of the Fourth Amendment. Brendlin v. California, 551 U.S. 249, 256-57, 127 S. Ct. 2400, 2403, 168 L. Ed. 2d 132 (2007) ("A traffic stop necessarily curtails the travel a passenger has chosen just as much as it halts the driver, diverting both from the stream of traffic to the side of the road.")

In a roadside traffic stop, it is "reasonable for passengers to expect that a police officer at the scene of a crime, arrest, or investigation will not

let people move around in ways that could jeopardize his safety." Id. at 258. This "societal expectation of 'unquestioned [police] command" is "at odds with any notion that a passenger would feel free to leave, or to terminate the personal encounter any other way, without advance permission." Id. at 258 (internal citations omitted). While Brendlin is a Fourth Amendment case, the Supreme Court's recognition of police domination over a passenger in a roadside encounter speaks to Mr. Jimma's experience and validates his Fifth Amendment claim that he was subjected to custodial interrogation complete with Miranda protections.

b. Mr. Jimma was 'in custody' for Miranda purposes

In concluding that Officer Miller did not conduct a custodial interrogation, the trial court relied heavily on the Washington State Supreme Court's analysis in State v. Heritage. Curiously, the Court of Appeals Opinion makes no attempt to reconcile the facts of Mr. Jimma's arrest with Heritage. The facts of the two cases are related, but differ. Review should be granted because a proper application of Heritage calls for reversal.

In Heritage, two unarmed public park security officers, dressed in shorts and "Security Officer" t-shirts, rode their bikes up to a group of youths they suspected to be smoking marijuana. 152 Wn.2d 212. "They did not physically detain or search anyone" and "[t]hey immediately made

it clear that they did not have the authority to arrest." Id. at 219 (emphasis added). They asked one of the juveniles if the marijuana pipe they saw belonged to him, but he denied ownership. The officers then "addressed the entire group" with "Whose marijuana pipe is it?" and "We're Park Security, let's move it along." Id. at 213. This is when Heritage confessed.

The setting of Mr. Jimma's encounter with Officer Miller suggests this was not a situation a reasonable person would have felt at liberty to terminate and leave. Accord Brendlin v. California. Unlike Heritage, who was in an open public park, Mr. Jimma was traveling at night in a private motor vehicle. Heritage was free to ignore the security officers as they cycled toward him and could have easily moved elsewhere, but Mr. Jimma was far less free. For as long as Officer Miller detained the driver, Mr. Jimma would be stuck at the side of the road. For him, to avoid Officer Miller's interrogation, Mr. Jimma would have had to abandon the security of his chosen mode of travel and start walking along a darkened roadway.

As Brendlin makes clear, the reasonable societal expectation of the power dynamic in a roadside encounter with the police is that the police dictate if, and when, the encounter will end. 551 U.S. at 258. Indeed, when Officer Miller questioned Mr. Jimma, he was still holding onto the driver's identification, while Heritage and his companions were not asked for identification until after the confession. 1RP 34; Heritage, at 213.

The interrogators who stopped Heritage were unarmed t-shirt clad security officers on bikes. Id. at 219. Mr. Jimma and his companions were detained by a police officer whose show of power included a uniform, sidearm, patrol car, and intrusive lights. Officer Miller even made it a point to let Mr. Jimma and his fellow travelers know that he was a veteran drug crime fighter who would not be fooled. And, Mr. Jimma did not initiate this contact and "custody is more likely to exist" when law enforcement initiates contact. United States v. Griffin, 922 F.2d 1343, 1351 (8th Cir. 1990).

A reasonable person in Mr. Jimma's shoes would not have felt free to terminate the interrogation. The security officers who detained Heritage, on the other hand, admitted to her group they had limited power over her: "any doubts she might have had about the security guards' authority were eliminated by the guards' assurances, before questioning, that they could not arrest her." Id. at 219. That is not how Mr. Jimma was treated. "[T]he absence of police advisement that the suspect is not under formal arrest, or that the suspect is at liberty to decline to answer questions, has been identified as an important indicium of the existence of a custodial setting." Griffin, 922 F.2d at 1350.

The Opinion completely lacks any analysis of the differences between Heritage and the instant facts. The Court of Appeals wrote that

"[t]he stop occurred on a public road," but left out the fact that this was at night and that Mr. Jimma was not the driver. Op. at 7. The stop may have "lasted only a few minutes," but it was entirely controlled by the officer's command. Op. at 7. Contrary to the Opinion, Mr. Jimma most certainly did "explain how these facts differ from any routine traffic stop." Op. at 8.

