

No. 347656

THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

MEGAN LARES-STORMS,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WALLA WALLA COUNTY

BRIEF OF APPELLANT

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A. INTRODUCTION

Article I, section 7 of the Washington Constitution is “a jealous protector of privacy.”¹ Unlike the federal Fourth Amendment, article I, section 7 prohibits warrantless vehicle searches, protects private affairs regardless of “reasonable” expectations, and sets strict standards of reliability for information offered in support of a warrant.

This Court should apply these settled principles and hold that (a) the warrantless inspection of a person’s car by a drug-detection dog violates article I, section 7; and (b) in order for a drug dog’s “alert” to support the issuance of a warrant, the State must prove the dog’s reliability by presenting its track record, including false positives and false negatives.

Without obtaining a warrant, officers used a drug-detection dog to inspect Ms. Lares-Storms’s car. They then used the resulting “alert” to obtain a search warrant, but presented no information about the dog’s rates of success or failure, either in training or in the field. Each action violated article I, section 7, and this Court should reverse.

¹ *State v. Buelna Valdez*, 167 Wn. 2d 761, 777, 224 P.3d 751 (2009).

B. ASSIGNMENTS OF ERROR

1. The trial court erred in denying Ms. Lares-Storms's motion to suppress the evidence obtained as a result of an unconstitutional search. CP 50-53; RP 4-6.

2. The trial court erred in entering Finding of Fact 2, which is actually a conclusion of law: "The Court finds that Off. Fulmer's application of his K-9 partner to the exterior of Ms. Lares-Storms' vehicle did not constitute a search." CP 52.²

3. The trial court erred in entering Finding of Fact 4, which is actually a conclusion of law: "The Court finds that Det. Harris had probable cause to apply for a search warrant based on the information he had about Ms. Lares-Storms' prior drug history and the use of her vehicle during a controlled buy on February 25, 2016, coupled with the K-9 sniff of that same vehicle on March 30, 2016." CP 53.

4. The trial court erred in entering its conclusion of law: "Court's Reason for Admissibility of Physical Evidence: The Court finds that based on Off. Fulmer's K-9 partner's

² For the Court's convenience, the trial court's Findings and Conclusions on Motion to Suppress are attached as an appendix to this brief.

positive sniff for the presence of a controlled substance within Ms. Lares-Storms' vehicle, coupled with Det. Harris' personal knowledge of defendant's prior drug history and the use of her vehicle one month earlier during a controlled drug buy constituted probable cause for a search warrant, and based on the K-9 sniff occurring in a public place; that the physical evidence found in Ms. Lares-Storms' vehicle after the execution of the search warrant is admissible." CP 53.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. This Court has held that the application of a drug-detection dog to the exterior of a home invades a "private affair" within the meaning of article I, section 7 of the Washington Constitution, and therefore a warrant is required prior to the invasion. The Supreme Court has repeatedly emphasized that article I, section 7 protects the right to privacy in vehicles. Did the warrantless use of a drug-detection dog to inspect Ms. Lares-Storms's car violate article I, section 7, requiring reversal and remand for suppression of the evidence thereby obtained?

2. The Washington Supreme Court has held that article I, section 7 requires more robust proof of reliability than the Fourth Amendment when an informant's tip is proffered to support probable cause to issue a warrant. Dog alerts are treated as informant's tips in this context. Did the State fail to prove the reliability of the dog alert here, where it presented evidence that the dog had participated in 400 searches where it detected the smell of drugs, but the State presented no evidence about the dog's track record of false positives and false negatives?

D. STATEMENT OF THE CASE

Megan Lares-Storms drove to the TAJ gas station and convenience store on Second Avenue and Morton Street in Walla Walla. CP 51. After she parked in the parking lot, police officers arrested her pursuant to a Department of Corrections warrant. CP 51. The officers permitted her to lock her belongings in her car and then they took her to jail. CP 51-52.

