

FILED
Court of Appeals
Division I
State of Washington
4/6/2018 11:14 AM

NO. 77730-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION I

STATE OF WASHINGTON,

Respondent,

vs.

REBECCA LOUISE MCINTIRE,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Rebecca Louise McIntire asks this court to accept review of the decision designated in Part B of this motion.

B. DECISION

Petitioner seeks review of each and every part of the decision of the Court of Appeals, Division I, filed February 26, 2018, affirming the Lewis County Superior Court judgment and sentence. A copy of the Court of Appeals decision is attached. On March 9, 2018, the Court of Appeals, Division I, denied a timely filed Motion to Publish. A copy of the Court's Order Denying Motion to Publish Opinion is also attached.

C. ISSUES PRESENTED FOR REVIEW

Does a seizure of a defendant's person occur when two uniformed police officers enter a motel room at gunpoint, search the room at gunpoint, order the defendant out of the room with her possessions, tell her that they need her identification to put her name in a "trespass database," and then hold her identification while they run her for warrants when they already know who she is and when they do not suspect her of committing or having committed a crime?

D. STATEMENT OF THE CASE

At 4:28 pm on October 1, 2016, Officer John Dorff and Sergeant David Clary of the Centralia Police Department went to the King Oscar Motel in Centralia in an attempt to find Natalie Sanchez, who had an outstanding warrant for her arrest. RP 4-5, 17-28. The officers had received information

from an anonymous informant that Ms Sanchez had rented a specific room at that motel. Id. Upon arrival, the officers went to the motel office and spoke with the clerk, who checked her records at their request and verified that no person by the name of Natalie Sanchez was registered as a guest at the motel. RP 5-6, 18-19. However, the clerk did tell them that a person by the name of Alicia Sanchez was registered in the room they had identified and that the clerk wanted the officers to go to that room, find out if anyone other than Alicia Sanchez was present, and then kick any such person out if they were present. Id.

Alicia Sanchez is Natalie Sanchez's sister. RP 11, 30. The defendant had gone to the room that afternoon to visit Alicia. RP 11, 30. When the officers went up to the room and knocked on the door, the defendant answered. RP 7, 12, 18-19, 30. Once she opened the door Sergeant Clary immediately recognized her from prior contacts. RP 18-19, 30. He greeted her by name and asked if Alicia was inside. Id. The defendant responded that she was alone in the room. RP 7, 19, 30. At that point the motel clerk walked up and told the officers to kick the defendant out of the room and to give her a trespass notice. RP 8, 19.

Based upon what the clerk said, the officers told the defendant to gather up her belongings and leave. RP 8-9, 19. As she did both officers

entered the room with guns drawn, ostensibly to verify that no other person was present and to verify that the defendant did not have any weapons. RP 8, 19. The defendant then gathered her possessions and walked out of the room carrying a bag and a purse. RP 20. The officers followed her and once outside the room Officer Dorff asked the defendant for identification so he could tell dispatch to enter her name into a “trespass” database and run her for warrants. RP 8-9, 14, 20. The defendant handed her identification to Officer Dorff, who held it while dispatch ran her for warrants and while dispatch put the information into their “trespass” database. Id. At the time, neither officer claimed to have any belief that the defendant had committed a crime or was about to commit a crime and the motel clerk gave no reason for wanting to give the defendant a trespass notice. RP 13.

Once dispatch put the defendant’s name in the trespass database they ran her for warrants and discovered that she had an outstanding misdemeanor arrest warrant. RP 9-10, 20-22. The officers then arrested the defendant and searched the bag she had brought out of the motel room. Id. During the search of that bag the officers found a small amount of heroin and arrested her for possession of a controlled substance. RP 10-22.

By information filed October 3, 2016, the Lewis County Prosecutor charged the defendant with one count of possession of heroin. CP 1-2. Following arraignment the defendant filed a motion to suppress, arguing that under the facts of the case the officers actions taking her identification constituted an unlawful seizure of her person. CP 6-7. The court later held a hearing on the motion with the state calling Officer Dorff and Sergeant Clary as its witnesses and the defense calling the defendant Rebecca McIntire as its witness. RP 4-17, 17-29, 29-32. Following this testimony and argument from counsel, the court denied the motion, later entering the following findings of fact and conclusions of law.

FINDINGS OF FACT

1.1 Officer John Dorff and Sergeant Doug Clary were employed by the Centralia police department and work in their capacity as law enforcement officers on October 1, 2016.

1.2 At approximately 4:30 pm, Dorff and Clary arrived at the King Oscar Motel in Centralia to look for Natalie Sanchez based on an anonymous tip that she was staying in a particular room at that hotel.

