

NO. 69542-8-I

IN THE COURT OF APPEALS – STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON
Respondent,

v.

SARAH JANE WIXOM,
Appellant.

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION ONE

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

The Honorable Dave Needy, Judge

RESPONDENT’S BRIEF

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I. SUMMARY OF ARGUMENT

Officers responded to a report of a domestic assault where a male driver reportedly struck a female in a car. When they came upon the parked car, officers were confronted by two angry individuals. The male was detained. The female, Sarah Wixom, was agitated and upset, yelling and screaming at officers. Because officers were investigating a domestic violence report, they sought to identify Ms. Wixom, asking for her name. In response, Ms. Wixom gave a false name and date of birth. Wixom was arrested for obstructing, providing a false statement and searched. Methamphetamine was found on Wixom. Officers also pursued a separate search warrant and located both further methamphetamine and the drug Alprazolam in a bag in the vehicle.

Wixom contested probable cause for arrest in the trial court.

Wixom contends officers violated her Wa. Const. article I, section 7 rights, when demanding that Wixom provide identification.

The State contends Wixom did not allege she was improperly seized prior to be asked her name, thus she failed to carry her burden. Wixom also does not assign error admission of drugs located pursuant to a search warrant which was not found pursuant to Wixom's arrest. Dismissal is inappropriate where Wixom fails to establish the search warrant was improperly granted.

II. ISSUES

1. Does a defendant carry the burden of establishing a seizure?
2. Where the defendant fails in the trial court to contend they were seized prior to being arrested, have they preserved the issue for review?
3. Where officers contact individuals in the proximity of a parked vehicle, are investigating an assault and ask for identity, have they commenced a seizure of that person?
4. Where officers are investigating a report of a domestic assault, are false statements about a potential victim's name and date of birth material where defense fails to make the claim on appeal?
5. Where a defendant assigns error only to whether an officer violated a defendant's article I, section 7 rights, by demanding that the defendant provide identification, does that permit challenge to a search warrant subsequently granted which is not alleged to have been based upon improperly obtained evidence?

III. STATEMENT OF THE CASE

1. Statement of Procedural History

On January 31, 2012, Sarah Wixom was charged with Possession of Methamphetamine alleged to have occurred on October 17, 2011. CP 1.

Wixom was a passenger in a vehicle which had been contacted regarding an assault reported by a driver in another vehicle. CP 34.

Officers contacted Sarah Wixom outside of the vehicle in the Walmart parking lot a short distance away. CP 34. While officers detained the driver, Wixom began yelling at officers and walked towards the officers trying to detain the driver. CP 34. Wixom was told that if she did not obey the officer's verbal commands, she would be arrested for obstructing. CP 34. Wixom then began yelling at another officer. CP 35. That officer spoke with Wixom who then provided a number of false names and a false date of birth. CP 36. The officer placed Wixom under arrest for obstructing, and pursuant to the search incident of arrest of Wixom, a bag of crystal substance later determined to be methamphetamine was located in her wallet. CP 23, 36, 99.

The other driver was contacted and described that she had observed a male driver of a vehicle leaning down and over toward the female passenger in response to which the passenger was moving away. CP 35. The civilian did not see the driver's hands, she could not see if he actually struck the passenger. CP 35.

Officers pursued a search warrant for the vehicle locating suspected methamphetamine. CP 25.

On April 4, 2012, the trial court heard a 3.6 motion and later entered findings that the false words alone and false name and date of birth alone did not provide probable cause to arrest for obstructing. 4/4/12 RP 16-7¹, CP 62. The trial court determined an evidentiary hearing as required to determine whether there was probable cause to arrest for making a false statement. 4/4/12 RP 21-2, CP 63.

On May 9, 2012, the trial court heard the 911 call and also took testimony from the officers regarding the contact with Wixom. 5/9/12 RP 30-78.