Without obtaining a search warrant, the officers then called for a K-9 unit, and another officer went to the parking

lot and had a drug-detection dog inspect Ms. Lares-Storms's car. CP 52. The dog sniffed all around the car, and showed a change in behavior indicating it detected the odor of drugs. CP 52.

A detective applied for a warrant to search the car. CP 28-38, 52. The detective averred there was probable cause to search the car based on the dog's alert, Ms. Lares-Storms's history of drug-related crimes, and the fact that her car had been present at a controlled buy a little over a month earlier. CP 50-52. On that previous occasion, the confidential informant could not identify Ms. Lares-Storms as the person who sold him drugs, but "felt" it was her. CP 51-52.

The dog's credentials were attached to the warrant application. CP 31-35. The dog's handler asserted that the dog had successfully completed a 16-week training program and had "performed over 400 applications where controlled substances were discovered and/or the odors of controlled substances were present." CP 33-34. But no information was provided regarding the number of false positives (dog alerts

but no drugs found) or false negatives (no alerts where drugs existed) – either in training or in the field.

Despite the facts that (1) the canine inspection occurred without a warrant and (2) no measure of the dog's reliability was provided, a judge signed a warrant authorizing a search of Ms. Lares-Storms's car. CP 38-39. Officers searched the car and found plastic seals and other paraphernalia containing methamphetamine. CP 52. The State charged Ms. Lares-Storms with one count of possession of methamphetamine with intent to deliver, and one count of use of drug paraphernalia. CP 6-7.

Ms. Lares-Storms moved to suppress the evidence on the ground that it was obtained pursuant to an unconstitutional search. CP 9-15. She pointed out that citizens have a privacy interest in their vehicles under article I, section 7 of the Washington Constitution. CP 11 (citing *State v. Snapp*, 174 Wn.2d 177, 187, 275 P.3d 289 (2012); *State v. Afana*, 169 Wn.2d 169, 176, 233 P.3d 879 (2010)). She argued that the State did not establish probable cause

to obtain the search warrant under *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). CP 12.

The trial court denied the motion to suppress. It agreed with “most” of defense counsel’s arguments, but concluded that the drug-detection dog’s inspection of Ms. Lares-Storms’s car was not a search that required a warrant, and that the dog’s alert tipped the scales in favor of a finding of probable cause. RP 4-6; CP 52-53.

Ms. Lares-Storms was found guilty as charged after a stipulated-facts bench trial, and preserved her right to appeal the denial of the suppression motion. CP 54-57.

E. ARGUMENT

This Court should reverse the convictions and remand for suppression of the evidence for two independent reasons. First, the warrantless inspection of Ms. Lares-Storms’s car by a drug-detection dog violated her right to privacy under article I, section 7. Second, the warrant application was deficient because State failed to prove the dog’s reliability. Although these errors do not offend the Fourth Amendment, article I, section 7 demands more. Our state constitution

provides higher privacy protection for vehicles, and requires more reliable evidence to support a warrant. This Court should reverse.

1. The warrantless inspection of Ms. Lares-Storms's car by a drug-detection dog violated her right to privacy under article I, section 7.

There is no question that the warrantless application of a drug-detection dog to a person's *home* violates both the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution. See *Florida v. Jardines*, ___ U.S. ___, 133 S.Ct. 1409, 1417-18, 185 L.Ed.2d 495 (2013) (Fourth Amendment); *State v. Dearman*, 92 Wn. App. 630, 631, 962 P.2d 850 (1998) (article I, section 7). In *Dearman*, this Court explained that just as use of an infrared device violates a person's privacy by revealing information an officer could not sense without aid, "using a narcotics dog goes beyond merely enhancing natural human senses and, in effect, allows officers to 'see through the walls' of the home." *Dearman*, 92 Wn. App. at 635 (citing *State v. Young*, 123 Wn.2d 173, 183, 867 P.2d 593 (1994)).

