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CLERK OF SUPERIOR COURT  
STATE OF WASHINGTON  
2009 AUG 11 PM  
No. 63161-64: 43

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

ERIC R. ANICHINI,

Appellant.

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

The Honorable Ronald L. Castleberry  
The Honorable Kenneth L. Cowser

---

BRIEF OF APPELLANT

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A. SUMMARY OF ARGUMENT

Eric Anichini was a passenger in a van lawfully stopped by the police. Upon police request while investigating his failure to wear a seatbelt, Mr. Anichini identified himself to the officer with what the officer later learned was not his true name. Mr. Anichini was arrested for failing to identify himself or cooperate with the police based on a belief he had given a false name. Contraband was subsequently found in Mr. Anichini's wallet. Mr. Anichini submits his arrest was unlawful under the Fourth Amendment and article I, section 7 and the contraband must be suppressed.

B. ASSIGNMENTS OF ERROR

1. Mr. Anichini's right to be free from illegal searches and seizures under the Fourth Amendment and article I, section 7 was violated.

2. The trial court erred in denying Mr. Anichini's motion to suppress the evidence seized from his wallet.

3. In the absence of substantial evidence, and to the extent it is found to be a finding of fact, the trial erred in entering Conclusion of Law 3 that Mr. Anichini was lawfully arrested for failure to give information or cooperate.

4. In the absence of substantial evidence, and to the extent it is found to be a finding of fact, the trial erred in entering Conclusion of Law 3 that the subsequent search of Mr. Anichini was incident to a lawful arrest.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

Under the Fourth Amendment to the United States constitution and article I, section 7 of the Washington Constitution, warrantless searches and seizures are *per se* unreasonable. A search pursuant to a lawful arrest does not violate the Fourth Amendment or article I, section 7. Mr. Anichini was arrested for failing to identify himself and cooperate during a traffic stop despite identifying himself at the officer's request with a name the officer later learned was a false name. Is Mr. Anichini entitled to suppression of the contraband subsequently found in his wallet where his arrest was unlawful?

D. STATEMENT OF THE CASE

Eric Anichini was the front seat passenger in a van stopped by Snohomish County Deputy Sheriff Stephen Gordon for a cracked windshield. CP 40-41; RP 5. While speaking to the driver, Gordon noticed Mr. Anichini was not wearing a seatbelt. CP 41; RP 6. Gordon asked Mr. Anichini for identification, and he stated

his name was "Bill R. Moore." CP 41; RP 7. When asked for his date of birth, Mr. Anichini stated he had done nothing wrong and began to open the door of the van. CP 41; RP 7. Gordon ordered Mr. Anichini to stay in the van, and he complied. CP 41; RP 8. Gordon requested an additional officer to assist him. CP 41; RP 8. Gordon later testified he thought Mr. Anichini had given him a false name. RP 10. Mr. Anichini admitted to the officer *after* his arrest the name he gave the officer was false. RP 24.

Deputy Mark Monson arrived and Gordon relayed that Mr. Anichini had not been wearing a seatbelt and had failed to identify himself. CP 41; RP 21. Monson approached Mr. Anichini, requested he get out of the van, and when Mr. Anichini complied and without asking any further questions of him, immediately arrested Mr. Anichini. CP 41; RP 22-23. A search of Mr. Anichini revealed a wallet, which contained a quantity of suspected methamphetamine and heroin. CP 41; RP 24. Gordon subsequently issued Mr. Anichini a citation for failing to wear a seatbelt. CP 41; RP 11.

Mr. Anichini was charged with possession of methamphetamine. CP 82. Mr. Anichini moved to suppress the contraband on the basis that the officer had no reason to ask him

for his identification under *State v. Rankin*, 151 Wn.2d 689, 92 P.3d 202 (2004). CP 77-81. Following a CrR 3.6 hearing, the court denied the motion to suppress. CP 40-43. The jury found him guilty as charged. CP 48.

