

No. 68069-2-I

IN THE COURT OF APPEALS OF THE STATE OF  
WASHINGTON

DIVISION ONE

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STATE OF WASHINGTON,

Respondent,

v.

MARY ANDERSON,

Appellant.

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

The Honorable Michael C. Hayden

FILED  
MAY 11 2017  
CLERK OF SUPERIOR COURT  
KING COUNTY  
SEATTLE, WASHINGTON

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BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. In violation of the Fourth Amendment and article I, section 7, the trial court erred in refusing to suppress evidence acquired as a result of a warrantless seizure.

2. The trial court erred in entering Conclusions of Law pursuant to CrR 3.6 2d, e, f, g, and i. CP 124.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Under article I, section 7 and the Fourth Amendment, a police officer's request for identification from a vehicle passenger is a seizure and must be justified at its inception and reasonably related in scope to the circumstances that prompted the intrusion in the first place. The passenger of a vehicle is not legally obligated to carry identification. Were the repeated demands for a physical identification card by a police officer investigating Anderson's open container infraction unrelated in scope to the initial justification for the intrusion?

C. STATEMENT OF THE CASE

On March 1, 2010, Seattle police officer Ernest DeBella was working patrol by himself in South Seattle. 1RP

5.<sup>1</sup> He was parked at a minimart, where he saw a silver Nissan Maxima also in the parking lot. 1RP 6. He ran the car's license plates and received information that the registered owner had a suspended license in the third degree and that someone associated with the car had a warrant. 1RP 6-7. As the car drove away from the lot, he accordingly decided to initiate a traffic stop of the vehicle. 1RP 8.

DeBella approached the car from the passenger's side. There were two occupants: the registered owner, "Mr. Braxton,"<sup>2</sup> who was in the driver's seat, and appellant Mary Anderson, who was the passenger. 2RP 1-2. DeBella noticed two open 22-ounce containers of beer on the floorboards between Braxton and Anderson's feet. Id.

He asked Anderson for identification and she said she had none. 2RP 6. DeBella asked her if she had ever had a Washington state driver's license or identification card. 2RP

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<sup>1</sup> Only transcripts from the CrR 3.6 hearing are cited in this brief. That hearing took place on November 21, 2011, and was transcribed by two court reporters. The volume transcribed by Jackie Burley is referenced herein as "1RP" followed by page number. The volume transcribed by Dana Lee Butler is referenced herein as "2RP" followed by page number.

<sup>2</sup> Braxton was not identified during the proceedings by his first name.

7. She said she had not. Id. He then asked if she had ever had an identification card in any state. She said she had not. 2RP 8.

DeBella did not believe Anderson and told her so. 2RP 8, 18. In response, Anderson produced identification, and admitted she had a warrant for her arrest from Auburn Municipal Court and that she also had a knife on her person. 2RP 8-9.

DeBella decided to remove Anderson from the car. He instructed her to place her left hand on her head so he could grasp her right wrist and take her safely from the vehicle. 2RP 11, 18-19. At that point, he claimed, he saw her hand pass over the car's center console. After she moved her hand he saw what appeared to be crack cocaine there. 2RP 19-20.

Based on these events, Anderson was charged in King County Superior Court with one count of possession of cocaine. CP 1-5. Prior to trial, she moved to suppress evidence acquired as a result of her unlawful seizure by DeBella. CP 14-38. The court denied her motion and entered written findings of fact and conclusions of law in

support of its ruling. CP 122-25. A jury convicted Anderson of possession of cocaine as charged. CP 87. Anderson appeals. CP 129-38.

D. ARGUMENT

**DeBella's request for identification from Anderson, who was a vehicle passenger, constituted an unlawful seizure under the Fourth Amendment and article I, section 7, requiring suppression of all after-acquired evidence.**

1. Warrantless seizures are presumptively unreasonable

Under article I, section 7 and the Fourth Amendment to the United States Constitution, warrantless seizures are presumptively unreasonable. Terry v. Ohio, 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); State v. Doughty, 170 Wn.2d 57, 61, 239 P.3d 573 (2010). An investigative detention based on a reasonable articulable suspicion of criminal activity is one of the "jealously and carefully drawn" exceptions to the warrant requirement, and is constitutionally authorized only if (1) "the officer's action was justified at its inception," and (2) "it was reasonably related in scope to the circumstances which justified the

interference in the first place.” Terry, 392 U.S. at 20. A traffic stop is a seizure under article I, section 7 and the Fourth Amendment. State v. Ladson, 138 Wn.2d 343, 350, 979 P.2d 833 (1999).

For a Terry stop to be justified, an officer must have a well-founded suspicion, based upon specific, articulable facts, that criminal activity is afoot. Doughty, 170 Wn.2d at 62; State v. White, 97 Wn.2d 92, 105, 800 P.2d 1061 (1982). These facts, taken together with rational inferences from the facts, must reasonably warrant the intrusion into privacy rights. Terry, 392 U.S. at 21.

The court considers the totality of the circumstances presented to the investigating officer in determining a stop’s constitutionality. Doughty, 170 Wn.2d at 62. The State bears the burden of proving by clear and convincing evidence that a Terry stop was justified. State v. Garvin, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009). A trial court’s conclusions of law following a motion to suppress evidence are reviewed *de novo*. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

2. A request for identification from a vehicle passenger constitutes a seizure.

Under article I, section 7, a seizure occurs “when considering all the circumstances, an individual’s freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer’s use of force or display of authority.” State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 302 (2004). Although an automobile passenger is not seized when a police officer stops a vehicle in which the passenger is riding, “passengers are unconstitutionally detained when an officer requests identification ‘unless other 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)).