The U.S. Supreme Court has rejected such protection in the vehicle context, however, on the basis that citizens do not have a “reasonable expectation of privacy” in the smell of drugs in their cars. *Illinois v. Caballes*, 543 U.S. 405, 408-10, 125 S.Ct. 834, 160 L.Ed.2d 842 (2005). This reasoning is inapplicable under article I, section 7. Our state constitution provides greater privacy protection in the vehicle context than the Fourth Amendment, and article I, section 7 does not depend on notions of “reasonableness” but instead prohibits any disturbance of an individual’s private affairs without authority of law. *State v. Snapp*, 174 Wn.2d 177, 194, 275 P.3d 289 (2012).

- a. Article I, section 7 provides stronger privacy protection in the vehicle context than the Fourth Amendment.

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.” Const. art. I, § 7. The state constitutional protection “is explicitly broader than that of the Fourth Amendment.” *State v. Ladson*, 138 Wn.2d 343, 348, 979 P.2d 833 (1999). It “clearly recognizes

an individual's right to privacy with no express limitations and places greater emphasis on privacy." *Id.*

The protections provided by article I, section 7 are not only more robust than those of the Fourth Amendment, they are also "qualitatively different[.]" *Snapp*, 174 Wn.2d at 187. The Fourth Amendment prohibits government intrusion only where there is a "reasonable expectation of privacy." *Young*, 123 Wn.2d at 181 (citing *Katz v. United States*, 389 U.S. 347, 351-52, 88 S.Ct. 507, 511-12, 19 L.Ed.2d 576 (1967)). "However, under the Washington constitution the inquiry focuses on 'those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.'" *Young*, 123 Wn.2d at 181 (quoting *State v. Myrick*, 102 Wn.2d 506, 511, 688 P.2d 151 (1984)).

The Washington Supreme Court has repeatedly held that citizens of this state have a privacy interest in their cars which they are entitled to hold safe from governmental trespass absent a warrant. "From the earliest days of the automobile in this state, this court has acknowledged the

privacy interest of individuals and objects in automobiles.”
City of Seattle v. Mesiani, 110 Wn.2d 454, 456-57, 755 P.2d 775 (1988). Thus, while there is an “automobile exception” to the warrant requirement under the Fourth Amendment, a warrant is required prior to invading a person’s privacy interest in her car in Washington. *See Snapp*, 174 Wn.2d at 192; *State v. Tibbles*, 169 Wn.2d 364, 369, 236 P.3d 885 (2010).

In addition to rejecting the automobile exception under article I, section 7, Washington courts have refused to endorse invasions of the right to privacy in vehicles in other contexts. For example, sobriety checkpoints violate article I, section 7, even though they pass Fourth Amendment muster. *Mesiani*, 110 Wn.2d at 457-58; *contrast Michigan Department of State Police v. Sitz*, 496 U.S. 444, 455, 110 S.Ct. 2481, 110 L.Ed.2d 412 (1990). Under the Fourth Amendment, police may stop cars based on pretext, while Washington prohibits vehicle seizures unless the purported basis for the stop is the real reason for the intrusion. *Compare Whren v. United States*, 517 U.S. 806, 813, 116

S.Ct. 1769, 135 L.Ed.2d 89 (1996) *with Ladson*, 138 Wn.2d at 352-53; *accord State v. Chacon Arreola*, 176 Wn.2d 284, 294, 290 P.3d 983 (2012). Under federal law, a car may be searched incident to arrest if there is reason to believe it contains evidence of the crime of arrest, but under Washington law, a warrant must be obtained in such circumstances. *Snapp*, 174 Wn.2d at 197.

Accordingly, this Court should hold that the inspection of a person's car by a drug-detection dog implicates article I, section 7, even though it is not a "search" within the meaning of the Fourth Amendment.

b. The application of a drug-detection dog to a person's car disturbs a "private affair" within the meaning of article I, section 7.

