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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON
BY
DEPUTY

NO. 40903-8-II

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Appellant,

vs.

FAWN ALMA BRIDGES,

Respondent.

RESPONDENT'S BRIEF

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I. COUNTER- STATEMENT OF THE ISSUES

Whether an arresting officer of a driver for DWLS Third Degree may demand passengers names and dates of birth because the arrested driver, who was placed in the back seat of a patrol car, “said they could drive the vehicle away”? The officer was also conducting an on-going investigation of the passengers for possession of drugs found as a result of an illegal search of the interior compartment of the driver’s vehicle?

II. STATEMENT OF THE CASE

At the conclusion of a CrR 3.6 suppression hearing the trial court rendered an oral ruling granting the defendant’s motion to suppress the evidence. RP 74. The respondent accepts the appellant’s chronological statement of the case with the following exceptions: The trial court entered 18 findings of fact and 11 conclusions of law to which no error is assigned. (See appendix.)

The appellant’s statement of facts state that Trooper Sanders found “...a large blue men’s jacket that was lying on the seat next to Ms. Bridges.” App. Br. 4. There is no citation to the record to support this inference. The trial court specifically found: “Then Trooper Sanders saw a large blue jacket in the back driver’s seat. Trooper Sanders reported and testified that the jacket

appeared to belong to a male.” FF 13, CP 27. There is no reference to the jacket’s specific location in relation to Ms. Bridges in the record.

Also, the appellant has included in the statement of the case the following: “A search incident to arrest discovered \$125 wrapped around two plastic bags; one filled with green pills and the other containing yellow pills.” App. Br. 5. Again, there is no reference to the report of proceedings. Trooper Sanders testified over objection that during a search of Ms. Bridges’ purse by Trooper Clark - he Trooper Sanders- saw: “...pills, baggies, and money.” RP 21. Those were the only details testified to.

The following statement of the case does not appear in the CrR 3.6 hearing record on appeal. There is no reference to the record in the appellant’s brief and Trooper Clark did not testify to the following:

“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.” App. Br. 5.

It should be noted that exhibits 1, 2 and 3 were admitted at the CrR 3.6 hearing, but were not included in the appellate record

designated by the appellant. RP 53-4.

III. ARGUMENT

A. THE TRIAL COURT DID NOT ERR IN CONCLUDING THAT THE ARRESTING OFFICER DID NOT HAVE A WELL FOUNDED SUSPICION THAT THE PASSENGERS WERE ENGAGED IN CRIMINAL ACTIVITY.

The state argues that the trial court erred in finding that the passengers were seized when the police asked them for their identities. App.Br. 8. This claim is without merit because all of the trial court's unchallenged findings of fact support the court's multiple conclusions of law.

The appellant has not assigned error to any of the trial court's 18 findings of fact. CP 25-30. Therefore, according to the well established rules of appellate procedure, all of the trial court's findings of fact become verities and are binding on appeal. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994); *State v. Gaines*, 154 Wn.2d 711, 716, 116 P.3d 993 (2005).

For instance, the trial court found that Trooper Sanders searched the interior of the vehicle. He discovered a jacket belonging to a male. A search of the jacket revealed a modified soda can. Inside the soda can the Trooper found what he believed to be heroin and methamphetamine. FF 13; CP 27.

No error is assigned to the next finding which states: “At that point, in the Trooper’s mind, neither Ms. Bridges nor Ms. Robertson-Baker were free to leave.” FF 14; CP 27. According to *United States v. Hensley*, 469 U.S. 221, 226, 105 S.Ct. 675, 83 L.Ed.2d 604 (1985) stopping a car and detaining its occupants constitutes a seizure. See also, *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed. 2d 660 (1979) stopping an automobile and detaining its occupants also constitutes a seizure. This is because at a traffic stop an officer exerts and displays a significant amount of authority.

Consequently, the passengers were seized before they were asked to identify themselves. They were seized at the time of the search of the interior compartment of the vehicle. FF 13; CP 27. Comapre unchallenged findings of fact: “It was an hour from the time the car was stopped until the time Trooper Sanders took the identification of the passengers.” FF 16, CP 28.

According to *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004):

“However, a seizure occurs under article 1, section 7,¹

¹ Const. Art. 1, sec. 7 guarantees: “No person shall be disturbed in his private affairs, or his home invaded, without

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 the officer's use of force or display of authority. *O'Neill*, 148 Wn.2d at 574. This determination is made by objectively looking at the actions of the law enforcement officer. *State v. Young*, 135 Wn.2d 498, 501, 957 P.2d 681 (1998). Moreover, it is elementary that all investigatory detentions constitute a seizure. *State v. Armenta*, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997)."

