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A. ASSIGNMENTS OF ERROR

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I. MS. CARNEY WAS SEIZED, UNDER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 7 OF THE WASHINGTON STATES CONSTITUTION, PRIOR TO ARREST ON AN OUTSTANDING MISDEMEANOR WARRANT.

II. THE SEIZURE OF MS. CARNEY WAS UNLAWFUL AND THE COURT ERRED IN DENYING THE MOTION TO SUPPRESS.

C. STATEMENT OF THE CASE

On March 6th, 2005, Deputy Kendall of the Clark County Sheriff's Office was dispatched to 22113 N.E. 10th Avenue in Clark County to contact Mr. James Beyer in response to his complaint about a reckless driver. F.F. 1, CP 78-79¹. Mr. Beyer complained that a man on a motorcycle had been driving up and down the street in front of his house at excessive speed, cutting off other traffic, and riding "wheelies" while riding on the center "skip" line and passing other traffic. F.F. 2, CP 79. Mr. Beyer stated that the motorcycle seemed to keep returning to the area of new homes under construction on N.E. 224th, just north of his house. F.F. 2, CP 79. Mr. Beyer provided a physical description of the motorcyclist. F.F. 2, CP 79.

Deputy Kendall then drove to the area of new homes on N.E. 224th to look for the motorcyclist. F.F. 3, CP 79. When Deputy Kendall turned onto NE 224th Circle, a dead end street ending in a cul-de-sac, he observed a black sedan parked at the west end of the street facing west toward the end of the cul-de-sac. F.F. 3-4, CP 79. The sedan had two female occupants, with Ms. Carney in the front passenger seat, and it was not running. F.F. 8, CP 81. Next to the sedan was a man matching the

¹ The abbreviation "F.F." is used throughout the brief to reference the trial court's findings of fact on the CrR 3.6 hearing. The abbreviation "C.L." is used throughout the brief to reference the trial court's conclusions of law on the CrR 3.6 hearing.

description given by Mr. Beyers, standing next to the motorcycle described by Mr. Beyers and speaking to the women in the sedan. F.F. 4, CP 79-80.

As Deputy Kendall approached the motorcycle the motorcyclist ran to his motorcycle and fled the area. F.F. 5, CP 80. Deputy Kendall attempted to stop the motorcyclist from fleeing by turning on his emergency lights and yelling at the motorcyclist to stop and get off the bike. F.F. 5, CP 80. Rather than pursue the motorcyclist, Deputy Kendall pulled his car behind the sedan with his emergency lights on and approached the sedan. F.F. 7, CP 80. At the motion to suppress Deputy Kendall testified that he intended to “detain” the two women in the sedan to find out if they knew the identity of the motorcyclist and to find out if they were involved in any criminal activity. II RP 10. He testified that he had no reason to believe the women were armed and dangerous. II RP 30. He testified that he had no suspicion that the women in the car were engaged in criminal activity. II RP 37, C.L. 4, CP 84. He testified that Ms. Carney was not free to leave when he was parked behind the sedan with his lights activated. II RP 32. The court found, however, at finding of fact number seven, that the activation of Deputy Kendall’s emergency lights was directed at the motorcycle rider and not directed at or “intended to stop, detain, or seize” the women in the sedan. F.F. 7, CP 81.

When Deputy Kendall reached the vehicle he commanded the women to show him their hands and to identify themselves. F.F. 8, CP 81, II RP 25-26. He also believed that he told the women not to start the vehicle or attempt to leave. II RP 26. Deputy Kendall then requested identification from the women. F.F. 8, CP 81. The women verbally identified themselves and provided their dates of birth. F.F. 8, CP 81. Deputy Kendall then radioed their names and dates of birth to the dispatch center so he could do a warrants check. F.F. 8, CP 81. It was only after Deputy Kendall identified the two women and began the warrants check that he began to question them about the motorcyclist suspected of reckless driving. F.F. 9, CP 81. During the course of the questioning, Deputy Kendall was advised that both Ms. Carney and the driver of the sedan had warrants for their arrest. F.F. 10, CP 81. Ms. Carney's warrant was a misdemeanor warrant. F.F. 10, CP 81. Both women were removed from the car and arrested. F.F. 10, CP 82. During the search incident to arrest of Ms. Carney, methamphetamine was found on her person. F.F. 11, CP 82.

