

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 100135-5

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

ZACHERY KYLE MEREDITH,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, Respondent, asks the court to deny review.

II. STATEMENT OF THE CASE

The facts of the case have been adequately set out in the published decision of the Court of Appeals appended to the defendant's petition for review.

III. ARGUMENT

A. STANDARD FOR ACCEPTING REVIEW

This court may accept review of a decision of the Court of Appeals if the decision (1) conflicts with a decision of this court or the Court of Appeals, (2) presents a significant question of constitutional law, or (3) involves an issue of substantial public interest that this court should decide. RAP 13.4(b). Because none of these grounds exist, review should be denied.

B. THE DECISION OF THE COURT IS CONSISTENT WITH DECISIONS OF THE COURT OF APPEALS AND THIS COURT.

The defendant claims that the police violated Const. Art. 1, § 7. Authority of law to conduct a search or seizure may be conferred by either a valid statute, the common law or court rule, or legal process such as a warrant or subpoena. State v. Gunwall, 106 Wn.2d 54, 68-69, 720 P.2d 808 (1986); Service Employees International Union Local 925 v. Freedom Foundation, 197 Wn. App. 203, 222, 389 P.3d 641 (2016).

The Court of Appeals assumed without deciding that the defendant had been seized when the officer asked him for his ORCA card or proof of payment. Slip op. at 6. A person designated to conduct fare enforcement for a Regional Transit Authority has the authority to request proof of payment from persons riding on buses operated by that authority. RCW 81.112.210(2)(b)(i). Thus, if the statute is consistent with

constitutional requirements it provides valid authority of law for the officer to have contacted the defendant to request proof of payment.

A person must produce proof of payment when requested by a person designated to monitor fare payment as a condition of riding on a Regional Transit Authority bus. RCW 81.112.220(1). People are presumed to know the law and are responsible for their voluntary acts and deeds. State v. Esquivel, 132 Wn. App. 316, 327, 132 P.3d 751 (2006). Thus, by entering a bus operated by that authority an individual impliedly consents to contact for the purposes of providing proof he has paid the fare for the ride.

Consent is an exception to the warrant requirement. To be valid consent must be voluntary, the person granting consent must have authority to consent, and the search must not exceed the scope of consent. State Reichenbach, 153 Wn.2d 126, 131, 101 P.2d 80 (2004).

There is no question that upon entering a bus a person has authority to consent to the contact and that consent is voluntary. In this case as the Court of Appeals recognized the contact did not exceed the scope of the consent. That initial contact was no more than asking for proof the defendant had paid his bus fare. Thus, the statute is consistent with requirements for a valid consent as an exception to the warrant requirement, and it provides authority of law for contact.

The defendant argues that consent is not a valid exception under Art. 1, § 7 of the State Constitution in the context of a seizure of one's person. But this court has said a person may consent to contact with a law enforcement officer. State v. Harrington, 167 Wn.2d 656, 222 P.3d 92 (2009).

Generally, when considering whether contact is consensual the test is whether a reasonable person in the in that situation would feel he was free to walk away. Id.

In the context of a person riding public transportation, the test is whether the person felt free to decline the officer's request or otherwise terminate the encounter. Florida v. Bostick, 501 U.S. 429, 436, 111 S.Ct. 2382, 115 L.Ed. 389 (1991). A request for identification without more is not a seizure. State v. Armenta, 134 Wn.2d 1, 11, 940 P.2d 1280 (1997).

Here the statute permitted even less. The only information a fare enforcement officer is permitted to request shows whether the person paid his bus fare. This is not the kind of personal information that this court has previously considered a private affair covered by Art 1, § 7. State v. Miles, 160 Wn.2d 236, 246-47, 156 P.3d 864 (2007).

The defendant relies on several cases to support the claim that consent is not an exception to a seizure under Art. 1, § 7. None of those cases support his

position because they do not address that specific question and involve different facts and circumstances.

In Thorp, the court considered whether a statute which required a permit for hauling cedar allowed a warrantless stop to determine if the hauler had a permit on the theory that forest industry was pervasively regulated by the Government. If so, persons engaging in that business impliedly consented to contact. State v. Thorp 71 Wn. App. 175, 178, 856 P.2d 1123 (1993). The court found the forest products industry was not pervasively regulated, and even if it were, implied consent would not extend to roving stops of motorists. Id. at 179. Finally, an ordinance permitting such a stop was unconstitutional to the extent that it permitted stopping motorists absent probable cause or reasonable suspicion to believe individual did not have a forest permit. Id. at 182. The court in that case never addressed whether consensual encounter between individuals and law-

enforcement was permitted in other circumstances such as those presented here.

Likewise, the defendant's position is not supported by State v. Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009). That case involved the constitutionality of a warrantless search of an automobile pursuant to arrest. Id. at 765. The quote cited by the defendant preceded a discussion of the application of that exception under the state constitutional provision. The consent exception to the warrant requirement was not at issue in that case.