On May 23, 2013, the trial court heard arguments as to the constitutionality of the false statement statute. 5/23/12 RP 103-111. The trial court determined that Ms. Wixom's statement was material and that the statute is not unconstitutional. 5/23/12 RP 112, 115

On June 13, 2012, the trial court entered an order finding that the false statement statute, RCW 9A.76.175, was not unconstitutional. 6/13/12 RP 3-4, CP 64. The trial court also entered findings on the suppression hearing. 6/13/12 RP 3-4, CP 66-9. The trial court concluded that the false

¹ The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

4/4/12 RP	Motion to Suppress (in volume with 5/29/12)
5/9/12 RP	Motion to Suppress (in volume with 4/4/12)
6/13/12 RP	Entry of Findings and Second Motion to Suppress
10/3/12 RP	Argument on Motion to Suppress Search Warrant
10/31/12 RP	Stipulated Facts Trial, Findings and Sentencing.

name and date of birth by Wixom was information likely to be relied upon by a public servant and that the officers had probable cause to arrest based upon the false statement. CP 65. Therefore the trial court determined the search incident to arrest was proper. CP 66.

Wixom was also arraigned on an amended information alleging additional counts of Unlawful Possession of Controlled Substance for methamphetamine and alprazolam found pursuant to the search warrant. CP 8-9, 6/13/12 RP 6, 10/31/12 RP 7.

On August 22, 2012, Wixom filed a third motion to suppress contending there was an unlawful search of the vehicle claiming the search warrant obtained was unsupported by probable cause. CP 70.

On October 3, 2012, the trial court heard argument on the motion to suppress the search warrant based upon a claimed lack of nexus. 6/3/12 RP 4-13.

On October 4, 2012, the trial court entered an order denying the motion to suppress. CP 93. The trial court found there was sufficient nexus between the defendants to justify the issuance of a warrant to search the vehicle for evidence of drugs. CP 93.

On October 31, 2012, Wixom entered a Statement of Submittal or Stipulation to Facts, allowing the court to make a determination of guilt and

thereby preserve her ability to appeal the pretrial rulings. 10/31/12 RP 5-7, CP 94-5.

On October 31, 2012, the trial court found Wixom guilty on the count related to the methamphetamine found on her person. 10/31/12 RP 10-11. Regarding the methamphetamine and the Alprazolam found in the backpack in the vehicle, the trial court found that Ms. Wixom had dominion and control over the items in the backpack immediately prior to arrest. 10/31/12 RP 10-1. The trial court accepted the State's position that the two substances located in the backpack constituted the same unit of prosecution and therefore found Wixom guilty of only the count related to the Alprazolam. 10/31/12 RP 11.

The trial court sentenced Wixom to 20 days of confinement with 13 days converted to jail alternatives or community service, but stayed the sentence pending appeal. 10/31/12 RP 17, CP 40, 43.

On November 8, 2012, Wixom timely filed a notice of appeal. CP 175-86.

On December 12, 2012, the trial court entered findings of fact and conclusions of law regarding the bench trial on stipulated facts. CP ___ (Sub No. ___, Findings of Fact and Conclusions of Law Re Stipulated Bench Trial filed December 13, 2012, Supplemental Designation of Clerk's Papers Pending).

2. Statement of Facts Pertaining to Suppression Motion

On May 9, 2012, the trial court conducted an evidentiary hearing. 5/9/12 RP 23-114.

The prosecutor played the 911 call. 5/9/12 RP 30-4.

Officer Oster, a twenty-seven year veteran of the Mount Vernon Police, was working patrol on October 17, 2011. 5/9/12 RP 35. Oster responded to a possible domestic of a male hitting a female in a vehicle in the area of Wal-Mart. 5/9/12 RP 36, 52. Oster had specific training regarding dealing with domestic violence cases. 5/9/12 RP 37-9. Oster testified that because of the relationship dynamic in domestic violence cases, the victim is often in violent and threatening encounters in the relationship and when officers respond it is usually not the first time. 5/9/12 RP 38. Based upon his experience, Oster testified that often times the victim of the alleged assault or violence will cover up or downplay the incident to avoid consequences from law enforcement. 5/9/12 RP 38-9. As a result, Oster testified it is important to separate the parties to avoid them influencing information between each other. 5/9/12 RP 39, 51-2.

