

68004-8

68004-8

NO. 68004-8-1

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

---

---

STATE OF WASHINGTON,

Appellant,

v.

JUDITH MORRIS,

Respondent,

---

---

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

The Honorable Ronald Castleberry, Judge

---

---

BRIEF OF RESPONDENT

---

---

CHRISTOPHER GIBSON  
Attorney for Respondent

NIELSEN, BROMAN & KOCH, PLLC  
1908 E Madison Street  
Seattle, WA 98122  
(206) 623-2373

TB

TWJ

**TABLE OF CONTENTS**

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	1
C. <u>ARGUMENT</u> .....	6
<u>THE RALJ COURT CORRECTLY REVERSED THE     DISTRICT COURT BECAUSE DEPUTY RAVENSCRAFT     SEIZED MORRIS WITHOUT THE NECESSARY AUTHORITY     OF LAW.</u> .....	6
D. <u>CONCLUSION</u> .....	13

**TABLE OF AUTHORITIES**

	Page
<u>WASHINGTON CASES</u>	
<u>City of Seattle v. Mesiani</u> 110 Wn.2d 454, 755 P.2d 775 (1988).....	9
<u>Nord v. Eastside Ass'n Ltd.</u> 34 Wn. App. 796, 664 P.2d 4 (1983) .....	7
<u>State v. Aranguren</u> 42 Wn. App. 452, 711 P.2d 1096 (1985) .....	12
<u>State v. Bailey</u> 154 Wn. App. 295, 224 P.3d 852 <u>review denied</u> , 169 Wn.2d 1004 (2010).....	7
<u>State v. Chapin</u> 75 Wn. App. 460, 879 P.2d 300 (1994) <u>review denied</u> , 125 Wn.2d 1024 (1995).....	12
<u>State v. Ellwood</u> 52 Wn. App. 70, 757 P.2d 547 (1988) .....	8
<u>State v. Friederick</u> 34 Wn. App. 537, 663 P.2d 122 (1983) .....	8
<u>State v. Hagen</u> 55 Wn. App. 494, 781 P.2d 892 (1989) .....	7
<u>State v. Harrington</u> 167 Wn.2d 656, 222 P.3d 92 (2009) .....	8
<u>State v. Hastings</u> 119 Wn.2d 229, 830 P.2d 658 (1992).....	6
<u>State v. Hill</u> 123 Wn.2d 641, 870 P.2d 313 (1994) .....	7

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>State v. Lesnick</u> 84 Wn.2d 940, 530 P.2d 243 <u>cert. denied</u> , 423 U.S. 891 (1975).....	6
<u>State v. Nettles</u> 70 Wn. App. 706, 855 P.2d 699 (1993) <u>review denied</u> , 123 Wn.2d 1010 (1994).....	9
<u>State v. O'Neill</u> 148 Wn.2d 564, 62 P.3d 489 (2003).....	7
<u>State v. Rankin</u> 151 Wn.2d 689, 92 P.3d 202 (2004).....	9, 10
<u>State v. Sweet</u> 44 Wn. App. 226, 721 P.2d 560 <u>review denied</u> , 107 Wn.2d 1001 (1986).....	8
<u>State v. Thompson</u> 151 Wn.2d 793, 92 P.3d 228 (2004).....	11
<u>State v. Warner</u> 125 Wn.2d 876, 889 P.2d 479 (1995).....	12
<u>State v. Whitaker</u> 58 Wn. App. 851, 795 P.2d 182 (1990) <u>review denied</u> , 116 Wn.2d 1028 (1991).....	8
 <b><u>FEDERAL CASES</u></b>	
<u>Delaware v. Prouse</u> 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).....	9
<u>Schneckloth v. Bustamonte</u> 412 U.S. 218, 36 L. Ed. 2d 854, 93 S. Ct. 2041 (1973).....	6
<u>Terry v. Ohio</u> 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968).....	4, 5, 6

**TABLE OF AUTHORITIES (CONT'D)**

	Page
<u>Wong Sun v. United States</u> 371 U.S. 471, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963).....	12
 <b><u>RULES, STATUTES AND OTHER AUTHORITIES</u></b>	
CrRLJ 3.6 .....	1
RALJ .....	1, 4, 5, 6, 8, 10, 12, 13
RAP 10.3.....	1
 Wayne R. LaFave <u>The Present and Future Fourth Amendment</u> (1995) .....	   9

A. ISSUES PRESENTED

1. Where it is undisputed Respondent was not free to leave when being questioned by a sheriff deputy, was Respondent seized?

