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Court of Appeals
Division II
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NO. 51258-1-II

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

STATE OF WASHINGTON,

Respondent,

v.

PATRICIA LEWIS,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR GRAYS HARBOR COUNTY

Grays Harbor County Cause No. 16-1-00451-5

The Honorable David L. Edwards, Judge

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. THE DEPUTY CONDUCTED A WARRANTLESS SEARCH OF MS. LEWIS’S VEHICLE BY OPENING THE DOOR AND LOOKING INSIDE. BECAUSE THAT SEARCH WAS NOT JUSTIFIED BY ANY EXCEPTION TO THE WARRANT REQUIREMENT, THE TRIAL COURT VIOLATED MS. LEWIS’S CONSTITUTIONAL RIGHTS BY DENYING HER MOTION TO SUPPRESS.

The trial court denied Ms. Lewis’s motion to suppress on two grounds: finding that the deputy’s initial search of the car was justified by “a combination of community caretaking duties and the possibility that the vehicle may have contained witnesses and/or suspects [of the burglary].” CP 54.

The state appears to abandon the theory that the search of the car was justified by the possibility that it may have contained evidence of the burglary on appeal. *See* Brief of Respondent.

Rather, the state’s argument turns on the claim that the deputy’s intrusion into Ms. Lewis’s vehicle was not actually a search at all because it was justified by the community caretaking function. Brief of Respondent, pp. 5-7.

First, as outlined in Ms. Lewis’s Opening Brief, the intrusion was not a proper use of the community caretaking function because the hypothetical possibility that there could have been a person in the car who needed aid was far too remote to justify opening the door to the car. *See*

State v. Kinzy, 141 Wn.2d 373, 389, 5 P.3d 668 (2000); *State v. Villarreal*, 97 Wn. App. 636, 644, 984 P.2d 1064 (1999).

Notably, the state relies upon authority addressing the situation in which an officer encounters a person who appears to need emergency assistance of some kind. Brief of Respondent, pp. 4-5 (*citing State v. Hutchison*, 56 Wn. App. 863, 867, 785 P.2d 1154 (1990); *Gallegos v. City of Colorado Springs*, 114 F.3d 1024, 1029 n. 4 (10th Cir. 1997)). In Ms. Lewis's case, however, the deputy had only a hunch that there was anyone in the car at all. RP (7/27/17) 17. Caselaw concerning an officer's duty toward an actual person who needs help is inapplicable.

Second, the deputy unambiguously conducted a search of the car by opening the door and looking inside. *See e.g. State v. Ozuna*, 80 Wn. App. 684, 688, 911 P.2d 395 (1996).

In *Ozuna*, a police officer was investigating a report of vehicle prowling when he saw a parked car belonging to someone he knew to have a criminal record. *Id.* at 686. Noticing an expensive-looking briefcase in the car, the officer opened the door to the vehicle, reached in, and flipped over an identification tag to reveal the name of the owner. *Id.* On appeal, the state argued that the officer had not searched the car by opening the door and reaching inside. *Id.* at 687. Rather, the state claimed that the officer's conduct was more akin to a *Terry* "stop and frisk" of the

vehicle based on reasonable suspicion that it was involved in criminal activity. *Id.*

The *Ozuna* court rejected that argument, holding that the officer conducted a search of the car by opening its door and reaching inside and noting that only a person can be subjected to a *Terry* stop. *Id.* at 688.

Similarly, in Ms. Lewis’s case, the deputy conducted a search of the car by opening the door and looking inside. *Id.* This is not a case in which an officer simply saw an item of contraband through the windows of a parked car.¹ Accordingly, the state’s reliance on the plain view doctrine is misplaced. Brief of Respondent, pp. 5-6.

Because the deputy’s search of Ms. Lewis’s car was not justified by any exception to the warrant requirement, the trial court erred by denying her motion to suppress. *Kinzy*, 141 Wn.2d at 389-90; *State v. Duncan*, 185 Wn.2d 430, 441, 374 P.3d 83 (2016). Ms. Lewis’s conviction must be reversed. *Id.*

II. THE TRIAL COURT EXCEEDED ITS AUTHORITY BY ORDERING THE INDIGENT MS. LEWIS TO PAY \$650 IN FEES FOR HER COURT-APPOINTED ATTORNEY WITHOUT CONDUCTING ANY INQUIRY INTO HER ABILITY TO PAY.

Ms. Lewis relies upon the argument set forth in her Opening Brief.

¹ In *State v. Young*, 28 Wn. App. 412, 416–17, 624 P.2d 725 (1981), for example, the court noted that an officer does not conduct a search by looking into the windows of a parked vehicle. See also *Ozuna*, 80 Wn. App. at 690 (“Of course... an officer will not have ‘searched’ a car if the items seen through the window are clearly contraband”).

III. MS. LEWIS'S CASE MUST BE REMANDED FOR THE CORRECTION OF TWO SCRIVENER'S ERRORS IN HER JUDGMENT AND SENTENCE.

The state concedes that there are two scrivener's errors in Ms. Lewis's Judgment and Sentence. Brief of Respondent, p. 8. This Court should accept the state's concession and remand Ms. Lewis's case for correction of those errors.

CONCLUSION

For the reasons set forth above and in Ms. Lewis's Opening Brief, her conviction must be vacated. In the alternative, her case must be remanded for resentencing.

Respectfully submitted on August 29, 2018,



Skylar T. Brett, WSBA No. 45475
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CERTIFICATE OF SERVICE

I certify that on today's date:

I mailed a copy of Appellant's Opening Brief, postage prepaid, to:

Patricia Lewis
505 24th Street #5
Hoquiam, WA 98550

With the permission of the recipient(s), I delivered an electronic version of the brief, using the Court's filing portal, to:

Grays Harbor County Prosecuting Attorney
appeals@co.grays-harbor.wa.us

I filed the Appellant's Opening Brief electronically with the Court of Appeals, Division II, through the Court's online filing system.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Seattle, Washington on August 29, 2018.



Skylar T. Brett, WSBA No. 45475
Attorney for Appellant

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