1.3 Natalie had an active warrant for her arrest on October 1, 2016.

1.4 Both Dorff and Clary went to the lobby of the hotel and spoke with the clerk about Natalie staying at the hotel.

1.5 The clerk informed Dorff and Clary that Natalie Sanchez was not registered in that particular room, but Alicia Sanchez was.

1.6 The clerk stated that if anyone other than ALicia Sanchez was in the hotel room, she (the clerk) wanted them trespassed from the hotel.

1.7 The clerk informed Dorff and Clary how to get to the room Alicia was registered in.

1.8 When they arrived at the hotel room, Dorff and Clary knocked on the door, which was answered a short while later by the person Clary visually recognized as Rebecca McIntire.

1.9 Dorff explained to McIntire why he and Clary were at the hotel room, and asked if Natalie was in the room.

1.10 McIntire informed Dorff and Clary that she was the only person in the hotel room.

1.11 Around this same time, the clerk came to the room, observed McIntire, stated that she (McIntire) was not registered to the room, and requested law enforcement trespass McIntire from the room.

1.12 The officers did not obtain any additional information regarding the basis for the clerk's request to trespass McIntire, and their authority to trespass was based on the clerk's request alone.

1.13 When the clerk requested McIntire be trespassed, Dorff and Clary told her to gather her belongings and leave the room.

1.14 While she was gathering her belongings, Dorff and Clary entered the hotel room to ensure Natalie was not present and to make sure McIntire did not pick up any type of weapon.

1.15 During the time McIntire was gathering her belongings, Dorff asked for her driver's license in a normal, non-threatening tone.

1.16 Dorff was in possession of McIntire's license for an unknown length of time.

1.17 That request was for Dorff to enter McIntire's name into the Spillman system to log for future officers to be able to see [that] McIntire was trespassed from the King Ocean Motel.

1.18 An additional purpose for running McIntire's name was to check for any active warrants.

1.19 The entry into Spillman for trespassing notice and the check for warrants are run on the same system and accomplished at the same time.

1.20 McIntire returned as having a misdemeanor warrant from Chehalis.

1.21 McIntire was advised she was under arrest for the warrant.

1.22 When McIntire was advised she was under arrest, she was in possession of her belongings she had gathered from the room.

1.23 When she was advised she was under arrest, McIntire asked if she could return the items to the room.

1.24 When advised that she could not return the items to the room, McIntire stated that the purse she was carrying contained her wallet, cell phone, and her identification, but the purse was not hers and anything else inside the purse she knew nothing about.

1.25 A search of the purse incident to McIntire's arrest revealed a plastic baggie that contained a receipt from Goodwill that was folded up. Inside the receipt was a black, tar-like substance.

1.26 Clary later field-tested this substance, which returned positive for heroin.

CONCLUSIONS OF LAW

2.1 Dorff and Clary were validly trespassing McIntire from the hotel based upon the request of the hotel clerk.

2.2 The request for McIntire's identification was necessary to register her information for trespassing purposes.

2.3 The seizure of McIntire's license was minimally intrusive to accomplish that goal.

2.4 The discovery of the controlled substances in McIntire's purse was pursuant to a lawful search incident to arrest.

2.5 All statements made by McIntire were voluntary and admissible at trial.

CP 27-31.

At a subsequent date the defendant submitted to conviction upon stipulated facts and was sentenced within the standard range. CP 23-26, 32, 35-42. The defendant thereafter filed timely notice of appeal. CP 43. By unpublished decision filed February 26, 2018, the Court of Appeals, Division I, affirmed the conviction, finding that the officers' actions taking the defendant's identification did not constitute a seizure of the defendant's person. Thus, the court held that there was no basis to suppress the evidence found during the search incident to arrest. Appellant seeks review of this decision.

E. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED

Under RAP 13.4(b)(3), this case presents a significant question of law under our state and federal constitutions, specifically under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth

Amendment. The following sets out this argument.

In this case the Court of Appeals held that there had been no seizure of the defendant's person when the police took the defendant's identification after they entered the motel room she was in at gunpoint, searched the room at gunpoint, ordered her out, and then told her they needed her identification so they could enter her name in a trespass database even though the defendant was aware that the police well know her identify. The ultimate issue in determining the validity of this question is whether or not, under all of the facts and circumstances of the case, a reasonable person would have felt free to decline the officer's request and terminate the encounter. *State v. Armenta*, 134 Wn.2d 1, 948 P.2d 1280 (1997). Under the facts of this case a reasonable person in the defendant's shoes would not have felt that she was free to decline the officers' statement that they needed her identification so they could enter it into a trespass database.