In its oral ruling at the motion to suppress, the Court initially ruled, and the State agreed, that Ms. Carney clearly had been seized. II RP 122-124. The Court agreed with the State, however, that the seizure was justified, and the warrants check justified, because Ms. Carney had been a

witness to a crime, and that a suspicion that she was involved in criminal activity was not required. II RP 122-126. At a later hearing, the Court, sua sponte, reversed its previous ruling that Ms. Carney was seized and held that Ms. Carney was *not* seized. II RP 134. The Court held that because Ms. Carney was a witness to a crime, and that police officers have a duty to investigate crime, Ms. Carney was not seized. II RP 134-141. In other words, what would have otherwise been a seizure in any and every other context was not a seizure here because police officers have a duty to investigate crime and witnesses have a duty, according to the Court, to assist in that investigation. II RP 134-141.

The Court entered the following finding of fact on the CrR 3.6 hearing to which Ms. Carney assigns error:

Finding of Fact #7: “Deputy Kendall stopped his patrol car behind the sedan, and notified the dispatcher of the license plate of the vehicle, his location, and description of the motorcyclist and his direction of travel. The deputy’s emergency lights remained on. The Court finds that the activation of the emergency lights was directed at the motorcycle rider, and was not directed at or intended to stop, detain, or seize the occupants of the sedan.” CP 80-81

The Court entered the following finding of fact on the CrR 3.6 hearing to which Ms. Carney assigns error:

Finding of Fact #8: “Deputy Kendall approached the driver’s side of the vehicle. The vehicle’s engine was not running. There were two women in the front seat. Jessica Hall was seated in the driver’s seat. Defendant Roxanne Carney was seated in the front passenger seat of the vehicle. Deputy Kendall asked the women to show their hands, and requested identifying information from both women. Both women verbally provided their names and dates of birth. Deputy Kendall radioed the names and dates of birth to the dispatcher for a records check. This occurred at approximately 3:35 p.m.” CP 81

The Court entered the following conclusions of law on the CrR 3.6 hearing to which Ms. Carney assigns error:

Conclusion of Law #5: “A police officer has a duty to investigate crime, and as part of the investigation of a reported or observed crime an officer is acting within his authority to contact a person at the scene of the crime whom he has reason to believe may have information or evidence relevant to the commission of the crime or the identity of the perpetrator, and to ask that witness to identify himself or herself, and to question the witness about what he or she knows. The Court further concludes that it is reasonable for the officer to conduct a records check to confirm the identity of the witness.” CP 84.

Conclusion of Law #6: “The Court concludes that Deputy Kendall had reason to believe that the occupants of the sedan might know the identity of the motorcycle rider or might have information which would lead to his identity, or information which would explain why he failed to yield to Deputy Kendall’s signal to stop. Deputy Kendall was acting in the performance of his duty to investigate criminal conduct, and was within his authority in contacting the Defendant and Hall, who were seated in a parked car, and asking them for identification, and questioning them concerning their knowledge of the identity of the motorcycle rider or their observations of his conduct.” CP 84.

Conclusion of Law #7: “The Court concludes that asking the women to show their hands at the time of the initial contact, under the circumstances was a reasonable step taken by Deputy Kendall to assure his own safety, and did not change the nature of his contact with the women as witnesses or rise to the level of an unlawful detention.” CP 85.

Conclusion of Law #8: “While engaged in lawful contact with Defendant and Hall, Deputy Kendall learned of the existence of outstanding warrants for both of them. He then had the duty and authority to arrest them pursuant to the warrants, and restrain them with handcuffs. The search of Defendant by Sgt. Cooke was therefore incident to a lawful arrest, and the

evidence of methamphetamine possession which resulted from that search was lawfully obtained.” CP 85.