The Court of Appeals also chose to completely ignore authority provided by Mr. Jimma showing how other jurisdictions analyzed police-passenger encounters with nearly identical facts. In State v. Hackett, 944 So. 2d 399, 400 (Fla. Dist. Ct. App. 2006), the police arrested a driver for criminal possession of drug paraphernalia, saw a bag of cocaine in the car, and questioned two passengers as to whose bag it was. The passengers were deemed to have been subjected to a custodial interrogation requiring Miranda warnings. Mr. Jimma's case is no different.

Likewise, in People v. Patel, 730 N.E.2d 582 (Ill. App. Ct. 2000) a police officer made a routine traffic stop which led to the driver's arrest. Next, the officer requested that Patel, an underage passenger like Mr. Jimma, show him his driver's license. In the process, the officer detected "signs of [illegal for Patel] alcohol consumption." With this knowledge – of a criminal matter irrelevant to Patel's driver's stop – Officer Rivkin asked Patel to tell him how much he had to drink, much like Officer Miller asked, twice, "who has the marijuana."Patel was in custody for Miranda

purposes. Id. at 585. "Officer Rivkin's decision to question the passenger of the detained vehicle regarding matters not germane to the initial traffic stop transformed this situation into a custodial interrogation outside the ambit of Berkemer." Id. at 605-06.

Here too, the answer to the question of "whether a reasonable person in [Mr. Jimma's] position would have felt deprived of his freedom of action in any significant way, such that he would not have felt free to terminate the interrogation," is a resounding yes. Craighead, 539 F.3d at 1082. Mr. Jimma was in custody for purposes of Miranda and his Fifth Amendment rights were violated when the officers subjected him to a custodial interrogation without the required warnings, and when the trial court admitted his statements notwithstanding the omission.

c. Review should be granted

Miranda is a constitutional requirement. Dickerson v. United States, 530 U.S. 428, 438, 120 S.Ct. 2326, 147 L.Ed.2d 405 (2000). As such, the State bears the burden of proving that the admission of a statement obtained in violation of Miranda was harmless beyond a reasonable doubt. See Arizona v. Fulminante, 499 U.S. 279, 292-97, 111 S.Ct. 1246, 113 L.Ed.2d 302 (1991); Chapman v. California, 386 U.S. 18, 24, 87 S. Ct. 824, 17 L. Ed. 2d 705 (1967).

The error here was real and should be corrected. The State proved the marijuana possession case through Mr. Jimma's unwarned confession and the testimonial act of surrendering the drugs.

As the Eighth Circuit recognized:

> The constant reluctance of law enforcement to advise suspects of their rights is counterproductive to the fair administration of justice in a free society. ... Such practices protect the integrity of the criminal justice system by assuring that convictions obtained by means of confessions do not violate fundamental constitutional principles.

United States v. Griffin, 922 F.2d at 1356.

Review should be granted and the convictions reversed, to alert the lower courts that in Washington, the Fifth Amendment matters.

2. Review Should Be Granted Because The Trial Court Wrongfully Denied Mr. Jimma's CrR 3.6 Suppression Motion.

The Fourth Amendment of the United States Constitution guards against unreasonable seizures of persons and effects absent a warrant. United States v. Mendenhall, 446 U.S. 544, 550, 100 S.Ct. 1970, 64 L.Ed.2d 497 (1980). Article I, section 7 of the Washington Constitution's prohibition against governmental intrusion into individuals' private affairs absent authority of law provides even stronger privacy protection than the United States Constitution. State v. Jones, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002).

Warrantless searches and seizures are "per se unreasonable, in violation of the Fourth Amendment and article I, section 7 of the Washington State Constitution." State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002); Coolidge v. New Hampshire, 403 U.S. 443, 454-55, 91 S.Ct. 2022, 29 L.Ed.2d 564 (1971). Although there are a few "jealously and carefully drawn" exceptions to the warrant requirement, these are not intended to undermine the warrant requirement. State v. Houser, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980) (quoting Arkansas v. Sanders, 442 U.S. 753, 759, 99 S.Ct. 2586, 61 L.Ed.2d 235 (1979)); State v. Patton, 167 Wn.2d 379, 386, 219 P.3d 651 (2009). The State bears a "heavy burden" to show a seizure falls within the scope of one of the exceptions to the warrant requirement, and must do so "by clear and convincing evidence." State v. Garvin, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

A Terry stop—a brief investigatory seizure of an individual—is one of the exceptions to the warrant requirement. A police officer is only permitted to conduct a Terry stop and infringe on an individual's private affairs if she has a "well-founded suspicion that the defendant engaged in criminal conduct." State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). The State must show the Terry stop was reasonable by pointing to specific and articulable facts that "show by clear and convincing evidence that the Terry stop was justified." Id. "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, 516 (2002) (noting that "proximity and evidence of temporary handling [of contraband] may be insufficient to establish constructive possession.") Id. at 182.