Oster testified that he asks those that he is speaking to identify themselves because it is important to find out who the parties are and

determine whether there may have been prior assaults or violence between the parties. 5/9/12 RP 39-40.

Upon arriving at Wal-Mart, Oster identified that Officer Shaddy had arrived and was near a blue four-door Honda which was the vehicle which had been reported. 5/9/12 RP 41-2. Shaddy had a male subject standing near-by Shaddy's vehicle and appeared to be trying to hold the man there and restrain him. 5/9/12 RP 41. The man was resisting and was speaking to Shaddy. 5/9/12 RP 41-2. The man was later identified as Mr. Skogseth. 5/9/12 RP 44.

There was a female standing by the blue Honda who seemed to be agitated and was directing verbal comments at Officer Shaddy. 5/9/12 RP 42. The female was later identified as Sarah Wixom. 5/9/12 RP 44.

As Oster approached the man, Skogseth could hear him telling Shaddy that Skogseth hadn't done anything and that Skogseth appeared to attempt to spin out of Shaddy's grasp. 5/9/12 RP 43. Oster assisted by grabbing Skogseth's other arm so that Officer Shaddy could handcuff him. 5/9/12 RP 43.

Oster could hear Wixom yelling at him and Shaddy that Skogseth had done nothing wrong and to let him go. 5/9/12 RP 43. Oster turned his attention to Wixom at one point telling her to give the officer a minute and that he would explain what was going on. 5/9/12 RP 43. Wixom continued

to yell and argue. 5/9/12 RP 43. After Skogseth was put in handcuffs, Oster turned his attention to Wixom and to explain the situation to her. 5/9/12 RP 44-5. Oster did not see if Shaddy searched Skogseth. 5/9/12 RP 53. Wixom continued to yell and argue with Oster and as he tried to explain the situation to her Wixom interrupted him and shouted over him. 5/9/12 RP 46. Officer Oster then spoke with Officer Shaddy before returning to talk to Wixom. 5/9/12 RP 46.

Wixom was still yelling and at that point had begun yelling at Officer Gerondale, who had arrived. 5/9/12 RP 46. Oster again tried to explain what the call was about and why officers had responded, but could never finish a sentence because Wixom was yelling and screaming at them. 5/9/12 RP 46.

At that point, Officer Oster asked her for identification, but Wixom said she did not have any, but identified herself by name as Sarah Bixom. 5/9/12 RP 46-7. Because she was yelling, Oster had not heard the first letter of the last name clearly and asked her if it started with a "B" and Wixom said it did. 5/9/12 RP 47. Oster also got her date of birth as August 6th, 1986. 5/9/12 RP 47. Oster had dispatchers run the name to confirm who they were speaking with. 5/9/12 RP 47. He was informed there was no computer record. 5/9/12 RP 48. Oster approached Wixom with that fact. 5/9/12 RP 48. Oster also became aware that the vehicle was registered to a

person with the last name of Wixom from Officer Gerondale. 5/9/12 RP 48. When confronted, Wixom admitted her true name. 5/9/12 RP 48. Oster then went to confirm the date of birth with her, and she stated it the same again. 5/9/12 RP 48. After finding out, that it did not match the records through the Department of Licensing, Oster asked her what her true date of birth was and she admitted it was August 6, 1983. 5/9/12 RP 49.²

Oster testified it was important to get the correct information in this situation so he could positively identify who they were dealing with and document the correct person. 5/9/12 RP 49.

