

69228-3

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No. 69228-3-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

ANTHONY JOSEPH CORBELLA,

Appellant.

FILED
COURT OF APPEALS DIV I
STATE OF WASHINGTON
2013 FEB 28 PM 4:56

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

The Honorable Michael C. Hayden

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

The trial court violated Mr. Corbella's Fourth Amendment and article I, section 7 rights when it failed to suppress all of the evidence obtained as the result of the unlawful search of the car as the fruit of the poisonous tree.

B. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Warrantless searches of cars are *per se* unreasonable. Consent is an exception to the warrant requirement but consent that follows an illegal search requires the State to prove the taint from the illegal search had been attenuated. Here, the trial court found the police committed an illegal search prior to obtaining Mr. Corbella's consent to search the interior of a car. Did the State fail to prove the taint from the illegal search had been attenuated thus requiring reversal of the trial court's refusal to suppress all evidence obtained in the search of the car?

C. STATEMENT OF THE CASE

On May 11, 2011, at approximately 11:30 p.m., Bellevue Police were searching the area near the Newport Hills Park and Ride on an unrelated matter when Lieutenant Mark Tarantino, the shift supervisor, drove into the park and ride lot. RP 66. Tarantino saw a car containing a man and a woman parked in the middle of lot. CP 39; RP 66.

Tarantino parked his police car and approached the other car on foot. RP 67. Tarantino saw what he believed to be a lighter in the driver's hand. CP 39; 71. Tarantino used his flashlight to illuminate the interior of the car and saw what he believed to be tinfoil with burn marks near the driver's left foot. RP 71. The driver, later identified as appellant Anthony Corbella, opened the car door, explaining the window did not work. CP 39; RP 72.

Tarantino immediately demanded Mr. Corbella hand him the foil he had observed on the floor of the car. CP 40; RP 73. Mr. Corbella complied and handed the foil to Tarantino. CP 40; RP 74. Tarantino immediately asked for other officers to come to his location and asked Mr. Corbella to step out of the car. CP 40; RP 75. The two awaited the arrival of the additional officers. RP 79. Mr. Corbella was very cooperative with Tarantino. RP 75.

Officer Ryan Lange took custody of Mr. Corbella from Tarantino. CP 40; RP 21. While running Mr. Corbella's name through the computer for arrest warrants, Lange questioned Mr. Corbella. RP 22. Lange determined that Mr. Corbella had a warrant for his arrest for Driving While License Suspended (DWLS) in the second degree and

arrested Mr. Corbella. CP 40; RP 26. Lange advised Mr. Corbella of his *Miranda* rights.¹

Under questioning by Lange, Mr. Corbella admitted the car contained heroin in the side compartment of the passenger door. CP 40; RP 30. Lange sought permission from Mr. Corbella to search the interior of the car. CP 40; RP 30. Mr. Corbella signed the Bellevue Police Consent form. CP 40; RP 31. While searching the interior of the car, the police subsequently found a quantity of black tar heroin in the side pocket of the passenger door along with another piece of foil with burn marks. CP 41; RP 32-34.

Mr. Corbella was charged with possession of heroin. CP 1. Mr. Corbella moved to suppress all evidence seized during the encounter with the police. CP 6-10. Following the CrR 3.6 hearing, the court ruled that Tarantino's demand for Mr. Corbella to turn over the foil from the floorboard of the car was an illegal search and suppressed the foil. CP 41. The court otherwise denied the remainder of the motion to suppress. CP 41-42.

The matter proceeded to a stipulated facts bench trial, wherein the trial court found Mr. Corbella guilty as charged. CP 47-49.