In light of the above authority, Division One of this Court erred in concluding that the application of a drug-detection dog to a car was not an invasion of the driver's privacy in *State v. Hartzell*, 156 Wn. App. 918, 928-30, 237 P.3d 928 (2010). Division One improperly employed a Fourth Amendment analysis even though the issue was raised under article I, section 7. In its five-paragraph section

addressing this issue, the court used the word “reasonable” three times and “unreasonably” three times. *See id.* It concluded, “as long as the canine ‘sniffs the object from an area where the defendant does not have a **reasonable expectation of privacy**, and the canine sniff itself is minimally intrusive, then no search has occurred.” *Id.* at 929 (quoting *State v. Boyce*, 44 Wn. App. 724, 729, 723 P.2d 28 (1986)) (emphasis added).³

The Supreme Court has repeatedly admonished courts and parties that they may not rely on a “reasonableness” rationale to undermine privacy in Washington. The Court did so again two years after *Hartzell*:

As we have so frequently explained, **article I, section 7 is not grounded in notions of reasonableness**. Rather, it prohibits any disturbance of an individual’s private affairs without authority of law.

Snapp, 174 Wn.2d at 194 (emphasis added).

Numerous cases are in accord. For example, the Supreme Court rejected the “private search” doctrine endorsed under the Fourth Amendment because it depends

³ Notably, *Boyce*, on which Division One relied, predated most of the significant article I, section 7 cases that have been decided in the modern era of independent state constitutional jurisprudence.

on the “reasonable expectation of privacy” standard. *State v. Eisfeldt*, 163 Wn.2d 628, 636-37, 185 P.3d 580 (2008). (stating, inter alia, “We have repeatedly held the privacy protected by article I, section 7 survived where the reasonable expectation of privacy under the Fourth Amendment was destroyed.”). And it held that garbage is a “private affair” protected against government intrusion under the state constitution even though citizens lack a “reasonable expectation of privacy” in their garbage under the Fourth Amendment. *Compare State v. Boland*, 115 Wn.2d 571, 580, 800 P.2d 1112 (1990) *with California v. Greenwood*, 486 U.S. 35, 41, 108 S.Ct. 1625, 100 L.Ed.2d 30 (1988).

Thus, this Court should follow *Dearman* instead of *Hartzell*. In *Dearman*, the Court properly held that “using a trained narcotics dog constituted a search for purposes of article 1, section 7 of the Washington Constitution and a search warrant was required.” 92 Wn. App. at 635. This is so because the dog exposes information that officers are unable to detect from a lawful vantage point using their own senses.

Id. Moreover, although the *Dearman* Court did not note this point in its “intrusiveness” analysis, the embarrassment and stigma occasioned by the public application of a drug-detection dog further demonstrates that its use constitutes an invasion of a private affair. *See Caballes*, 543 U.S. at 421 (Ginsburg, J., dissenting).

The only difference between this case and *Dearman* is that this case involves disturbing the privacy of a car instead of a house. But again, the Washington Supreme Court has repeatedly held that citizens of this state have a privacy interest in their cars which they are entitled to hold safe from governmental trespass absent a warrant. *Snapp*, 174 Wn.2d at 191-92; *Tibbles*, 169 Wn.2d at 369; *Ladson*, 138 Wn.2d at 352-53; *Mesiani*, 110 Wn.2d at 457-58. Thus, this Court should hold that the warrantless application of a drug-detection dog to a person’s car violates article I, section 7 of the Washington Constitution.

- c. Absent the dog's alert, the State lacked probable cause to support the warrant; this Court should reverse and remand with instructions to suppress the evidence and dismiss the charges.

Because the warrantless dog sniff was unconstitutional, the information thereby obtained must be excised from the warrant application. *See Eisfeldt*, 163 Wn.2d at 640-41; *Young*, 123 Wn.2d at 194-95. The court must then determine whether the remaining evidence rose to the level of probable cause to support a warrant. *See id.*

Here, as in *Neth*, the evidence is insufficient. *See State v. Neth*, 165 Wn.2d 177, 179, 196 P.3d 658 (2008). The only other facts the State presented to support the issuance of a warrant were Ms. Lares-Storms's prior drug history and the use of her car during a controlled buy a month earlier. CP 53.