Once again, the facts of this case are as follows. First, two uniformed police officer entered a motel room where the defendant as the guest of the registered owner at gunpoint and certainly not at the defendant's bidding. Second, the officers, while holding their firearms, ordered the defendant to gather her belongings and vacate a room. Third,

those same two officers then searched the room at gunpoint while she was in it or leaving it. Fourth, the officers followed the defendant out of the room and told her that they needed her identification so he could enter that information in a “trespass” database and run it for warrants, even though the defendant and the officers were already well acquainted. Fifth, once they called in the information the officers maintained possession of the defendant’s identification. No reasonable person under similar circumstances would believe that she was free to refuse the request for identification or free to leave, particularly while one of the officers still had possession of her driver’s license.

In fact, the trial court’s third conclusion of law in this case presupposes that the trial court did find a seizure. That conclusion states:

2.3 The seizure of McIntire’s license was minimally intrusive to accomplish that goal [register the defendant’s identification into a trespass database].

CP 30.

In this finding, prepared by the state, the trial court presupposed that there was a seizure of the defendant’s property and her person when one of the two officers took her driver’s license. Thus, in this case there was a seizure of the defendant’s identification and person without legal justification, thereby violating both Washington Constitution, Article 1, § 7,

and United States Constitution, Fourth Amendment. Although the police felt the “need” to enter her information into a “trespass” database, neither the state nor the Court of Appeals cited to any authority under which a police officer may legally detain a person simply because the police wanted to put information into a database for possible future use. This is particularly so in the case at bar because the motel clerk was apparently acting arbitrarily when she ordered the defendant off of the premises.

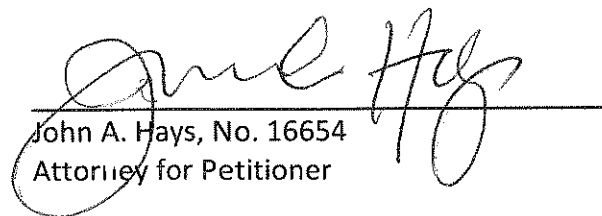
While a property owner or the property owner’s agent does have the right to “arbitrarily” order people off of his or her property, what that property owner does not have is the right to use the police as a private security force to unlawfully detain people. Thus, in the case at bar, the police acted in violation of Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment, when they illegally requested the defendant’s driver’s licence under circumstances in which a reasonable person in the defendant’s position would not feel free to refuse or deny the request. Consequently, under RAP 13.4(b)(3), this case presents a significant question of law under our state and federal constitution, specifically under Washington Constitution, Article 1, § 7, and United States Constitution, Fourth Amendment. As a result, Petitioner respectfully requests that this court accept this case for review.

F. CONCLUSION

For the reasons set out in this motion, this court should accept review of this case and reverse the decision of the Court of Appeals.

Dated this 6th day of April, 2018.

Respectfully submitted,



John A. Hays, No. 16654
Attorney for Petitioner

COURT OF APPEALS OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,
Respondent,

vs.

REBECCA LOUISE MCINTIRE,
Appellant.

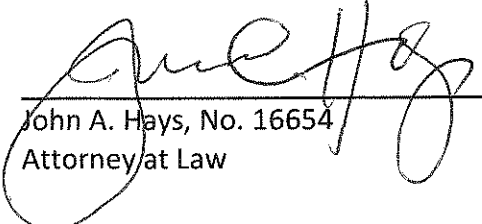
NO. 77730-1-I

AFFIRMATION OF
OF SERVICE

The under signed states the following under penalty of perjury under the laws of Washington State. On this, I personally e-filed and/or placed in the United States Mail the Brief of Appellant with this Affirmation of Service Attached with postage paid to the indicated parties:

1. Mr. Jonathan Meyer
Lewis County Prosecuting Attorney
345 West Main Street
Chehalis, WA 98532
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2. Rebecca Louise McIntire
c/o Shane O'Rourke, No. 38827
Attorney at Law
314 Harrison Avenue
Centralia, WA 98531

Dated this 6th day of April, 2018 at Longview, Washington.



John A. Hays, No. 16654
Attorney at Law

2018 WL 1110497
Only the Westlaw citation
is currently available.

NOTE: UNPUBLISHED OPINION,
SEE WA R GEN GR 14.1

UNPUBLISHED OPINION
Court of Appeals of Washington,
Division 1.

