

COUNT OF JUDGES
10-1-2010

NO. 40903-8-II

10 OCT 15 4 10 PM '10

COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON
BY *[Signature]*
DEPUTY

STATE OF WASHINGTON
Appellant,

vs.

FAWN ALMA BRIDGES
Respondent

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF WASHINGTON
FOR JEFFERSON COUNTY
Cause Number: 10-1-00005-0

OPENING BRIEF OF APPELLANT

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Date: October 14, 2010

 ORIGINAL

TABLE OF CONTENTS

	<u>Page</u>
TABLE OF AUTHORITIES.....	iii
I. Assignments of Error.....	iv
II. Issues Pertaining to Assignments of Error.....	iv
III. Statement of the Case.....	1
IV. Argument.	6
a. Trooper Sanders had an independent cause to ask Ms. Bridges for identification	6
V. Conclusion.....	9

TABLE OF AUTHORITIES

Page

CASES

Washington State

State v. Larson, 93 Wn.2d 638, 642, 611 P.2d 771 (1980).....7
State v. N.M.K., 129 Wn.App. 155, 160, 118 P.3d 368 (2005).....8
State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004)....5, 6, 7

Other Jurisdictions

United States v. Mendenhall, 446 U.S. 544, 553, 100 S.Ct. 1870,
64 L.Ed.2d 497 (1980).....7

Statutes

RCW 9A.04.080(2).....4,6

ASSIGNMENTS OF ERROR

1. The trial court erred in concluding Trooper Sanders did not have an independent cause to ask Ms. Bridges for identification.

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

The State showed that Trooper Sanders had an independent cause to ask Ms. Bridges for identification. Did the trial court erroneously suppress the evidence against her and dismiss the charges? (Assignment of error # 1).

STATEMENT OF THE CASE

PROCEDURAL HISTORY

Ms. Bridges appeared out of custody at her Initial Appearance on February 5, 2010. Her Arraignment was set for February 19, 2010. She failed to appear for her Arraignment and a warrant was issued.

On February 22, 2010, Ms. Bridges was charged by Information with Count I – Possession with Intent to Sell or Deliver a Legend Drug and Count II – Bail Jumping. Ms Bridges moved to

Suppress Evidence on April 2, 2010. A hearing was held on May 14, 2010.

The court entered suppressed the evidence found on Ms. Bridges and dismissed the charges. RP 74.

This appeal timely followed.

FACTS

On December 10, 2009, at approximately 1:20 p.m. Washington State Patrol Trooper Russell Lee Sanders stopped a vehicle on Highway 101 near mile post 278. The vehicle was stopped because the front fender was sticking out and was dangerous to other vehicles or pedestrians in violation of RCW 46.37.517. RP 6-7. At the time the stop commenced, there were three people in the vehicle and Trooper Sanders was alone. The passengers were later identified as Ms. Bridges, sitting in the rear passenger's side seat, and Ms. Kathleen Robertson-Baker, sitting in the front passenger's seat. RP 7-8.

Trooper Sanders contacted the driver regarding the stop. The driver identified himself as Zachary Oravetz. RP 7. Mr. Oravetz informed Trooper Sanders that his driver's license was

suspended. RP 8. While talking to Mr. Oravetz, Trooper Sanders recognized, based on his training and experience, a moderate odor of burnt marijuana coming from the vehicle. RP 8. Trooper Sanders performed a driver's check of Mr. Oravetz's license and was informed that his driver's license was suspended in the third degree (DWLS 3). RP 9.

Due to the odor of marijuana Mr. Oravetz was asked to perform field sobriety tests. RP 9. Mr. Oravetz took the tests and passed them. Mr. Oravetz was then taken into custody for DWLS 3 and read his constitutional rights. RP 9.

After placing Mr. Oravetz in the rear of his patrol car, Trooper Sanders read Mr. Oravetz the Miranda warnings. Mr. Oravetz waived his right to remain silent and stated that there was a marijuana pipe in the center console of the car and that is "probably" what Trooper Sanders smelled. RP 11. Mr. Oravetz did not say that the pipe was his but he did say that there was no marijuana in the vehicle. RP 11.

Trooper Sanders returned to the vehicle to investigate the odor of marijuana. In the vehicle Trooper Sanders found a marijuana pipe which was in the center console where either Mr.

Oravetz or Mrs. Roberston-Baker could have reached it, and he also found a large blue men's jacket that was lying on the seat next to Ms. Bridges. Inside the jacket Trooper Sanders discovered a can that had a secret compartment and in the secret compartment he found methamphetamine, heroin, and prescription pills that were packaged for individual sale. RP 13-16. Trooper Sanders testified that he was not watching the passengers while he was arresting Mr. Oravetz. RP 14.

Trooper Sanders discussed the disposition of the vehicle with Mr. Oravetz due to his arrest. Mr. Oravetz asked to have one of the passengers drive the vehicle away rather than have it impounded. RP 17. Trooper Sanders testified that he asked the passengers for their names and dates of birth and ran a driver's check on them to verify they could legally drive the vehicle. RP 17-18. The driver's checks showed Ms. Robertson-Baker had a felony warrant outstanding in Jefferson County and that Ms. Bridges had a felony warrant outstanding from Clallam County. RP 18.