² Wixom's brief asserts that she told Officer Oster she did not wish to speak with him citing 6/9/12 RP 48, 66. Brief of Appellant at page 4. It is believed that Wixom is citing to transcript 5/9/12. The State could find no such reference at page 48, and at page 65-6, the transcript reads:

- Q. All right. So at some point then you asked her – so at some point you asked her her date of birth; right?
- A. Yes.
- Q. Okay, and she said – she said she did not want to talk to you any further at some point; right? Prior to giving the date of birth?
- A. That was after she had given me two different names/
- Q. Okay. But - - two different names?
- A. Or I'm sorry, the name, the second time, but the wrong date of birth the second time.
- Q. Okay. But at some point she said she didn't want to talk to you any further; right?
- A. Correct.
- Q. What did you tell her?
- A. That I needed to be able to identify her, and that wasn't - - that wasn't a choice, not to provide that to me.
- Q. So essentially you were ordering her to answer the question; right?
- A. Yes, to identify herself.

5/9/12 RP 65-6. The State contends that when read in context of the statement on page 65, Ms. Wixom refused to talk to Officer Oster after she had already identified herself.

Officer Gerondale went to contact the reporting party who had reported the incident. 5/9/12 RP 49.

Officer Oster placed Wixom under arrest for obstructing and for providing the false information. 5/9/12 RP 50. When Wixom was arrested, she was handcuffed and searched. 5/9/12 RP 50.

After Wixom had been placed under arrest, Officer Gerondale came out and indicated that the reporting party did not actually see a physical assault. 5/9/12 RP 51.³ As a result, Skogseth and Wixom were both released from the scene as they both had denied there was physical assault. 5/9/12 RP 51.

Officer Gerondale, a twelve-year officer for the Mount Vernon Police Department, testified he responded to Wal-Mart for what was reported as an in-progress domestic assault as a high priority call. 5/9/12 RP 67. Gerondale was the third officer on the scene. 5/9/12 RP 67-8. When Gerondale arrived Wixom was yelling at Officers Oster and Shaddy. 5/9/12 RP 68. Gerondale went to talk to Wixom to explain what they were doing there. 5/9/12 RP 68. Wixom was upset and Gerondale tried to explain to her that she needed to calm down and that they were investigating a domestic

³ Wixom asserts that another officer had already spoken to the reporting party prior to Wixom being arrested. Brief of Appellant at page 4. From the record below, it is uncertain if it can be determined whether that was actually the case, because by the time Officer Gerondale returned from speaking with the reporting party to talk to Officer Oster, Wixom had already been placed in custody. 5/9/12 RP 50, 72.

dispute. 5/9/12 RP 68. Wixom was yelling and screaming and about a minute after he was speaking with her Wixom said there had been no assault and there was no reason to arrest Skogseth. 5/9/12 RP 68-9. Because people are often not honest with police, Gerondale felt the need to investigate further. 5/9/12 RP 69. Officer Gerondale tried to explain this to Wixom but she was yelling and screaming at Gerondale. 5/9/12 RP 69. While Gerondale was speaking with Wixom, she was trying to go to Shaddy and Oster who were arresting Skogseth. 5/9/12 RP 69. Gerondale informed her if she kept trying to go towards Skogseth, she was going to be arrested for obstructing. 5/9/12 RP 69.

Officer Oster came over and tried to speak with Wixom. 5/9/12 RP 69-70. Because Gerondale could not get anywhere with Wixom, he went to contact the reporting party while Officer Oster dealt with Wixom. 5/9/12 RP 70. Gerondale spoke with the reporting party by cell phone and arranged to meet her in Wal-Mart to talk face to face. 5/9/12 RP 70. The reporting party told Gerondale that she was following the vehicle and saw the male reach over and saw him punch a swing at the female who was in the front seat. 5/9/12 RP 71. The reporting party did not actually see the male strike the female, but just reach toward her and punch that way. 5/9/12 RP 71. Gerondale then went to contact Officer Oster to explain what he had found out, and by that point, Ms. Wixom was in custody. 5/9/12 RP 72.

The trial court found that Wixom made a material false statement.

5/9/12 RP 102.

I find that the officer was in fact, in the official discharge of his duties at the time of this investigation, and the statement made by your client was reasonably likely to be relied upon and is therefore material.