(citing *State v. O'Neill*, 148 Wn.2d 564, 62 P.3d 489 (2003)).

In sum, the appellant has conceded for purposes of this appeal that there is substantial evidence to persuade a fair-minded, rational person of the truth of all of the trial court's findings. *State v. McKague*, 143 Wn.App. 531, 542, 178 P.3d 1035 (2008) (citing *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (quoting *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999))).

Where findings of fact and conclusions of law are supported by substantial but disputed evidence an appellate court is not to disturb the trial court's ruling. *State v. Smith*, 84 Wn.2d 498, 505, 527 P.2d 674 (1974). The appellate court reviews de novo the trial court's challenged conclusions of law.² *McKague*, 143 Wn.

authority of law."

² Not only has the appellant not challenged any of the trial court's findings of fact but the appellant has not assigned error to

App. at 542 (citing *State v. Acrey*, 148 Wn.2d 738, 745, 64 P.3d 594 (2003)).

Here, the appellant attempts to circumvent the plethora of law that has developed that safe-guards and protects automobile passengers from unwanted intrusion by law enforcement officers. Officers who lack any basis to suspect a particular individual of criminal activity, other than being in the company of a person who-like the driver Mr. Oravetz- has been arrested for driving while his driver's license is suspended and is then placed in custody.

Rankin was cited in *State v. Grande*, 164 Wn.2d. 135, 187 P.3d 248 (2008) where that court observed:

“In *Rankin*, we held that the freedom from disturbance in private affairs afforded to vehicle passengers in Washington under article 1, section 7, prohibits law enforcement officers from effecting a seizure against that passenger unless the officer has an articulable suspicion that the person is engaged in criminal activity.”

State v. Grande, at 141 (citing *State v. Rankin*, at 699.) By

any one of the trial court's 11 conclusions of law other than arguing that there were independent grounds for the officer's actions regardless of the court's order granting the respondent's motion to suppress the evidence.

Any mixed finding of fact and conclusion of law should also become verities on appeal.

contrast the appellant argues in part that Trooper Sanders was justified because he was merely obtaining the identification of the passengers so that he could accommodate Mr. by directing his passengers, who had not been consulted, to drive off in his vehicle rather than have the vehicle impounded. App. Br. at 7.

It is noteworthy that Trooper Sanders did not ask to see valid driver's licenses from Ms. Bridges or her mother, who was actually in the front seat behind the steering wheel at one point. Instead the trooper asked for their names and dates of birth.³ RP 18.

In *Rankin*, like the facts in the case at bench, the defendant was a passenger in a vehicle stopped for a noncriminal traffic offense. Here, Mr. Oravetz was pulled over because his front fender was sticking out past the body of the vehicle and "it posed a hazard to pedestrians...." RP 7.

Like the facts in the case at bench, Rankin was asked for

³ Trooper Sanders testified as follows: Q: "...How are you going to confirm if they have a driver's license? A: I have to run their name and date of birth if they don't have..." [end of response] RP 18.

The trial court found: "Trooper Sanders asked for identification of Ms. Robertson-Baker and Ms. Bridges. Ms. Robertson-Baker produced her Costco card and Ms. Bridges provided her driver's license." FF 15; CP 28.

his identification. A records check revealed an outstanding arrest warrant. Rankin was placed under arrest, searched and found to possess methamphetamine. Here, Ms. Bridges, who was already not free to leave when Trooper Sanders searched the interior of the vehicle and discovered heroin and methamphetamine in a male's jacket, was asked to produce her identification. A records check revealed that there was an outstanding warrant for her arrest. FF 17; CP 28. Ms. Bridges- like Rankin- was then formally arrested. She was searched and drugs were found in her purse. She was then charged with Possession with Intent to Sell or Deliver a Legend Drug, methadone. CP 1-2.