Trooper Sanders waited for assistance to arrive before arresting the passengers since he did not have room for them in his patrol car. Trooper Grant Clark arrived and took Ms. Bridges into

custody for her felony warrant. RP 20. A search incident to arrest discovered \$125 wrapped around two plastic bags; one filled with green pills and the other containing yellow pills. Trooper Clark read Ms. Bridges her Miranda warnings and asked her about the pills. Ms. Bridges stated the pills were Xanax and Valium, and the prescriptions were in her purse. Trooper Clark looked in the purse but could only find prescriptions for Methadone and Diazepam. Ms. Bridges was charged with Possession with Intent to Sell or Deliver a Legend Drug.

Ms. Bridges moved to suppress evidence. At the hearing on May 14, 2010, the court granted Ms. Bridges motion, suppressed evidence found on Ms. Bridges, and dismissed the charges against her.

The trial court found that under *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004), "when you ask a passenger for ID that person is seized. And that's what happened here and that was done for the purposes of the criminal investigation here, and they were seized and you can't do that." RP 74. The court stated, "...when Ms Robertson[-Baker] and Ms. Bridges were seized, i.e. asked, their identification was taken, that there wasn't articulable ,

individualized suspicion to believe they were engaged in criminal activity. So I've got to grant the motion to suppress." RP 74.

ARGUMENT

a. Trooper Sanders had an independent cause to ask Ms. Bridges for identification.

The trial court relied on *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004), contending that the officer's request for identification violated article I, section 7 of the Washington Constitution that "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." *St. Const. art. I, § 7*.

In *Rankin*, passengers were stopped, searched, and found with drugs. There, the officer requested and retained identification or driver's licenses from the passengers. The court pointed out that the police officers had no independent basis for requesting identification from the passengers in each case and that requesting and holding the passengers' identification constituted a seizure. *Rankin*, 151 Wn.2d at 699, 92 P.3d 202. The evidence obtained

post-seizure was ruled inadmissible. *Rankin*, 151 Wn.2d at 699, 92 P.3d 202.

Rankin is distinguishable. Here, Mr. Oravetz requested that his passengers be permitted to drive his car away. Trooper Sanders had a duty to verify the passengers held valid driver's licenses. Also, Trooper Sanders did not request and hold their identification, he only asked their names and birthdates. Unlike the situation in *Rankin*, Trooper Sanders had an independent cause to ask for their names and he did not seize them.

However, "not every encounter between a police officer and a citizen is an intrusion requiring an objective justification." *Rankin*, 151 Wn.2d at 695, 92 P.3d 202 (citing *United States v. Mendenhall*, 446 U.S. 544, 553, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)). Under article I, section 7, passengers are unconstitutionally detained when an officer requests identification "unless other circumstances give the police independent cause to question [the] passengers." *Rankin*, 151 Wn.2d at 695, 92 P.3d 202 (citing *State v. Larson*, 93 Wn.2d 638, 642, 611 P.2d 771 (1980)).

A passenger's state constitutional rights are not violated when the police have an independent cause to question him and

ask him to identify himself. *State v. N.M.K.*, 129 Wn.App. 155, 160, 118 P.3d 368 (2005).

Here, the circumstances gave Trooper Sanders independent cause to ask Ms. Robertson-Baker and Ms. Bridges to identify themselves. Mr. Oravetz asked that the passengers be allowed to drive his vehicle away from the scene. RP 17. Trooper Sanders testified that he asked the passengers for their names and dates of birth and in order to run a driver's check on them to verify they could legally drive the vehicle. RP 17-18.

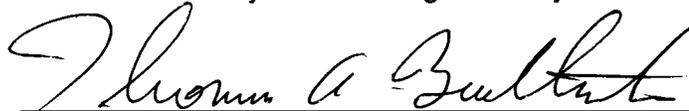
The trial court erred when it found that defendant passengers were seized when the police asked them for their identities. Thus, suppression of the evidence was not required on this ground and dismissal of the charges was inappropriate.

CONCLUSION

This court should reverse the Superior Court's order suppressing evidence and dismissing the charges against Ms. Bridges since Trooper Sanders had an independent cause to ask Ms. Bridges for her name and birthdate.

Respectfully submitted this 14th day of October, 2010

JUELIE DALZELL,
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By: THOMAS A. BROTHERTON , WSBA #37624
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2
3 IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
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5 STATE OF WASHINGTON,

6 Respondent,

7 vs.

8 FAWN ALMA BRIDGES,

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) Case No.: 40903-8-II

) Superior Court No.: 10-1-00005-0

) DECLARATION OF MAILING

STATE OF WASHINGTON
BY
10/29/2010
10:01:51 AM
PORT TOWNSEND

10
11 Janice N. Chadbourne declares:

12 That at all times mentioned herein I was over 18 years of age and a citizen of the United
13 States; that on the 22nd day of October, 2010, I mailed a copy of the State's BRIEF OF

14 RESPONDENT, to the following:

15 David C. Ponzoha, Clerk
16 Court of Appeals, Division II
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15 James L. Reese, III
16 Attorney at Law
612 Sidney Avenue
Port Orchard, WA 98366

17
18 Fawn Alma Bridges
203 N. Matriotti
19 Sequim, WA 98382

20 I declare under penalty of perjury under the laws of the State of Washington that the
21 foregoing declaration is true and correct.

22 Dated this 22nd day of October, 2010 at Port Townsend, Washington.

23
24 

25 Janice N. Chadbourne
26 Legal Assistant

27
28 DECLARATION OF MAILING
Page 1

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