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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

NO. 34147-6-II

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

STATE OF WASHINGTON, Respondent, v. ROXANNE ELAINE CARNEY, Appellant.
FROM THE SUPERIOR COURT FOR CLARK COUNTY THE HONORABLE JOHN P. WULLE CLARK COUNTY SUPERIOR COURT CAUSE NO. 05-1-00598-0
BRIEF OF RESPONDENT

Attorneys for Respondent:

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Clark County, Washington

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I. **STATEMENT OF FACTS**

On March 6, 2005, the defendant was arrested for Possession of Controlled Substance. This matter was the subject of a suppression hearing and later a stipulated facts trial. All the necessary facts are contained in the Findings of Fact and Conclusions of Law that were entered by the trial court.

A copy of the Stipulated Facts on Non-Jury Trial (CP 46) is attached hereto and by this reference incorporated herein. Further, a copy of the Findings of Fact and Conclusions of Law on Non-Jury Trial (CP 50) is attached hereto and by this reference incorporated herein. Finally, the court entered findings of fact concerning the suppression hearing. A copy of the Findings of Fact and Conclusions of Law on CrR 3.6 Hearing (CP 79) is attached hereto and by this reference incorporated herein.

II. **RESPONSE TO ASSIGNMENTS OF ERROR**

The assignment of error raised in this case deals with the claim that the trial court erred in denying the defense motion to suppress because of a claimed illegal seizure of the defendant.

When reviewing the denial of a suppression motion, the appellate court determines whether substantial evidence supports the findings of fact and whether the findings support the conclusions of law. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The determination of whether a seizure has occurred is a mixed question of law and fact. State v. Hansen, 99 Wn.App 575, 577, 994 P.2d 855, rev.denied, 141 Wn.2d 1022, 10 P.3d 1074 (2000). The appellate court gives great deference to the trial court's resolution of differing accounts of the circumstances surrounding the encounter and if the findings entered in a CrR 3.6 suppression hearing are challenged, the review is for substantial evidence. Evidence is substantial when it is sufficient to persuade a fair-minded person of the truth of the stated premise. State v. Reid, 98 Wn.App 152, 156, 988 P.2d 1038 (1999).

The defendant's claim in our case was that she was unlawfully seized when the deputy asked her for identification. She provided identification by telling the officer her name and date of birth. He then ran that information and determined that she had an outstanding warrant. Once the arrest was made on the outstanding warrant, the search found drugs in her possession which led to the felony count.

The State submits that the proper way to view this question is to use the rules that have been set forth in State v. Rankin, 151 Wn.2d 689, 92 P.3d 202 (2004). Rankin held that a passenger is not seized when a police officer merely stops the vehicle in which the passenger is riding. Rankin, 151 Wn.2d at 695. An officer's request for identification from a passenger for investigatory purposes is the seizure unless other circumstances give the police an independent cause to question the passenger. Rankin, 151 Wn.2d at 695; State v. Larson, 93 Wn.2d 638, 642, 611 P.2d 711 (1980); State v. Mendez, 137 Wn.2d 208, 222-223, 970 P.2d 722 (1999).

Using this set of rules, the question becomes whether or not the police had an independent reason to question the passenger.

There is no question in our case but that the deputy was trying to identify witnesses to criminal activity. The deputy sheriff had probable cause to stop and arrest the motorcyclist. RCW 10.31.100 (3)(c) authorizes a police officer having probable cause to believe that a person has committed the crime of reckless driving in violation of RCW 46.61.500 or RCW 46.61.530 to arrest that person without a warrant and without regard to whether the crime was committed in the officer's presence. In addition, the

motorcycle rider's failure to stop when signaled to do so by the deputy sheriff is itself a misdemeanor offense committed in the officer's presence. RCW 46.61.020, 46.61.021 and 46.61.022.