The holding of *Rankin* was violated because Ms. Bridges was seized for the third time when she was asked to produce her identification. *Rankin* held that article 1, section 7 is violated when a law enforcement officer requests identification from a passenger for investigative purposes unless there is an independent reason to justify the request. *Id.* at 692, 699.⁴

⁴ The appellant argues that the request was not for identification but only for the passengers names and birthdates. App. Br. 7. This was justified, according to the appellant's argument, because Mr. Oravetz requested that Trooper Sanders allow "his passengers be permitted to drive his car away." *id.* Based on this, the appellant has concluded: "Trooper Sanders had a

The trial court concluded: “Ms. Robertson Baker and Ms. Bridges were unlawfully seized when Trooper Sanders requested their identification, as there was no individualized articulable suspicion that they were engaged in criminal activity, the only evidence being that Mr. Oravetz was engaged in criminal activity.” CL 7, CP 30.

The record contained substantial evidence that supported the trial court’s finding that Trooper Sanders did not have a well-founded suspicion that either passenger- Ms. Bridges or her mother- were engaged in criminal activity. Sanders was unaware of any criminal activity until after he obtained Ms. Bridge’s identification and then checked her police records. See *State v.*

Larson, 93 Wn.2d 638, 645, 611 P.2d 771 (1980):

“...that the police officer who detained the petitioner for the purpose of requiring her to identify herself did so in violation of the fourth amendment to the United States Constitution⁵ and Const. Art. 1, [sec] 7, because

duty to verify the passengers held valid driver’s licenses.” *id.*

However, there is an absence of “a compelling justification for stripping this right [art. I, sec. 7] from the people.” *Rankin*, at 699.

⁵ “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause....”

none of the circumstances preceding the officer's detention of petitioner justified a reasonable suspicion that she was involved in criminal conduct.”

The trial court did not err in suppressing the evidence and dismissing the case.

B. THE TRIAL COURT RELIED ON CASES OTHER THAN *STATE V. RANKIN* TO SUPPORT ITS DECISION GRANTING THE MOTION TO SUPPRESS THE EVIDENCE.

Given the uncontested evidence regarding the stop and seizure, the appellant has failed to show how its challenge could have affected the trial court's decision to suppress the evidence. Since the appellant has not challenged the admissibility of any of the testimony or any of the exhibits, the overwhelming evidence clearly supports the trial court's decision-supported by legal authority - to grant the respondent's motion.

The centerpiece of the appellant's argument is that: “The trial court relied on *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d (2004).” App. Br. 6. Henceforth two of the three pages of the appellants' sole argument consists of discussion of *Rankin*. App. Br. 6-7. An examination of the conclusions of law show that the trial court relied on and cited in order the following cases: *State v. Valdez*, 167 Wn.2d 761, 224 P.3d 751 (2009); *State v. Patton*, 167

Wn.2d 379, 219 P.3d 651 (2009); *State v. Grande*, 164 Wn.2d 135, 187 P.3d 248 (2008); *State v. George*, 146 Wn. App. 906, 193 P.3d 693 (2008); *State v. Larson*, 21 Wn.App. 506, 587 P.2d 171 (1978); and *State v. Rankin*, 151 Wn.2d 689, 92 P.3d 202 (2004).

In *State v. Grande*, 164 Wn.2d 135, *supra*, an odor of marijuana was detected coming from the stopped vehicle. Both the driver and the passenger Grande were arrested based on the odor of marijuana. A search of Grande disclosed a marijuana pipe containing a small amount of marijuana.

The Supreme Court reversed a superior court's order that reversed an order of suppression entered by a lower court. The Supreme Court reinstated the suppression order. The High Court held in cases of this nature the arresting officer must have individualized probable cause. That requirement is based on an individual's right to privacy. This right to privacy is protected by both the United States Constitution and by the Washington Constitution. This right protects individuals, such as the defendant Ms. Bridges, where the police lack "...an objective basis to suspect that person of criminal activity." *id.* at 140.

The trial court concluded in the case at bench: "There was no probable cause for arrest of Ms. Robertson-Baker or Ms.

Bridges.” CL 9, CP 30. The appellant does not address this issue in its brief.

The Supreme Court held as follows in *Grande*:

“We hold that the smell of marijuana in the general area where an individual is located is insufficient, without more, to support probable cause for arrest. Where no other evidence exists linking the passenger to any criminal activity, an arrest of the passenger on the suspicion of possession of controlled substances, and any subsequent searches, is invalid and an unconstitutional invasion of that individual’s right to privacy...” *id.* at 146-7.

Here, the trial court found in part:

“When Mr. Oravetz was placed in custody, Trooper Sanders specifically told him he was not under arrest for possession of marijuana, but was under arrest for driving while license was suspended.” FF 7; CP 26.

Then, in violation of *Arizona v. Gant*, ___ U.S. ___, 129 S.Ct.

