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NOVEMBER 17, 2014
Court of Appeals
Division III
State of Washington

32097-9 -III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

MICHAEL R. WILLIAMS, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

APPELLANT'S REPLY BRIEF

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A. ARGUMENT

Respondent cites *State v. Sweet*, 23 Wn. App. 97, 596 P.2d 1080 (1979) for the proposition that the mere purpose to aid the government is not enough to make an otherwise private search into a government search. In *Sweet*, airline employees felt that luggage that had been checked for a flight appeared suspicious, so they opened it, discovered marijuana, and so notified the police. Unlike the situation in the present case, no police officers were present before or during the search, nor did law enforcement ever suggest or encourage the search of suspicious luggage. Here, Mr. Williams's mother handed the backpack to the officer after he had repeatedly asked her to help in finding the defendant's identification and in response to the officer's questions she had suggested the papers might be in the backpack. (CP 145)

The State's brief provides a somewhat different version of the relevant facts on this issue without any citation to the record. The reviewing court should not be required to comb the record to determine whether it provides support for counsel's arguments. *Matter of Estate of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998). Rather, it is incumbent on counsel to cite to the record to support factual arguments. *Id.*, see RAP 10.3(a)(6). Counsel has not done this.

The State next suggests the search was somehow lawful because the driver of a vehicle is statutorily required to produce his driver's license, registration and proof of insurance upon request. It goes on to argue that Ms. Root was merely "seeking to help the police find the documents, aiding the police by handing over the backpack" and that this shows she was acting as her son's agent rather than an agent of the State. The only support for this factual assertion is the trial court's finding that Ms. Root testified "she was concerned about her son and she wanted him to let the medics help him." (CP 147) The finding merely reflects Ms. Root's testimony; expressly finding that the officer's testimony was more credible, the court rejected the substance of Ms. Root's testimony. (CP 147)

None of the statutes cited by the State, RCW 46.20.017, RCW 46.30.020(1)(b), and former RCW 46.16.180(2) requires anyone other than the driver of the vehicle to produce these documents or suggests that these documents are evidence of a crime or contraband for which a warrantless search by law enforcement would be authorized. The court did not find that Mr. Williams refused to provide the requested documents. (CP 145) The State fails to explain how assisting the officer in obtaining evidence to which he is not entitled makes Ms. Root an agent of her son.

“Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.” *Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998). The State’s contention on this point should be rejected.

The State next argues there was no search because Ms. Root voluntarily handed the backpack to the officer. The Fourth Amendment prohibits warrantless seizures as well as searches: “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated” U.S. Const. amend. IV. Under Wash. Const. art. I, sec. 7, “[a] warrantless search is per se unreasonable and its fruits will be suppressed unless it falls within one of the carefully drawn and jealously guarded exceptions to the warrant requirement.” *State v. Hamilton*, 179 Wn. App. 870, 884, 320 P.3d 142 (2014) (quoting *State v. Ortega*, 177 Wn.2d 116, 122, 297 P.3d 57 (2013)).

The facts here are similar to those in *State v. Hamilton*. Ms. Hamilton’s husband went into the family home, where she had left her purse, and brought the purse to police officers. 179 Wn. App. 875-76. He held out the partially opened purse to the officers and the officers observed drug paraphernalia in the purse. *Id.* Finding that the husband had no ownership or possessory interest in the purse, the court held that the

husband “had no authority to consent to search the purse, particularly when [Ms.] Hamilton was present.” *State v. Hamilton*, 179 Wn. App. 870, 886-87.

Like Ms. Hamilton’s husband, Mr. Williams’s mother had no possessory interest in his backpack and thus no authority to disclose its contents to the officer. *State v. Eisfeldt*, 163 Wn. 2d 628, 639, 185 P.3d 580 (2008).

Mr. Williams was present and there is no evidence or finding that he had abandoned the backpack or that the officer had requested his consent to examine the backpack.

B. CONCLUSION

The trial court erred in concluding there was no constitutional violation and the content of the backpack would be admissible at trial. This court should reverse Mr. Williams’s conviction.

Dated this 17th day of November, 2014.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 32097-9-III
)	
vs.)	CERTIFICATE
)	OF MAILING
MICHAEL R. WILLIAMS,)	
)	
Appellant.)	

I certify under penalty of perjury under the laws of the State of Washington that on November 17, 2014, I served a copy of the Appellant's Reply Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

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I certify under penalty of perjury under the laws of the State of Washington that on November 17, 2014, I mailed a copy of the Appellant's Reply Brief in this matter to:

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Signed at Spokane, Washington on November 17, 2014.


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