Among the uncontested findings of fact at the 3.6 hearing was the following entered by the court:

Finding of Fact No. 6. Deputy Kendall believed, considering the speed and maneuverability of the motorcycle compared to that of his patrol car, the head start the driver had, and the additional time which would be needed to turn his patrol car around and pursue, that he had no chance of catching the motorcycle in his patrol car. He also considered it likely that the occupants of the vehicle would know the identity of the motorcyclist, and maybe have additional information which would explain the motorcyclist's failure to stop when directed to do so. He concluded that by pursuing the motorcycle he might lose the opportunity to obtain information from the persons in the car with whom the rider appeared to have been speaking, and therefore chose to contact the occupants of the vehicle. (CP 79; Finding of Fact No. 6)

The officer was requesting identification from the driver and passenger in the car to assist him in identifying the motorcyclist. There was no other purpose, and no other purpose has been demonstrated in this record, other than to support a conclusion that the officer was attempting to identify witnesses to criminal activity and discern what they knew and how they knew it. This is further supported by the additional findings of fact that were

entered at the 3.6 hearing (specifically findings of facts 8, 9 and 10) when the officer continues to talk to the occupants of the car concerning their knowledge of the identity of the fleeing miscreant. The State submits that this gives the police the independent cause to question the passenger and request identity. There is absolutely no indication in this record that the officer had any intentions of arresting this defendant. She was not the subject of investigation, nor was she being stopped or questioned for anything that she was doing. The vehicle was properly parked and she was a witness to criminal activity. The officer was doing nothing more than ascertaining who the witness was and what she knew about the underlying circumstances. Further, the officer's sole purpose, as demonstrated repeatedly in the findings of fact, was to identify the motorcyclist. In the vast majority of cases dealing with seizure of a passenger, the passenger is the center of attention or the focus of the investigation. Here, the passenger is not the center of attention or the focus of investigation, but is being asked to provide extremely limited information so that the officer can discover the identity of the motorcyclist and ascertain the identity of the witness in case she may be needed later in the investigation.

To reiterate, not every encounter between a police officer and a citizen is an intrusion requiring an objective justification. Rankin, 151 Wn.2d at 695 (quoting United States v. Mendenhall, 446 US 544, 553, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)). Under Article 1, §7 of the Washington State Constitution, passengers are unconstitutionally detained when an officer requests identification “unless other circumstances give the police independent cause to question the passengers.” (Rankin, 151 Wn.2d at 695). The State submits that here there are other circumstances that gave the deputy sheriff independent cause to ask the defendant to identify herself. The State further submits because there was this independent cause to question the defendant, her state constitutional rights were not violated when the officer asked her to identify herself. This is consistent with the findings of fact which further support the conclusions of law entered by the trial court.

III. CONCLUSION

The trial court should be affirmed in all respects.

DATED this 2 day of August, 2006.

Respectfully submitted:

ARTHUR D. CURTIS
Prosecuting Attorney
Clark County, Washington

By:


MICHAEL C. KINNE, WSBA #7869
Senior Deputy Prosecuting Attorney

APPENDIX "A"

STIPULATED FACTS ON NON-JURY TRIAL

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FILED

DEC 05 2005

JoAnne McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,

Plaintiff,

v.

ROXANNE ELAINE CARNEY,

Defendant.

No. 05-1-00598-0

STIPULATED FACTS ON
NON-JURY TRIAL

COME NOW Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, and Defendant Roxanne Elaine Carney, in person and with her attorney Therese Lavallee, Defendant having previously entered a knowing, intelligent and voluntary written waiver of her right to trial by a jury, and of her right to hear and confront witnesses against her and of her right to call witnesses on her own behalf and to compel their attendance, and of her right to testify on her own behalf or to remain silent at trial, and the Defendant and the Plaintiff stipulate to the following undisputed facts:

1. On March 6, 2005, Deputy Kyle Kendall of the Clark County Sheriff's Department was dispatched to 22113 NE 10th Avenue, in Clark County, Washington, to investigate a