2. Is the seizure of a person by a sheriff deputy done without probable cause, without articulable suspicion of criminal activity, and without a warrant or community caretaking justification, unlawful as a matter of law?

3. If a seizure is unlawful as a matter of law, is it error not to suppress the fruits of the seizure?

4. If a district court fails to suppress the fruits of an unlawful seizure, is a RALJ court properly exercise its review authority by reversing the district court and ordering the fruits of the unlawful seizure suppressed?

B. STATEMENT OF THE CASE

Pursuant to RAP 10.3(b) respondent Judith Morris adopts by reference the "Statement of the Case" set forth in the "Brief of Appellant" (BOA) at pages 2-5. Supplementing that statement, however, are the following detailed accounts of the district court proceedings held December 20, 2010, at which Morris's CrRLJ 3.6 motion to suppress was denied, and the subsequent RALJ appeal hearing from that ruling, heard October 27, 2011.

At the December 20th district court hearing the only evidence

submitted was the testimony of Deputy Ravenscraft. CP 10-27. Ravenscraft testified about the details of his interactions with Morris immediately before arresting her on warrants. When asked by the prosecutor whether he commanded Morris to remain at the location while he checked her driver's license and warrants status he replied, "I don't know - I don't know that I ever command anybody but they stand right by and they're not necessarily free to leave because I need to - again for my report to be accurate I need to make sure that I've got the right name in there." CP 17. When asked again if he told Morris "she wasn't free to leave[.]" Ravenscraft replied, "I don't recall." *Id.*

On cross-examination, Ravenscraft confirmed that Morris, like anyone else he has obtained information from in order to check license and warrant status, was "not necessarily free to leave" because he needed to confirm he an accurate identification. CP 22. Ravenscraft also agreed that he had no evidence Morris had committed any type of crime, and had done nothing suspicious. CP 25.

On redirect, the prosecutor asked for clarification on Ravenscraft's statement that Morris was not free to leave, asking whether he meant she was not free to leave at all, or just not free to take the car. Ravenscraft replied:

Well I've got to verify who she is. I mean again a crime has been committed. Who's to say that either one of you that want her as a witness if that suspended was to come to court so you would want to maybe call her and say hey were you there when this happened or where you a passenger in the car.

CP 27.

The concluding question and response on redirect were:

[Prosecutor]: And if you asked her her name - if after having asked her her name she just walked away from you, would that have been okay with you[?]

Deputy Ravenscraft: No.

CP 27.

In denying Morris's motion to suppress, the district court never explicitly stated whether Morris was seized at the point when Ravenscraft asked for her name, date of birth and social security number, although it did find he did not "show an indication of force under these circumstances." See CP 32-33 (court oral ruling). The court instead focused on whether Ravenscraft had a "logical reason" to ask Morris for her identification information. CP 33. It found he did because he was trying to ascertain whether Morris could legally move her companion's car from the gas station so that it would not obstruct the pump and would avoid the need for towing and impoundment. The court also noted Morris was a witness to her companion driving while license suspended. *Id.* The court implied,

however, it might have ruled differently had Ravenscraft's interaction with Morris begun only after he initiated the process of having the car towed. *Id.*

At the subsequent hearing on Morris's appeal of the district court ruling, defense counsel highlighted Deputy Ravenscraft's district court testimony that Morris "was not free to leave" when he engaged her after she left the convenience store. RP<sup>1</sup> 3-5, 9. Counsel also highlighted the fact that there was "no basis for a Terry stop." RP 3-4.