1710, 173 L.Ed.2d 485 (2009): “Trooper Sanders went and found a marijuana pipe in the console of the vehicle as indicated by Mr.

Oravetz.” FF 9, CP 27. Next, and again in violation of *Gant*:

“Trooper Sanders proceeded to search the vehicle.” FF 11;

CP 27. The next occurrence was:

“Then Trooper Sanders saw a blue jacket in the back driver’s seat. Trooper Sanders reported and testified that the jacket appeared to belong to a male. Trooper Sanders proceeded to search the jacket and within the jacket found a modified soda can. Trooper Sanders testified that in his

training and experience these cans are modified to hide drugs. Trooper Sanders opened the modified can and found what he believed to be heroin and methamphetamine.” FF 13; CP 27.

The trial court concluded: “This Court makes no ruling on the issue of whether Trooper Sanders could search the console of the vehicle or the jacket.” CL 8; CP 30. However, based on the uncontested findings of fact and based on *Grande* alone, the trial court’s order of suppression must be affirmed. The trial court can also be affirmed based on obvious violation of the holding in *Arizona v. Gant*.

The trial court did not state in its oral ruling that it was only relying on *Rankin* exclusively. Instead, the trial court reasoned and stated in part as indicated in the excerpt located in the appendix. As indicated, this reasoning contradicts the appellant’s main argument that “The Trial court relied on *State v. Rankin...*” App. Br. 6.

The court’s factual findings and the above cited cases support the trial court’s legal conclusion that the investigating officer did not have a well-founded suspicion that the passengers were engaged in any criminal conduct or criminal activity to warrant demanding their respective identifications. It was reasoned

and stated in *Grande*, “Unless there is specific evidence pinpointing the crime on a person, that person has a right to their own privacy and constitutional protection against police searches and seizures.” *id.* at 145-6.

Valdez and Patton

Two cases cited by the trial court in addition to *Grande* were *State v. Valdez*, 167 Wn.2d 761, 224 P.3d 751 (2009)⁶ and *State v. Patton*, 167 Wn.2d 379, 219 P.3d 651 (2009). Each of those cases was cited in the court’s conclusions of law. Each of these cases stand for the proposition that once the driver of a stopped vehicle can no longer reach into the passenger compartment the police may not search the interior of an automobile for evidence of crime or for weapons to insure officer safety as a search incident to arrest exception to the warrant requirement.

In *Valdez* the arresting officer stopped a vehicle with only

⁶ According to *State v. Grande*: “An equivalent quantum of evidence is required whether the inquiry is one of probable cause to arrest or probable cause to search, although each requires some-what different facts and circumstances.” 164 Wn.2d at 142. Here, the trial court concluded that there was no probable cause to arrest. CL 9; CP 30. That conclusion is not challenged by an assignment of error nor by argument.

one headlight. A records check showed that Valdez had an outstanding arrest warrant. Although, as here, it was not disclosed what the nature of the warrant was. Valdez was handcuffed by another officer who arrived on the scene and placed in the back seat of a patrol car. The passenger was asked to exit the minivan. The interior was then searched; where two pounds of methamphetamine was discovered behind a molded cup holder. The passenger was then arrested. And each occupant later confessed.

In a unanimous opinion, the Supreme Court affirmed the Court of Appeals' reversal of the judgments of both the driver and his passenger. The Supreme Court held that the warrantless search of the motor vehicle could not be justified as a search made incident to the driver's arrest under either state or the federal constitutions. *id.* at 764. See, *Arizona v. Gant*, ___ U.S. ___, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009).

Applying that holding to the case at bench, Trooper Sanders' search of the console of the vehicle where a marijuana pipe was found and the search of the backseat, jacket and modified soda can was unconstitutional. Trooper Sanders and Trooper Clarke's subsequent investigation of the respondent, demand for

identification and search of her purse incident to arrest must also be suppressed as fruits of the poisonous tree doctrine. *Won Sun v. United States*, 371 U.S. 471, 485, 83 S.Ct. 407, 9 L.Ed. 441 (1963) (“The exclusionary rule has traditionally barred from trial physical, tangible materials obtained either during or as a direct result of an unlawful invasion.”). *Valdez*, 167 Wn.2d at 778.