1 complaint of reckless driving. Deputy Kendall was in uniform, and driving a marked
2 patrol car with identifying Sheriff's Department insignia and lettering on the side and an
3 emergency light bar on top. Deputy Kendall spoke with the complaining party, who
4 identified himself as James Beyer. Based upon information and descriptions provided
5 by Beyer, Deputy Kendall began to look for a white and blue "crotch rocket" or "café
6 style" motorcycle ridden by a white male wearing a dark helmet, white shirt and blue
7 jeans, which was the subject of the reckless driving complaint. Based upon information
8 provided by Beyer, Deputy Kendall drove to an area north of Beyer's house where new
9 homes were under construction, and turned onto NE 224th Circle, a dead end street
10 ending in a cul-de-sac. This location was also within Clark County.
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12
13 2. At the west end of the street Deputy Kendall observed a black sedan, parked at
14 the end of the street and facing west toward the end of the cul-de-sac. The vehicle had
15 two occupants. Deputy Kendall also observed a white male matching the description
16 given by Beyer but not wearing a helmet, standing next to the driver's side of the sedan.
17 Also parked at the end of the street, near the sedan and white male, was a white and
18 blue motorcycle matching the description given by Beyer.
19

20 3. As Deputy Kendall approached the two vehicles, the male ran to the motorcycle,
21 got on and started the engine. Deputy Kendall turned on his emergency lights and
22 yelled to the rider to stop the bike and get off. He also attempted to block the
23 motorcycle's path with his patrol car, but the rider swerved around the patrol car, drove
24 over the curb and sped off, leaving southbound on 10th Avenue.
25

26 4. Deputy Kendall stopped his patrol car behind the sedan and contacted the two
27

1 occupants. Jessica Hall was seated in the driver's seat. Defendant Roxanne Carney
2 was seated in the front passenger seat of the vehicle. Deputy Kendall requested
3 identifying information from both women. Deputy Kendall used the names and birth
4 dates provided by the two women to run a records check on them, and was notified by
5 his dispatcher that there was an outstanding warrant for the arrest of the Defendant
6 Roxanne Carney. Deputy Kendall had Defendant get out of the sedan, arrested
7 Defendant for the warrant, handcuffed her and placed her in his patrol car.
8

9 5. Deputy Sgt. Cooke arrived to assist Deputy Kendall. Sgt. Cooke removed
10 Defendant from the back of the patrol car and searched her person. Defendant was
11 wearing a pullover type windbreaker coat. In a zippered pocket on the front of the coat
12 Sgt. Cooke found two small baggies of methamphetamine. Also in the pocket with the
13 baggies, Sgt. Cooke found a Washington State DSHS card with a signature in the name
14 of "Roxanne Carney" on the back. Sgt. Cooke turned the two baggies and the DSHS
15 card over to Deputy Kendall.
16
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18 6. Deputy Kendall sealed the two baggies in an evidence bag, labeled it, and
19 deposited it into the Clark County Sheriff's evidence system. The Clark County Sheriff's
20 Evidence Custodian transmitted the sealed container to the Washington State Patrol
21 Crime Lab.
22

23 7. Bruce Siggins is a Forensic Scientist at the Washington State Patrol Crime
24 Laboratory, who is qualified as an expert in the use of recognized scientific tests to
25 analyze various substances and thereby identify or determine the presence of controlled
26 substances including methamphetamine. Bruce Siggins received the sealed container
27

1 containing the two baggies, opened it, and weighed and tested the contents of the two
2 baggies. He found that the crystalline material in both bags contained
3 Methamphetamine, weighing .5 grams in one bag, and .1 grams in the other.

