

FILED
Aug 10, 2016
Court of Appeals
Division I
State of Washington

No. 74217-5-I

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

TRAVIS RIFE,

Appellant.

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

APPELLANT'S REPLY BRIEF

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A. ARGUMENT IN REPLY

1. The trial court erroneously denied Mr. Rife’s motion to suppress the evidence seized in the warrantless search of his backpack.

A warrantless search of items in an individual’s “actual and exclusive possession at the time of this arrest” does not violate the Fourth Amendment or article I, section 7. *State v. MacDicken*, 179 Wn.2d 936, 942, 319 P.3d 31 (2014); U.S. Const. amend. IV; Const. art. I, § 7. This exception, however, does not encompass “articles within the arrestee’s reach.” *State v. Byrd*, 178 Wn.2d 611, 623, 310 P.3d 793 (2013).

Our supreme court recently found the exception applied where, at the time of arrest, a woman was holding a purse in her lap and where a man was holding a laptop bag and pushing a rolling duffle bag. *Byrd*, 178 Wn. 2d at 614; *MacDicken*, 179 Wn.2d at 939. The court also found the exception applied where a man was wearing a backpack when he was stopped by police, even though he was arrested after removing the backpack. *State v. Brock*, 184 Wn.2d 148, 158, 355 P.3d 1118 (2015).

The State argues Mr. Rife’s case is indistinguishable from these cases because, even though he was not wearing or holding the

backpack when he was detained by the officer, the item need not be in physical contact with the arrestee's body in order for the exception to be satisfied. Resp. Br. at 6. It relies on *State v. Ellison*, 172 Wn. App. 710, 291 P.3d 921 (2013), and *State v. Worth*, 37 Wn. App. 889, 683 P.2d 622 (1984) for this assertion. Resp. Br. at 6-7.

These cases do not support the State's claim. In *Ellison*, this Court found the search was lawful not because the backpack was part of the defendant's person, but because the backpack was within *reach* of the defendant and concerns for officer safety justified the search. 172 Wn. App. at 717. Where a search is warranted based on a concern for officer safety or the preservation of evidence, it may be lawfully conducted of the area within the control of the arrestee under *Byrd*. 178 Wn.2d at 617. No such finding was made here, and the State has not argued the search was justified because of safety concerns. Thus, *Ellison* is inapplicable.

In addition, while *Worth* suggests a purse resting against a woman's chair was part of her person, this Court was examining whether the purse fell within the scope of a warrant to search the house in which the woman was a guest. 37 Wn. App. at 891. The Court determined that declaring the purse part of the home, when it clearly

belonged to the defendant, was contrary to the protections granted by the Fourth Amendment, and rejected the State's argument on appeal. *Id.* at 893-94. Such a finding does not guide this Court's analysis under *Byrd*.

Unlike in *Byrd*, *MacDicken*, and *Brock*, Mr. Rife was not wearing or holding the backpack. The backpack was hung over the back of his wheelchair and out of his reach immediately preceding his arrest. 9/17/15 RP 9-11, 20. The search of the backpack was constitutionally impermissible and this Court should reverse.

2. The trial court's admission of Mr. Rife's statements made in response to police questioning, and conducted prior to *Miranda* warnings, was error.

The State concedes the police officer questioned Mr. Rife after he had been taken into custody but before the officer advised Mr. Rife of his *Miranda* rights. Resp. Br. at 14; *Miranda v. Arizona*, 384 U.S. 436, 479, 86 S.Ct. 1602 (1966). It also concedes that Mr. Rife's statements were therefore only admissible if the purpose of the questioning was to ensure the officer's or the public's safety and the circumstances were sufficiently urgent to warrant the questions. Resp. Br. at 14; *State v. Spotted Elk*, 109 Wn. App. 253, 260, 34 P.3d 906 (2001).

The State argues the police officer's questioning was designed to ensure his own safety, despite the officer's acknowledgement he did not feel unsafe. Resp. Br. at 15. It then makes the vague argument, without citation to the record, that because of "the time of day and location of the arrest" the circumstances presented were sufficiently urgent to justify his questions. Resp. Br. at 15.

In fact, there was no urgent reason to search the backpack or ask the questions of Mr. Rife. Mr. Rife was handcuffed, in custody, and "wasn't going anywhere" when he was interrogated. 9/17/15 RP 9, 46. There was no urgency and, as the police officer agreed, no issue of safety. The officer should not have conducted the search of the backpack and should not have questioned Mr. Rife before advising him of his *Miranda* rights. This Court should reverse.

B. CONCLUSION

For the reasons stated above and in his opening brief, this Court should reverse the trial court's CrR 3.6 order and suppress all evidence obtained subsequent to Mr. Rife's arrest and all statements obtained prior to the issuance of *Miranda* warnings.

DATED this 10th day of August, 2016.

Respectfully submitted,



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STATE OF WASHINGTON,)	
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Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 10TH DAY OF AUGUST, 2016, 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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