5/9/12 RP 102.

IV. ARGUMENT

1. The defendant failed raise a seizure below and none exists where officers came upon a vehicle in a parked lot and spoke with the defendant who had exited the vehicle.

Wixom asserts that she was “seized as a matter of law when the officer first asked her to identify herself.” Brief of Appellant at page 8. At the trial court Wixom had not contended there was unlawful seizure, instead contending her statements were not material statements and therefore there was no basis to arrest on probable cause. CP 5-6, 40, 50, 53.

Wixom did not raise the issue or carry the burden of establishing a seizure. Wixom’s failure to assert there was an improper seizure at the trial court resulted in the parties not addressing in the testimony where Wixom was upon contact. This precludes this Court from adequately being able to address Wixom’s claim that she had been seized.

Furthermore, the State contends on the sparse facts available there was no seizure because officers had contacted a stopped vehicle, where

Wixom was outside and she remained there to confront officers while they were investigating a reported assault.

- i. At the trial court Wixom failed to contend there was a seizure prior to officers asking her name resulting in an incomplete record precluding review.**

Wixom cites to State v. Thorn, to contend that the issue of whether there was a seizure as a matter of law is reviewed de novo on appeal. Brief of Appellant at page 6. Had Wixom raised the issue of seizure prior to the statements being made and facts been uncontested, that would be correct and applicable. However, Wixom did not contend that she was seized prior to her being asked her name. Instead she contended her arrest was unlawful because her conduct did not amount to obstructing or a false statement. Thus, the record did not focus on whether she was seized prior to arrest.

Wixom carries the burden of showing that a seizure occurred in violation of article I, section 7. State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003), *citing*, State v. Young, 135 Wn.2d 498, 509, 957 P.2d 681 (1998), State v. Thorn, 129 Wn.2d 347, 354, 917 P.2d 108 (1996), *overruled on other grounds*, State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003), State v. Knox, 86 Wn. App. 831, 838, 939 P.2d 710 (1997).

The State thus contends that the situation does not present a manifest error affecting a constitutional right that permits her to raise the issue of when she was seized for the first time on appeal under RAP 2.5(a).

In State v. Thorn, the trial court concluded that an officer's questioning resulted in a seizure. State v. Thorn, 129 Wn.2d 347, 350, 917 P.2d 108 (1996), overruled on other grounds, State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). The officers had approached a vehicle on foot and asked a driver, "Where is the pipe?" after he observed a flicker of light in the vehicle. Id. at 349. In reviewing the decision, Supreme Court returned "to the established test of looking to the totality of circumstances surrounding the encounter to determine whether a seizure occurred." Id. at 353. But the trial court's determination of whether a seizure occurred is a mixed question of law and fact. Id. at 351. .

The determination of whether undisputed facts constitute a violation of that provision of the Washington Constitution is a question of law, which is reviewed de novo. State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996), overruled on other grounds by State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003). Here, the determinative facts of this case are not in dispute. Our review, therefore, is de novo.

State v. Rankin, 151 Wn.2d 689, 694, 92 P.3d 202 (2004). Here, the issue raised by Wixom was about whether there was a basis to arrest on the charges. And, thus, the record did not address where the vehicle, the driver and Wixom were when they were contacted by police. Neither a record made as to whether officers activate lights or sirens. Simply put, since Wixom made a different claim, the record did not address what

Wixom now claims on appeal. These are important factual determinations to establish whether there or not there was a seizure.

Finally, as outlined above, the question is not merely whether Thorn felt free to leave, but whether he felt free to terminate the encounter, refuse to answer the officer's question, or otherwise go about his business. Consequently, whether it was more difficult for the defendant to actually leave the scene of the police contact because he was in a parked car is not a significant factor here. *See INS v. Delgado*, 466 U.S. 210, 104 S.Ct. 1758, 80 L.Ed.2d 247 (1984)

State v. Thorn, 129 Wn.2d at 347, 917 P.2d 108 (1996).