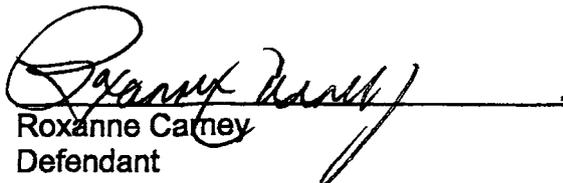
4 8. The arrest of the Defendant Roxanne Carney and the seizure of the baggies from
5 her coat pocket on March 6, 2005 occurred in Clark County, State of Washington.
6

7 The Parties further stipulate and agree that this Stipulation and the foregoing
8 facts may be admitted into evidence and considered by the Court as evidence in the
9 trial of the above entitled Cause, without the necessity of any further testimony or
10 evidence.
11

12 DATED this 5th day of December, 2005.

13 
14 Philip A. Meyers, WSBA #8246
15 Deputy Prosecuting Attorney
16 Attorney for Plaintiff

17 
18 Therese Lavalley, WSBA #16350
19 Attorney for Defendant

20 
21 Roxanne Carney
22 Defendant

APPENDIX "B"

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON NON-JURY TRIAL

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FILED
DEC 05 2005
JoAnne McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
ROXANNE ELAINE CARNEY,
Defendant.

No. 05-1-00598-0
FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
NON-JURY TRIAL

THIS MATTER having come duly and regularly before the Court on the 5th day of December, 2005 for trial, Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, State of Washington, Defendant appearing in person and with her attorney Therese Lavallee, Defendant having previously entered a knowing, intelligent and voluntary written waiver of her right to trial by a jury, and a knowing, intelligent and voluntary waiver of her right to hear and confront witnesses against her and of her right to call witnesses on her own behalf and to compel their attendance, and the right to testify on her own behalf or to remain silent at trial, and the Defendant and the Plaintiff further having stipulated and agreed to the admission into evidence the written Stipulation of Facts of the parties, and the parties

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1 further having stipulated to the incorporation into evidence at trial of the testimony of the
2 witnesses and evidence at the hearing on Motion to Suppress held herein on June 21,
3 2005 and September 8, 2005, and the parties having stipulated to the Court's entry of
4 Findings of Fact and Conclusions of Law based upon said stipulations and evidence,
5 and the Court, having heard and considered the testimony of said witnesses, the
6 stipulations entered into evidence, and the statements and arguments of counsel, now
7 finds the following facts to have been proven beyond a reasonable doubt:
8

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10 FINDINGS OF FACT

11
12 1. On March 6, 2005, Deputy Kyle Kendall of the Clark County Sheriff's Department
13 was dispatched to 22113 NE 10th Avenue, in Clark County, Washington, to investigate a
14 complaint of reckless driving. Deputy Kendall was in uniform, and driving a marked
15 patrol car with identifying Sheriff's Department insignia and lettering on the side and an
16 emergency light bar on top. Deputy Kendall spoke with the complaining party, who
17 identified himself as James Beyer. Based upon information and descriptions provided
18 by Beyer, Deputy Kendall began to look for a white and blue "crotch rocket" or "café
19 style" motorcycle ridden by a white male wearing a dark helmet, white shirt and blue
20 jeans, which was the subject of the reckless driving complaint. Based upon information
21 provided by Beyer, Deputy Kendall drove to an area north of Beyer's house where new
22 homes were under construction, and turned onto NE 224th Circle, a dead end street
23 ending in a cul-de-sac. This location was also within Clark County.
24

25
26 2. At the west end of the street Deputy Kendall observed a black sedan, parked at
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1 the end of the street and facing west toward the dead end of the cul-de-sac. The
2 vehicle had two occupants. Deputy Kendall also observed a white male matching the
3 description given by Beyer but not wearing a helmet, standing next to the driver's side of
4 the sedan. Also parked at the end of the street, near the sedan and white male, was a
5 white and blue motorcycle matching the description given by Beyer.

6
7 3. As Deputy Kendall approached the two vehicles, the male ran to the motorcycle,
8 got on and started the engine. Deputy Kendall turned on his emergency lights and
9 yelled to the rider to stop the bike and get off. He also attempted to block the
10 motorcycle's path with his patrol car but the rider swerved around the patrol car and
11 sped off, leaving the area southbound on 10th Avenue.