In *Neth*, after excising the dog alert (for failure to prove reliability) the remaining evidence consisted of: (1) The defendant had several clear plastic baggies of the type drug traffickers use in his pocket; (2) the defendant had previously been convicted of possessing and delivering

heroin; (3) the defendant appeared overly nervous; (4) the defendant admitted that he had several thousand dollars in cash in the car; (5) the defendant was driving but had no license, registration, or insurance; and (6) the defendant did not know the address or exact location of the house he claimed to be renting. *Neth*, 165 Wn.2d at 183-84. The Supreme Court acknowledged these facts created suspicion, but held they did not rise to the level of probable cause. *Id.* at 184-86.

The same is true here; in fact, there is less evidence here absent the dog alert than there was in *Neth*. Accordingly, this Court should reverse the convictions and remand with instructions to suppress the evidence and dismiss the charges with prejudice. *See State v. Gatewood*, 163 Wn.2d 534, 542, 182 P.3d 426 (2008).

2. The State failed to prove the dog could reliably detect the unlawful presence of controlled substances.

Even if this Court disagrees that the warrantless inspection of Ms. Lares-Storms's car by a drug-detection dog violated article I, section 7, it should nevertheless reverse.

The dog's alert should have been disregarded because the State failed to prove reliability.

- a. Article I, section 7 provides greater protection against unreliable alerts than the Fourth Amendment.

A dog's alert is treated like an informant's tip in this context. *See Florida v. Harris*, 568 U.S. 237, 133 S.Ct. 1050, 1056, 185 L.Ed.2d 61 (2013). And, as in most contexts, article I, section 7 provides greater protection against unreliable tips than the Fourth Amendment. *Compare State v. Jackson*, 102 Wn.2d 432, 435-38, 688 P.2d 136 (1984) with *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983).

Prior to *Gates*, both the Fourth Amendment and article I, section 7 required the government to satisfy the two-pronged "*Aguilar-Spinelli*"⁴ test of reliability in order for an informant's tip to support probable cause. *See Jackson*, 102 Wn.2d at 435. Under this standard:

For an informant's tip (as detailed in an affidavit) to create probable cause for a search warrant to

⁴ *See Spinelli v. United States*, 393 U.S. 410, 89 S.Ct. 584, 21 L.Ed.2d 637 (1969); *Aguilar v. Texas*, 378 U.S. 108, 84 S.Ct. 1509, 12 L.Ed.2d 723 (1964).

issue: (1) the officer's affidavit must set forth some of the underlying circumstances from which the informant drew his conclusion so that a magistrate can independently evaluate the reliability of the manner in which the informant acquired his information; and (2) the affidavit must set forth some of the underlying circumstances from which the officer concluded that the informant was credible or his information reliable.

Id. Stated differently, the State must prove that both (1) the informant is reliable, and (2) the informant's *tip* is reliable.

State v. Hart, 66 Wn. App. 1, 8, 830 P.2d 696 (1992).

The U.S. Supreme Court abandoned this standard for the Fourth Amendment in *Gates*, 462 U.S. at 238. It held that rather than imposing a "rigid demand that specific 'tests' be satisfied by every informant's tip[,]" courts should evaluate the reliability of a tipster's alert under the totality of the circumstances. *Id.* at 230-31.

But the Washington Supreme Court adhered to the "rigid demand" previously imposed. *Jackson*, 102 Wn.2d at 438. The court held:

We are not persuaded by the United States Supreme Court's rationale for departing from the *Aguilar-Spinelli* standard. Furthermore, it is inapplicable in the context of Const. art. 1, § 7 analysis.

Id. at 441. The court emphasized that under article I, section 7, “unless it can be shown that the tip came from an honest or reliable person who acquired the information in the particular case in a reliable way, an arrest or search should not be permitted on the basis of the tip.” *Id.* at 442.

Thus, the U.S. Supreme Court’s recent decision in *Harris* does not apply under article I, section 7. In *Harris*, the Court relied on the rationale of *Gates* to reject the Florida Supreme Court’s imposition of a reliability test for dog alerts. *Harris*, 133 S.Ct. at 1053.