Conclusion of Law #9: “The Motion to Suppress should therefore be denied.” CP 85.

On March 10th, 2005 the Clark County Prosecuting Attorney charged Ms. Carney with one count of Possession of a Controlled Substance: Methamphetamine. Ms. Carney brought a motion to suppress evidence based on the illegality of her initial detention, which the trial court denied. CP 11, C.L. 9, CP 85. Ms. Carney submitted to a non-jury trial based upon stipulated facts. CP 50-54. The Court found Ms. Carney guilty as charged. CP 54. Ms. Carney was given a standard range sentence. CP 70. This timely appeal followed. CP 56.

D. ARGUMENT

I. MS. CARNEY WAS SEIZED, UNDER THE FOURTH AMENDMENT OF THE UNITED STATES CONSTITUTION AND ARTICLE 1, SECTION 7 OF THE WASHINGTON STATES CONSTITUTION, PRIOR TO ARREST ON AN OUTSTANDING MISDEMEANOR WARRANT.

Contrary to the holding of the trial court, Ms. Carney was seized, without any articulable suspicion that she had engaged in criminal activity, at several times prior to her arrest. First, she was seized when the officer parked his vehicle behind her vehicle with his emergency lights activated.

Second, she was seized when the officer commanded her to show him her hands. That this was done for “officer safety” does not negate the fact that the command itself constituted a seizure. Last, Ms. Carney was seized when the officer requested her identification and ran a warrants check on her.

a. ACTIVATION OF EMERGENCY LIGHTS.

The testimony of Deputy Kendall established, and the Court found at Finding of Fact number seven, that Deputy Kendall parked his patrol car directly behind Ms. Carney’s vehicle with his emergency lights activated. F.F. #7, CP 80. The Court further stated in this finding of fact that “[t]he Court finds that the activation of the emergency lights was directed at the motorcycle rider, and was not directed at or intended to stop, detain, or seize the occupants of the sedan.” CP 81. This portion of finding of fact number seven is more properly characterized as a conclusion of law, but was nevertheless included as a factual finding. This is the portion of finding of fact number seven to which Ms. Carney assigns error.

First, this finding by the Court is not supported by the record. Deputy Kendall clearly testified that he pulled behind the sedan, with his lights activated, with the intention of detaining the two women in the sedan. Deputy Kendall testified at the motion to suppress that his purpose

in pulling behind the sedan with his lights activated was to “detain” the occupants of the sedan for the purpose of interrogating them about the motorcyclist, and that the women were not free to leave once he pulled up behind the sedan with his lights activated. II RP 10, 32. His intention to detain these women, even had he not freely admitted it during his testimony, was demonstrated by the fact that he could have pursued the motorcycle but didn’t. If the emergency lights were not directed at the sedan, then who were they directed at? A motorcycle that was no longer there? Had the emergency lights been directed at the motorcycle and not at the sedan, as the Court found, then it would have been totally unnecessary to keep them activated once the motorcycle fled the scene.

Second, even if the Court’s finding as to the subjective intent of Deputy Kendall was not totally contradicted by Deputy Kendall’s *own testimony* about his subjective intent, it would not matter. The subjective intention of the officer plays no role in the analysis of whether a seizure has occurred. A seizure occurs, under Article 1, 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. *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004); *State v. O’Neill*, 148 Wn.2d 564, 574, 62 P.3d 489 (2003). “The standard is ‘a purely

objective one, looking to the actions of the law enforcement officer.”
O’Neill at 574, quoting *State v. Young*, 135 Wn.2d 498, 501, 957 P.2d 681
(1998).

Here, looking objectively at the facts, it is obvious that Ms. Carney was seized when Deputy parked behind her car with emergency lights activated. First, the emergency lights were a show of authority by Deputy Kendall that would lead a reasonable person to believe she was not free to leave or terminate the encounter. *State v. Vandover*, 63 Wn.App. 754, 757, 822 P.2d 784 (1992). A person in a parked vehicle is seized when an officer pulls up behind the vehicle and activates his emergency lights. *State v. Stroud*, 30 Wn.App. 392, 396, 634 P.2d 316 (1981); *State v. DeArman*, 54 Wn.App. 621, 624, 774 P. 2d 1247 (1992). It does not matter whether the person is the driver or, as in *Stroud*, a passenger. It is a seizure in either situation. *Stroud* at 396.