12
13 4. Deputy Kendall stopped his patrol car behind the sedan and contacted the two
14 occupants. Jessica Hall was seated in the driver's seat. Defendant Roxanne Carney
15 was seated in the front passenger seat of the vehicle. Deputy Kendall requested
16 identifying information from both women. Deputy Kendall used the names and birth
17 dates provided by the two women to run a records check on them, and was notified by
18 his dispatcher that there was an outstanding warrant for the arrest of the Defendant
19 Roxanne Carney. Deputy Kendall had Defendant get out of the sedan, arrested
20 Defendant for the warrant, handcuffed her and placed her in his patrol car.

21
22
23 5. Deputy Sgt. Cooke arrived to assist Deputy Kendall. Sgt. Cooke removed
24 Defendant from the back of the patrol car and searched her person. Defendant was
25 wearing a pullover type windbreaker coat. In a zippered pocket on the front of the coat
26 Sgt. Cooke found two small baggies of methamphetamine. Also in the pocket with the
27

1 baggies, Sgt. Cooke found a Washington State DSHS card with a signature in the name
2 of "Roxanne Carney" on the back. Sgt. Cooke turned the two baggies and the DSHS
3 card over to Deputy Kendall.

4 6. Deputy Kendall sealed the two baggies in an evidence bag, labeled it, and
5 deposited it into the Clark County Sheriff's evidence system. The Clark County Sheriff's
6 Evidence Custodian transmitted the sealed container to the Washington State Patrol
7 Crime Lab.
8

9 7. Bruce Siggins is a Forensic Scientist at the Washington State Patrol Crime
10 Laboratory, who is qualified as an expert in analyzing substances by the use of
11 recognized scientific tests to identify or determine the presence of controlled substances
12 including methamphetamine. Bruce Siggins received the sealed container containing
13 the two baggies, opened it, and weighed and tested the contents of the two baggies.
14 He found that the crystalline material in both bags contained Methamphetamine,
15 weighing .5 grams in one bag, and .1 grams in the other.
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18 8. The acts of the Defendant hereinabove described occurred in Clark County,
19 State of Washington, on March 6, 2005.

20 Based upon the foregoing Findings of Fact, the Court enters the following

21 CONCLUSIONS OF LAW
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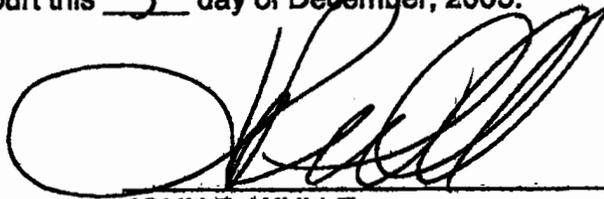
- 23 1. The Court has jurisdiction of the Defendant and the subject matter.
24 2. At the time of her arrest by Deputy Kendall on March 6, 2005, Defendant
25 Roxanne Carney had the two baggies containing Methamphetamine in her actual
26 physical possession.
27

1 3. Methamphetamine is a controlled substance under RCW 69.50.206 (a) & (d)(2).

2 4. The Defendant is therefore guilty of the crime of Possession of a Controlled
3 Substance – Methamphetamine, in violation of RCW 69.50.4013, as charged in Count I
4 of the Information.

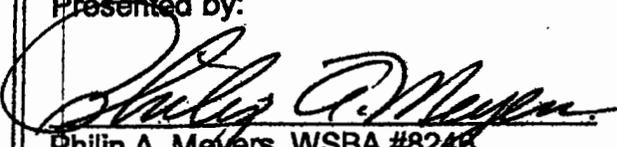
5 5. Judgment and Sentence should be entered accordingly.

6
7 DONE in open Court this 5 day of December, 2005.

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10 

11 JOHN P. WULLE
12 JUDGE OF THE SUPERIOR COURT

13 Presented by:

14 
15 Philip A. Meyers, WSBA #8248
16 Deputy Prosecuting Attorney

17 Copy received, approved for entry
18 this 5 day of December, 2005.

19 
20
21 Therese Lavalley, WSBA#16350
22 Attorney for Defendant

APPENDIX "C"

FINDINGS OF FACT AND CONCLUSIONS OF LAW ON CrR 3.6 Hearing

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FILED

DEC 13 2005

JoAnne McBride, Clerk, Clark Co.