E. ARGUMENT

THE POLICE SEARCH OF MR. ANICHINI'S  
WALLET WAS THE RESULT OF AN ILLEGAL  
ARREST AND THE EVIDENCE SEIZED SHOULD  
HAVE BEEN SUPPRESSED

1. Warrantless searches are *per se* unreasonable under the Fourth Amendment and article I, section 7. It is well settled that article I, section 7 of the Washington Constitution provides greater protection to individual privacy rights than the Fourth Amendment. *E.g. State v. Hendrickson*, 129 Wn.2d 61, 69 n. 1, 917 P.2d 563 (1996); *State v. Stroud*, 106 Wn.2d 144, 148, 720 P.2d 436 (1986); *State v. Williams*, 102 Wn.2d 733, 741-42, 689 P.2d 1065 (1984). Article I, section 7 provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” This provision is violated when the State unreasonably intrudes upon a person's private affairs. *State v. Boland*, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990); *State v. Myrick*, 102 Wn.2d 506, 510, 688 P.2d 151 (1984). Evidence that is the product of an unlawful

search or seizure is not admissible. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961).

A warrantless search is presumed unconstitutional. *State v. Johnson*, 128 Wn.2d 431, 446-47, 909 P.2d 293 (1996).

“Exceptions to this requirement are narrowly drawn. The State bears a heavy burden in showing that the search falls within one of the exceptions.” *State v. Jones*, 146 Wn.2d 328, 335, 45 P.3d 1062 (2002) (citations omitted). It is presumed that a warrantless search violates both the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington State Constitution. *State v. Day*, 161 Wn.2d 889, 893-94, 168 P.3d 1265 (2007). The State bears the burden to prove that one of the narrowly drawn exceptions to the warrant requirement validates the warrantless search. *Id.*; *State v. Vrieling*, 144 Wn.2d 489, 492, 28 P.3d 762 (2001).

2. The police lacked probable cause to arrest Mr. Anichini, thus his search of his wallet was illegal. An exception to the bar against warrantless searches is a search conducted incident to arrest. *Vrieling*, 144 Wn.2d at 492. To justify a warrantless search, the arrest must be a *lawful* custodial arrest. *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007); *State v. O'Neill*, 148 Wn.2d

564, 585, 62 P.3d 489 (2003). A *lawful* arrest provides the legal authority required by article I, section 7 of the Washington State Constitution. *O'Neill*, 148 Wn.2d at 585. If the State obtains the evidence without the authority of law, then the evidence is not admissible in court. *Day*, 161 Wn.2d at 894.

“[T]he search incident to arrest exception to the warrant requirement is narrower” under article I, section 7 than under the Fourth Amendment. *O'Neill*, 148 Wn.2d at 584. Under the Washington Constitution, a lawful custodial arrest is a constitutional prerequisite to any search incident to arrest. *Id.* at 587. The lawfulness of an arrest turns on whether probable cause supports the arrest. *State v. Potter*, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006). Probable cause exists when the arresting officer has “knowledge of facts sufficient to cause a reasonable [officer] to believe that an offense has been committed” at the time of the arrest. *Id.* *State v. Moore*, 161 Wn.2d 880, 885, 169 P.3d 469 (2007).

Here, Mr. Anichini, a passenger in a car, was arrested for “failing to cooperate and failing to identify himself.” RP 23. Neither of these bases for the arrest are valid under the facts as revealed during the CrR 3.6 hearing.

Arguably, the stop of the car in which Mr. Anichini was riding was proper given the police officer's observation of the badly cracked windshield. See *State v. Burks*, 114 Wn.App. 109, 112, 56 P.3d 598 (2002) (an officer may stop the driver of a vehicle whose windshield is in such an unsafe condition as to endanger any person). In addition, the officer's observation of Mr. Anichini's failure to wear a seatbelt arguably allowed the officer to require Mr. Anichini to identify himself. RCW 46.61.021(3); RCW 46.61.688(3); *State v. Chapin*, 75 Wn.App. 460, 464 n.5, 879 P.2d 300 (1994), review denied, 125 Wn.2d 1024 (1995).<sup>1</sup> But, once Mr. Anichini provided the officer with a name, he had identified himself to the officer as required under RCW 46.61.020. See *State v. Cole*, 73 Wn.App. 844, 871 P.2d 656 (1994) (passenger in car not required to carry a driver's license or other identification and need only identify themselves when requested and provide a current address).