Here, Deputy Kendall parked his car directly behind the sedan in which Ms. Carney was a passenger, with his lights activated, with the stated intent of detaining Ms. Carney. Further, there was no other vehicle present which could have been the subject of the seizure. As the Court found in its findings of fact, the motorcycle had already fled the scene. F.F. #5, CP 80. Further, Deputy Kendall could have pursued the motorcycle but chose not to for logistical reasons. F.F. #6, CP 80.

Certainly someone in Ms. Carney's position, who observes a patrol car pull in behind her with its lights activated, and specifically declines to pursue the other vehicle which has fled the scene, would reasonably believe that the emergency lights were directed at her and that she was seized by the officer. The trial court erred in holding that Ms. Carney was not seized at this point, and in relying on what it believed to be the subjective intent of the officer.

b. COMMAND TO SHOW HANDS

Even if this Court were to find that Ms. Carney was not seized when Deputy Kendall effectuated what amounted to a traffic stop of her vehicle, this Court should find she was seized when Deputy Kendall commanded her to show him her hands. The trial court found, at finding of fact number eight, that Deputy Kendall asked the women to show their hands. CP 81. To the extent this finding of fact characterizes this request as a casual one which the women were free to disregard, as opposed to a command which they were compelled to follow, this finding is not supported by the evidence.

First, the Deputy testified that his basis for directing the women to show their hands was for officer safety. II RP 25. He specifically characterized it as a "command" in his testimony. II RP 25. Because the purpose of this command was "officer safety," it is axiomatic that the

women were not free to disregard this command. Anyone living in our society, particularly those who come into regular contact with law enforcement, knows that commands which relate to safety, as opposed to investigation, cannot be disregarded without risk of peril to the subject. “Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, would be threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or use of language or *tone of voice indicating that compliance with the officer’s request might be compelled.*” *Young* at 512, quoting *United States v. Mendenhall*, 446 U.S. 544, 554-55, 100 S.Ct. 1870 (1980) (emphasis added).

Here, not only did the nature of the command establish that Ms. Carney was compelled to comply, the officer himself testified this was, in fact, a command. Such a command, because Ms. Carney was compelled to follow it, constituted a seizure pursuant to holdings of *Young* and *Mendenhall*. That this command was motivated by “officer safety” does not negate the fact that it amounted to a seizure of Ms. Carney. There are any number of things an officer will request a subject to do out of concern for his or her safety, usually in the course of an otherwise lawful seizure. However, in order for a seizure to be reasonable on the grounds of officer safety alone, it must be premised upon a reasonable belief that the subject

is armed and dangerous. *State v. Duncan*, 146 Wn.2d 166, 172, 43 P.3d 513 (2002); *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868 (1968). Here, as noted, the officer testified he had no such suspicion. II RP 30.

Ms. Carney was seized when the officer ordered her to show him her hands, and such seizure was not justified at its inception where the officer lacked any suspicion that Ms. Carney was engaged in criminal activity and where the officer lacked any suspicion that she was armed and dangerous.

*c. **REQUEST FOR IDENTIFICATION***

The parties below, in arguing over whether Ms. Carney was seized, focused the bulk of the discussion on whether Deputy Kendall's request for identification elevated the encounter to a seizure. The State argued that Ms. Carney's case was not controlled by *State v. Rankin*, 151 Wn.2d 689, 92 P.3d 202 (2004) (holding that a mere request for identification from a passenger in a stopped vehicle constitutes a seizure; departing from cases holding that the request must be a "demand" for a seizure to have occurred), or *State v. Brown*, 154 Wn.2d 787, 117 P.2d 336 (2005) (holding that there is no distinction between asking a passenger in a stopped vehicle for his physical license and merely asking him for his name and other identifying information, as both methods enable an officer to do a warrants check). The State argued that because Ms. Carney's

vehicle was not stopped after having been in motion, as were the vehicles in *Rankin* and *Brown*, her case was controlled by *State v. O'Neill*, 148 Wn.2d 564, 62 P.3d 489 (2003) and *State v. Mote*, 129 Wn.App. 276, 120 P.3d 596 (2005).