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF CLARK

STATE OF WASHINGTON,
Plaintiff,
v.
ROXANNE ELAINE CARNEY,
Defendant.

No. 05-1-00598-0

FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON
CrR 3.6 Hearing

THIS MATTER having come duly and regularly before the Court on the 21st day of June and the 8th day of September, 2005 for hearing pursuant to CrR 3.6 on Defendant's Motion to Suppress, Plaintiff State of Washington appearing by and through Philip A. Meyers, Deputy Prosecuting Attorney for Clark County, State of Washington, Defendant appearing in person and with her attorney Therese Lavallee, and the Court having heard and considered the testimony of witnesses, evidence presented, and the statements and arguments of counsel, makes the following:

FINDINGS OF FACT

1. On March 6, 2005, Deputy Kyle Kendall of the Clark County Sheriff's Department was dispatched to 22113 NE 10th Avenue, in Clark County, Washington, to investigate a

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1 complaint of reckless driving. Deputy Kendall was in uniform, and driving a marked
2 patrol car with identifying Sheriff's Department insignia and lettering on the side and an
3 emergency light bar on top. Deputy Kendall spoke with the complaining party, who
4 identified himself as James Beyer, a resident at the address.

5
6 2. Beyer told Deputy Kendall that for the previous hour, a man on a motorcycle had
7 been driving up and down the street in front of his house at excessive speed, cutting off
8 other traffic, and riding "wheelies" while riding on the center "skip" line and passing other
9 traffic. Beyer also informed Deputy Kendall that the motorcycle seemed to keep
10 returning to the area of new homes being built on NE 224th, just north of Beyer's house.
11 Beyer described the motorcycle rider as a white male, wearing a white shirt and blue
12 jeans and dark helmet. He described the motorcycle as a white and blue "crotch rocket"
13 or "café style" motorcycle.

14
15 3. Based upon information and descriptions provided by Beyer, Deputy Kendall
16 began to look for a motorcycle and rider matching the descriptions, and drove to the
17 area described by Beyer toward which the motorcycle seemed to be returning. The
18 area is one in which new homes were under construction. Deputy Kendall turned onto
19 NE 224th Circle, a dead end street ending in a cul-de-sac. This location was also within
20 Clark County.

21
22 4. Deputy Kendall observed a black sedan, parked at the west end of the street and
23 facing west toward the end of the cul-de-sac. The vehicle had two occupants. Deputy
24 Kendall also observed a white male matching the description given by Beyer but not
25 wearing a helmet, standing next to the driver's side of the sedan. Also parked at the
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1 end of the street, near the sedan and white male, was a white and blue motorcycle
2 matching the description given by Beyer.

3 5. As Deputy Kendall approached the two vehicles, the male ran to the motorcycle,
4 got on, and started the engine. Deputy Kendall was approximately 30 feet from the
5 vehicles. He turned on his emergency lights and yelled to the rider from his open
6 driver's side window to stop the bike and get off. He also attempted to block the
7 motorcycle's path with his patrol car but the rider swerved around the driver's side of the
8 patrol car within a few feet of Deputy Kendall, drove up over the curb and sped off,
9 leaving the area southbound on 10th Avenue.
10

11 6. Deputy Kendall believed, considering the speed and maneuverability of the
12 motorcycle compared to that of his patrol car, the head start the rider had, and the
13 additional time which would be needed to turn his patrol car around and pursue, that he
14 had no chance of catching the motorcycle in his patrol car. He also considered it likely
15 that the occupants of the vehicle would know the identity of the motorcyclist, and may
16 be have additional information which would explain the motorcyclist's failure to stop
17 when directed to do so. He concluded that by pursuing the motorcycle he might lose
18 the opportunity to obtain information from the persons in the car with whom the rider
19 appeared to have been speaking, and therefore chose to contact the occupants of the
20 vehicle.
21

22 7. Deputy Kendall stopped his patrol car behind the sedan, and notified the
23 dispatcher of the license plate of the vehicle, his location, and description of the
24 motorcyclist and his direction of travel. The deputy's emergency lights remained on.
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1 The Court finds that the activation of the emergency lights was directed at the
2 motorcycle rider, and was not directed at or intended to stop, detain, or seize the
3 occupants of the sedan.