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

D. ARGUMENT

MR. CORBELLA'S CONSENT WAS TAINTED BY, AND A DIRECT PRODUCT OF, THE INITIAL ILLEGAL SEARCH BY LIEUTENANT TARANTINO

1. Warrantless searches are *per se* unreasonable absent a valid exception to the warrant requirement.² Under the Washington Constitution, “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”³ Article I, section 7. Article I, section 7 of the Washington Constitution provides greater protection to individual privacy rights than the Fourth Amendment to the United States Constitution. *State v. Gaines*, 154 Wn.2d 711, 717, 116 P.3d 993 (2005); *State v. Jones*, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002). A warrantless search is *per se* unreasonable under our state constitution. *State v. Hendrickson*, 129 Wn.2d 61, 70, 917 P.2d 563 (1996).

² To review a trial court's ruling on a suppression motion, this Court examines whether substantial evidence supports the challenged findings. *State v. Ross*, 106 Wn.App. 876, 880, 26 P.3d 298 (2001), *review denied*, 145 Wn.2d 1016 (2002). Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises.” *State v. Jeannotte*, 133 Wn.2d 847, 856, 947 P.2d 1192 (1997) (internal quotation marks omitted), *quoting Olmstead v. Dep't of Health*, 61 Wn.App. 888, 893, 812 P.2d 527 (1991). This Court reviews the trial court's conclusions of law *de novo*. *State v. Carneh*, 153 Wn.2d 274, 281, 103 P.3d 743 (2004).

³ Although it was not an issue before the trial court, there is no question Mr. Corbella had standing to challenge the search. The driver of a car has automatic standing to challenge the search and seizure of an automobile where the driver is charged with possessory offenses supported by evidence discovered in the vehicle. *State v. Coss*, 87 Wn.App. 891, 895-96, 943 P.2d 1126 (1997), *review denied*, 134 Wn.2d 1028 (1998).

There are a few exceptions to the warrant requirement which are “jealously and carefully drawn.” *Id.* at 72 (internal quotation marks omitted), quoting *State v. Bradley*, 105 Wn.2d 898, 902, 719 P.2d 546 (1986). The State bears the burden to show that a warrantless search or seizure falls within one of the exceptions. *Hendrickson*, 129 Wn.2d at 70.

Initially it must be noted that once Mr. Corbella was arrested for DWLS, the police were barred from searching the car without a warrant. After the suspect exits the vehicle and cannot access it, there is no longer a risk to police officer safety or the destruction of evidence. *State v. Valdez*, 167 Wn.2d 761, 775, 224 P.3d 751 (2009). The Washington State Constitution does not permit warrantless vehicle searches after the arrest of a recent occupant of that vehicle, when law enforcement has reasonable belief that evidence relevant to the crime of arrest is within. *State v. Snapp*, 174 Wn.2d 177, 197, 275 P.3d 289 (2012). Since Mr. Corbella was outside the car and did not have access to it, the police were barred from searching the car without a warrant absent the existence of one of the exceptions to the warrant requirement.

2. While consent is a valid exception, Mr. Corbella's consent here was not valid as it was tainted by the initial illegal search by Tarantino. Recognizing that the initial search of Mr. Corbella violated Mr. Corbella's right against unreasonable searches, the court suppressed the burned foil demanded by Tarantino. This illegal search tainted Mr. Cornella's subsequent consent rendering the search of the interior of the car illegal. The contraband seized as a result of that search must be suppressed.

One recognized exception to the warrant requirement is consent. *State v. Walker*, 136 Wn.2d 678, 682, 965 P.2d 1079 (1998). The State bears the burden of establishing the validity of a warrantless search based upon consent. *State v. Mathe*, 102 Wn.2d 537, 540, 688 P.2d 859 (1984). The State must meet three requirements to show a warrantless but consensual search was valid: (1) the consent must be voluntary; (2) the person granting consent must have authority to consent; and (3) the search must not exceed the scope of the consent. *State v. Nedergard*, 51 Wn.App. 304, 308, 753 P.2d 526 (1988).

Even though Mr. Corbella voluntarily consented to the search, "the State must also demonstrate his consent was not obtained by the exploitation of [a] prior illegal search." *State v. Jensen*, 44 Wn.App.

