

NO. 69542-8-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

SARAH WIXOM,

Appellant.

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

APPELLANT'S OPENING BRIEF

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COURT OF APPEALS
STATE OF WASHINGTON
KATHLEEN A. SHEA

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A. SUMMARY OF ARGUMENT

In response to a report of a possible assault taking place within a moving vehicle, officers detained the suspect, Jesse Skogseth. An officer then unlawfully seized the passenger in the car, and potential victim, Ms. Wixom, when he requested that she identify herself. After she provided identifying information the officer discovered was incorrect, he placed her under arrest. A search of Ms. Wixom's person and the vehicle uncovered illegal substances. At a stipulated trial, Ms. Wixom was found guilty of possession of methamphetamine and Alprazolam. Because Ms. Wixom was unlawfully seized when the officer asked for her identification, the evidence obtained during the subsequent searches must be suppressed, and the case dismissed.

B. ASSIGNMENT OF ERROR

The officer violated article I, section 7, when he demanded that Ms. Wixom provide identifying information.

C. ISSUE PERTAINING TO ASSIGNMENT OF ERROR

Pursuant to article I, section 7, an officer must have an independent justification for requesting identification of a passenger in a vehicle. Here, the officer had no basis for reasonable suspicion that Ms. Wixom was engaged in criminal conduct, as she was merely a

potential victim of a crime. Is Ms. Wixom entitled to a reversal of her conviction, with suppression of the evidence and instructions to dismiss?

D. STATEMENT OF THE CASE

A 911 caller reported that a car was swerving outside the lane boundaries. 5/9/12 RP 30-31. She also reported that it appeared the male driver of the car was punching the female passenger. 5/9/12 RP 31. However, she told the 911 dispatcher she “could be wrong about that.” Id. She did not actually observe the driver strike the passenger. Instead, she made the following observation:

[H]e just kept leaning over and leaning over, and then swerving all over the road, and she was – seemed to be huddled down in the seat, and it just appeared that there was something bad going on.

5/9/12 RP 32. In response to the call, officers were dispatched to a Wal-Mart parking lot, where the caller reported the car had turned to park. 5/9/12 RP 31.

Officer Shaddy was the first to arrive at Wal-Mart and pulled into the parking space facing the car identified by the 911 caller. CP 17. He reports that a male, later identified as Jesse Skogseth, got out of the car and approached him. CP 17. Ms. Wixom, the passenger in the

car, was already out of the vehicle. Id. Officer Shaddy reports that Mr. Skogseth stopped an arm's length away from him, but because Mr. Skogseth was speaking quickly and fidgeting, the officer immediately moved to handcuff him. CP 17.

Officer Oster, who was the second officer to arrive on the scene, testified that he received information about a "possible domestic in a vehicle, possibly a male hitting a female in that vehicle." 5/9/12 RP 36. When he arrived, he assisted Officer Shaddy with handcuffing Mr. Skogseth. 5/9/12 RP 43. Ms. Wixom yelled at the officers, telling them that Mr. Skogseth had done nothing wrong and to release him. Id. Officer Oster turned his attention to Ms. Wixom, and told her about the allegations made by the 911 caller. 5/9/12 RP 45. He testified that every time he tried to offer an explanation, Ms. Wixom would interrupt and shout over him. 5/9/12 RP 46.

At that point, he asked her for identification. Id. Officer Oster testified it was necessary to ask for identification because he needed to know who he was talking to and, as part of his investigation, it is important that he "figure out who is who." 5/9/12 RP 40. He also believed it was important to have this information because he was investigating an allegation of domestic violence. Id. He testified that

he needed to determine whether there was a history between the two parties or a court order preventing them from being together. Id.

Ms. Wixom denied having identification, but provided her name and date of birth, which Officer Oster heard as “Sarah J. Bixom” and August 6, 1986. 6/9/12 RP 46-47. Officer Oster performed an unsuccessful computer search with that information, at which point he learned from another officer that the car owner’s last name was Wixom. 6/9/12 RP 47-48. When he asked Ms. Wixom if her last name was actually Wixom, she confirmed that it was. 6/9/12 RP 48. Officer Oster testified that Ms. Wixom also confirmed her date of birth was August 6, 1986. Id. When Officer Oster’s computer search was again unsuccessful, Ms. Wixom told him she did not wish to speak with him. 6/9/12 RP 48, 66. He instructed her that she did not have a choice, and she must identify herself. 6/9/12 RP 66. She then provided her date of birth as August 6, 1983. 6/9/12 RP 49.

Officer Oster determined this identifying information was correct, but placed Ms. Wixom under arrest for giving him the prior false information. 6/9/12 RP 50. By this time, another officer had spoken in person with the 911 caller, who made it clear she had not actually witnessed an assault. 6/9/12 RP 49. In addition, Ms. Wixom

showed no signs of having been assaulted, and Ms. Wixom and Mr. Skogseth both denied that an assault had occurred. 5/9/12 RP 51, 57.