The prosecutor argued the encounter between Ravenscraft and Morris was merely "a social contact with a pedestrian." RP 6. In response, the RALJ court asked;

Do you really think under the totality of the circumstances where she sees the driver of the car being arrested, and she's stopped from getting back into the car, that a reasonable person under that set of circumstances thinks that, you know, I'm free to leave, I can just walk away? Do you really think that? You think that if an armed cop walks up to you and says, "Hey, buddy, give me your name, your license, and the last four digits of your Social Security Number" that you can just say, "I'm not going to answer that I'm going to walk away"? You really think that?

RP 7.

The prosecutor replied in the affirmative. RP 8. The prosecutor also noted Ravenscraft did not physically restrain Morris, take possession of her

---

<sup>1</sup> "RP" refers to the verbatim report of proceedings for the Morris's RALJ appeal hearing before the Honorable Ronald L. Castleberry on October 27, 2011.

license, or lay hands on her prior to discovering the arrest warrant. RP 8-9.

In reversing the district court, the RALJ court noted Ravenscraft's admission that Morris was not free to leave once he contacted her, despite no grounds for a Terry stop. RP 10. The RALJ court also agreed that regardless of whether Morris was consider a passenger or a pedestrian, her encounter with Ravenscraft was not merely a "social contact" as the prosecution claimed, but constituted a seizure by Ravenscraft for which there was no authority of law. RP 10-11.

A written order reversing the district court ruling was subsequently filed. CP 38-39. The following unchallenged factual findings are set forth in that order:

(1) "When Appellant came out of the store she was contacted by the Deputy and asked her name, date of birth and last four digits of her social security number";

(2) "Deputy stated that Appellant was not free to leave;" and

(3) The deputy's "reason for contacting Appellant and requesting {the information he did] was to determine if she could move the vehicle rather than have it impounded and because Appellant was a witness to the driving while license suspended." CP 38.

C. ARGUMENT

THE RALJ COURT CORRECTLY REVERSED THE DISTRICT COURT BECAUSE DEPUTY RAVENSCRAFT SEIZED MORRIS WITHOUT THE NECESSARY AUTHORITY OF LAW.

The RALJ court correctly reversed the district court because there is no reasonable basis to dispute Morris was seized when Ravenscraft confronted here outside the convenience store, and that it was done without the necessary authority of law. The district court's approval of the seizure on the basis that there was a "logical reason" for it was an error of law that would have been error not to reverse. This Court should affirm the RALJ court.

Both the federal and state constitutions prohibit unreasonable police seizures. Terry v. Ohio, 392 U.S. 1, 16-19, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968); State v. Lesnick, 84 Wn.2d 940, 942, 530 P.2d 243, cert. denied, 423 U.S. 891 (1975). A search or seizure without a warrant is presumed to be unreasonable, "subject to a few specifically established and well-delineated exceptions." State v. Hastings, 119 Wn.2d 229, 233-34, 830 P.2d 658 (1992), quoting Schneckloth v. Bustamonte, 412 U.S. 218, 219, 36 L. Ed. 2d 854, 93 S. Ct. 2041 (1973).

A person is seized "when, by means of physical force or a show of authority, his or her freedom of movement is restrained and a reasonable person would not have believed he or she is (1) free to leave, given all the

circumstances, or (2) free to otherwise decline an officer's request and terminate the encounter." State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003) (internal quotations and citations omitted). Whether a seizure has occurred is a mixed question of law and fact. What occurred involves questions of fact. But the legal consequences flowing from those facts are questions of law, reviewed de novo. State v. Bailey, 154 Wn. App. 295, 299, 224 P.3d 852, review denied, 169 Wn.2d 1004 (2010).

When reviewing the denial of a suppression motion, the reviewing court must determine whether substantial evidence supports the findings of fact and then determine whether the findings support the conclusions of law. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994); State v. Hagen, 55 Wn. App. 494, 498, 781 P.2d 892 (1989). "A trial court's erroneous determination of facts, unsupported by substantial evidence, will not be binding on appeal." Hill, 123 Wn.2d at 647 (citing Nord v. Eastside Ass'n Ltd., 34 Wn. App. 796, 798, 664 P.2d 4 (1983)).

