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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 35409-1-III

STATE OF WASHINGTON, Respondent,

v.

JAMES E. RANEY, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

James Raney was a passenger in a vehicle stopped by law enforcement for making an unlawful u-turn. The deputy observed him making furtive movements beneath his seat at the time of the stop. Later, the deputy obtained the driver's consent to re-enter the vehicle to search for her ownership and registration paperwork, which she advised him was in the passenger side glovebox or visor. Despite this limitation on the scope of the permission granted, the deputy searched the passenger side floorboard of the car and recovered a baggie of methamphetamine, which Raney was ultimately charged and convicted of possessing. The search was not challenged below, and on appeal, Raney contends that introducing the baggie constitutes a manifest error of constitutional magnitude because the record reflects it was obtained only by exceeding the scope of the consent given to re-enter the vehicle and search for the paperwork.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The admission of evidence obtained by exceeding the scope of consent given to search is a manifest error of constitutional magnitude requiring reversal.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: When the driver of a vehicle gives police consent to obtain paperwork from the vehicle's glovebox or visor, does it exceed the scope of that consent for the officer to search the floorboard of the car beneath the passenger seat?

ISSUE NO. 2: On the record presented, is the error "manifest"?

IV. STATEMENT OF THE CASE

On February 20, 2017, in the early afternoon, Spokane County Sheriff deputy Timothy Greenfield saw a car make an illegal u-turn on the top of a hill. RP 27-29. Thinking the car might belong to a person he was currently looking for, Greenfield followed and stopped the car. RP 29. As he approached and made contact with the female driver, he saw the passenger digging around on the floorboard. RP 30-31. When he told the passenger to show his hands, the passenger complied. RP 30-31. After a short conversation, he arrested the driver for operating the car without a valid license or identification. RP 31. During the conversation, the driver identified the passenger as James Raney. RP 32.

Despite the lack of suspicion of criminal activity by Raney, Greenfield ran his name in the computer and found that he had an active

community custody warrant. RP 33. Greenfield arrested Raney and observed him climb out of the vehicle through the driver door while appearing to push something beneath the seat with his foot. RP 33-34.

After arresting Raney, Greenfield spoke with the driver again, and she told him her paperwork for the vehicle was in the glove box or somewhere in the visor of the car. RP 34. She told Greenfield he could get into the glove box to retrieve her paperwork. RP 35. Greenfield entered the car and did not find the paperwork, but looked under the passenger seat and saw a small baggie with a crystalline substance in it, which he believed to be methamphetamine. RP 34. When he told the driver about the find, she stated, "That's not mine. That belongs to Jim." RP 36. When Raney denied that the baggie belonged to him, Greenfield told him he was also under arrest for possessing a controlled substance and read him his *Miranda* warnings. RP 37.

The State charged Raney with possessing methamphetamine, and the case proceeded to jury trial. CP 3, 22. The jury convicted Raney as charged. CP 22, RP 124. Following the defense recommendation, the trial court imposed a low-end sentence of one year and one day and imposed only mandatory legal financial obligations. RP 133, 140, CP 32,

35. Raney now appeals, and has been found indigent for that purpose. CP 45, 50.

V. ARGUMENT

The sole issue presented on appeal is whether introducing the baggie recovered from the vehicle floorboard is a manifest error of constitutional magnitude warranting reversal, when the record reflects that the driver gave consent to the deputy to search the passenger side glovebox and visor to retrieve paperwork about the car's ownership but did not authorize police to search beneath the passenger seat.

Article I, section 7 of the Washington Constitution and the Fourth Amendment to the U.S. Constitution establish that warrantless searches and seizures are *per se* unreasonable, unless the State proves that the circumstances fall within an exception to the warrant requirement. *State v. Morse*, 156 Wn.2d 1, 7, 123 P.3d 832 (2005). Washington courts have long interpreted article I, section 7 as more protective of privacy interests in vehicles than the Fourth Amendment. *See State v. Parker*, 139 Wn.2d 486, 496, 987 P.2d 73 (1999) (recognizing that vehicle passengers have independent, constitutionally protected privacy interests that they do not lose merely by entering a vehicle with others). Unlike the Fourth Amendment, article 1, section 7 “recognizes an individual’s right to

privacy with no express limitations.” *State v. Simpson*, 95 Wn.2d 170, 178, 622 P.2d 1199 (1980). Washington courts have established that the article 1, section 7 analysis is not based on whether the defendant possessed a reasonable expectation of privacy in the area to be searched, but whether the State has intruded into the defendant’s private affairs. *State v. Myrick*, 102 Wn.2d 506, 510-11, 688 P.2d 151 (1984).