During Ms. Wixom's arrest, methamphetamine was found in her wallet. CP 23, 99. Ms. Wixom and Mr. Skogseth were released at the scene, but the car was impounded. 6/9/12 RP 51. During a subsequent search of the car, methamphetamine and Alprazolam pills were found inside of a purse. CP 25.

Ms. Wixom's motions to suppress were denied by the trial court. CP 63, 64, 93. At a stipulated bench trial, Ms. Wixom was convicted of possession of methamphetamine and possession of Alprazolam. CP 164. She was never charged with providing false information. 4/4/12 RP 18; CP 164.

E. ARGUMENT

Ms. Wixom was unlawfully seized when the officer requested that she identify herself, and the evidence obtained during the subsequent search of her person and car must be suppressed.

a. All investigatory detentions constitute a seizure.

As a general rule, a warrantless search or seizure is per se unconstitutional under the Fourth Amendment and article I, section 7, unless it falls under one of the narrow exceptions to the warrant

requirement. State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (citing State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999)). A seizure occurs under article I, section 7 when, by means of physical force or a show of authority, freedom of movement is restrained and a reasonable person would not believe she is either free to leave, given all the circumstances, or free to otherwise decline the officer's request and terminate the encounter. State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003) (citations omitted).

The standard is objective, and is based on the actions of the law enforcement officer. Id. (citing State v. Young, 135 Wn.2d 498, 501, 957 P.2d 681 (1998)). However, "it is elementary that all investigatory detentions constitute a seizure." Rankin, 151 Wn.2d at 695 (citing State v. Armenta, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997)).

An alleged violation of article I, section 7 is a question of law that is reviewed de novo on appeal. Id. (citing State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996), (overruled on other grounds by O'Neill, supra)).

b. Ms. Wixom was unlawfully seized in violation of article I, section 7.

In this case, officers were dispatched upon a report that a male driver was failing to stay in his lane and might be punching his female passenger. 5/9/12 RP 31. By the time the first officer arrived on the scene, the car identified by the 911 caller was parked at Wal-Mart and the passenger, Ms. Wixom, had exited the vehicle. CP 17. Mr. Skogseth, the suspect of the investigation, got out of the car and walked toward the officer, at which point he was immediately restrained in handcuffs. Id.

There was no allegation that Ms. Wixom had committed a traffic infraction or a crime. According to the information reported by the 911 dispatcher, Ms. Wixom was merely a potential victim of a possible assault. 5/9/12 RP 36. Despite the fact that she was only a potential victim, Officer Oster demanded identification from Ms. Wixom. 5/9/12 RP 46. According to the officer, she provided incorrect information and then informed him she no longer wished to speak with him. 6/9/12 RP 46-48, 66. In response, the officer told her that she did not have a choice, and that she must identify herself. 6/9/12 RP 66.

When an officer initiates a stop of a vehicle, he is prohibited from requesting identification from passengers for investigative purposes under article I, section 7, unless there is an independent reason to justify the request. Rankin, 151 Wn.2d at 691. In Rankin, the officer stopped a vehicle for rolling over a marked stop line after recognizing the passenger and suspecting the passenger had an outstanding warrant. 151 Wn.2d at 692. When the officer pulled the vehicle over, he requested identification of both the driver and the passenger. Id. After finding that his guess was correct, he placed the defendant under arrest, discovering methamphetamine on the defendant in the process. Id.

The court found that the passenger was seized as a matter of law when the officer requested identification. Id. at 699. Because the officer had no independent cause to seize the passenger for investigative purposes, the court held the passenger was unlawfully detained, and reversed. Id. at 699-700; see also State v. Larson, 93 Wn.2d 638, 611 P.2d 771 (1980) (passenger unlawfully detained when officer requested identification after stopping a vehicle).

Here, Ms. Wixom was seized as a matter of law when the officer first asked her to identify herself. The officer claims he was justified in requesting identification because he needed to determine whether there

was a “history” between Ms. Wixom and Mr. Skogseth and to see if there was a no-contact order in place. 5/9/12 RP 40. However, this explanation is meritless. In order to obtain this information, the officer needed only to identify the suspect, who was already in custody.

The officer further claimed that he needed to identify Ms. Wixom simply as part of his investigation. However, Ms. Wixom had not been accused of any wrongdoing. If she preferred not to provide her full name or date of birth, it was unlawful for the officer to compel her to do so. See Rankin, 151 Wn.2d at 691; Larson, 93 Wn.App. at 645. That the officer alleged she initially provided incorrect information does not change this. See State v. Young, 167 Wn.App. 922, 275 P.3d 1150 (2012) (pedestrian unlawfully seized after she denied having identification, declined to provide her date of birth, and gave the last four digits of her social security number in reverse order).

c. The officers’ interaction with Ms. Wixom cannot be classified as a social contact.

