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COURT OF APPEALS

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STATE OF WASHINGTON

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40160-6-II

IN THE COURT OF APPEALS, DIVISION TWO  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Respondent,

v.

AMY CRITCHFIELD

Appellant.

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Appeal from the Superior Court of Clallam County

09-1-00008-4

The Honorable George Wood

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BRIEF OF THE RESPONDENT

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**I. COUNTERSTATEMENT OF THE ISSUE:**

1. Did the trial court erroneously find that Officer Nutter's contact with / questioning of the defendant, a vehicle passenger, was lawful when (1) a second officer observed her making furtive movements and concealing drugs in the passenger seat, and (2) the defendant refused to comply with second officer's efforts to ensure safety at the scene?
2. Did the search of the vehicle violate the recent search and seizure analysis developed under *State v. Valdez*?

**II. STATEMENT OF THE CASE:**

Pursuant to RAP 10.3(b), the State accepts Ms. Critchfield's recitation of the factual history with the following clarifications.

While Officer Nutter arrested the vehicle's driver, Trooper Dufour observed Ms. Critchfield, the vehicle's passenger, acting in a furtive manner and attempting to conceal various pills into the cracks of the passenger seat. CP 5, 42. These movements raised concerns for the officers' safety. CP 6, 42. To ensure officer, Trooper Dufour asked Ms. Critchfield to step outside the vehicle. CP 6, 42. However, Ms. Critchfield ignored the officer. CP 6, 42.

Because Ms. Critchfield continued to make furtive movements, Trooper Dufour physically removed her from the vehicle. CP 6, 42. Trooper Dufour (1) threatened to arrest Ms. Critchfield for obstructing law

enforcement, and (2) asked / directed her to sit on the bumper of Officer Nutter's patrol vehicle. CP 6, 42. Officer Nutter contacted Ms. Critchfield and requested her identification. CP 6, 42.

At a suppression hearing, the State argued that Ms. Critchfield's furtive acts and refusal to comply with Trooper Dufour's requests provided Officer Nutter with the independent basis necessary to question the vehicle passenger. CP 7, 24-25, 31-32; RP 07/29/09 at 10-11. The trial court agreed. CP 7-8, 26.

The trial court stated it was not clear when Officer Nutter learned of Ms. Critchfield's furtive movements and her obstruction of law enforcement. CP 7, 26. However, the trial court recognized that Trooper Dufour directly advised Officer Nutter of Ms. Critchfield's disconcerting actions, and that one could infer that Trooper Dufour advised Officer Nutter at the scene of the stop. CP 7, 26. Nonetheless, the trial court concluded that under the "fellow officer" rule the "information known to one officer may be considered in deciding whether or not there was probable cause to arrest, even if it was not expressly communicated to the arresting officer." CP 26. Thus, the trial court ruled because Trooper Dufour had probable cause to arrest Ms. Critchfield for obstructing a law enforcement officer, Officer Nutter had an independent basis to contact Ms. Critchfield and request her identification. CP 7, CP 26.

### III. ARGUMENT:

#### A. THE COURT CORRECTLY APPLIED THE FELLOW OFFICER RULE.

Article I, section 7 of the state constitution prohibits law enforcement officers from requesting identification from a vehicle passenger for investigative purposes unless there is an independent reason that justifies the request. *State v. Brown*, 154 Wn.2d 787, 796, 117 P.3d 336 (2005) (citing *State v. Rankin*, 151 Wn.2d 689, 699, 92 P.3d 202 (2004)). An officer must have an articulable suspicion of criminal activity in order to request a vehicle passenger's identification. *Id.* at 797.

This Court reviews a trial court's finding of fact entered after a CrR 3.6 suppression hearing under the substantial evidence standard. *State v. Sommerville*, 111 Wn.2d 524, 533-34, 760 P.2d 932 (1998). Substantial evidence exists if there is a sufficient quantity of evidence in the record to persuade a fair-minded person of the truth of the declared premise. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). This Court reviews a trial court's conclusions of law de novo. *State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008).

Ms. Critchfield contends the evidence supporting her arrest for criminal "impersonation and/or on the basis of the discovered warrant" should have been suppressed because the "fellow officer" rule did not

apply. *See* Brief of Appellant at 11-12. Ms. Critchfield appears to argue that the “fellow officer” rule requires the record affirmatively show that Officer Nutter contacted her upon Trooper Dufour’s direction or communication. *See* Brief of Appellant at 11-12. This Court should hold that Washington does not support such a narrow reading/application of the rule.

