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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

No. 29084-1-III

COURT OF APPEALS, DIVISION III
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

vs.

ALEJANDRO MAGANA ARREOLA,

Appellant.

On Appeal from the Yakima County Superior Court
Cause No. 09-1-01571-1
The Honorable David Elofson, Judge

SUPPLEMENTAL BRIEF OF APPELLANT

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I. SUPPLEMENTAL STATEMENT OF THE CASE

Toppenish Police Sergeant Jake Church approached Alejandro Magana Arreola with his firearm drawn, ordered him to turn around and place his hands on the fence, and informed him that he was under arrest for failing to disperse. (RP 11, 20, 21) Arreola was not free to leave. (RP 11, 21) Yakima County Sherriff's Deputy Matt Steadman then approached Arreola and obtained his identification. (RP 29) He conducted a warrant check, and discovered that Arreola had one outstanding arrest warrant. (RP 28, 29) Deputy Steadman next conducted a search incident to arrest, and discovered several vicoden pills in Arreola's pants pocket. (RP 29, 49, 63)

Both at trial and on appeal, Arreola argued that the seizure and arrest for failing to disperse were invalid, and evidence discovered as a result of the search incident to his arrest should be suppressed. The State has continually argued that the officer acted properly when he arrested Arreola for failing to disperse, so the subsequent search was valid. The State has never suggested that an alternate legal theory, such as inevitable discovery or independent source, provide an alternative ground to affirm the search.

This court has asked for additional briefing to address the following question: “What authority, if any, did Mr. Arreola’s outstanding warrant provide for police to search him incident to arrest?”

II. SUPPLEMENTAL ARGUMENT & AUTHORITIES

The primary question presented on appeal is whether Sergeant Church had authority to detain and arrest Arreola for failing to disperse. If the initial seizure and arrest were lawful, then the search of Arreola’s person is lawful regardless of the existence of the arrest warrant, because a search incident to a lawful arrest is permissible. State v. Johnson, 128 Wn.2d 431, 447, 909 P.2d 293 (1996).

However, if the seizure and arrest were not lawful at their inception (as argued in detail in the Opening Brief of Appellant and the Motion to Modify Commissioner’s Ruling), then the subsequent discovery of an arrest warrant does not cure the illegality of the search.

Under the exclusionary rule, evidence obtained following the infringement of a constitutionally protected freedom should be suppressed if a causal connection exists between the constitutional violation and the discovery of the evidence. State v. Rothenberger,

73 Wn.2d 596, 600-01, 440 P.2d 184 (1968) (citing Nardone v. United States, 308 U.S. 338, 341, 60 S. Ct. 266, 84 L. Ed. 301 (1939)). But the evidence need not be suppressed if it was obtained “by means sufficiently distinguishable to be purged of the primary taint.” Wong Sun v. United States, 371 U.S. 471, 488, 83 S. Ct. 407, 9 L. Ed. 441 (1963).

For example, in State v. Ellwood, a police officer approached Ellwood and another man at night in a high crime area. 52 Wn. App. 70, 71, 757 P.2d 547 (1988). After asking the men what they were doing and learning their names and dates of birth, the officer told them to “[w]ait right here” while he returned to his patrol car to conduct a warrant check. The officer discovered that Ellwood had an outstanding warrant, and placed him under arrest. 52 Wn. App. at 71-27. During a search incident to arrest, the officer found cocaine and a measuring scale. 52 Wn. App. at 71.

On appeal, Division 1 agreed that Ellwood was improperly seized when the officer ordered him to wait while he conducted a warrant check, because the officer lacked articulable facts to support an investigative detention. 52 Wn. App. at 73-74. But the State argued that the evidence should not be suppressed because the officer’s request for identification was lawful, and that

identification led to discovery of the arrest warrant, which justified an arrest and search. 52 Wn. App. at 74. The court rejected this argument, stating:

It was not simply Ellwood's *name*, however, but his *coerced continued presence* at the scene, that led to the seizure of the cocaine and measuring scale. [The officer] was able to seize the cocaine and measuring scale during the course of Ellwood's arrest only because he had improperly detained Ellwood. . . . [T]he connection between [the officer's] illegal seizure of Ellwood and the seizure of the cocaine and measuring scale was not sufficiently attenuated to dissipate the taint. Thus, the evidence gathered as a result of Ellwood's illegal detention is inadmissible.