The few references in the motion to where Wixom or the driver were found are contained in the declaration of Wixom's counsel which was a part of Wixom's two motions to suppress. CP 4, 39. That declaration reads:

Officer Shaddy was on the scene first and states in his report "I began getting out of my patrol vehicle and the male immediately got out of the vehicle and walked directly towards my location. The male was a white male. The subject continued to walk to my location at which time he stopped approximately an arm(sic) length from me at my quarter panel. The subject began to speak very quickly and appeared fidgety. Due to his very quick talking, his fast motions, and the proximity that he walked up to me along with the nature of the call I indicated to the subject that he was going to be detained for investigation.

CP 4, 39. No mention of Wixom's location is included in the pleading. A reference to Wixom's location upon officer's arrival were statements in the probable cause declaration that Wixom was outside the vehicle

walking around the front and when Officer Shaddy first arrived and fifteen feet away from the vehicle while officers were dealing with the driver. CP 34-5.

The general rule in Washington is that a party's failure to raise an issue at trial waives the issue on appeal unless the party can show the presence of a “ ‘manifest error affecting a constitutional right.’ ” State v. Kirwin, 165 Wn.2d 818, 823, 203 P.3d 1044 (2009) (internal quotation marks omitted) (quoting State v. McFarland, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995)). This standard comes from RAP 2.5(a), which permits a court to refuse to consider claimed errors not raised in the trial court, subject to certain exceptions. McFarland, 127 Wn.2d at 332–33, 899 P.2d 1251.

State v. Robinson, 171 Wn.2d 292, 304, 253 P.3d 84 (2011) (holding that issue preservation would not apply to a situation where subsequent cases overruled existing constitutional interpretation), see also State v. Fenwick, 164 Wash. App. 392, 405, 264 P.3d 284, 290 (2011) review denied, 173 Wash. 2d 1021, 272 P.3d 850 (2012) (passenger's location during the search indiscernible from the record thus the record was not developed during a suppression hearing precluding the court from fairly deciding whether officers search was valid incident to arrest under article 1, section 7 citing RAP 2.5).

Given Wixom's failure to assert in the trial court that she was seized prior to making the false statement review is precluded.

ii. Where Wixom was not stopped by officers, but approached them, the asking of the name did not cause a seizure.

“[N]ot every encounter between a police officer and a citizen is an intrusion requiring an objective justification.” United States v. Mendenhall, 446 U.S. 544, 553, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980). However, a seizure occurs, under article I, section 7, when considering all the circumstances, an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer's use of force or display of authority. O'Neill, 148 Wn.2d at 574, 62 P.3d 489. This determination is made by objectively looking at the actions of the law enforcement officer. State v. Young, 135 Wn.2d 498, 501, 957 P.2d 681 (1998). Moreover, it is elementary that all investigatory detentions constitute a seizure. State v. Armenta, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997).

State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004).

From the undeveloped record, Wixom was outside of the vehicle at the time that officers came into contact with her. CP 34-5. She was not a passenger in a vehicle pursuant to a traffic stop and was not the person that officers had initially gone to contact. She remained at the scene while officers dealt with the driver.

Citing Terry v. Ohio, 392 U.S. 1, 19 n. 16, 88 S.Ct. 1868, 1879 n. 16, 20 L.Ed.2d 889 (1968), the Court identified two ways in which a seizure may occur: a seizure occurs “when the officer, by means of physical force or a show of authority, has in some way restrained the liberty of the citizen.” In Hodari D., as in the present case, there was no application of physical force at the time both defendants assert the seizure occurred, so the threshold question in both cases is whether the actions of the officer constituted a show of authority that in some way restrained the liberty of the citizen.

State v. Young, 135 Wn. 2d 498, 505-06, 957 P.2d 681 (1998)

In Rankin, the appellants were passengers in a vehicle which had been stopped by law enforcement. State v. Rankin, 151 Wn.2d at 692-3, 92 P.3d 202 (2004). Officer subsequently asked both for identification and Rankin was arrested on a warrant with drugs found on his person incident to arrest. Id. The court in Rankin determined that without independent cause to request identification from a passenger in a traffic stop there is an unconstitutional seizure. Id. at 695.