RCW 46.61.021(3) requires any person requested by an officer to identify themselves as part of an investigation into a traffic

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<sup>1</sup> Every person over age sixteen driving or riding in a car is required to wear a seatbelt. RCW 46.61.688(3). A person violating this law has committed a traffic infraction and a notice of traffic violation shall be issued. RCW 46.61.688(5).

violation must provide their name and current address. Instructive on this issue is the decision in *Moore, supra*. In *Moore*, the defendant was a passenger in a car lawfully stopped. The officer recognized Mr. Moore from a previous encounter but could not remember his name so she asked him to identify himself. *Moore*, 161 Wn.2d at 883. The defendant gave the officer a name which was not his true name. During the encounter, the officer noticed a pit bull dog sitting on the defendant's lap. She arrested the defendant for a municipal code violation of having a dangerous dog outside an enclosure. *Id.* The officer also arrested the defendant for failing to identify himself or cooperate. *Id.* A subsequent search of the defendant revealed a quantity of cocaine and methadone pills. *Id.* Post-arrest, the officer provided an additional report which noted she had noted that the defendant was not wearing a seatbelt when she first approached the car. *Id.*

The trial court denied the defendant's motion to suppress. The court agreed that the officer didn't arrest the defendant for the seat belt violation but could have, thus the defendant's act of providing a false name gave the officer probable cause to arrest him. *Moore*, 161 Wn.2d at 884. The Supreme Court reversed and ordered the fruits of the illegal search suppressed. *Id.* at 886. The

Court ruled the officer lacked probable cause to arrest the defendant as she was not investigating a traffic violation when she requested identification from the defendant. *Id.*

Here, the officer arguably requested that Mr. Anichini identify himself as part of the investigation into the seatbelt violation, which differs from *Moore, supra*. But, once Mr. Anichini provided a name, the officer had two choices; issue Mr. Anichini a traffic citation for the seat belt violation or detain him further to investigate the officer's belief that Mr. Anichini had provided a false name. See *State v. Chelly*, 94 Wn.App. 254, 260-61, 970 P.2d 376, review denied, 138 Wn.2d 1009 (1999) (officer may briefly detain person suspected of giving a false name to ascertain his or her true name). Instead, the officer took a third course of action which was not supported by probable cause and that was to arrest Mr. Anichini for failing to identify himself or to cooperate. This was troubling in light of the fact the officer did not determine Mr. Anichini had provided a false name until *after* the officer had arrested him. While the officer "believed" Mr. Anichini had not been truthful when he identified himself the officer lacked probable cause to arrest Mr. Anichini because he had cooperated with the officer by identifying himself. Further, without more, the officer's "belief" would have allowed the

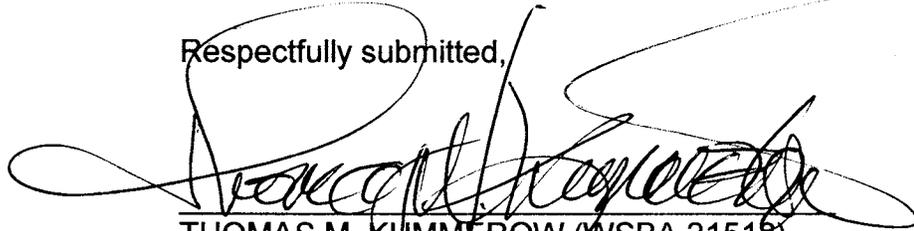
officer to detain Mr. Anichini to determine his true identity, but it did not rise to the level of probable cause necessary to arrest Mr. Anichini. Since Mr. Anichini's arrest was not lawful, the subsequent search was invalid. This Court should reverse Mr. Anichini's conviction and order the methamphetamine suppressed.

F. CONCLUSION

For the reasons stated, Mr. Anichini submits this Court must order the contraband suppressed as the product of an unlawful arrest and reverse his conviction.

DATED this 14th day of August 2009.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'Thomas M. Kummerow', is written over the typed name and extends across the typed address.

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Washington Appellate Project – 91052  
Attorneys for Appellant

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION I

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STATE OF WASHINGTON,	)	
	)	NO. 63161-6
Respondent,	)	
	)	
v.	)	
	)	
ERIC ANCHINI,	)	
	)	
Appellant.	)	

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**DECLARATION OF SERVICE**

I, ANN JOYCE, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

1. THAT ON THE 14TH DAY OF AUGUST, 2009, A COPY OF **APPELLANT'S REPLY BRIEF** WAS SERVED ON THE PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL TO THE ADDRESSES INDICATED:

Snohomish County Prosecuting Attorney  
Appellate Division  
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Everett, WA 98201

Eric Anchini  
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2009 AUG 14 PM 4:43  
STATE OF WASHINGTON  
CLERK OF COURT

SIGNED IN SEATTLE, WASHINGTON THIS 14TH DAY OF AUGUST, 2009

x *Ann Joyce*