52 Wn. App. at 74-75 (emphasis in original) (internal citation omitted).

Similarly, in State v. Rife, an officer detained Rife for jaywalking, but exceeded the proper scope of the detention when he failed to merely cite and release Rife (as required by the local municipal code), and instead continued the detention in order to run an unauthorized warrant check. 133 Wn.2d 140, 142-43, 943 P.2d 266 (1997). Despite the existence of two outstanding felony warrants, our Supreme Court reversed Rife's conviction for possession of heroine found during a search incident to arrest. 133 Wn.2d at 151. The Court found that the officer had no authority to detain Rife in order to run a warrant check, and therefore no

authority to conduct a search incident to arrest on the warrant. 133 Wn.2d at 150-511.

This case is stronger factually than both Rife and Ellwood because here, unlike in those two cases, there was no legal justification for the initial detention. And unlike in Ellwood, the improper detention began *before* Deputy Steadman obtained Arreola's name and identification. Deputy Steadman would not have learned Arreola's name, and could not have conducted a warrant check, had it not been for the preceding illegal detention and arrest.¹ The connection between Arreola's illegal seizure and the discovery of the vicoden is not "sufficiently attenuated to dissipate the taint" of the illegal arrest. Ellwood, 52 Wn. App. at 75. There is a direct causal connection between the illegal arrest and the discovery of the vicoden, which cannot be cured by the existence of the arrest warrant.

Moreover, the broad protection provided by the plain language of our State constitution "mandate[s] that the right of privacy shall not be diminished by the judicial gloss of a selectively applied exclusionary remedy." State v. White, 97 Wn.2d 92, 110,

¹ Deputy Steadman testified that he did not know the names or identities of any of the men arrested. (RP 31)

640 P.2d 1061 (1982).² Because the intent was to protect personal rights rather than curb government actions, “*whenever* the right is unreasonably violated, the remedy *must* follow.” White, 97 Wn.2d at 110 (emphasis added).

Accordingly, if a search is preceded by improper police conduct, then the contraband found during the search *must* be excluded, regardless of whether a later discovered fact could have or would have resulted in discovery of the contraband. White, 97 Wn.2d at 110; State v. Winterstein, 167 Wn.2d 620, 220 P.3d 1226 (2009) (rejecting the inevitable discovery rule as incompatible with the broad protection provided by art. I, § 7 of the Washington Constitution); See State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). In this case, the search was preceded by improper police conduct, and the existence of the warrant was only discovered as a direct result of the improper detention and arrest. The discovery of the vicoden is directly linked to the improper police conduct, and it must be excluded.

² Article I, section 7 of the Washington Constitution provides: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”

III. CONCLUSION

To answer the Court's question, the arrest warrant provides no authority for the search in this case because Arreola's identity and outstanding warrant were only discovered during, and as a direct result of, an unconstitutional seizure and arrest. The contraband discovered during the search incident to arrest is tainted by this primary illegality. The exclusionary rule mandates that the vicoden be suppressed.

DATED: July 14, 2011



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CERTIFICATE OF SERVICE

I certify that on 07/14/2011, I caused to be placed in the mails of the United States, first class postage pre-paid, a copy of this document addressed to: Alejandro M. Arreola, PO Box 71, Buena, WA 98921. I further certify that I provided a copy of this document to David B. Trefry, Attorney for Respondent State of Washington, by PDF email attachment sent to TrefryLaw@WeGoWireless.com, and this method of service is by prior agreement of the parties.



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