Subsequent case law has made a distinction between a traffic stop and an encounter in a public location. In State v. O'Neil, the Supreme Court established that article I, section 7 permits officers to engage in conversation and request identification from occupants in cars parked in public places because such occupants are like pedestrians. State v. O'Neill, 148 Wn.2d at 579, 62 P.3d 489 (2003).

This same analysis of O'Neil has been followed in subsequent cases.

Occupants in vehicles parked in public places are like pedestrians for purposes of article I, section 7 seizure analysis. As the O'Neill court held, the distinction between a pedestrian and the occupant of a vehicle dissipates when a vehicle is parked in a public place. O'Neill, 148 Wn.2d at 579, 62 P.3d 489. The reasoning of Rankin and similar cases is centered on the fact that a driver's traffic infraction gives an officer cause to pull a vehicle over and get the driver's, but not the passenger's, identification. Rankin, 151 Wn.2d at 695,

92 P.3d 202. This reasoning does not apply to distinguish occupants in cars parked in public places from pedestrians.

State v. Mote, 129 Wn. App. 276, 290, 120 P.3d 596 (2005) (holding that a defendant was not seized when approached in a car parked in a public place and identification requested).

Here, Wixom was contacted in a public place outside a vehicle pursuant to a law enforcement investigation for a potential domestic assault. Upon the sparse record as exists, case law does not support that this was a seizure.

2. Wixom fails to contend the defendant's false name and date of birth were material to the officer's investigation which are thus verities on appeal.

Wixom does not assign error to the trial court's determination that the Wixom's false name and date of birth were material statements that the officers relied upon in their duties.

The rule in Washington is that challenged findings entered after a suppression hearing that are supported by substantial evidence are binding, and, where the findings are unchallenged, they are verities on appeal.

State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003) (following string citation omitted).

3. The defendant was properly searched incident to arrest.

Where the defendant is placed under arrest for an offense committed in the presence of the officer, the person of the defendant may be searched.

Washington law has long recognized the validity of searching a defendant and the property immediately within his or her control without a warrant in the process of making an arrest. In State v. Nordstrom, 7 Wn. 506, 509–10, 35 P. 382 (1893), *aff'd*, 164 U.S. 705, 17 S.Ct. 997, 41 L.Ed. 1183 (1896).

State v. Ellison, 172 Wn. App. 710, 719, 291 P.3d 921 (2013).

4. At the trial court, the defendant only contested there was no nexus to search the vehicle and fails to assign error to the trial court's determination.

Wixom concludes without providing any authority that as a result of the contended unlawful seizure any evidence gathered thereafter must be suppressed. Brief of Appellant at page 13. However, Wixom presents no analysis indicating that the evidence which was located in the vehicle pursuant to the search warrant was derived from the evidence located in the search of her person. Wixom also fails to contend that the trial court erred in denying the suppression of the fruits of the search warrant pursuant the nexus allegations raised in the trial court.

Even should this Court find there was an improper seizure, that cannot result in suppression of evidence found based upon a search warrant


which was not raised in the trial court and not challenged on appeal. State v. Busig, 119 Wn. App. 381, 391, 81 P.3d 143, 148 (2003), RAP 2.5.

V. CONCLUSION

For the foregoing reasons, the defendant's appeal must be denied and the conviction affirmed.

DATED this 2nd day of October, 2013.

SKAGIT COUNTY PROSECUTING ATTORNEY

By: 
ERIK PEDERSEN, WSBA#20015
Deputy Prosecuting Attorney
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by; [XX]United States Postal Service; []ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Kathleen Shea, addressed as Washington Appellate Project, 1511 Third Avenue, Suite 701, Seattle, WA 98101 . I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 2nd day of October, 2013.


KAREN R. WALLACE, DECLARANT