In *State v. Maese*, 29 Wn. App. 642, 629 P.2d 1349 (1989), Washington adopted the “fellow officer” rule, which permits a trial court to determine whether probable cause to arrest exists based on the information that the police possessed as a whole. In *Maese*, several officers investigating arson obtained information implicating the defendant. 29 Wn. App. at 643-44. One of the officers instructed another officer, who was unaware of all of the information known to those involved with the investigation, to arrest the defendant. *Id.* at 644. The appellate court determined that the cumulative information possessed by all of the investigating officers could be considered when assessing whether the police had probable cause to arrest. *Id.* at 648. The *Maese* Court held:

[I]n those circumstances where police officers are acting together as a unit, cumulative knowledge of all the officers involved in the arrest may be considered in deciding whether there was probable cause to apprehend a particular suspect.

*Id.* at 647. Thus, a trial court need not limit its examination of the facts to those that were within the personal or subjective knowledge of the arresting officer. *Id.*

Ms. Critchfield emphasizes language in *Maesee* that referenced the State of Colorado’s description of the “fellow officer” rule. *See* Brief of Appellant at 11. The *Maesee* Court noted that in Colorado the rule provides:

[T]hat an arresting officer who does not personally possess sufficient information to constitute probable cause may still make a warrantless arrest if (1) he acts upon the direction or as a result of a communication from a fellow officer, and (2) the police as a whole, possess sufficient information to constitute probable cause.

29 Wn. App. at 646-47 (quoting *People v. Baca*, 600 P.2d 770, 771 (Colo. 1979)). However, the *Maesee* Court also noted that federal precedent applies the fellow officer rule more broadly:

[T]he collective knowledge of the arresting officers should be considered even though the substance of the information obtained by other officers had not been communicated to the arresting officer.

*Id.* at 647 (citing *United States v. Bernard*, 623 F.2d 551 (9th Cir. 1979)).

The holding in *Maesee* follows this broader application of the rule, *see id.* at 647, *supra*, and it does not require the officer who possess probable cause to expressly communicate with or direct the arresting officer. *State v. Wagner-Bennett*, 148 Wn. App. 538, 542, 200 P.3d 739 (2009).

RCW 9A.76.020 provides that a person is guilty of obstructing when that person willfully “hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties.” Here, Trooper Dufour was discharging his official duties when he tried to preserve security at the scene of the stop. CP 26, 42. Ms. Critchfield ignored Trooper Dufour’s commands to cease her furtive movements, which he feared might be reaching for a concealed weapon, and efforts to conceal certain drugs in the cracks of the passenger seat. CP 42. Thus, Trooper Dufour had probable cause to arrest Ms. Critchfield for obstruction, and he properly removed Ms. Critchfield from the vehicle requesting/directing that she sit on Officer Nutter’s patrol vehicle. CP 42. Ms. Critchfield does not contest or assign error to these facts or this analysis. RP (07/29/2009) at 9; *See* Brief of Appellant at 1. Thus, there was a reasonable suspicion that Ms. Critchfield had committed a criminal act.

The reasonable suspicion of criminal activity that Trooper Dufour observed is attributable to Office Nutter. Trooper Dufour and Officer Nutter acted a unit, cooperating to ensure security at the scene of the stop, which occurred at a public gas station at midday. CP 42. Because the officers acted as a unit, the trial court properly consider the cumulative knowledge between the two officers. *See Maesee*, 29 Wn. App. at 647.

The law does not require that Trooper Dufour first explain to Officer Nutter why he requested/directed Ms. Critchfield to sit on the patrol vehicle before Officer Nutter could ask for identification. *Wagner-Bennett*, 148 Wn. App. at 542. Thus, this Court should hold Officer Nutter’s request for identification from Ms. Critchfield was permissible under the “fellow officer” rule.