Harris was charged with drug crimes based on evidence found in his truck following a dog’s alert. *Id.* at 1054. He moved to suppress the evidence on the basis that the dog’s alert did not provide probable cause for the search. *Id.* At the suppression hearing, the State presented evidence of the handler’s and dog’s trainings and certifications, but presented no evidence of their performance history, including false positives. *Id.* at 1055. The Florida Supreme Court concluded that absent evidence of performance history, including “how often the dog has alerted in the field

without illegal contraband having been found,” the fact that “the dog has been trained and certified is simply not enough to establish probable cause.” *Id.* (quoting *Harris v. State*, 71 So.3d 756, 767, 769 (Fla. 2011)). The U.S. Supreme Court reversed, ruling that the Florida court’s “strict” reliability requirement was inconsistent with *Gates*. *Harris*, 133 S.Ct. at 1056 (citing *Gates*, 462 U.S. at 235).

Under Washington law, strict reliability requirements remain. *See Jackson*, 102 Wn.2d at 441 (rejecting *Gates*). As explained below, the State failed to prove the dog’s reliability in this case, providing an independent basis for reversal.

b. The State failed to prove reliability in this case.

Here, the State presented evidence that the dog in question had been trained and certified, and that it had “performed over 400 applications where controlled substances were discovered and/or the odors of controlled substances were present.” CP 33-34. But no information was provided regarding the number of false positives (dog alerts but no drugs found) or false negatives (no alerts where drugs existed) – either in training or in the field. Indeed, the clause

“and/or the odors of controlled substances were present” indicates that in some unrevealed percentage of cases, the dog alerted but controlled substances were *not* discovered. The lack of information regarding false positives and false negatives rendered the evidence insufficient to demonstrate reliability.

As the Florida Supreme Court explained in *Harris*, “[a] critical part of the informant’s reliability is the informant’s track record of giving accurate information in the past.” *Harris*, 71 So.3d at 767. The Washington Supreme Court agrees that it is important to “evaluate the informant’s ‘track record’, i.e., has he provided accurate information to the police a number of times in the past?” *Jackson*, 102 Wn.2d at 437.

In the canine context, a “track record” analysis must “take into account the potential for false alerts, the potential for handler error, and the possibility of alerts to residual odors.” *Harris*, 71 So.3d at 768.

Information that merely tallies successes does not provide a complete picture. Well-presented data should include the number of failures, if

any, and the conditions under which they occurred.

Id. at 769 n.8 (quoting Robert C. Bird, *An Examination of the Training and Reliability of the Narcotics Detection Dog*, 85 Ky. L.J. 405, 425 (1997)). The Tennessee Supreme Court agreed that in determining reliability, courts should consider “the canine’s training and the canine’s ‘track record,’ with emphasis on the amount of false negatives and false positives the dog has furnished.” *Harris*, 71 So. at 770 (quoting *State v. England*, 19 S.W.3d 762, 768 (Tenn. 2000)).

Courts must not assume that trained canines can reliably detect whether a motorist unlawfully possesses controlled substances because there are many potential pitfalls, including unconscious cueing by handlers, oversensitive noses, “or even the pervasive contamination of currency by cocaine.” *Caballes*, 543 U.S. at 411-12 (Souter, J., dissenting). Indeed, one of the major problems with drug-detection dogs is that they are *too* good at their job, and can detect trace amounts of substances that may or may not have been left recently and may or may not have been illegally possessed by the current target of the intrusion. See

id. (collecting cases and studies). A person's privacy should not be violated just because a dog "correctly" detected trace amounts of a substance long ago discarded by an unknown individual; rather, a person's privacy may be disturbed only if there is probable cause to believe that person is committing a crime. *Neth*, 165 Wn.2d at 182.

Here, no information was presented regarding the dog's track record of false positives and false negatives. Absent that data, it is impossible to assess reliability. Thus, the canine informant's tip should not have been considered in the assessment of probable cause.

- c. The remedy is reversal and remand for suppression of the evidence and dismissal of the charges.