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

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12
13 9. Deputy Kendall then began to question the two women about the identity of the
14 man on the motorcycle, and the nature of their contact with him. The women told
15 Deputy Kendall that they did not know the full identity of the rider of the motorcycle, that
16 they had just met him at the market on 219th Street and 10th Avenue and believed his
17 name was "Arthur". They also gave some vague information about where he might live.
18 They indicated that they liked his bike and thought he was good looking. Deputy
19 Kendall informed the dispatcher and other responding officers of this information.

20
21 10. While speaking with the women, Deputy Kendall was notified by radio that there
22 was an outstanding felony warrant for the arrest of Jessica Hall, and an outstanding
23 misdemeanor warrant for the arrest of the Defendant Roxanne Carney. This was
24 several minutes after he had initially contacted the women and obtained their
25 identification. After receiving the information that there were warrants for the women,
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1 Deputy Kendall then told Hall to get out of the sedan, arrested her pursuant to the
2 warrant, handcuffed her and placed her in his patrol car. He also told Defendant to get
3 out of the car, handcuffed her and arrested her pursuant to the warrant, and also placed
4 her into his patrol car. Deputy Kendall requested that the dispatcher confirm the
5 warrants, which is apparently a procedure in which the dispatcher communicates with
6 the agency from which the warrant was issued and the actual existence of the warrant is
7 confirmed. He was notified a few minutes later that the warrants had been confirmed.
8

9 11. Deputy Sgt. Cooke arrived to assist Deputy Kendall at approximately 3:43 p.m.
10 Both women were handcuffed in Deputy Kendall's patrol car when Sgt. Cooke arrived.
11 Sgt. Cooke removed Defendant from the back of the patrol car to place her in a different
12 car. He asked Deputy Kendall if Defendant had been thoroughly searched, and upon
13 being told that she had not, he searched her person. Defendant was wearing a pullover
14 type windbreaker coat. In a zippered pocket on the front of the coat Sgt. Cooke found
15 two small baggies of methamphetamine. Also in the pocket with the baggies, Sgt.
16 Cooke found a Washington State DSHS card with a signature in the name of "Roxanne
17 Carney" on the back. Sgt. Cooke turned the two baggies and the DSHS card over to
18 Deputy Kendall.
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22 DISPUTED FACTS

23 1. The primary disputed fact is whether Deputy Kendall removed the Defendant
24 from the vehicle and handcuffed her before or after learning of the existence of the
25 warrant for her arrest.

26 (a) Deputy Kendall testified that he did not order Defendant or Hall out of the
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1 vehicle until after he had been notified of the existence of the warrants for their arrest.
2 He handcuffed each of them immediately when they got out of the vehicle.

3 COURT'S FINDINGS AS TO DISPUTED FACTS

4 1. Based upon all of the testimony and other evidence and after consideration of
5 factors bearing on believability and weight of the evidence, the Court finds that Deputy
6 Kendall did not remove the Defendant or Hall from the vehicle, or arrest or handcuff
7 either of them until after he had been notified of the existence of outstanding warrants
8 for their arrest.
9