In *O'Neill*, the defendant was in a parked car that was parked in the parking lot of a closed business that had recently been burglarized. A police officer pulled his patrol vehicle into the parking lot so that he could talk to the occupant of the vehicle and inquire what he was doing. The officer *did not* activate his emergency lights, but rather shined his flashlight into the vehicle. He asked O'Neill to roll down the window and for his identification, and O'Neill volunteered that he had been driving with a suspended license. *O'Neill* at 570-72. The Supreme Court held that there was no show of authority on the officer's part which would have elevated the request for identification to a seizure. *O'Neill* at 577. The Court noted that O'Neill was free to refuse the officer's request that he roll down his window, and was under no obligation to speak to the officer. *O'Neill* at 579.

In *Mote*, a police officer pulled his car up behind a legally parked car on a residential street with its tail and dome lights on. The officer *did not* activate his emergency lights. *Mote* at 279. The officer walked up to the driver's side window and requested identifying information from both

the driver and Mote, the passenger. A check for warrants revealed that Mote had an outstanding warrant, upon which he was arrested. *Mote* at 279. The Court of Appeals for Division I held that Mote's case was controlled by *O'Neill* rather than *Rankin* and *Brown*. Because Mote had been in a parked vehicle that was approached by a police vehicle in which the emergency lights were not activated, the *Mote* Court held that this case similar to *O'Neill* in that the officer made no demands and issued no orders and made no other show of authority. *Mote* at 289. The contact, therefore, was analogous to a citizen contact by a police officer with a pedestrian. *Mote* at 288.

The *Mote* Court, in distinguishing *Rankin*, relied heavily on the fact that the appellants in *Rankin* were passengers in vehicles "stopped by law enforcement *after a show of authority*." *Mote* at 289 (emphasis added). The State, in oral argument on the motion to suppress, argued simply that Ms. Carney's case was controlled by *Mote* and *O'Neill* because her car was not in motion prior to being detained by Deputy Kendall. The State argued, without even addressing the fact that Deputy Kendall's patrol car was parked right behind Ms. Carney's vehicle with his emergency lights activated, that she was no different from a pedestrian in a citizen/police contact because her car had not been in motion.

In Ms. Carney's case, however, the trial court's reliance on *Mote* and *O'Neill* was error because those cases did not involve police vehicles which had their emergency lights activated. Ms. Carney's case is controlled first and foremost by *Stroud* and *DeArman*, which hold that a person (whether the driver or a passenger) in a parked vehicle is seized the moment an officer pulls up behind the vehicle and activates his emergency lights. *Stroud* at 396, *DeArman* at 624. Because Ms. Carney was seized when Deputy Kendall pulled behind her sedan with his emergency lights activated, his request for her identification as a passenger was no different than the requests for identification made to the passengers in *Rankin* and *Brown*. That the sedan was not in motion prior to the "stop" is of no consequence.

In *State v. Crane*, 105 Wn.App. 301, 19 P.3d 1100 (2001), an officer for the city of Aberdeen was parked in front of a house in his patrol car, with instructions from his superior to monitor the house while other officers obtained a warrant to search the house. The officer had been specifically instructed by his sergeant to identify anyone attempting to enter or leave the residence. *Crane* at 304. The officer observed a car, in which defendant Crane was a passenger, pull into the driveway. The officer pulled his vehicle behind Crane's vehicle and told the men, who had exited the vehicle and were approaching the residence, to stop. The

