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OCTOBER 14, 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

BRIEF OF RESPONDENT

STEVEN J. TUCKER
Prosecuting Attorney

Andrew J. Metts
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I. ASSIGNMENT OF ERROR

The court erred in admitting into evidence the contents of Mr. William's backpack

II. ISSUES PRESENTED

1. Was there testimony indicating that the defendant's mother was a "state agent?"
2. Are the defendant's privacy interests an issue in this case?
3. Since there was no request to search the backpack, does Ms. Root's authority to consent to a search of the backpack have relevance to this case?
4. Does the "open view" doctrine have any relevance to this case?

III. STATEMENT OF THE CASE

For the purposes of this appeal, the State accepts the defendant's version of the Statement of the Case.

IV. ARGUMENT

- A. THERE WAS NO TESTIMONY INDICATING THAT THE DEFENDANT'S MOTHER WAS A "STATE AGENT"

At the end of the CrR 3.6 hearing, the trial court signed Findings of Fact and Conclusions of Law. CP 144-148. The defendant has not questioned any of those findings, so they are verities on appeal. *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994).

The defendant first argues that his mother became a “state agent” when she gave his backpack to the police. In itself, a mere purpose to aid the government is insufficient to transform an otherwise private search into a government search. *State v. Sweet*, 23 Wn.App. 97, 99, 596 P.2d 1080 (1979). There is nothing in the record that indicates that Ms. Root was working for the police, employed by the police, or otherwise in a position to be a “state agent.”

In this case, the search (if any) was not started by the officer. According to Officer Howe’s testimony, he asked the defendant’s mother if she knew the location of the documents he was looking for. The officer was investigating a collision. Officer Howe asked Ms. Root for items that the defendant was required to produce as the operator of the truck. The defendant was required to produce his driver’s license under RCW 46.20.017, proof of insurance under RCW46.30.020(1)(b), and the truck’s registration under RCW 46.16.180(2). This information is required by the statutes. It must be displayed upon request.

Officer Howe first spoke to the medics attending to the defendant’s injuries. They did not know where the documents in question were. Unable to find any of those required documents in the truck or around the scene, Officer Howe asked the defendant’s mother (who was standing nearby and holding a backpack) if she had any ideas where the documents

might be. The officer expected the defendant's mother to look in the backpack. CP 146. Instead, the woman handed the backpack to the officer and told him to look in it. CP 146. The officer did not encourage or request anything of the woman other than he was trying to determine the defendant's identification, license, etc. There is no indication in the record that the officer used subterfuge or some other technique to obtain the backpack. In practical terms, what was the officer to do when the woman handed the backpack to him? Should he have held his arms by his sides and allowed the backpack to fall to the ground?

There is nothing in the record that indicates the woman was doing anything but seeking to help the police find the documents, aiding the police by handing over the backpack. The defendant has not shown that his mother was a government agent. If anything, the defendant's mother was the *defendant's* agent.

B. THE DEFENDANT'S PRIVACY INTERESTS ARE NOT RELEVANT TO THE FINDINGS IN THIS CASE AS HIS MOTHER TOLD THE OFFICER TO LOOK INSIDE THE BACKPACK AND HANDED THE BACKPACK TO OFFICER HOWE.

The question of whether the defendant maintained a reasonable expectation of privacy in the contents of the backpack is not a relevant issue in this case.

The reason that expectation of privacy is not relevant is because there was no “search.”

The facts of this case as found by the trial court were:

Officer Howe testified that when Ms. Root told him that the items must be in the backpack, he expected that she would look in the backpack for the items. Officer Howe testified that Ms. Root handed him the backpack and told him to look for the items.

CP 146.

When the backpack was handed to the officer, the backpack had an unzipped outer pocket in which the officer could see “...several clear plastic baggies with a blue crystalline substance...” CP 146. The officer believed, (based on his training and experience) that the blue substance was methamphetamine. CP 146.

The trial court found that the officer did not initiate the search or request a search in this case. CP 147. Ms. Root handed the backpack to the officer and told him to look in the backpack. As the trial court concluded, there was no violation of constitutional laws. CP 147. This finding is supported by the facts of the case. When Ms. Root handed the backpack to the officer, it was immediately apparent that one pocket contained methamphetamine. The officer was told by Ms. Root to look in the backpack.

C. THERE WAS NO REQUEST TO SEARCH, ANY QUESTIONS REGARDING MS. ROOT'S AUTHORITY TO "CONSENT" HAVE NO APPLICATION IN THIS CASE.

The defendant bypasses the earlier facts pertaining to grounds for a search and argues that Ms. Root did not have authority to consent to a search. There was no request that the backpack be given to the police officer and no request to search the backpack. Since no one was asked to permit a search of the backpack, Ms. Root's alleged lack of authority is irrelevant.

D. "OPEN VIEW" HAS NO APPLICATION IN THIS CASE

The officer was standing in the street. The defendant obviously has no grounds to argue that the officer had intruded into a "protected" place. Warrantless searches are *per se* unreasonable under both the Fourth Amendment and Article I, Section 7 of our State Constitution unless they fall within a few specifically established and well-delineated exceptions. *State v. Myers*, 117 Wn.2d 332, 337, 815 P.2d 761 (1991).

Had there been a "search" in this case, the defendant's arguments regarding "consent," "open view," "plain view" as well as others not argued by the defendant such as "abandonment" would need to be addressed. The State would be required to show that an exception to the general warrantless search doctrine applied. Since there was no "search"

the law does not require that the State put forth facts and arguments satisfying *Myers, supra*.

V. CONCLUSION

The trial court concluded that the investigating officer violated no laws. The State respectfully requests that this court make a similar finding and affirm the conviction.

Dated this 14 day of October, 2014.

STEVEN J. TUCKER
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", written over a horizontal line.

Andrew J. Metts #19578
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
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Respondent,

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MICHAEL R. WILLIAMS,

Appellant,

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on October 14, 2014, I e-mailed a copy of the Respondent's Brief in this matter, pursuant to the parties' agreement, to:

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10/14/2014

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(Place)

Kim Cornelius

(Signature)