The Court in Rankin found “good reasons” to differentiate between pedestrians, who are not detained by a mere request for identification, and vehicle passengers. Id. at 696. “[A] passenger faced with undesirable questioning by the police does not have the realistic alternative of leaving the scene as does a pedestrian.” Id. Instead, a passenger

who seeks to terminate an encounter with the police must “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.” *Id.* Thus, “the *request* for passenger identification, without an articulable suspicion of criminal activity . . . results in an unconstitutional seizure under article I, section 7.” *State v. Brown*, 154 Wn.2d 787, 797, 117 P.3d 336 (2005) (emphasis in original).

3. The repeated demands for physical identification exceeded the scope of the circumstances justifying the intrusion.

The trial court correctly found that DeBella lacked the authority to demand that Anderson produce identification because a passenger in a vehicle is not legally required to carry identification. CP 124 (Conclusion of Law 2c). The trial court erroneously concluded, however, that because DeBella was legally entitled to investigate the open container infraction, his request for Anderson’s identification was not a seizure. In so ruling, the trial court inverted the analysis.

Rankin and Brown make clear that a request for identification from a vehicle passenger will always be a seizure. Rankin, 151 Wn.2d at 696; Brown, 154 Wn.2d at 797; see also State v. Allen, 138 Wn. App. 463, 469, 157 P.3d 893 (2007). The question is whether the seizure is constitutionally justified at its inception and reasonably related in scope to the circumstances which justified the seizure in the first place. Terry, 392 U.S. at 20.

Here, Anderson was initially unwilling to physically produce identification in response to DeBella's request. DeBella, for his part, believed he "had legal authority to demand [Braxton and Anderson's] identification or their identities." 2RP 7. For this reason, when Anderson failed to produce identification in response to DeBella's demand, instead of simply asking her name, he asked her if she had ever had a driver's license or identification card issued in Washington state. 2RP 7. When she said no, he asked her if she had ever had an identification card issued in any state. 2RP 8. When she again said no he began to aggressively

challenge her assertion, telling her that “it sounded very suspicious.” Id.

These repeated questions were tantamount to a demand that Anderson show an identification card, which she was not legally required to do. In response, Anderson finally produced identification, admitted the Auburn municipal court warrant, and said that she had a knife.

It appears that at no time did DeBella simply ask Anderson for her name. Instead, he pursued the issue of her identification card, which she was not legally obligated to carry. Thus, even assuming DeBella had probable cause to believe Anderson had committed an open container infraction, this Court should conclude that the scope of DeBella’s intrusion into Anderson’s privacy rights exceeded this limited authorization.

4. The remedy is suppression of all after-acquired evidence.

Whenever the rights protected by article I, section 7 are violated, the exclusionary remedy must follow. State v. Winterstein, 167 Wn.2d 620, 632, 220 P.3d 1226 (2009); White, 97 Wn.2d at 110. “The exclusionary rule mandates

the suppression of evidence gathered through unconstitutional means.” Garvin, 166 Wn.2d at.

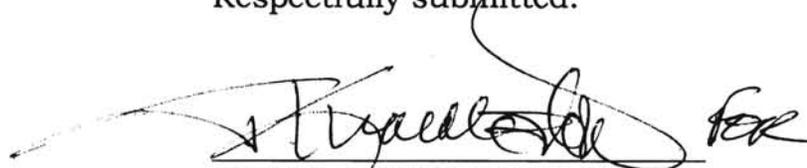
This Court should reverse the order denying Anderson’s CrR 3.6 motion, and remand with direction that all after-acquired evidence be suppressed.

E. CONCLUSION

This Court should conclude that Officer DeBella exceeded the limited scope of the authority conferred by the open container infraction when he repeatedly asked Anderson to produce physical identification, and violated her right to be free from unconstitutional searches or seizures. The after-acquired evidence should be suppressed.

DATED this 27<sup>th</sup> day of June, 2012.

Respectfully submitted:

A handwritten signature in black ink, appearing to read "Susan F. Wilk", with a large flourish extending to the left and a smaller flourish to the right.

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DIVISION ONE**

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	)	
Respondent,	)	
	)	NO. 68069-2-I
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	)	
MARY ANDERSON,	)	
	)	
Appellant.	)	

**DECLARATION OF DOCUMENT FILING AND SERVICE**

I, MARIA ARRANZA RILEY, STATE THAT ON THE 27<sup>TH</sup> DAY OF JUNE, 2012, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> KING COUNTY PROSECUTING ATTORNEY APPELLATE UNIT KING COUNTY COURTHOUSE 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____
<input checked="" type="checkbox"/> MARY ANDERSON 21640 30 <sup>TH</sup> AVE. APT F DES MOINES, WA 98198	(X) ( ) ( )	U.S. MAIL HAND DELIVERY _____

2012 JUN 27 PM 4:30  
 COURT OF APPEALS  
 STATE OF WASHINGTON

**SIGNED** IN SEATTLE, WASHINGTON THIS 27<sup>TH</sup> DAY OF JUNE, 2012.

X \_\_\_\_\_ 

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