men complied and walked toward the officer, in response to him motioning them over using a demanding voice. *Crane* at 304. The officer then requested identification from the men and ran a warrants check on them. *Crane* at 304. Finding a warrant for Crane, he was arrested and searched. Division II held that while the officer's actions in pulling behind Crane's car and asking Crane to stop did not amount to a seizure, the request for identification, along with the warrants check within earshot of Crane, did amount to a seizure. The Court held that a reasonable person would not feel free to leave or terminate the contact knowing that the officer was conducting a warrants check. *Crane* at 310-11. The Court held "This was not a casual contact on a public street. Green had parked his patrol car behind the car Crane arrived in, requested Crane's identification, and retained it while running a warrants check." *Crane* at 311. Because the officer in *Crane* had no individualized suspicion of criminal activity pertaining to Mr. Crane, the seizure was unlawful. *Crane* at 312. Such is the case with Ms. Carney as well.

In conclusion, Ms. Carney was seized in at least three ways prior to her arrest on an outstanding misdemeanor warrant. She was first seized when Deputy Kendall pulled behind the sedan in which she was a passenger with his emergency lights activated. As argued above, the Court's conclusion that Deputy Kendall subjectively intended to direct his

emergency lights only at the motorcycle rider, while contrary both to common sense and to the direct evidence offered at the hearing, is immaterial because the test for when a seizure has occurred is objective, not subjective.

Should this Court disagree that Ms. Carney was seized by Deputy Kendall's emergency lights, she was also seized when she was ordered to show Deputy Kendall her hands. This was a command she was compelled to follow. That it was subjectively motivated by Deputy Kendall's concern for his safety is immaterial. What defines the encounter is the nature of the command, not the reason for it.

Last, Ms. Carney was seized when Deputy Kendall requested her identification. Ms. Carney was not a pedestrian involved in a casual, consensual conversation out on the street with Deputy Kendall. She was a passenger in a car which was not free to move, which was parked in front of a patrol car with flashing emergency lights. She had been ordered, prior to the request for identification, to show the deputy her hands. It is difficult to imagine a more obvious case of a seizure, for purposes of both the Fourth Amendment and Article 1, Section 7, than this.

**II. THE SEIZURE OF MS. CARNEY WAS UNLAWFUL
AND THE COURT ERRED IN DENYING THE MOTION
TO SUPPRESS.**

“All seizures of the person, even those involving only brief detentions, must be tested against the Fourth Amendment guaranty of freedom from unreasonable searches and seizures’...An investigatory stop made be made on less than probable cause... ‘An officer making such an investigatory stop, however, is required by the Fourth Amendment to have a reasonable suspicion, based on objective facts, that the individual is involved in criminal conduct’ or is a safety threat.” *Crane* at 311-12, citing *State v. Thompson*, 93 Wn.2d 838, 840-41, 613 P.2d 525 (1980). “The State has the burden to show that the particular warrantless seizure is valid.” *Crane* at 312, citing *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984), and *State v. Houser*, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980).

Here, there is no need to discuss whether Deputy Kendall had a reasonable suspicion that Ms. Carney was engaged in criminal activity because all parties agreed he didn’t, and the Court found as such at Conclusion of Law number four. Rather, the State argued, and the Court agreed, that Ms. Carney’s status as a potential witness to a misdemeanor crime rendered her contact with Deputy Kendall not to be a seizure.

It is worth noting that the State initially agreed (as it must), that Ms. Carney was in fact seized by Deputy Kendall. II RP 105, 122. The State simply argued, without citation to authority, that the seizure was

reasonable because Ms. Carney was a potential witness to reckless driving and failure to obey a law enforcement officer. The State argued, without citation to authority, that witnesses have a duty to cooperate with a police investigation. Such cooperation, the State argued, included agreeing to be identified and run for warrants. 11 RP 104-122.

It was only at a later hearing, when the Court changed its position that Ms. Carney was in fact seized, that the State argued this was a citizen encounter and not a seizure. The State argued, and the Court agreed, that Deputy Kendall had merely inquired of Ms. Carney, not seized her, and such inquiry, including her name and whether she had warrants, was part and parcel of his investigation of the reckless motorcyclist. In other words, the State and the Court took the position that this encounter, which in every other context would be a seizure, was not a seizure here because Ms. Carney had been a potential witness to two misdemeanors allegedly committed by another person. With all due respect to counsel and the Court, this analysis is disingenuous and ridiculous. This encounter was clearly a seizure.

