

COURT OF APPEALS  
DIVISION II

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STATE OF WASHINGTON  
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THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION II

38580-5-II

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STATE OF WASHINGTON  
APPELLANT,

VS.

THOMAS S. COPLAND,  
RESPONDENT.

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APPELLANT'S REPLY BRIEF

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David J. Burke WSBA #16113 for Michael  
Michael N. Rothman N. Rothman  
Special Deputy Prosecutor  
WSBA# 33048

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FILED

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**A.**

**STATES RESPONSE TO RESPONDENT'S STATEMENT  
OF FACTS AND PRIOR PROCEEDINGS**

The State does not find any significant differences between the State's "Statement of the Case" and the Respondent's "Statement of Facts and Prior Proceedings."

**B.**

**ARGUMENT**

**The Fourth Amendment to the U.S. Constitution and Article I, Section 7 of the State Constitution do not require suppression of evidence under the facts of this case.**

The respondent correctly points out that the Fourth Amendment of the U.S. Constitution and Article I, Section 7, of the State Constitution apply to searches conducted by firefighters when acting under government authority. Respondent's Brief at 6-7. A fire department's seizure of

personal property implicates the Fourth Amendment because the fire department is acting under government authority and the seizure may invade the owner's legitimate property interest. *State v. Picard*, 90 Wn. App. 890, 895, 954 P.2d 336 (1998). Lawful exceptions to the Fourth Amendment's warrant requirement due to exigency include entry of fire officials into burning buildings and remaining a reasonable time thereafter to investigate the origin, cause and circumstances of the fire and the extent of loss. *State v. Picard*, 90 Wn. App. 890, 895, 954 P.2d 336 (1998).

All of the cases that the respondent relies on involve warrantless reentry into residences by firefighters to investigate crime. However, this case involves the search of a bag in a hospital of an individual in an examination room receiving medical treatment. This factual distinction is of great importance, because David Cartwright, the firefighter in

this instance, was acting as a paramedic and not investigating a crime.

The one case which is closest to the fact pattern of the current case is *State v. McWatters*, 63 Wn.App. 911 822 P.2d 787 (1992). In that case the defendant was injured in a motorcycle accident and a student paramedic with the Spokane Fire Department found heroin and \$11,000.00 in cash which were given to police. The Court held that the paramedic was not acting on behalf of police when he seized the heroin and the cash; thus, no government action occurred. The current case is factually similar to *McWatters* and dissimilar to *Picard*. A person's status as a firefighter does not automatically imply the presence of state action.

Defense counsel stipulated at the preliminary hearing that the seizure of the black bag by hospital staff personnel did not involve state action. RP (October 9, 2008) at 2. The

only reasonable inference is that the impetus of the search was to provide medical care to the defendant. While a person may believe that turning over evidence may be helpful to the police, such unilateral conduct does not convert that person into an agent of the police. *State v. Clark*, 48 Wn. App. 850, 857, 743 P.2d 822 (1987). Since Aberdeen firefighter David Cartwright functionally stood in the same position as the hospital staff, i.e., both the firefighter and the hospital staff were providing medical treatment, it logically follows that one cannot categorize this firefighter's behavior as state action.

In short, the respondent assumes that because Mr. Cartwright was a firefighter, he *ipso facto* must be involved in governmental action. But to make this assertion is to beg the relevant question -- what constitutes state action? To answer this question one needs to consider the function that

is being performed. Because the respondent's analysis elides this question, his argument is overly simplistic. Based on the reasoning of *McWatters*, the Court should consider what a firefighter is doing in order to determine whether State action is present.

Additionally, any putative search and seizure protections that are deemed to apply in situations involving firefighters are not applicable here. The discovery of the contraband in this case falls within the exigent circumstances exception to the warrant requirement. Firefighter David Cartwright, while acting as a paramedic, needed to examine the respondent's pockets in order to determine whether the respondent was in possession of any deleterious items/substances. This emergency action was necessary to protect himself from sharp objects and to provide quality medical care. Because the exigent exception to the search

warrant requirement applies here, the respondent's argument fails.

**C.**

### **CONCLUSION**

Based on the facts of this case, the Court should conclude that Aberdeen Firefighter David Cartwright was not acting under government authority when he handed the bag to law enforcement. The facile argument of the respondent should be rejected.

For the reasons listed above, the relief sought by the State of Washington should be granted. The orders of the Superior Court suppressing the evidence seized in this case and dismissing this case should be vacated. This matter should be remanded to the Superior Court for entry of amended Findings of Fact and Conclusions of Law and for setting a new trial date.

RESPECTFULLY SUBMITTED:

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N. Rothman*

MICHAEL N. ROTHMAN  
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VICKI FLEMETIS

SUBSCRIBED & SWORN to before me this 4<sup>th</sup> day of  
September, 2009.

  
NOTARY PUBLIC in and for the State  
of Washington, residing at:  
Raymond