Passengers' privacy rights are independent of that of the driver. Under Article I, section 7, "[i]ndividual constitutional rights are not extinguished by mere presence in a lawfully stopped vehicle." State v. Parker, 139 Wn.2d 486, 498, 987 P.2d 73 (1999). The stop must be limited to the driver's traffic infraction; law enforcement officers are thus prohibited from asking a passenger for identification based only upon the vehicle stop. State v. Brown, 154 Wn.2d 787, 796, 117 P.3d 336 (2005); State v. Rankin, 151 Wn.2d 689, 698-99, 92 P.3d 202 (2004); see State v. Barwick, 66 Wn. App. 706, 709, 833 P.2d 421 (1992) (passengers are not required to carry identification). Similarly, an officer may not search a passenger or his belongings based upon the arrest of the driver or another occupant. Parker, 139 Wn.2d at 502-03; State v. Adams, 144 Wn. App. 100, 107, 181 P.3d 37 (2008); State v. Mendez, 137 Wn.2d 208, 219-20, 970 P.2d 722 (1999) (officer cannot order a passenger to exit or remain in the car without first articulating "an objective rationale predicated

specifically on safety concerns, for officers, vehicle occupants, or other citizens").[4]

A person is seized when they are stopped by a police officer for investigatory reasons. State v. Armenta, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997). A passenger is also seized when the police effectuate a traffic stop of the driver. Brendlin. v. California, supra.

Here, the illegality of the seizure arose when Officer Miller refused to take no for an answer and continued to press all of the car's occupants after they denied having marijuana in the car. 1RP 56-58. Officer Miller lacked individualized suspicion with respect to any one of the car's occupants. This course of action against Mr. Jimma was illegal.

The police have no authority to effectuate a Terry stop or frisk in the absence of "reasonable, articulable, and individualized suspicion." State v. Abuan, 161 Wn. App. 135, 141, 257 P.3d 1 (2011). Abuan was a passenger in a car whose driver was initially stopped for expired registration tabs and then arrested for driving with a suspended license. When the police arrested the driver, they also asked Abuan to come out of the car so it could be searched. The police then told Abuan "that he was

[4] In contrast, under the Fourth Amendment, the officer may order a passenger out of the car as a precautionary measure, without a reasonable suspicion that the passenger poses a safety risk. Brendlin v. California, 551 U.S. at 257-58. Maryland v. Wilson, 519 U.S. 408, 414-15, 117 S.Ct. 882, 137 L.Ed.2d 41 (1997).

not under arrest but that [they] wanted to search Abuan for weapons." Id. at 143. When Abuan disclosed he had marijuana on him, he was handcuffed, and placed under arrest for possession of marijuana. On appeal, the Court reversed Abuan's multiple convictions because the pat-down search was a violation of Abuan's state constitutional rights:

> Absent a reasonable, articulable, and individualized suspicion that a passenger is armed and dangerous or independently connected to illegal activity, the search of a passenger incident to the arrest of the driver is invalid under article I, section 7.

Id. at 146-47, citing State v. Jones, 146 Wn.2d at 336 (emphasis added).

Mr. Jimma was not frisked, but he was certainly seized. State v. Cormier, 100 Wn. App. 457, 460-61, 997 P.2d 950 (2000); State v. Gleason, 70 Wn. App. 13, 17, 851 P.2d 731 (1993); State v. Ellwood, 52 Wn. App. 70, 73-74, 757 P.2d 547 (1988).

The trial court did not understand that Officer Miller's actions toward Mr. Jimma required individualized suspicion: "So, doesn't the suspicion have to be directed towards somebody, or is it just the general somebody?" 1RP 72, 80, 83. The Court of Appeals should have corrected this error.

