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NO. 68069-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MARY LYNN ANDERSON,

Appellant.

2012 AUG 23 PM 2:33
COURT OF APPEALS
STATE OF WASHINGTON
KING COUNTY

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HAYDEN

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

Where a passenger is committing a traffic infraction, an officer may lawfully seize her by requesting identification so long as the seizure remains reasonable in its scope. The officer in this case did not expand the scope of the seizure when he asked follow-up questions to Anderson's denial that she had an I.D. card. Did the trial court properly conclude that the seizure was at all times lawful?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Mary Lynn Anderson was charged by Information with Violation of the Uniform Controlled Substances Act: possession of cocaine. CP 1. The trial court heard testimony on Anderson's pre-trial motion to suppress the cocaine as the result of an unlawful seizure, and denied the motion. CP 122-125. The case proceeded by way of a jury trial, and the jury found Anderson guilty as charged. CP 87.

2. SUBSTANTIVE FACTS.

In the early minutes of March 1, 2010, Seattle Police Officer Earnest DeBella was on duty at a gas station in Seattle, Washington. 1RP 5-6.¹ While there, he ran the license plate of a silver Nissan Maxima that he observed, and was notified that there was an arrest warrant out for someone who had previously been contacted in that vehicle, and that the registered owner's driver's license was suspended. 1RP 6-8. Officer DeBella then conducted a traffic stop of the Nissan, which had left the gas station and was now driving on a public street. *Id.* When the vehicle stopped, Officer DeBella approached on the passenger side in order to avoid the danger of being struck by passing cars. 1RP 8; 2RP 1. When he reached the Nissan, Officer DeBella observed the appellant, Mary Anderson, in the front passenger seat, and the registered owner, "Mr. Braxton," in the driver's seat. 2RP 1. Officer DeBella saw two open 22-ounce cans of beer standing upright on the floorboard of the vehicle—one between Anderson's feet and the

¹ Only transcripts from the CrR 3.6 hearing are cited in this brief. That hearing occurred on November 21, 2011, and was transcribed by two different court reporters. Following the convention of Appellant's brief, the volume transcribed by Jackie Burley from the opening minutes of the hearing is referenced as "1RP" followed by the page number within that volume. The volume transcribed by Dana Lee Butler is referenced as "2RP" followed by the page number within that volume.

other between Braxton's feet. 2RP 1-2. Based on that observation, Officer DeBella believed that Anderson and Braxton were each committing a traffic infraction by possessing an open container of alcohol in a vehicle on a public street. 2RP 6-7.

Officer DeBella asked Anderson and Braxton for identification, and Anderson stated that she had none. 2RP 7. Officer DeBella then asked Anderson if she had ever had a Washington State driver's license or I.D. card, and Anderson again replied "no." Id. Officer DeBella then asked Anderson if she had ever in her life had a driver's license or I.D. card issued to her in any U.S. state, and Anderson again replied "no." 2RP 7-8. At no point did Anderson volunteer her name. 2RP 21. Officer DeBella testified that based on his experience, whenever a person who is clearly old enough to drive denies ever having had an I.D. card, he is suspicious that the person is trying to conceal his or her identity. 2RP 8. Officer DeBella informed Anderson that he found it suspicious that she claimed to have never had an I.D. card anywhere,² at which point Anderson produced an I.D. card and admitted that she had a warrant out for her arrest. Id. Anderson also admitted that she had a knife on her person. 2RP 9. Officer

² Anderson was born in 1959. CP 4.

DeBella removed Anderson from the vehicle to pat her down for weapons, and observed her place what appeared to be crack cocaine on the vehicle's center console as she exited. 2RP 11-12.

C. ARGUMENT

1. OFFICER DEBELLA'S QUESTIONING REGARDING ANDERSON'S POSSESSION OF IDENTIFICATION DID NOT EXCEED THE PERMISSIBLE SCOPE OF THE STOP.

Anderson asserts that the trial court erred in denying her motion to suppress the cocaine, claiming that Officer DeBella's questions regarding whether Anderson had ever had an identification card, and his statement that he did not believe her, exceeded the permissible scope of his investigation into the open container violation. Neither the facts nor the law support this claim. Because Officer DeBella's questions and statement did not expand the scope of the investigative seizure beyond what was reasonable, the seizure remained at all times lawful.

The only issue on appeal is whether the undisputed facts constitute a violation of Article 1, Section 7 of the Washington State Constitution and the Fourth Amendment to the U.S. Constitution.

As a result, the trial court's denial of the defendant's motion to suppress is reviewed de novo. State v. Rankin, 151 Wn.2d 689, 694, 92 P.3d 202, 204 (2004).

Under Article 1, Section 7 of the Washington State Constitution and the Fourth Amendment to the U.S. Constitution, warrantless seizures are presumptively unconstitutional. State v. Garcia-Salgado, 170 Wn.2d 176, 184, 240 P.3d 153 (2010).

However, an exception exists for investigative stops, which are lawful when based upon "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion." Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868 (1968); State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

The same standard applies to a stop to investigate a traffic infraction or traffic offense. See State v. Duncan, 146 Wn.2d 166, 173-175, 43 P.3d 513 (2002).