As explained in section (1)(c) above, after excising the dog alert from the warrant application, insufficient evidence remains to support a finding of probable cause. Thus, whether the alert is excised because of the warrantless canine inspection or because of the failure to prove reliability, the result is the same. This Court should reverse

and remand for suppression of the evidence and dismissal of the charges. *See Neth*, 165 Wn.2d at 184-86.

F. CONCLUSION

For the reasons set forth above, Ms. Lares-Storms asks this Court to reverse her convictions and remand with instructions to suppress the evidence and dismiss the charges with prejudice.

Respectfully submitted this 31st day of May, 2017.

/s Lila J. Silverstein

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APPENDIX A

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2016 JUL -5 P 3: 27

WALLA WALLA COUNTY
WASHINGTON

BY. _____

SUPERIOR COURT OF WASHINGTON – COUNTY OF WALLA WALLA

THE STATE OF WASHINGTON,

Plaintiff,

-vs-

MEGAN CHERISSE LARES-STORMS,

Defendant.

NO. 16 1 00145 6

STATE'S PROPOSED
FINDINGS, CONCLUSION
AND ORDER REGARDING
3.6 HEARING

THIS MATTER having come before the court upon defendant's motion for a CrR 3.6 hearing regarding admissibility of physical evidence found by law enforcement, and the court having reviewed the legal memoranda of counsel, and being fully advised, the court makes the following findings,

UNDISPUTED FACTS

1. On February 25, 2016, Walla Walla Police Department ("WWPD") Det. Harris, while conducting a controlled drug buy with an informant, saw a 2005 Chevrolet Malibu with WA plates# AWN-4415, show up at the drug buy location in Walla Walla and park near the informant with the suspect exiting that vehicle and delivering meth to the informant before returning to that vehicle and leaving the area. When the informant was shown a photo of Ms. Lares-Storms later that day, the informant could not say for sure the driver was Ms. Lares-

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3 Storms but said he/she felt that was the female driving that vehicle that day. Det. Harris had
4 information from other sources that Ms. Lares-Storms was driving this vehicle in town.

5 2. On March 30, 2016, Det. Harris saw the same 2005 Chevrolet Malibu with WA license
6 plates #AWN-4415 parked on Chestnut Street near 3rd Avenue in Walla Walla. At that time
7 Det. Harris knew that Ms. Lares-Storms had a valid warrant for her arrest through the
8 Washington Department of Corrections (“DOC”), and confirmed it after seeing the Malibu
9 parked where it was. Based on that knowledge Det. Harris parked his vehicle nearby and
10 watched the Malibu to see if Ms. Lares-Storms would come out to it. At about 2:09 p.m., Det.
11 Harris saw Ms. Lares-Storms exit the house at 638 S. 3rd Avenue and enter the driver’s front
12 seat of the Malibu. She carried out with her a bag and appeared to have a backpack on her
13 back. Det. Harris called for backup to assist in stopping Ms. Lares-Storms.
14
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16 3. Det. Harris followed Ms. Lares-Storms as she drove into the TAJ parking lot at 2nd
17 Avenue and Morton Street. The TAJ is both a gas station and convenience store open to the
18 public. WWPD Off. Henzel arrived at the same time and parked right behind Ms. Lares-
19 Storms. Off. Henzel went to Ms. Lares-Storms’ driver’s door and knocked on the window
20 with no response by her. He then opened her car door, took her by the arm and escorted her
21 out of the car. Det. Harris advised Ms. Lares-Storms at that time she was under arrest
22 pursuant to the warrant. She had a phone in her hand at the time and as she began dialing it
23 Det. Harris took it from her and placed it on the driver’s seat of her car. Det. Harris then
24 placed a blue tooth she was wearing onto the driver’s seat after noticing her answering a
25 phone call. When Ms. Lares-Storms expressed concern for personal items in her car, Det.
26 Harris told her the items would stay in the car which would be locked. She was then
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3 transported to the county jail on the DOC warrant. Ms. Lares-Storms was the only occupant
4 of the vehicle.