In State v. Grande, 164 Wn.2d 135, 187 P.3d 248 (2008), our Supreme Court made clear that when a police officer notices the odor of marijuana coming from a car, he does not have probable cause to arrest

everyone in it: "article I, section 7 of the Washington Constitution requires individualized probable cause for each occupant of the vehicle." 164 Wn.2d at 138 (emphasis added). "Each individual possesses the right to privacy, meaning that person has the right to be left alone by police unless there is probable cause based on objective facts that the person is committing a crime." Id. at 140. Accord State v. Rankin, 51 Wn.2d at 699 (vehicle passengers may not be seized "unless the officer has an articulable suspicion that that person is involved in criminal activity"); State v. Mendez, 137 Wn.2d 208; State v. Parker, 139 Wn.2d at 498.

Officer Miller may have been interested in finding out if there was illegally possessed marijuana in the car, but that did not give him the authority of law to detain everyone in it.

> Unless there is specific evidence pinpointing the crime on a person, that person has a right to their own privacy and constitutional protection against police searches and seizures.

Grande, 151 Wn.2d at 145-46 (emphasis added).

The Fourth Amendment too requires that searches and seizures be reasonable. A search or seizure is ordinarily unreasonable in the absence of individualized suspicion of wrongdoing. City of Indianapolis v. Edmond, 531 U.S. 32, 37, 121 S. Ct. 447, 451, 148 L. Ed. 2d 333 (2000) (sweeping drug interdiction checkpoints violated Fourth Amendment) citing Chandler v. Miller, 520 U.S. 305, 308, 117 S.Ct. 1295, 137 L.Ed.2d

513 (1997). Ybarra v. Illinois, 444 U.S. 85, 92, 100 S.Ct. 338, 62 L.Ed.2d 238 (1979) (constitutional protections against illegal search and seizure are "possessed individually.")

Furthermore, mere proximity to others independently suspected does not justify a police stop. State v. Thompson, 93 Wn.2d 838, 841, 613 P.2d 525 (1980). In fact, indiscriminate warrantless seizures of the many – predicated on the theory that one among them may be a criminal – are unconstitutional. Floyd v. City of New York, 959 F. Supp. 2d 540, 660 (S.D.N.Y. 2013), appeal dismissed (Sept. 25, 2013) (ruling that New York City Police Department's stop-and-frisk program that "lacke[ed] individualized reasonable suspicion" was unconstitutional and that the City was liable for violating the plaintiffs' Fourth and Fourteenth Amendment rights, due to the police department's widespread practice of suspicion-less targeting of African-American and Latino suspects).

In focusing on what it labeled the officer's "right to investigate" the trial court erred. 1RP 130. The analytical focus should have been on Mr. Jimma's "right to be left alone." Grande at 140.

The Court of Appeals should have recognized and corrected the trial court error. And, this is not a question of forcing the police to "walk away." Like the officer in Grande, did not have to "walk away;" he could

have pursued a search warrant because "he had probable cause to search the vehicle." Id. at 146.

The exclusionary rule serves to protect individual privacy rights, deter law enforcement from violating those rights by illegally gathering evidence, and preserve the dignity of the courts. State v. Rife, 133 Wn.2d 140, 148, 943 P.2d 266 (1997). Fruits of an unconstitutional search or seizure must be suppressed. State v. Ladson, 138 Wn.2d 343, 359, 979 P.2d 833 (1999).

E. CONCLUSION.

Officer Miller's custodial interrogation of Mr. Jimma should have been preceded by Miranda warnings. The roadside seizure – effectuated in the absence of individualized suspicion – violated Mr. Jimma's article I, section 7 right to privacy and was also unreasonable under the Fourth Amendment.

Review should be granted and both convictions should be reversed.

DATED this 31st day of August, 2016

Respectfully submitted,

/s/ Mick Woynarowski

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CASE #: 73422-9-I
State of Washington, Respondent v. Jahrod Jimma, Appellant

King County, Cause No. 13-1-14131-7 KNT

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal which states in part:

"Affirmed"

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

Richard D. Johnson
Court Administrator/Clerk

ssd

Enclosure

c: The Honorable Laura G. Middaugh

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	No. 73422-9-I
	)	
Respondent,	)	DIVISION ONE
	)	
v.	)	
	)	
JAHROD BESHAH JIMMA,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: August 1, 2016
	)	

APPELWICK, J. — Jimma challenges his jury conviction for possession of marijuana and first degree unlawful possession of a firearm. He contends that he was unlawfully detained and that he was interrogated without being advised of his rights under Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). He argues that the trial court erred in denying his CrR 3.5 and 3.6 motions to suppress the marijuana and the firearm. We affirm.