The trial court correctly recognized that the facts allow the inference that Trooper Dufour and Officer Nutter did communicate prior to the questioning of Ms. Critchfield. CP 7, 26. The report states Trooper Dufour explained the circumstances that led to his request/direction that Ms. Critchfield sit on Officer Nutter’s patrol vehicle. CP 42. However, the record is not clear as to the timing of said communication. CP 7, 26, 42. If this Court follows a narrow application of the “fellow officer” rule, which Ms. Critchfield proposes, the appropriate remedy is to remand to the trial court for a new CrR 3.6 hearing to determine when Officer Nutter learned the facts that caused Trooper Dufour to remove Ms. Critchfield from the vehicle and request/direct that she sit on Officer Nutter’s patrol vehicle. *See* RAP 9.11(a) (allowing the appellate court to direct the trial court to take additional evidence).

This Court should hold that the trial court correctly applied the “fellow officer” rule, finding that an independent basis existed to justify

Officer Nutter's request for Ms. Critchfield's identification. Thus, the trial court did not err when it denied Ms. Critchfield's motion to suppress the evidence against her that followed her contact with Officer Nutter. This Court should affirm Ms. Critchfield's conviction for criminal impersonation.

B. THE SEARCH OF THE VEHICLE WAS IMPROPER.

In the present case, the parties presented argument before the Washington Supreme Court issued its opinions in *State v. Patton* and *State v. Valdez*. The State concedes that the resulting vehicle search was unlawful in light of *State v. Valdez*.

The Washington Supreme Court's opinion in *State v. Valdez*, 167 Wn.2d 761, 224 P.3d 751 (2009), further restricted the search incident to arrest exception to the warrant requirement. After *Valdez*, a warrantless search of an automobile is permissible under the search incident to arrest exception when that search is necessary to (1) preserve officer safety, or (2) prevent the destruction or concealment of evidence of the crime of arrest. 167 Wn.2d at 777.

Here, the State relied on the evidence of the crime of arrest to justify the search of the detained vehicle. CP 32-33; RP (07/29/2009) at 16-18. The trial court ruled that the search of the vehicle was justified

under this exception reasoning that because Ms. Critchfield was arrested for criminal impersonation, evidence of her true identity would be discovered inside the vehicle. CP 8-9, 27.

However, in light of *Valdez*, the search cannot be justified under this rationale. Both Ms. Critchfield and the driver were secured in handcuffs in the back of a patrol car when the two officers searched the vehicle. CP 42-43. Thus, the search was not necessary to preserve officer safety or prevent the destruction/concealment of the evidence of Ms. Critchfield's criminal impersonation. While the trial court did not have the benefit of the *Valdez* opinion, the State concedes that the appropriate remedy is to reverse the trial court's order that denied suppression of the drug evidence discovered in the passenger compartment.

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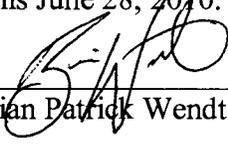
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**IV. CONCLUSION:**

For the foregoing reasons, the State requests that this Court (1) affirm the trial court's application of the "fellow officer" rule, which allowed the State to introduce Ms. Critchfield's false statements to Officer Nutter to support her conviction for criminal impersonation, and (2) reverse the trial court's order denying the suppression of drug evidence and supported her five convictions for unlawful drug possession.

Respectfully submitted this June 28, 2010.

  
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Brian Patrick Wendt, WSBA #40537

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STATE OF WASHINGTON

BY [Signature]  
DEPUTY

IN THE COURT OF APPEALS, DIVISION 2  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

NO. 40160-6-II

Respondent,

vs.

AFFIDAVIT OF SERVICE  
BY MAIL

AMY CRITCHFIELD,

Appellant.

The undersigned, being first duly sworn, deposes and says:

That the affiant is a citizen of the United States and over the age of eighteen years; that on June 28, 2010, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope containing a copy of the following document(s): Brief of Respondent, addressed as follows:

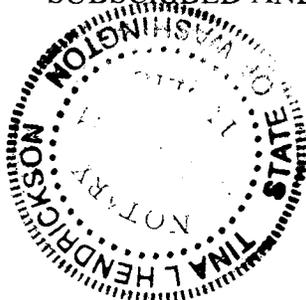
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Brian Patrick Wendt, WSBA 40537

SUBSCRIBED AND SWORN TO before me this 28 day of June, 2010.



[Signature]

(PRINTED NAME:) Tina Hendrickson  
NOTARY PUBLIC in and for the State of Washington  
Residing at Port Angeles, Washington  
My commission expires: 12-15-11