Of significance to the case at bench is the admonishment that appears in *Valdez*. Justice Sanders wrote for a unanimous court: “The search incident to arrest exception, born of the common law, arises from the necessity to provide for officer safety and the preservation of evidence of the crime of arrest, and the application and scope of that exception must be so grounded and so limited.” *id.* at 776. Compare the trial court’s formal finding of fact: “When Mr. Oravetz was placed in custody, Trooper Sanders specifically told him that he was not under arrest for possession of marijuana, but was under arrest for driving while license was suspended.” FF 7; CP 26. There was no legal justification for Trooper Sanders to then search the interior of Oravetz’ vehicle.

Another case specifically cited by the trial court was *State v. Patton, supra*. CL 1, CP 28. There, an officer was looking for Patton to serve an arrest warrant. At Patton’s address he saw the

dome light on and saw someone “rummaging around” inside a vehicle. The officer pulled his patrol car in behind the defendant’s vehicle, activated his lights, announced that he was under arrest and advised him to put his hands behind his back.

The defendant was standing in his driveway next to his parked car. He had his head in the window. When he was advised he was under arrest he fled into his residence. He was subsequently apprehended and the police searched his car. Inside the vehicle they found two baggies of methamphetamine and cash.

The Supreme Court found the search illegal because it was not incident to the arrest and because there was no connection between his arrest on a warrant for failure to appear in court and the search.

The court found: “No connection existed between Patton, the reason for his arrest warrant and the vehicle.” *id* at 395. That reasoning applies to the case at bench. There was no connection between Oravetz, the reason for his arrest for driving with a suspended license and the search of his vehicle. The court also noted in conjunction with *Gant* that “At the time of the search, Patton was secured in the patrol car, some distance from his vehicle.” *id*.

The Patton court emphasized that the narrowing trend in appellate courts in Washington and as observed in *Gant*:

“Recognizing that the decision in *Belton* itself purports to follow *Chimel*, the court in *Gant* issued a necessary course correction to assure that a search incident to the arrest of a recent vehicle occupant under the fourth amendment takes place “only when the arrestee is unsecured and within reaching distance of the passenger compartment at the time of the search. *Gant*, 129 S.Ct. at 1719.”

Article 1, section 7 requires no less...Today, we hold that the search of a vehicle incident to the arrest of a recent occupant is unlawful absent a reasonable basis to believe that the arrestee poses a safety risk or that the vehicle contains evidence of the crime of arrest that could be concealed or destroyed, and that these concerns exist at the time of the search.”

State v. Patton, 167 Wn.2d at 394-5 (citing *Arizona v. Gant*, 129 S.Ct 1710, 1718-19 and *Chimel v. California*, 395 U.S. 742, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969); *New York v. Belton*, 453 U.S. 454, 101 S.Ct. 2860, 69 L.Ed.2d 7681 (1981)).

What *Patton* and *Valdez* illustrate is that citizens can not be seized while the police conduct an unconstitutional search. Then as part of that investigation they are asked to identify themselves. They are then arrested based on their identification, personally searched and charged with a crime based on what they possessed.

State v. N.M.K.

Another case that should be discussed is *State v. N.M.K.*, 129 Wn.App. 155, 118 P.3d 368 (2005). App. Br. 8. In *N.M.K.* the appellate court found that there was a reasonable, articulable suspicion to ask N.M.K.- who was the actual driver of the errant vehicle but sitting in the passenger seat - to identify himself. N.M.K. was not seized nor placed in custody.

The court in *N.M.K.* did not go far enough with the applicable legal standard when it stated: “Officer Osterdahl had a reasonable, articulable suspicion to ask N.M.K. to identify himself.” *id.* at 160. Here, the trial court in the case at bench concluded that “...there was no individualized articulable suspicion that they were engaged in criminal activity....” CL 7; CP 30.

According to the fourth amendment an officer must have a reasonable, articulable suspicion that the suspect is engaged in criminal activity in order to detain a suspect for questioning when the officer does not have probable cause to believe that the suspect is involved in criminal activity. (*Brown v. Texas*, 443 U.S.47, 51, 61 L.Ed.2d 357, 99 S.Ct. 2637 (1979) (“However, we have required officers to have a reasonable suspicion, based on objective facts, that the individual is involved in criminal activity.” *Delaware v.*

Prouse, supra, at 663....”)(other citations omitted.)

In *State v. Larson, supra* at 9-10, the police observed a vehicle parked illegally near a closed city park at 3:00 a.m. in a high crime area. They approached the vehicle and asked the occupants including the passenger for identification. As the passenger opened her purse an officer seized a bag of marijuana. The passenger was charged with possession of marijuana, possession of a controlled substance and with forgery. The Supreme Court reversed the Court of Appeals who had reversed the trial court’s order of suppression.