Here, the district court made no explicit finding whether Ravenscraft seized Morris in the process of obtaining identification information. It did find Ravenscraft did not "show an indication of force under these circumstances." CP 33. Ravenscraft could not recall, however, whether he told Morris "she wasn't free to leave." CP 17. And the district court also implied it might have granted Morris's motion to suppress had Ravenscraft

initiated having the car towed before contacting Morris. Thus, while the lack of force implies a lack of seizure, the fact the court would have suppressed absent a "logical reason" for obtaining identification information implies there was a seizure finding lurking in the background and Ravenscraft's undisputed testimony that Morris was in fact not free to leave strongly supports this conclusion. CP 17, 22, 27.

To the extent the district court may have found a seizure did not occur, the RALJ court properly found this was error because it was not supported by substantial evidence. Given Ravenscraft's testimony the only reasonable finding was that Morris was seized. Although Ravenscraft could not recall precisely how he initiated contact with Morris, it is notable that statements such as "halt," "stop, I want to talk to you," "wait right here," and the like qualify as seizures. See State v. Whitaker, 58 Wn. App. 851, 854, 795 P.2d 182 (1990), review denied, 116 Wn.2d 1028 (1991); State v. Ellwood, 52 Wn. App. 70, 73-74, 757 P.2d 547 (1988); State v. Sweet, 44 Wn. App. 226, 230, 721 P.2d 560, review denied, 107 Wn.2d 1001 (1986); State v. Friederick, 34 Wn. App. 537, 541, 663 P.2d 122 (1983). In contrast, a "social contact" is contact falling short of an investigative detention or seizure; i.e., an interaction in which an individual would feel free to walk away. See State v. Harrington, 167 Wn.2d 656, 663-665, 222 P.3d 92 (2009); see also State v. Nettles, 70 Wn. App. 706, 710, 855 P.2d 699

(1993) (seizure does not occur “when a police officer merely asks an individual whether he or she will answer questions or when the officer makes some further request that falls short of immobilizing the individual.”), review denied, 123 Wn.2d 1010 (1994).

Moreover, in State v. Rankin, 151 Wn.2d 689, 92 P.3d 202 (2004), the Court held that based on the long-recognized “freedom from disturbance in ‘private affairs,’” police officers may not request identification from a vehicle passenger for investigatory purposes in the absence of reasonable suspicion the passenger has committed a crime. 151 Wn.2d at 699-700. This protection stems, in part, from the unique circumstances passengers face when police stop the vehicle in which they are traveling:

As we have said, “many [individuals] find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel.” City of Seattle v. Mesiani, 110 Wn.2d 454, 457, 755 P.2d 775 (1988)(quoting Delaware v. Prouse, 440 U.S. 648, 662, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979)). Indeed, a passenger faced with undesirable questioning by the police does not have the realistic alternative of leaving the scene as does a pedestrian. As the noted commentator Professor LaFave observed, the passenger is forced to abandon his or her chosen mode of transportation and, instead, walk away into a frequently foreign location thereby risking the departure of his or her ride while away. See Wayne R. LaFave, The Present and Future Fourth Amendment, 1995 U. Ill. L. Rev. 111, 114-15. . . .

Rankin, 151 Wn.2d at 697.

Here, although Morris was outside the car when confronted by Ravenscraft, she was still faced the Hobson's choice of responding to the deputy's demand or abandoning her chosen mode of transportation and walking away into a foreign and potential risky area. It is this totality of the circumstances the RALJ court recognized when it asked the prosecutor whether it was really objectively reasonable to conclude Morris could have simply walked away from Ravenscraft. RP 7.

Similar to the passengers Rankin, Morris was objectively seized when Ravenscraft demanded her personal information. Rankin, 151 Wn.2d at 695-700. To the extent the district court held to the contrary, the RALJ court was correct to reverse.