STATE OF WASHINGTON,
Respondent,
v.
REBECCA LOUISE
MCINTIRE, Appellant.

No.

77730

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FILED: February 26, 2018

Opinion

DWYER, J.

*1 Following a bench trial, Rebecca McIntire was found guilty of unlawful possession of a controlled substance. On appeal, McIntire contends that the trial court erred by denying her motion to suppress evidence of the drugs discovered in her purse. Finding no error, we affirm.

I

The State charged Rebecca McIntire with possession of heroin. McIntire filed a motion to suppress evidence of the heroin discovered in her purse. Following a CrR 3.6 hearing, the trial court entered written findings of the following undisputed facts:

- 1.1 Officer John Dorff and Sergeant Doug Clary were employed by the Centralia police department and working in their capacity as law enforcement officers on October 1, 2016.
- 1.2 At approximately 4:30 pm, Dorff and Clary arrived at the King Oscar Motel in Centralia to look for Natalie Sanchez based on an anonymous tip that she was staying in a particular room at that hotel.
- 1.3 Natalie had an active warrant for her arrest on October 1, 2016.
- 1.4 Both Dorff and Clary went to the lobby of the hotel and spoke with the clerk about Natalie staying at the hotel.
- 1.5 The clerk informed Dorff and Clary that Natalie Sanchez was not registered in that particular room, but Alicia Sanchez was.
- 1.6 The clerk stated that if anyone other than Alicia Sanchez was in the hotel room, she (the clerk) wanted them trespassed from the hotel.
- 1.7 The clerk informed Dorff and Clary how to get to the room Alicia was registered in.

- 1.8 When they arrived at the hotel room, Dorff and Clary knocked on the door, which was answered a short while later by a person Clary visually recognized as Rebecca McIntire.
- 1.9 Dorff explained to McIntire why he and Clary were at her hotel room, and asked if Natalie was in the room.
- 1.10 McIntire informed Dorff and Clary that she was the only person in the hotel room.
- 1.11 Around this same time, the clerk came to the room, observed McIntire, stated that she (McIntire) was not registered to the room, and requested law enforcement trespass McIntire from the room.
- 1.12 The officers did not obtain any additional information regarding the basis for the clerk's request to trespass McIntire, and their authority to trespass was based on the clerk's request alone.
- 1.13 When the clerk requested McIntire be trespassed, Dorff and Clary told her to gather her belongings and leave the room.
- 1.14 While she was gathering her belongings, Dorff and Clary entered the hotel room to ensure Natalie was not present and to make sure McIntire did not pick up any type of weapon.
- 1.15 During the time McIntire was gathering her belongings, Dorff asked for her driver's license in a normal, non-threatening tone.
- 1.16 Dorff was in possession of McIntire's license for an unknown length of time.
- 1.17 That request was for Dorff to enter McIntire's name into the Spillman system to log for future officers to be able to see [that] McIntire was trespassed from the King Oscar Motel.
- 1.18 An additional purpose for running McIntire's name was to check for any active warrants.
- 1.19 The entry into Spillman for trespassing notice and the check for warrants are run on the same system and accomplished at the same time.
- *2 1.20 McIntire returned as having a misdemeanor warrant from Chehalis.
- 1.21 McIntire was advised she was under arrest for the warrant.
- 1.22 When McIntire was advised she was under arrest, she was in possession of her belongings she had gathered from the room.
- 1.23 When she was advised she was under arrest, McIntire asked if she could return the items to the room.
- 1.24 When advised that she could not return the items to the room, McIntire stated that the purse she was carrying contained her wallet, cell phone, and her identification, but the purse was not

hers and anything else inside the purse she knew nothing about.

1.25 A search of the purse incident to McIntire's arrest revealed a plastic baggie that contained a receipt from Goodwill that was folded up. Inside the receipt was a black, tar-like substance.

1.26 Clary later field-tested this substance, which returned positive for heroin.

The trial court entered the following conclusions of law:

2.1 Dorff and Clary were validly trespassing McIntire from the hotel based on the request of the hotel clerk.

2.2 The request for McIntire's identification was necessary to register her information for trespassing purposes.

2.3 The seizure of McIntire's license was minimally intrusive to accomplish that goal.

2.4 The discovery of the controlled substances in McIntire's purse was pursuant to a lawful search incident to arrest.

2.5 All statements made by McIntire were voluntary and admissible at trial.

The trial court denied the motion to suppress. After a stipulated facts bench trial, the trial court found McIntire guilty and imposed a standard range sentence. McIntire appeals.

II

McIntire contends that she was unlawfully seized when Dorff asked for her identification. We disagree.