An automobile passenger is seized if, in the course of a stop of the vehicle in which he or she is riding, an officer asks for the passenger's identification. State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202, 205 (2004). Such a request is lawful when "circumstances give the police independent cause to question [the]

passengers.” Id. (quoting State v. Larson, 93 Wn.2d 638, 642, 611 P.2d 771 (1980)) (alteration in original).

Pursuant to RCW 46.61.519(2), “[i]t is a traffic infraction for a person to have in his or her possession while in a motor vehicle upon a highway,³ a bottle, can, or other receptacle containing an alcoholic beverage if the container has been opened or a seal broken or the contents partially removed.” RCW 46.61.021(2) states that “[w]henver any person is stopped for a traffic infraction, the officer may detain that person for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person’s license, insurance identification card, and the vehicle’s registration, and complete and issue a notice of traffic infraction.” Furthermore, “[a]ny person requested to identify himself or herself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself or herself and give his or her current address,” RCW 46.61.021(3), and “[a]ny person who willfully fails . . . to comply with RCW 46.61.021(3), is guilty of a misdemeanor.” RCW 46.61.022.

³ Pursuant to RCW 46.04.197, a highway means the entire width between the boundary lines of every way publicly maintained when any part thereof is open to the use of the public for purposes of vehicular travel.

Anderson does not dispute that Officer DeBella's initial request for Anderson's identification was lawful based on the fact that he had probable cause to believe that Anderson was committing a traffic infraction by possessing an open container of alcohol. Anderson contends, without citation to any authority, that by asking follow-up questions when Anderson claimed not to have an identification card, Officer DeBella exceeded the permissible scope of the investigative seizure. This argument is without merit.

An officer's seizure of a vehicle passenger to investigate a traffic infraction is lawful if it is "justified at its inception and reasonable in scope." State v. Chelly, 94 Wn. App. 254, 258-59, 970 P.2d 376, 378 (1999). Here, Officer DeBella did not expand the scope of the seizure when Anderson initially claimed not to have an identification card, let alone expand it unreasonably. He did not search Anderson, remove her from the vehicle, or otherwise increase the restraint on her freedom of movement. Instead, Officer DeBella simply asked Anderson whether she had ever had an identification card in Washington, then whether she had ever had an identification card in any state, and then when she repeatedly said "no," informed her that he did not believe her. 2RP 7-8. While Anderson is correct that a passenger in a vehicle is not

legally obligated to carry identification, a request for identification is not improper. State v. Cole, 73 Wn. App. 844, 848, 871 P.2d 656, 659 (1994); See Chelly, 94 Wn. App. 254. Furthermore, when an individual of an age likely to possess an identification card denies having one, it is not improper for an officer to ask exactly the follow-up questions that Officer DeBella asked. Id. at 260-61.

The facts in State v. Chelly are virtually identical to the facts of this case. In Chelly, an officer lawfully stopped a vehicle for not having a rear brake light, and then noticed that two passengers weren't wearing seat belts. Chelly, 94 Wn. App. at 256. The officer asked both passengers for identification, and one said that he did not have any identification. Id. The officer then asked that passenger if he had ever had any identification, and the passenger stated that he had not. Id. Based on the fact that the passenger appeared to be in his mid-twenties and the officer's experience that it was highly unusual for someone over the age of sixteen to state that he had never had an identification card, the officer believed that the passenger was attempting to conceal his identity and was likely to give a false name when asked. Id. at 256-57. On those facts, the appellate court held that it did not exceed the permissible scope of the seizure for the officer to go so far as to remove the

passenger from the car in order to further investigate his identity and prevent the other passengers from hearing, and thus falsely corroborating, a false name if the passenger gave one. Id. at 260-61.

The State is aware of no case in which a court has held or even suggested that when an officer receives an implausible denial to a request for identification, the officer is limited to simply asking for the person's name and date of birth. The holding in Chelly is directly contrary to such a proposition. However, that is exactly the rule that Anderson urges this Court to adopt. Such a rule would inhibit officers' ability to correctly identify persons to whom they need to issue a citation without any meaningful benefit to an individual's privacy interests. Questions about whether an individual has ever had an identification card pose, at most, a de minimis intrusion into an individual's privacy right—particularly given that the legislature has made it a crime to refuse to identify oneself during a traffic stop. The rule proposed by Anderson is inconsistent with public policy, legislative intent, and case law, and the court should reject it.

Officer DeBella's questions about whether Anderson had ever had an identification card and his statement that he did not

believe her did not expand the scope of the investigative seizure, let alone expand it unreasonably. Thus, Anderson's production of her identification card and statement that she had a warrant were not the product of an unlawful seizure. This Court should affirm the trial court's ruling that the later-obtained cocaine was not the product of an unlawful seizure.

D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Anderson's conviction.

DATED this 22nd day of August, 2012.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Susan F. Wilk, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief for Respondent in STATE V. MARY ANDERSON, Cause No. 68069-2-I, in the Court of Appeals, Division I, for the State of Washington.

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

Nicolette Batra
Name: Nicolette Batra
Done in Seattle, Washington

8/23/12
Date