Washington courts have distinguished an investigative detention from a social contact. 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). In O’Neill, an officer approached a vehicle parked on a public

street after determining the car had been previously been impounded due to a drug incident. 148 Wn.2d at 571-72. The officer asked the driver of the vehicle for identification, and the driver informed him that his license had been revoked. Id. at 572. The officer then asked the driver to get out of the car, at which point he saw a spoon that appeared to have narcotics on it. Id. The court held that, because the driver was not seized until he revealed his license had been revoked, the officer's request for him to exit the car, and subsequent view of the spoon, was lawful. Id. at 581.

In Mote, an officer approached a car legally parked on a residential street and requested identification from both the driver and passenger. 129 Wn.App. at 280. The officer arrested the passenger after determining that he had an outstanding warrant, at which point the officer found methamphetamine in the passenger's pocket. Id. at 281. Relying on O'Neill, the court found that Rankin did not apply and the request for identification was not an unlawful seizure. Id. at 292.

The court drew this distinction, in part, by defining the interaction as a social contact. Id. at 290. It found that when an officer is merely initiating social contact, there is no difference between pedestrians and those in parked cars. Id. In both circumstances,

officers are free to engage citizens in conversation in public places without enough suspicion to justify a Terry stop. Id. (citing Young, 135 Wn.2d at 511; State v. Nettles, 70 Wn.App. 706, 712, 855 P.2d 699 (1993)); see also Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Unlike when the officer stops a vehicle to investigate an alleged crime or violation, in these situations the officer has no cause to seek identification from either the driver or the passenger. Id. The officer is simply initiating a social interaction.

When examining a social contact, it is necessary to determine whether the individual is seized by performing an objective analysis of the officer's actions. Id. at 291. This inquiry looks at whether, due to the officer's show of force or display of authority, the individual's freedom of movement was restrained and she would not believe that she was free to leave, or decline a request. Id. When applying this test, the Supreme Court has found that interaction that begins as a social contact can escalate to an unlawful seizure. State v. Harrington, 167 Wn.2d 656, 222 P.3d 92 (2009) (finding that what started as a social contact between a pedestrian and officer became progressively intrusive, escalating to an unlawful seizure when the officer asked to frisk the pedestrian for officer safety).

In this case, the officers were not initiating a social contact. They were responding to a report of erratic driving and possible assault by the driver of an identified vehicle. Although the vehicle was parked by the time they arrived on the scene, and the passenger had exited the car, the officers were nonetheless initiating a stop for the sole purpose of conducting a criminal investigation. The first officer to arrive on the scene displayed a clear show of force by immediately placing the suspect in handcuffs. CP 17. When the potential victim, Ms. Wixom, indicated she did not wish to identify herself to the second officer, he gave her no choice, informing her she must comply. 6/9/12 RP 66.

Also, just as the passenger in Rankin, when the driver of the vehicle was detained by the officers, Ms. Wixom did “not have the realistic alternative of leaving the scene as does a pedestrian.” 151 Wn.2d at 697. In order to remove herself from the officer’s presence, she would have been forced to “abandon [her] chosen mode of transportation and, instead, walk way into a frequently foreign location thereby risking the departure of [her] ride while away.” Id. The circumstances here, therefore, were very different than those presented in social contact cases, in which both the driver and passenger are free to leave at any time. See Mote, 129 Wn.App. at 290.

Thus, this was an investigative stop by the officers, and Ms. Wixom was merely a potential victim of assault. She was not a suspect. She was under no legal duty to answer the officer's questions or identify herself. See Larson, 93 Wn.2d at 775 (the circumstances preceding detention must justify a reasonable suspicion that the detained individual was involved in criminal conduct) (citing Brown v. Texas, 433 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979)). Because they were performing an investigative function, and had no independent justification for seeking her identifying information, Ms. Wixom was unlawfully seized at the time the officer made the request.

- d. Because Ms. Wixom was unlawfully seized, the evidence obtained during the subsequent search of her person and car must be suppressed, and her case dismissed.

When an individual is unlawfully seized, the appropriate remedy is suppression of the evidence obtained during the subsequent search. Rankin, 151 Wn.2d at 699-700. Ms. Wixom was convicted of possession of methamphetamine and possession of Alprazolam after these substances were found in her wallet, located in her coat pocket, and her purse, which was found during the subsequent search of the vehicle. CP 23, 25, 99. Because the officer had no reasonable suspicion that she was engaged in criminal conduct, Ms. Wixom should

not have been required to identify herself, and the seizure and subsequent search was unlawful. The case must be remanded for suppression of the evidence and dismissal.

F. CONCLUSION

Ms. Wixom was unlawfully seized when the officer requested her identification, as he had no independent justification for this request. Because Ms. Wixom was unlawfully seized, the case must be remanded for suppression of the evidence against her and dismissal of the case.

DATED this 17th day of June, 2013.

Respectfully submitted,



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DIVISION ONE**

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)	
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)	NO. 69542-8-I
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)	
SARAH WIXOM,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 17TH DAY OF JUNE, 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:

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