

U9542-8

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NO. 69542-8-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SARAH WIXOM,

Appellant.

FILED  
APR 11 2011  
11:16 AM  
CLERK OF COURT  
COURT OF APPEALS  
STATE OF WASHINGTON  
4

ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR SKAGIT COUNTY

APPELLANT'S REPLY BRIEF

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TABLE OF CONTENTS

A. ARGUMENT IN REPLY..... 1

1. Ms. Wixom was unlawfully seized when the officer requested identification, and the evidence obtained during the subsequent search of her person must be suppressed.....1

    a. The same fundamental issue was raised below and the record is sufficient for review..... 1

    b. Ms. Wixom was unlawfully seized at the time the officer requested identification because the officers were investigating an alleged crime, in which Ms. Wixom was the potential victim, rather than initiating a social contact.....4

2. The search warrant is invalid as to Ms. Wixom’s belongings and the evidence found in her purse must be suppressed.....5

B. CONCLUSION..... 8

TABLE OF AUTHORITIES

**Washington Supreme Court Decisions**

State v. Coates, 107 Wn.2d 882, 735 P.2d 64 (1987).....6

State v. Gaines, 154 Wn.2d 711, 116 P.3d 993 (2005).....5, 6

State v. Larson, 93 Wn.2d 638, 611 P.2d 771 (1980) ..... 2, 5

State v. O’Bremski, 70 Wn.2d 425, 423 P.2d 530 (1967).....5

State v. O’Neill, 148 Wn.2d 564, 62 P.3d 489 (2003) ..... 4

State v. Parker, 139 Wn.2d 486, 987 P.2d 73 (1999)..... 6, 7

State v. Rankin, 151 Wn.2d 689, 92 P.3d 202 (2004)..... 1

**Washington Court of Appeals Decisions**

State v. Mote, 129 Wn.App. 276, 120 P.3d 596 (2005) ..... 4

**United States Supreme Court Decisions**

Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407,  
9 L.Ed.2d 441 (1963) ..... 13

A. ARGUMENT IN REPLY

**1. Ms. Wixom was unlawfully seized when the officer requested identification, and the evidence obtained during the subsequent search of her person must be suppressed.**

- a. The same fundamental issue was raised below and the record is sufficient for review.

A woman placed a call to 911 after she observed a car swerving outside the lane boundaries and believed that the male driver might be punching his female passenger. 5/9/12 RP 30-31. Officers located the vehicle in the parking lot of a Wal-Mart just as the occupants were exiting the car. CP 17. An officer immediately placed the male driver, Jesse Skogseth, in custody because he was speaking quickly and fidgeting. Id. Ms. Wixom, the passenger in the car, yelled at the officers that Ms. Skogseth had done nothing wrong and should be released. 5/9/12 RP 43. When she refused to listen to the officers' explanation of their investigation, an officer demanded her identification. 5/9/12 RP 40. When he determined the information she provided was inaccurate, he placed Ms. Wixom under arrest. 5/9/12 RP 50.

Ms. Wixom was seized as a matter of law when the police officer asked her to identify herself. See State v. Rankin, 151 Wn.2d

689, 699, 92 P.3d 202 (2004); State v. Larson, 93 Wn.2d 638, 611 P.2d 771 (1980). The State contends the record is insufficient to allow review of this issue because the trial court focused on whether Ms. Wixom was unlawfully seized at the time she allegedly provided a false name and birth date to officers, rather than when the officer requested Ms. Wixom's identification. Resp. Br. at 15-17. It asserts review is precluded because the record is unclear as to Ms. Wixom's location relative to the police officers and the vehicle. Resp. Br. at 15.

However, the record is clear that when the officer asked Ms. Wixom to identify herself she was standing outside of the vehicle. 5/9/12 RP 42, 68. At the evidentiary hearing, Officer Michael Oster testified that when he arrived on the scene he observed Ms. Wixom standing by a blue Honda, the car she had just exited. 5/9/12 RP 42. Officer Oster stated that he attempted to explain the allegations to her, and she continued to yell at him. 5/9/12 RP 45. Officer Oster asked another officer to stand with Ms. Wixom while he gathered information from the first officer on the scene. 5/9/12 RP 46. He then returned to Ms. Wixom and attempted to explain the allegations to her again. Id. When she continued to yell at him, he requested she provide identification. Id.

In arguing this record is insufficient, the State reads Ms. Wixom's argument too narrowly. The fundamental issue raised at both the trial court level and on appeal is whether Ms. Wixom was unlawfully seized. The evidentiary hearing provides a fully developed record of the circumstances leading up to and surrounding Ms. Wixom's unlawful seizure. The undisputed facts show Officer Oster asked Ms. Wixom for identification after she continued to yell at him rather than listen quietly to his explanation of the allegations made against Mr. Skogseth. 5/9/12 46. After she denied having identification, and provided information about her name and date of birth the officer determined was incorrect, Ms. Wixom indicated she did not wish to speak with the officer further. 5/9/12 RP 66. However, Officer Oster informed her that it "wasn't a choice" and that he "needed to be able to identify her" despite the fact that she was merely a potential victim of a crime. Id. The record provides all of the information needed to consider the issue on appeal. Review is not precluded.

- b. Ms. Wixom was unlawfully seized at the time the officer requested identification because the officers were investigating an alleged crime, in which Ms. Wixom was the potential victim, rather than initiating a social contact.

