

NO. 40903-8-II

COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
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STATE OF WASHINGTON  
Appellant,

vs.

FAWN ALMA BRIDGES  
Respondent

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ON APPEAL FROM THE SUPERIOR COURT  
OF THE STATE OF WASHINGTON  
FOR JEFFERSON COUNTY  
Cause Number: 10-1-00005-0

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**REPLY TO RESPONDENT'S BRIEF**

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 ORIGINAL

TABLE OF CONTENTS

	<u>Page</u>
<b>TABLE OF AUTHORITIES.....</b>	<b>iii</b>
<b>I. Introduction.....</b>	<b>1</b>
<b>II. Facts.....</b>	<b>2</b>
<b>II. Argument.....</b>	<b>6</b>
<b>a. Trooper Sanders had an independent cause to ask         Ms. Bridges for identification .....</b>	<b>6</b>
<b>V. Conclusion.....</b>	<b>9</b>

**TABLE OF AUTHORITIES**

Page

**CASES**

**Washington State**

State v. Larson, 93 Wn.2d 638, 642, 611 P.2d 771 (1980).....7  
State v. Lorenz, 152 Wn.2d 22, 30, 93 P.3d 133 (2004).....1  
State v. McKague, 143 Wn.App. 531, 542, 178 P.3d 1035 (2008).1  
State v. N.M.K., 129 Wn.App. 155, 160, 118 P.3d 368 (2005).....7  
State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004)....5, 6, 7

**Other Jurisdictions**

United States v. Mendenhall, 446 U.S. 544, 553, 100 S.Ct. 1870,  
64 L.Ed.2d 497 (1980).....7

**Statutes**

RCW

9A.04.080(2).....4,6

## I. Introduction

Ms. Bridges was a passenger in a car which was stopped for a traffic infraction. The Trooper smelled the odor of marijuana coming from the vehicle and conducted an investigation to determine who, if any, of the occupants possessed the marijuana. He asked Ms. Bridges for her identity, determined she had an outstanding warrant, and arrested her. The trial court concluded Ms. Bridges was unlawfully seized when Trooper Sanders asked her for identification.

Ms. Bridges argues that because the State has not challenged the trial court's Findings of Fact, this court should not disturb the trial court's ruling. However, the State contends the trial court's Findings of Fact were accurate but its Conclusions of Law were erroneous.

The appellate court reviews de novo the trial court's challenged conclusions of law. *State v. McKague*, 143 Wn.App. 531, 542, 178 P.3d 1035 (2008). The court also applies de novo review to the issue of whether an interrogation was custodial. *State v. Lorenz*, 152 Wn.2d 22, 30, 93 P.3d 133 (2004).

## II. Facts

On December 10, 2009, at approximately 1:20 p.m. Washington State Patrol Trooper Russell Lee Sanders stopped a vehicle on Highway 101 near mile post 278. The vehicle was stopped because the front fender was sticking out and was dangerous to other vehicles or pedestrians in violation of RCW 46.37.517. RP 6-7. At the time the stop commenced, there were three people in the vehicle and Trooper Sanders was alone. The passengers were later identified as Ms. Bridges, sitting in the rear passenger's side seat, and Ms. Kathleen Robertson-Baker, sitting in the front passenger's seat. RP 7-8.

Trooper Sanders contacted the driver regarding the stop. The driver identified himself as Zachary Oravetz. RP 7. Mr. Oravetz informed Trooper Sanders that his driver's license was suspended. RP 8. While talking to Mr. Oravetz, Trooper Sanders recognized, based on his training and experience, a moderate odor of burnt marijuana coming from the vehicle. RP 8. Trooper Sanders performed a driver's check of Mr. Oravetz's license and was informed that his driver's license was suspended in the third degree (DWLS 3). RP 9.

Due to the odor of marijuana Mr. Oravetz was asked to perform field sobriety tests. RP 9. Mr. Oravetz took the tests and passed them. Mr. Oravetz was then taken into custody for DWLS 3 and read his constitutional rights. RP 9.

After placing Mr. Oravetz in the rear of his patrol car, Trooper Sanders read Mr. Oravetz the Miranda warnings. Mr. Oravetz waived his right to remain silent and stated that there was a marijuana pipe in the center console of the car and that is “probably” what Trooper Sanders smelled. RP 11. Mr. Oravetz did not say that the pipe was his but he did say that there was no marijuana in the vehicle. RP 11.

Trooper Sanders returned to the vehicle to investigate the odor of marijuana. In the vehicle Trooper Sanders found a marijuana pipe which was in the center console where either Mr. Oravetz or Mrs. Roberston-Baker could have reached it, and he also found a large blue men’s jacket that was lying on the seat next to Ms. Bridges. Inside the jacket Trooper Sanders discovered a can that had a secret compartment and in the secret compartment he found methamphetamine, heroin, and prescription pills that were packaged for individual sale. RP 13-16. Trooper Sanders testified

that he was not watching the passengers while he was arresting Mr. Oravetz. RP 14.

Trooper Sanders discussed the disposition of the vehicle with Mr. Oravetz due to his arrest. Mr. Oravetz asked to have one of the passengers drive the vehicle away rather than have it impounded. RP 17. Trooper Sanders testified that he asked the passengers for their names and dates of birth and ran a driver's check on them to verify they could legally drive the vehicle. RP 17-18. The driver's checks showed Ms. Robertson-Baker had a felony warrant outstanding in Jefferson County and that Ms. Bridges had a felony warrant outstanding from Clallam County. RP 18.