Because the State, in its response, will likely revert to its first argument that *if* this was a seizure, it was reasonable because Ms. Carney was a witness to a crime that Deputy Kendall was investigating, appellant challenges the State to do what it could not do at the suppression

proceedings below: Cite a binding authority which holds that in Washington, a witness to a crime forfeits the privacy protections guaranteed by the Fourth Amendment and Article 1, Section 7 and must submit to a seizure, which is not premised upon any suspicion of criminal activity (reasonable or otherwise) or any suspicion that the subject is armed and dangerous, and must provide identification and submit to a warrants check.

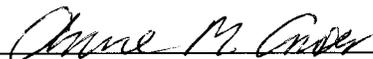
The complete lack of relevance of whether Ms. Carney had warrants to the primary investigation (i.e. whether the motorcyclist had driven recklessly some time earlier and failed to obey a police officer) notwithstanding, there simply is no authority to suggest that Ms. Carney had a duty to identify herself and submit to a warrants check as part of an officer's investigation of a misdemeanor in which she played no role other than as a potential witness. A diligent search by appellate counsel has revealed no case which carves out a "witness exception" to the massive volume of cases which hold that a seizure such as this is unreasonable. To the contrary, *Crane* compels the conclusion that the seizure of Ms. Carney was unreasonable: "Neither close proximity to others suspected of criminal activities nor presence in a high crime area, without more, will justify a seizure." *Crane* at 312, citing *Ybarra v. Illinois*, 444 U.S. 85, 90-91, 100 S.Ct. 338 (1979).

Because Ms. Carney was seized and the seizure, like the seizure in *Crane*, was not premised upon any suspicion that she was engaged in criminal activity but was in fact premised upon the criminal activities of another person, it was unlawful. Her subsequent arrest on the outstanding misdemeanor warrant was therefore unlawful and the evidence recovered as part of the search incident to arrest should have been suppressed and her case dismissed.

E. CONCLUSION

The trial court erred in denying Ms. Carney's motion to suppress. Ms. Carney's conviction should be reversed and her case dismissed.

RESPECTFULLY SUBMITTED THIS 9th day of June, 2006.


ANNE M. CRUSER, WSBA# 27944
Attorney for Ms. Carney

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

STATE OF WASHINGTON,)	Court of Appeals No. 34147-6-II
)	Clark County No. 05-1-00598-0
Respondent,)	
)	AFFIDAVIT OF MAILING
vs.)	
)	
ROXANNE CARNEY,)	
)	
Appellant.)	

ANNE M. CRUSER, being sworn on oath, states that on the 9th day of June 2006,
affiant deposited in the mails of the United States of America, a properly stamped envelope
directed to:

Arthur Curtis
Clark County Prosecuting Attorney
P.O. Box 5000
Vancouver, WA 98666-5000

AND

David C. Ponzoha, Clerk
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402-4454

Anne M. Cruser
Attorney at Law
P.O. Box 1670
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anne-cruser@kalama.com

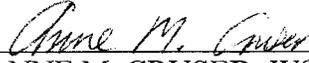
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4 AND

5 Ms. Roxanne Carney
6 5515 NE 102nd
7 Vancouver, WA 98684

8 and that said envelope contained the following:

- 9 (1) BRIEF OF APPELLANT (2 COPIES TO MR. PONZOHA)
10 (2) VERBATIM REPORT OF PROCEEDINGS (TO MR. CURTIS)
11 (3) R.A.P. 10.10 (TO MS. CARNEY)
12 (4) AFFIDAVIT OF MAILING

13
14 Dated this 9th day of June 2006,

15 
16 ANNE M. CRUSER, WSBA #27944
17 Attorney for Appellant

18
19 I, ANNE M. CRUSER, certify under penalty of perjury of the laws of the State of
20 Washington that the foregoing is true and correct.

21
22 Date and Place: June 9th, 2006, Kalama, Washington

23
24 Signature: Anne M. Cruser