The only remaining issue is whether the warrantless seizure of Morris was justifiable under one of the few exceptions to the warrant requirement. As the superior court correctly found, it was not, and properly concluded the district court's reliance on a "logical reason" exception was clear error.

Ravenscraft conceded he had no reason to suspect Morris of any criminal activity. CP 25. As such, the seizure cannot be justified under the probable cause or investigation exceptions.

The reasons Ravenscraft gave for seizing Morris were that he wanted

to determine if she could legally move her companion's car from the gas station, and because she was a witness to her companion's unlawful driving. CP 14-15, 26-27. The only possible applicable exception in light of these reasons would be community caretaking.

The community caretaking exception "allows for the limited invasion of constitutionally protected privacy rights when it is necessary for police officers to render aid or assistance or when making routine checks on health and safety." State v. Thompson, 151 Wn.2d 793, 802, 92 P.3d 228 (2004). An intrusion is justified under the community caretaking function only if (1) the police officer subjectively believed that someone likely needed assistance for health or safety concerns, (2) a reasonable person in the same situation would similarly believe that there was need for assistance, and (3) there was a reasonable basis to associate the need for assistance with a need to intrude into an otherwise private affair. *Id.*

There is no basis here to find the criteria for the community caretaking exception were met. Nothing Ravenscraft said at the suppression hearing provided a reason to think someone needed assistance for health or safety concerns, much less that seizing Morris would help serve that purpose. The community caretaking exception does not apply, nor does any other.

Evidence or statements derived directly or indirectly from an illegal

seizure must be suppressed unless sufficiently attenuated from the initial illegality to be purged of the original taint. Wong Sun v. United States, 371 U.S. 471, 484-88, 9 L. Ed. 2d 441, 83 S. Ct. 407 (1963); State v. Warner, 125 Wn.2d 876, 888, 889 P.2d 479 (1995); State v. Chapin, 75 Wn. App. 460, 463, 879 P.2d 300 (1994), review denied, 125 Wn.2d 1024 (1995). The courts apply a "but-for analysis." State v. Aranguren, 42 Wn. App. 452, 457, 711 P.2d 1096 (1985). But for the unlawful seizure, Ravenscraft would not have arrested and searched Morris for outstanding warrants. And but for the search of Morris, Ravenscraft would not have discovered the paraphernalia used to charge Morris with a crime. Therefore, the RALJ court order reversing the district court and suppressing the evidence should be affirmed.

D. CONCLUSION

For the reasons stated herein, this Court should affirm the RALJ court order.

DATED this 10th day of October 2012.

Respectfully submitted,

NIELSEN, BROMAN & KOCH

A large, stylized handwritten signature in black ink, appearing to be 'C. Gibson', written over a horizontal line.

CHRISTOPHER GIBSON  
WSBA No. 25079  
Office ID No. 91051

Attorneys for Respondent

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

---

STATE OF WASHINGTON	)	
	)	
Appellant,	)	
	)	
v.	)	COA NO. 68004-8-I
	)	
JUDITH MORRIS,	)	
	)	
Respondent.	)	

---

**DECLARATION OF SERVICE**

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

THAT ON THE 11<sup>TH</sup> DAY OF OCTOBER 2012, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF RESPONDENT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL AND/OR VIA EMAIL.

- [X] SNOHOMISH COUNTY PROSECUTOR'S OFFICE  
3000 ROCKEFELLER AVENUE  
EVERETT, WA 98201  
[Diane.Kremenich@co.snohomish.wa.us](mailto:Diane.Kremenich@co.snohomish.wa.us)
  
- [X] JUDITH MORRIS  
15905 SR 99, #48  
LYNNWOOD, WA 98036

**SIGNED** IN SEATTLE WASHINGTON, THIS 11<sup>TH</sup> DAY OF OCTOBER 2012.

x *Patrick Mayovsky*

2012 OCT 11 PM 4:17  
STATE OF WASHINGTON  
CLERK OF COURT  
T/K