10 Based upon the foregoing Findings of Fact, the Court enters the following:

11 CONCLUSIONS OF LAW

- 12
- 13 1. The Court has jurisdiction of the Defendant and the subject matter.
 - 14 2. The Court concludes that Deputy Kendall had information sufficient to establish
15 probable cause to believe that the crime of reckless driving had been committed by the
16 motorcycle rider witnessed by Mr. Beyer. Deputy Kendall therefore had authority, if not
17 a duty, to conduct further investigation into that reported crime, and was doing so at the
18 time he drove onto the dead end street and observed the parked sedan, and the
19 motorcycle and rider.
20
 - 21 3. The motorcycle and rider's description were consistent with the descriptions
22 given by Beyer, and the location and time lapse were also consistent with the
23 conclusion that the rider was the person who had been seen by Beyer. Deputy Kendall
24 therefore had probable cause to believe that the motorcycle rider who began to flee
25 when he arrived had committed the crime reported by Beyer, and Deputy Kendall
26
27

1 therefore had authority to attempt to stop the rider from leaving the scene and to arrest
2 or detain him for further investigation. The motorcycle rider's failure to stop therefore
3 constituted an additional criminal offense (RCW 46.61.022) committed within view of the
4 Deputy and the two women in the car.

5
6 4. At the time of his initial contact with the Defendant and Hall, Deputy Kendall had
7 no evidence upon which to believe that either of the women was involved in criminal
8 activity.

9
10 5. A police officer has a duty to investigate crime, and as part of the investigation of
11 a reported or observed crime an officer is acting within his authority to contact a person
12 at the scene of the crime whom he has reason to believe may have information or
13 evidence relevant to the commission of the crime or the identity of the perpetrator, and
14 to ask that witness to identify himself or herself, and to question the witness about what
15 he or she knows. The Court further concludes that it is reasonable for the officer to
16 conduct a records check to confirm the identity of the witness.
17

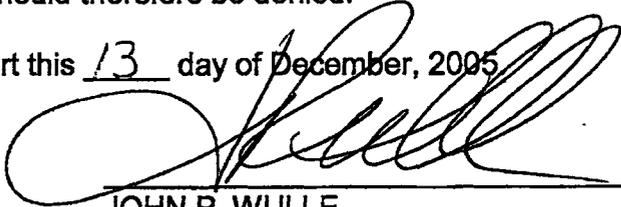
18 6. The Court concludes that Deputy Kendall had reason to believe that the
19 occupants of the sedan might know the identity of the motorcycle rider or might have
20 information which would lead to his identity, or information which would explain why he
21 failed to yield to Deputy Kendall's signal to stop. Deputy Kendall was acting in the
22 performance of his duty to investigate criminal conduct, and was within his authority in
23 contacting the Defendant and Hall, who were seated in a parked car, and asking them
24 for identification, and questioning them concerning their knowledge of the identity of the
25 motorcycle rider or their observations of his conduct.
26
27

1 7. The Court concludes that asking the women to show their hands at the time of
2 the initial contact, under the circumstances was a reasonable step taken by Deputy
3 Kendall to assure his own safety, and did not change the nature of his contact with the
4 women as witnesses or rise to the level of an unlawful detention.

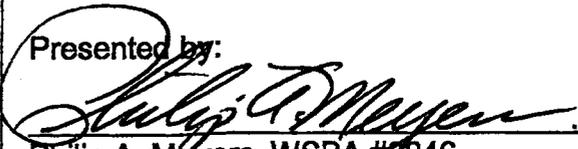
5 8. While engaged in a lawful contact with Defendant and Hall, Deputy Kendall
6 learned of the existence of outstanding warrants for both of them. He then had the duty
7 and authority to arrest them pursuant to the warrants, and restrain them with handcuffs.
8 The search of Defendant by Sgt. Cooke was therefore incident to a lawful arrest, and
9 the evidence of methamphetamine possession which resulted from that search was
10 lawfully obtained.
11

12 9. The Motion to Suppress should therefore be denied.
13

14 DONE in open Court this 13 day of December, 2005.

15 
16 _____
17 JOHN P. WULLE
18 JUDGE OF THE SUPERIOR COURT

19 Presented by:

20 
21 Philip A. Meyers, WSBA #8246
22 Deputy Prosecuting Attorney

23 Copy received, approved for entry
24 this 13 day of December, 2005.

25 
26 _____
27 Therese Lavalley, WSBA#16350
Attorney for Defendant