The State argues that Ms. Wixom was not seized at the time Officer Oster requested identification because she was outside of the vehicle and simply “remained at the scene while officers dealt with the driver.” Resp. Br. at 18. It relies on cases in which the initial contact involved questioning by an officer but no show of force, termed a “social contact.” Resp. Br. at 19-20; see State v. O’Neill, 148 Wn.2d 564, 579, 62 P.3d 489 (2003); State v. Mote, 129 Wn.App. 276, 290, 120 P.3d 596 (2005).

As discussed in the Appellant’s Opening Brief, these cases are inapposite because here the officers were investigating a crime, not initiating a social contact. The officers displayed a clear show of force by placing Mr. Skogseth under arrest immediately upon coming in contact with him. CP 17, 5/9/12 RP 41. When Ms. Wixom indicated she did not wish to speak with Officer Oster, he informed her she was required to identify herself. 5/9/12 RP 66. Officer Oster made it clear that Ms. Wixom was not free to terminate the encounter and walk away. See O’Neill, 148 Wn.2d at 574. However, Ms. Wixom was under no

legal duty to answer the officer's questions or identify herself. See State v. Larson, 93 Wn.2d 638, 645, 611 P.2d 771 (1980). The officers were acting in an investigative capacity and had no independent justification for requesting Ms. Wixom's identifying information. She was unlawfully seized at the time the officer made the request.

**2. The search warrant is invalid as to Ms. Wixom's belongings and the evidence found in her purse must be suppressed.**

The State contends that even if Ms. Wixom was unlawfully seized, this cannot result in suppression of the evidence found as a result of the search warrant because this issue was not raised on appeal. Resp. Br. at 21. However, Ms. Wixom did raise this issue on appeal. Op. Br. at 13.

Evidence derived from an illegal search is subject to suppression under the fruit of the poisonous tree doctrine. State v. Gaines, 154 Wn.2d 711, 717, 116 P.3d 993 (2005); see also State v. O'Bremski, 70 Wn.2d 425, 428, 423 P.2d 530 (1967) (citing Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963)). A search warrant is invalid if the affidavit does not establish probable cause independent of the illegally obtained information. Gaines, 154 Wn.2d



at 718 (citing State v. Coates, 107 Wn.2d 882, 887, 735 P.2d 64 (1987)).

When applying for the search warrant, the State relied on the fact that methamphetamine was found on Ms. Wixom's person during the search incident to her arrest. CP 79. This information was obtained unlawfully and therefore cannot provide the basis for probable cause. Gaines, 154 Wn.2d at 717. Had the affidavit relied only on the information that Mr. Skogseth was in possession of methamphetamine, the State may have established probable cause to search the vehicle. However, without the unlawfully obtained evidence, it would not have had probable cause to search Ms. Wixom's purse found within the car. See State v. Parker, 139 Wn.2d 486, 502-503, 987 P.2d 73 (1999).

Counts two and three of the amended information, charging Ms. Wixom with possession of methamphetamine and possession of Alprazolam, arise from the search of the vehicle and are based on evidence discovered in Ms. Wixom's purse. CP 9, 25. During the search, the officers located a purse on the "floorboards of the passenger side front seat." CP 25. In this purse, officers found methamphetamine and Alprazolam prescribed to a "William Carnahan." CP 25-26. They also located a receipt and a pill bottle with Ms. Wixom's name. CP 25.

Under State v. Parker, officers are permitted to search a vehicle incident to the arrest of the driver but containers within the vehicle may not be lawfully searched if the officers know or should have known the containers belonged to non-arrested occupants. Parker, 139 Wn.2d 505. These containers are subject to lawful search only if there is an independent, objective basis to believe the containers hold a weapon or evidence. Id.

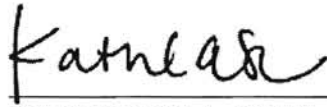
Here the officers had information that Ms. Wixom was seated in the front passenger seat of the vehicle, and they located a woman's purse on the front passenger floor of the car. CP 25. Upon conducting a search of the vehicle, they knew or should have known the purse belonged to Ms. Wixom. Without the unlawfully obtained information that Ms. Wixom was in possession of methamphetamine, the State would have had no basis upon which to establish probable cause to search Ms. Wixom's belongings located within the vehicle. The evidence found in Ms. Wixom's purse must be suppressed.

B. CONCLUSION

For the reasons set forth above and in the Appellant's Opening Brief, Ms. Wixom's conviction must be reversed, with the case remanded for suppression of the evidence against her and dismissal.

DATED this 17<sup>th</sup> day of December 2013.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Kathleen A. Shea". The signature is written in a cursive style with a horizontal line underneath.

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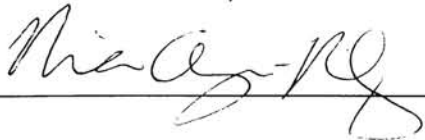
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**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, NINA ARRANZA RILEY, STATE THAT ON THE 17<sup>TH</sup> DAY OF DECEMBER, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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| [X] | SARAH WIXOM<br>69 PUFFIN LANE<br>EASTSOUND, WA 98245   | (X)<br>( )<br>( ) | U.S. MAIL<br>HAND DELIVERY<br>_____ |

**SIGNED** IN SEATTLE, WASHINGTON THIS 17<sup>TH</sup> DAY OF DECEMBER, 2013.

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