In Washington, the right to be free from intrusions into private affairs extends to vehicles and their contents. *Parker*, 139 Wn.2d at 494. However, a few “jealously and carefully drawn” exceptions will overcome the warrant requirement when societal interests outweigh the rationale for prior recourse to a neutral magistrate. *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). Consent is one such exception, and the burden rests with the State to prove that it applies. *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996).

In order to show a warrantless search was valid due to consent, the State must show (1) voluntary consent; (2) by a person authorized to consent; and (3) the search does not exceed the scope of the consent. *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004). Consent may be expressly or implicitly limited, and a consensual search must be restricted within the boundaries of such limitations. *Id.* at 133.

Here, the record reflects that the driver, who claimed ownership of the car and controlled it at the time of the stop, authorized Greenfield to look in the glovebox and possibly the visor to locate her paperwork. RP 34-35. Her consent was apparently voluntary and authorized, but did not permit Greenfield to generally search the car or to look in other places besides the glovebox and the visor. By looking beneath the passenger seat, Greenfield exceeded the scope of the consent given by the driver.

Courts generally decline to review errors that were not raised below, and Raney did not file a motion to suppress or argue that Greenfield's search was unlawful before the trial court. However, manifest errors affecting a constitutional right may be raised for the first time on appeal. RAP 2.5(a)(3). To be reviewable, the error must be of constitutional magnitude and must have actually affected the defendant's rights. *State v. McFarland*, 127 Wn.2d 322, 333, 899 P.2d 1251 (1995). Sufficient facts must appear in the record to adjudicate the claimed error or it is not "manifest" because no prejudice is shown. *Id.*

An argument that a warrantless vehicle search is unlawful under the state and federal constitutions is of constitutional magnitude as it implicates constitutionally protected privacy interests. *State v. Jones*, 163 Wn. App. 354, 360, 266 P.3d 886 (2011), *review denied*, 173 Wn.2d 1009

(2012). Further, where the fruits of the challenged search provide evidence to support the charge and conviction, sufficient prejudice is shown to render the error manifest. *Id.*

Here, the facts were sufficiently developed through testimony presented in a CrR 3.5 hearing to address the merits of Raney's argument. Those facts show that Greenfield searched an area of the car that he did not receive consent to search. Raney may assert automatic standing to challenge the privacy intrusion because he was charged with a possessory crime for an item he possessed at the time of the unlawful search. *State v. Jones*, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002). Thus, Raney's argument that the warrantless search runs afoul of the Fourth Amendment and article I, section 7 privacy interests presents a claim of constitutional error.

Moreover, the error is manifest because it resulted in the introduction of evidence used to charge and convict him of a crime. But for the unlawful search, Greenfield would not have had a basis to charge Raney with unlawfully possessing a controlled substance, and the State would have lacked sufficient evidence to prosecute him. Because the error had real and identifiable impacts in the outcome of the case, sufficient prejudice is shown to warrant review.

The remedy for an unlawful search is reversal of the convictions and remand to the trial court to suppress the evidence. *See State v. Ortiz*, 196 Wn. App. 301, 313, 383 P.3d 586 (2016).

VI. CONCLUSION

For the foregoing reasons, Raney respectfully request that the court REVERSE his conviction and REMAND the case with instruction to suppress the fruits of the unlawful search.

RESPECTFULLY SUBMITTED this 4 day of January, 2018.



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DECLARATION OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Brief upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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And, pursuant to prior agreement of the parties, by e-mail to the following:

Brian Clayton O'Brien
Spokane County Prosecuting Attorney
sopaappeals@spokanecounty.org

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 4 day of January, 2018 in Walla Walla, Washington.



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