Because McIntire does not challenge the trial court's findings of fact, they are verities on appeal. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). We review the trial court's conclusions of law de novo. State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002).

A person is seized under article I, section 7 of the Washington Constitution “ ‘only when, by means of physical force or a show of authority,’ his or her freedom of movement is restrained and a reasonable person would not have believed he or she is (1) free to leave, given all the circumstances, or (2) free to otherwise decline an officer's request and terminate the encounter.” O'Neill, 148 Wn.2d at 574 (citations and internal quotation marks omitted) (quoting State v. Young, 135 Wn.2d 498, 510, 957 P.2d 681 (1998)). “[T]he ‘reasonable person’ test presupposes an *innocent person*.” Florida v. Bostick, 501 U.S. 429, 438, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991). The standard is “a purely objective one, looking to the actions of the law enforcement officer.” Young, 135 Wn.2d at 501. The defendant bears the burden of proving that a seizure occurred. O'Neill, 148 Wn.2d at 574.

“ ‘[N]ot every encounter between a police officer and a citizen is an intrusion requiring an objective justification.’ ” State v. Rankin,

151 Wn.2d 689, 695, 92 P.3d 202 (2004) (alteration in original) (quoting United States v. Mendenhall, 446 U.S. 544, 553, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980)).

*3 “Examples of circumstance that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.... In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.”

Young, 135 Wn.2d at 512 (alteration in original) (quoting Mendenhall, 446 U.S. at 554-55).

Thus, “the police are permitted to engage persons in conversation and ask for identification even in the absence of an articulable suspicion of wrongdoing.” Young, 135 Wn.2d at 511. Moreover, “[w]hile most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to

respond, hardly eliminates the consensual nature of the response.” Immigration & Naturalization Serv. v. Delgado, 466 U.S. 210, 216, 104 S. Ct. 1758, 80 L. Ed. 2d 247 (1984).

Here, the trial court found that Dorff asked for McIntire's identification in a “normal, non-threatening tone.” Nothing in the record indicates that the officers used any show of force or authority, commanded McIntire to relinquish her identification, or prevented her from leaving without first complying with the officers' request. Although the record does not establish for how long Dorff retained possession of McIntire's driver's license, it is clear that he did not remove the license from her presence.

Under these circumstances, McIntire fails to demonstrate that a seizure occurred when the officers asked for her identification. See, e.g., O'Neill, 148 Wn.2d at 578-80 (no seizure occurred when officer shined spotlight on defendant's car, approached car and shined flashlight into it, asked defendant to roll down window, asked defendant to try to start car, and asked defendant for his identification); State v. Hansen, 99 Wn. App. 575, 579, 994 P.2d 855 (2000) (no seizure occurred when an officer requested the defendant's identification and handed it to another officer, who took note of the defendant's name and birthdate in the presence of the defendant); State v. Smith, 154 Wn. App. 695, 700, 226 P.3d 195 (2010) (no seizure occurred when an officer requested the defendant's identification and remained in close proximity of the defendant while holding the identification).

Because McIntire fails to demonstrate any constitutional violation, the trial court properly denied her motion to suppress.

we direct that no such costs be imposed.
RAP 14.2.

Affirmed.

III

The State has indicated that it will not seek appellate costs in this appeal. Accordingly,

We concur:

All Citations

Not Reported in P.3d, 2018 WL 1110497

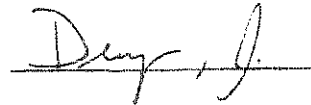
IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

| | | |
|--------------------------|---|----------------------|
| STATE OF WASHINGTON, |) | |
| |) | DIVISION ONE |
| Respondent, |) | |
| |) | No. 77730-1-I |
| v. |) | |
| |) | ORDER DENYING MOTION |
| REBECCA LOUISE MCINTIRE, |) | TO PUBLISH OPINION |
| |) | |
| Appellant. |) | |
| _____ |) | |

The appellant, Rebecca McIntire, having filed a motion to publish opinion, and the hearing panel having considered its prior determination and finding that the opinion will not be of precedential value; now, therefore it is hereby

ORDERED that the unpublished opinion filed February 26, 2018, shall remain unpublished.

FOR THE COURT:



JOHN A. HAYS, ATTORNEY AT LAW

April 06, 2018 - 11:14 AM

Transmittal Information

Filed with Court: Court of Appeals Division I
Appellate Court Case Number: 77730-1
Appellate Court Case Title: State of Washington, Respondent v. Rebecca L. McIntire, Appellant
Superior Court Case Number: 16-1-00577-7

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