Trooper Sanders waited for assistance to arrive before arresting the passengers since he did not have room for them in his patrol car. Trooper Grant Clark arrived and took Ms. Bridges into custody for her felony warrant. RP 20. A search incident to arrest discovered \$125 wrapped around two plastic bags; one filled with green pills and the other containing yellow pills. Trooper Clark read Ms. Bridges her Miranda warnings and asked her about the pills. Ms. Bridges stated the pills were Xanax and Valium, and the prescriptions were in her purse. Trooper Clark looked in the purse

but could only find prescriptions for Methadone and Diazepam. Ms. Bridges was charged with Possession with Intent to Sell or Deliver a Legend Drug.

Ms. Bridges moved to suppress evidence. At the hearing on May 14, 2010, the court granted Ms. Bridges motion, suppressed evidence found on Ms. Bridges, and dismissed the charges against her.

The trial court found that under *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004), “when you ask a passenger for ID that person is seized. And that’s what happened here and that was done for the purposes of the criminal investigation here, and they were seized and you can’t do that.” RP 74. The court stated, “...when Ms Robertson[-Baker] and Ms. Bridges were seized, i.e. asked, their identification was taken, that there wasn’t articulable , individualized suspicion to believe they were engaged in criminal activity. So I’ve got to grant the motion to suppress.” RP 74.

### III. ARGUMENT

**a. Trooper Sanders had an independent cause to ask Ms. Bridges for identification.**

RCW 46.61.020 specifically authorizes a police officer to identify a person who is driving or in charge of a motor vehicle.

The trial court relied on *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004), contending that the officer's request for identification violated article I, section 7 of the Washington Constitution that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” *St. Const. art. I, § 7*.

In *Rankin*, passengers were stopped, searched, and found with drugs. There, the officer requested and retained identification or driver's licenses from the passengers. The court pointed out that the police officers had no independent basis for requesting identification from the passengers in each case and that requesting and holding the passengers' identification constituted a seizure. *Rankin*, 151 Wn.2d at 699, 92 P.3d 202. The evidence obtained post-seizure was ruled inadmissible. *Rankin*, 151 Wn.2d at 699, 92 P.3d 202.

*Rankin* is distinguishable. Here, Mr. Oravetz requested that his passengers be permitted to drive his car away. Trooper Sanders had a duty to verify the passengers held valid driver's licenses. Also, Trooper Sanders did not request and hold their identification, he only asked their names and birthdates. Unlike the situation in *Rankin*, Trooper Sanders had an independent cause to ask for their names and he did not seize them.

"[N]ot every encounter between a police officer and a citizen is an intrusion requiring an objective justification." *Rankin*, 151 Wn.2d at 695, 92 P.3d 202 (citing *United States v. Mendenhall*, 446 U.S. 544, 553, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)). Under article I, section 7, 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, 92 P.3d 202 (citing *State v. Larson*, 93 Wn.2d 638, 642, 611 P.2d 771 (1980)).

A passenger's state constitutional rights are not violated when the police have an independent cause to question him and ask him to identify himself. *State v. N.M.K.*, 129 Wn.App. 155, 160, 118 P.3d 368 (2005).

Here, the circumstances gave Trooper Sanders independent cause to ask Ms. Robertson-Baker and Ms. Bridges to identify themselves. Multiple illegal drugs were found in the passenger compartment immediately adjacent to Ms. Bridges, a pipe with marijuana residue was located next Ms. Robertson-Baker, and thus there was an ongoing Terry investigation. Mr. Oravetz asked that the passengers be allowed to drive his vehicle away from the scene. RP 17. Trooper Sanders testified that he asked the passengers for their names and dates of birth and in order to run a driver's check on them to verify they could legally drive the vehicle, which was his right under RCW 46.61.020. RP 17-18.

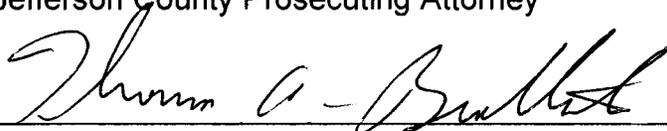
The trial court erred when it found that defendant passengers were seized when the police asked them for their identities. Thus, suppression of the evidence was not required on this ground and dismissal of the charges was inappropriate.

**IV. CONCLUSION**

This court should reverse the Superior Court's order suppressing evidence and dismissing the charges against Ms. Bridges since Trooper Sanders had an independent cause to ask Ms. Bridges for her name and birthdate.

Respectfully submitted this 11th day of January, 2011.

SCOTT ROSEKRANS,  
Jefferson County Prosecuting Attorney



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By: THOMAS A. BROTHERTON , WSBA #37624  
Deputy Prosecuting Attorney

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DECLARATION OF MAILING

Janice N. Chadbourne declares:

That at all times mentioned herein I was over 18 years of age and a citizen of the United States; that on the 13<sup>th</sup> day of January, 2011, I mailed a copy of the State's REPLY BRIEF, to the following:

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Fawn Alma Bridges  
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1 I declare under penalty of perjury under the laws of the State of Washington that the  
2 foregoing declaration is true and correct.

3 Dated this 13<sup>th</sup> day of January, 2011 at Port Townsend, Washington.

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6 Janice N. Chadbourne  
7 Legal Assistant  
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