485, 488-89, 723 P.2d 443 (1986). For consent to be valid, a person must consent freely and voluntarily. *State v. O'Neill*, 148 Wn.2d 564, 588, 62 P.3d 489 (2003). Whether consent was voluntary is a question of fact to be determined from the totality of the circumstances. *O'Neill*, 148 Wn.2d at 588, citing *State v. Bustamante-Davila*, 138 Wn.2d 964, 981, 983 P.2d 590 (1999). If the free and voluntary character of the consent is challenged, the State must prove that the individual consented freely and voluntarily, not as a result of duress or coercion. *State v. Smith*, 115 Wn.2d 775, 789, 801 P.2d 975 (1990).

But “consent to search obtained through exploitation of a prior illegality may be invalid even if voluntarily given.” *State v. Soto-Garcia*, 68 Wn.App. 20, 27, 841 P.2d 1271 (1992), *disapproved on other grounds in State v. Thorn*, 129 Wn.2d 347, 350-51, 917 P.2d 108 (1996) (citations omitted). *See also State v. Armenta*, 134 Wn.2d 1, 17-18, 948 P.2d 1280 (1997) (even voluntary consent may be vitiated by an unlawful detention). The burden is on the State to prove sufficient attenuation from the illegal search to dissipate its taint. *State v. Childress*, 35 Wn.App. 314, 316, 666 P.2d 941 (1983). In determining whether consent to search is tainted, this Court considers (1) the temporal proximity of the illegal detention and the subsequent consent,

(2) the presence of significant intervening circumstances, (3) the purpose and flagrancy of the officer's misconduct, and (4) the giving of *Miranda* warnings. *Soto-Garcia*, 68 Wn.App. at 27.

Here, although the police gave Mr. Corbella *Miranda* warnings and also told him he did not have to consent to the search, there was no attenuation of the taint of the illegality because his consent occurred in very close temporal proximity to the illegal search by Lieutenant Tarantino. Further, Tarantino's conduct in seizing the piece of foil was to further his belief that Mr. Corbella was involved in using or dealing narcotics, a particularly flagrant act. Tarantino was a veteran police officer, a lieutenant and supervisor of this particular shift, and should have known he lacked the authority to demand Mr. Corbella retrieve the foil from the interior of the car. The police then capitalized on this illegality by continuing to find ways to search the interior of the car that ultimately resulted in Mr. Corbella's consent. Clearly the contraband seized from inside the car would not have been obtained absent Mr. Corbella's consent that was the result of the illegal search by Tarantino.

3. The evidence seized from inside the car must be suppressed.

Evidence seized during an illegal search must be suppressed under both the exclusionary rule and the fruit of the poisonous tree doctrine. *Wong*

Sun v. United States, 371 U.S. 471, 487-88, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963); *Gaines*, 154 Wn.2d at 716-17.

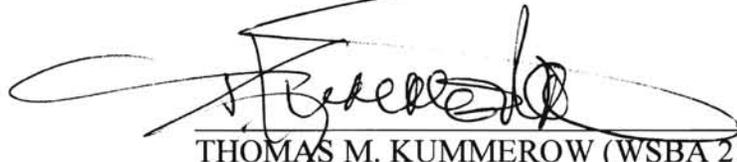
The search of the car was the product of Lieutenant Tarantino's initial illegal search which tainted Mr. Corbella's subsequent consent. The contraband seized from inside the car must be suppressed.

E. CONCLUSION

For the reasons stated, Mr. Corbella requests this Court reverse his convictions and order the evidence seized from the inside of the car suppressed.

DATED this 28th day of February 2013.

Respectfully submitted,



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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 69228-3-I
v.)	
)	
ANTHONY CORBELLA,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 28TH DAY OF FEBRUARY, 2013, I CAUSED THE ORIGINAL **OPENING 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:

[X] KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) () ()	U.S. MAIL HAND DELIVERY _____
[X] ANTHONY CORBELLA 12625 195 TH PL SE ISSAQUAH, WA 98027	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 28TH DAY OF FEBRUARY, 2013.

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