5 4. Det. Harris called WWPDP Off. Fulmer to respond with his K-9 partner to his location at
6 the TAJ parking lot. Once there, Off. Fulmer had his K-9 do a sniff of the exterior of Ms.
7 Lares-Storms' car in the TAJ parking lot. The K-9 showed a change in behavior indicating
8 the odor of drugs while doing a sniff of the car. The K-9 is trained to alert for the presence of
9 cocaine, methamphetamine, and heroin, and has been certified with his handler/partner Off.
10 Fulmer to detect those odors.
11

12 5. Det. Harris applied for and obtained a search warrant for Ms. Lares-Storms' car based
13 on his observations during the controlled drug buy on February 25, 2016, his personal
14 knowledge of Ms. Lares-Storms prior drug criminal history, and on the K-9 sniff.
15

16 6. Upon executing the search warrant, Det. Harris found plastic seals containing a
17 substance suspected of being methamphetamine along with other drug paraphernalia inside
18 Ms. Lares-Storms' vehicle. The state crime lab later tested the substance and found it to be
19 methamphetamine.
20

21 **DISPUTED FACTS**

22 1. There are no disputed facts.

23 **COURT'S FINDINGS AS TO THE FACTS**

24 The Court finds that Ms. Lares-Storms' vehicle was parked in a public place when Off.
25 Fulmer applied his K-9 partner to conduct a drug sniff to the exterior of her vehicle.

26 2. The Court finds that Off. Fulmer's application of his K-9 partner to the exterior of Ms.
27 Lares-Storms' vehicle did not constitute a search.

28 3. The Court finds that Off. Fulmer's K-9 partner was able to detect a controlled substance
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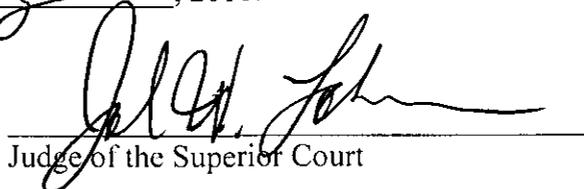
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3 coming from within Ms. Lares-Storms' vehicle.

4 4. The Court finds that Det. Harris had probable cause to apply for a search warrant based
5 on the information he had about Ms. Lares-Storms' prior drug history and the use of her
6 vehicle during a controlled buy on February 25, 2016, coupled with the K-9 sniff of that same
7 vehicle on March 30, 2016.
8

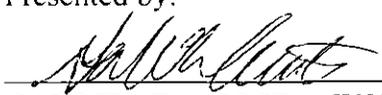
9 **COURT'S REASON FOR ADMISSIBILITY OF PHYSICAL EVIDENCE**

10 1. The Court finds that based on Off. Fulmer's K-9 partner's positive sniff for the
11 presence of a controlled substance within Ms. Lares-Storms' vehicle, coupled with Det.
12 Harris' personal knowledge of defendant's prior drug history and the use of her vehicle one
13 month earlier during a controlled drug buy constituted probable case for a search warrant, and
14 based on the K-9 sniff occurring in a public place; that the physical evidence found in Ms.
15 Lares-Storms' vehicle after the execution of the search warrant is admissible.
16

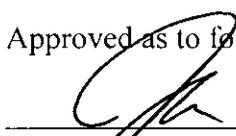
17
18 DATED this 5th of July, 2016.

19
20 
21 Judge of the Superior Court

22 Presented by:

23 
24 GABRIEL E. ACOSTA WSBA# 16719
Deputy Prosecuting Attorney

25 Approved as to form:

26 
27 JULIE A. BROWN WSBA# 32316
Attorney for Defendant
28
29
30

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 34765-6-III
)	
MEGAN LARES-STORMS,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 31ST DAY OF MAY, 2017, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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[X] MEGAN LARES-STORMS 367356 WACC FOR WOMEN 9601 BUJACICH RD NW GIG HARBOR, WA 98332	(X) () ()	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 31ST DAY OF MAY, 2017.

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Superior Court Case Number: 16-1-00145-6

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