FACTS

Around 10:45 p.m. on October 31, 2013, Officer Rex Miller observed a car driving 53 miles per hour in a 40 mile per hour zone. Officer Miller stopped the car and the driver provided Officer Miller with an identification card listing her age as 19. Because it was dark, Officer Miller shone a flashlight into the car in order to

see the car's other occupants. The passengers, two females and a male, "appeared to be the same age as the driver."

While speaking with the driver, Officer Miller smelled "a very strong odor of marijuana." Believing that all of the car's occupants were not of legal age to possess marijuana, Officer Miller asked "if there was anybody in the vehicle that's 21 or older."[1] All four of the car's occupants admitted they were under 21. Officer Miller asked the occupants "where the marijuana was at." The occupants all denied having marijuana. Officer Miller told them he "had been doing the job for quite a while" and "knew what the smell of marijuana was." He asked the car's occupants a second time if anyone had marijuana. At this point, the male passenger, later identified as Jahrod Jimma, admitted that he had marijuana. Jimma reached into his jacket pocket and handed Officer Miller a small bag of what appeared to be marijuana. Officer Miller asked Jimma for identification. Jimma gave Officer Miller an instruction permit showing his age as 20. .

Officer Miller returned to his patrol car and called for backup. He waited in his patrol car until an additional officer arrived a few minutes later. The officers told Jimma that he was under arrest for possession of marijuana and handcuffed him. During a search incident to arrest, the officers found a handgun and several additional bags of marijuana in Jimma's jacket pockets. Officer Miller placed Jimma in his patrol car and advised Jimma of his Miranda rights. Jimma agreed

[1] Possession of less than 40 grams of marijuana by anyone under the age of 21 is a misdemeanor offense. RCW 69.50.4013(4), RCW 69.50.4014.

to answer questions. He admitted the gun was his and that he had purchased the marijuana.

At a CrR 3.5 and 3.6 hearing, Jimma moved to suppress the marijuana and the firearm. The trial court denied the motion. A jury convicted Jimma of possession of marijuana and first degree unlawful possession of a firearm. Jimma appeals.

DISCUSSION

Jimma argues that the trial court erred by denying his CrR 3.5 and 3.6 motions to suppress evidence. He contends that Officer Miller unlawfully enlarged the scope of the initial traffic stop by asking questions about marijuana because he lacked a specific, individualized suspicion that Jimma possessed marijuana. He also claims that the stop constituted a custodial interrogation and thus his statements and actions during the stop—admitting to having marijuana and giving the marijuana to Officer Miller—were inadmissible because he had not been advised of his Miranda rights beforehand.

"When reviewing the denial of a suppression motion, an appellate court determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law." State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). We review a trial court's conclusions of law de novo. Id.

I. Terry[2] Stop

As a general rule, the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution prohibit unreasonable searches and seizures. Id. Warrantless searches and seizures are per se unreasonable absent an exception to the warrant requirement. State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). One such exception is an investigative detention, or Terry stop. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

A Terry stop is permissible whenever an officer has a reasonable suspicion, grounded in specific and articulable facts, that the person stopped has been or is about to be involved in a crime. State v. Acrey, 148 Wn.2d 738, 747, 64 P.3d 594 (2003). The stop must be temporary and last no longer than necessary to effectuate the stop's purpose. State v. Williams, 102 Wn.2d 733, 738, 689 P.2d 1065 (1984). However, a stop "may be enlarged or prolonged . . . if the stop confirms or arouses further suspicions." State v. Guzman-Cuellar, 47 Wn. App. 326, 332, 734 P.2d 966 (1987). An officer may " 'maintain the status quo momentarily while obtaining more information.' " Williams, 102 Wn.2d at 737 (quoting Adams v. Williams, 407 U.S. 143, 146, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972)).

In reviewing the reasonableness of a stop, we "evaluate the totality of circumstances presented to the investigating officer." State v. Glover, 116 Wn.2d

[2] Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

509, 514, 806 P.2d 760 (1991). If the initial stop was unlawful or if officers exceed the scope of a valid stop, the evidence discovered during the unlawful portion of that stop is inadmissible. State v. Saggers, 182 Wn. App. 832, 839, 332 P.3d 1034 (2014).