The defendant further argues that the decision of the Court of Appeals conflicts with State v. Villela, 194 Wn.2d 451, 450 P.3d 170 (2019). That case dealt with the impound exception to the warrant requirement, not the consent exception. The question was whether RCW 46.55.360 provided the authority of law for mandatory impound upon arrest for DUI. Id. at 454. The impound exception required officers to consider reasonable

alternatives to impound or determine there was probable cause to believe the vehicle contained evidence of a crime before impounding the vehicle. Because the statute imposed a mandatory obligation regardless of these requirements it was inconsistent with that constitutional exception. It therefore did not provide or authority of law to permit a mandatory impound. Id. at 460.

As noted above however RCW 81.112.220(1) is consistent with the consent exception for either search seizure. Thus, the statute is constitutional and does provide authority of law to contact the bus passenger for the limited purpose purposes of confirming fare payment. Therefore, the decision is not in conflict with the decision of this Court.

Finally, the defendant argues the decision conflicts with settled contract law in Washington. He argues a well-known principle of contract law is that the terms of the agreement must be sufficiently definite so that the parties

are not surprised by the contractual obligations. But as noted, people are assumed to know the law, and the law requires persons entering Regional Transit Authority buses pay the fare and produce proof of payment upon request. So riders are aware of the conditions of riding a publicly-operated bus. The statute does not conflict with this principle of contract law.

The defendant points to State v. Carter, 472 Md. 36, 244 A.3d 1041 (2021). While both cases involved barrier-free transportation, a key difference was present in Carter. There passengers were prevented from continuing on their journey while fare inspection was conducted. Id. at 47-48. The court found it unlikely that passengers would understand that they would be seized on a stationary train based on signage indicating passengers must pay before boarding. Id. at 62. The court distinguished the situation in which fare inspection occurred while the train was in transit between stations

although. Here, as the lower court in Carter observed, it was the nature of the bus travel itself, and not the officer's conduct that restrained the passenger's freedom of movement. Id. Carter does not support review.

C. THE DECISION IS BASED ON SETTLED CONSTITUTIONAL LAW AND IS LIMITED IN SCOPE.

The defendant suggests that review is warranted here because the decision could have far-reaching effects on motorists. Citing RCW 46.64.070 and RCW 46.16A.180, the defendant argues that law enforcement would be able to stop and seize any driver to demand proof of registration. Since the decision only addresses whether RCW 81.112.210 and RCW 81.112.220 gives authority of law to permit officers to request proof of payment on buses operated by the Regional Transit Authority, it could not be construed to expand the authority for officers to stop private motor vehicles driven on public highways. And because the decision of the Court of Appeals is based on settled constitutional law, it

does not present a significant question of constitutional law.

D. ARGUMENTS BASED UPON AN UNDEVELOPED RECORD DO NOT RAISE AN ISSUE OF SUBSTANTIAL PUBLIC INTEREST THAT SHOULD BE DETERMINED BY THIS COURT.

The defendant argues that this Court should take review because it involves an issue of substantial public interest that this court should decide. To support this argument, he relies on arguments raised only by amici which the Court of Appeals rejected because the record had not been developed and neither party had raised that particular issue. Slip opinion at 4, n.2.

This court has taken review based on issues of substantial public interest where the decision of the Court of Appeals has the potential to affect many people. State v. Watson, 155 Wn.2d 574, 577, 122 P.3d 903 (2005). In Watson, this Court reviewed a decision where the Court of Appeals held a memorandum by the elected prosecutor distributed to all Superior Court judges concerning the

prosecutor's office policy for handling DOSA sentences was an improper ex parte communication that was harmless under the circumstances. Id. at 575.

In Watson the communication between the prosecutor and the Superior Court judges had been made part of the record. Id. at 576. Unlike Watson, the data upon which amici relied to argue disparate treatment for people of color in fare enforcement for King County Metro was not part of the record. Nor was there any other evidence that countered that argument in the record. For example, in its response the State noted evidence that when fares were not collected due to health concerns for transit operators during the pandemic, the result was a reduction in service which adversely affected those same populations. See Answer to Brief of Amici at 12.

While certainly the question of fare enforcement affects many people, this court should decline review where the record supporting issues of substantial public

interest has not been developed. Reviewing the issue on this basis could result in ill-considered results.

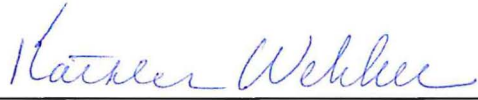
IV. CONCLUSION

For the foregoing reasons the State asks the Court to deny review.

This brief contains 9,380 words (exclusive of appendices, title sheet, table of contents, table of authorities, certificate of service, signature blocks, and pictorial images).

Respectfully submitted on September 24, 2021.

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DECLARATION OF SERVICE

I certify that I sent via e-mail a copy of the foregoing document to: The Supreme Court via Electronic Filing and to Tobin Klusty; tobink@mazzonelaw.com;

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

Signed at the Snohomish County Prosecutor's Office.



9/24/21

Diane K. Kremenich DATE:
Legal Assistant/Appeals Unit

SNOHOMISH COUNTY PROSECUTOR'S OFFICE

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