Here, there is no dispute that the initial traffic stop was valid based on Officer Miller's reasonable suspicion that the driver was speeding. During the traffic stop, Officer Miller smelled what he knew, based on past law enforcement experience, to be marijuana. Officer Miller also had reason to believe that none of the car's occupants were of legal age to possess marijuana. Officer Miller therefore had a reasonable suspicion that a crime was being committed: that a minor was in possession of marijuana. This suspicion reasonably justified extending the initial detention to investigate the possible presence of marijuana in the car.

Citing State v. Grande, 164 Wn.2d 135, 187 P.3d 248 (2008), Jimma argues that continued detention was unjustified because even if Officer Miller reasonably believed that someone in the car had marijuana, he lacked individualized suspicion with respect to any particular passenger. Grande does not control here. In Grande, an officer performed a routine traffic stop on a car with two occupants. Id. at 138. The officer smelled marijuana emanating from the car and arrested both the driver and the passenger based solely on the odor. Id. at 139. The court held that the officer lacked probable cause to arrest both occupants without establishing individualized probable cause as to either occupant. Id. at 146. But, an officer may have reasonable suspicion to conduct a Terry stop based on less evidence

than is needed for probable cause to make an arrest. Acrey, 148 Wn.2d at 746-47; see also State v. Heritage, 152 Wn.2d 210, 218-19, 95 P.3d 345 (2004) (officers who smelled marijuana emanating from a group of juveniles and saw one of the juveniles holding what appeared to be a marijuana pipe were entitled to ask all the members of the group about ownership of the marijuana pipe as part of a valid Terry stop).

Here, Officer Miller had a reasonable suspicion that one of the car's underage occupants had marijuana. He was therefore entitled to ask a moderate number of questions to confirm or dispel his suspicions as part of a Terry stop. See Grande, 164 Wn.2d at 146 (an officer is not required to "simply walk away from a vehicle from which the odor of marijuana emanates and in which more than one occupant is present if the officer cannot determine which occupant possessed or used the illegal drug."). Officer Miller's brief amount of questioning did not exceed the valid scope of a Terry stop.

II. Miranda

The Fifth Amendment privilege against compelled self-incrimination requires that custodial interrogation be preceded by advice to the accused that he or she has a right to remain silent and a right to counsel. Miranda, 384 U.S. at 478-9. If officers conduct a custodial interrogation without Miranda warnings, statements made by the suspect during the interrogation must be suppressed. Id. at 479. An interrogation is "custodial" if, after considering the circumstances, a reasonable person would feel that his or her freedom was curtailed to a degree

associated with formal arrest. State v. Short, 113 Wn.2d 35, 40, 775 P.2d 458 (1989).

Jimma argues that at the time of the traffic stop, he was in custody for Miranda purposes because he did not feel "free to leave." But, by definition, a person subject to a traffic stop or a Terry stop is not free to leave. State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). " '[F]or the duration of a traffic stop . . . a police officer effectively seizes everyone in the vehicle.'" State v. Marcum, 149 Wn. App. 894, 910, 205 P.3d 969 (2009) (second alteration in original) (quoting Arizona v. Johnson, 555 U.S. 323, 327, 129 S. Ct. 781, 172 L. Ed. 2d 694 (2009). But, this does not make a stop comparable to a formal arrest for Miranda purposes, because traffic or Terry stops occur in public and are "presumptively temporary and brief." Berkemer v. McCarty, 468 U.S. 420, 437, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). Thus, a "detaining officer may ask a moderate number of questions during a Terry stop to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect 'in custody' for the purposes of Miranda." Heritage, 152 Wn.2d at 218.

Here, Jimma was not in custody when he admitted to possessing marijuana and gave Officer Miller the bag of marijuana. The stop occurred on a public road and lasted only a few minutes. Officer Miller asked the car's occupants a limited number of questions, all directed toward confirming or disproving his suspicion that one of the occupants illegally possessed marijuana. Jimma argues that the encounter was custodial because Officer Miller was in uniform, carried a firearm,

and shone a bright flashlight in the car. But, Jimma does not explain how these facts differ from any routine traffic stop. The scope and duration of the stop was reasonably related to its legitimate purposes: determining whether a traffic infraction had been committed and whether any of the car's occupants were committing a crime. Accordingly, the trial court did not err by admitting Jimma's statements and actions during the stop.

We affirm.

WE CONCUR:

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 73422-9-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

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Date: August 31, 2016