Larson held as follows:

“Accordingly, we believe that the police officer who detained the petitioner for the purpose of requiring her to identify herself did so in violation of the fourth amendment to the United States Constitution and Const. art. 1, sec. 7, because none of the circumstances preceding the officer’s detention of petitioner justified a reasonable suspicion that she was involved in criminal conduct. *Brown v. Texas, supra*.”

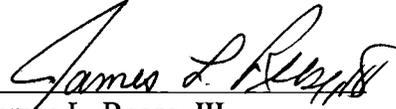
State v. Larson, 93 Wn.2d at 645.

IV. CONCLUSION

For the foregoing reasons, the trial court’s decision should be affirmed.

Dated this 23rd day of December 2010.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "James L. Reese, III". The signature is written in a cursive style with a horizontal line underneath it.

James L. Reese, III

WSBA #7608

Court-appointed Attorney
for Respondent

FILED

10 JUN -7 PM 3:16

JEFFERSON COUNTY
RUTH GORDON

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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR JEFFERSON COUNTY

STATE OF WASHINGTON,

Plaintiff,

v.

FAWN ALMA BRIDGES,

Defendant.

NO: 10-1-00005-0

DEFENDANT'S FINDING OF
FACT/CONCLUSION OF LAW

~~PROPOSED~~
6/18/10

COMES NOW the Defendant, FAWN ALMA BRIDGES, by and through her attorney, Mindy Walker, the Court having heard testimony of the parties and being in all things advised, now enters herein the following Finding of Facts and Conclusion of Law.

FINDING OF FACTS

1. On December 10, 2009 at approximately 1320 hours, Trooper Sanders lawfully stopped a vehicle on Highway 101 for having the front fender sticking out in a

Finding of Fact and Conclusion of Law
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(360)774-6611 Fax (360) 385-5691

SOA

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2 hazardous manner, in violation of RCW 46.37.517 (1). This stop was lawful
3 under the statute.

4 2. There were three persons in the vehicle. The driver was Zachary Ryan Oravetz,
5 the front passenger was Kathleen Robertson-Baker and in the passenger back
6 seat was Fawn Alma Bridges.

7 3. When Trooper Sanders made contact and questioned the driver of the vehicle he
8 smelled a moderate odor of marijuana coming from the vehicle, indicating to the
9 Trooper that marijuana had been smoked.

10 4. Acting on that suspicion, Trooper Sanders asked to see Mr. Oravetz driver's
11 license. Trooper Sanders conducted a driver's check on Mr. Oravetz and
12 determined his driver's license was suspended in the 3rd degree in Washington.
13 Trooper Sanders placed Mr. Oravetz under arrest for driving while his license
14 was suspended in the third degree.

15 5. Trooper Sanders preformed field sobriety tests on Mr. Oravetz. Mr. Oravetz
16 passed the field sobriety tests.

17 6. Mr. Oravetz was not placed under arrest for driving under the influence.

18 7. When Mr. Oravetz was placed in custody, Trooper Sanders specifically told him
19 that he was not under arrest for possession of marijuana, but was under arrest
20 for driving while license was suspended.
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1 8. Trooper Sanders asked Mr. Oravetz about the smell of marijuana and Mr.

2 Oravetz responded by telling Trooper Sanders that there was a marijuana pipe in
3 the console of the vehicle and stated that was probably what Trooper Sanders
4 smelled.
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6 9. Trooper Sanders went and found a marijuana pipe in the console of the vehicle
7 as indicated by Mr. Oravetz.

8 10. Trooper Sanders thought Oravetz was telling the truth but did not know whom
9 the pipe belonged to.

10 11. Trooper Sanders proceeded to search the vehicle.

11 12. During this time, passengers Ms. Robertson-Baker and Ms. Bridges remained in
12 the vehicle.

13 13. Then Trooper Sanders saw a large blue jacket in the back driver's seat. Trooper
14 Sanders reported and testified that the jacket appeared to belong a male.

15 Trooper Sanders proceeded to search the jacket and within the jacket found a
16 modified soda can. Trooper Sanders testified that in his training and experience
17 these cans are modified to hide drugs. Trooper Sanders opened the modified
18 soda can and found what he believed to be heroin and methamphetamine.
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20 14. At that point, in the Trooper's mind, neither Ms. Bridges nor Ms. Robertson-
21 Baker were free to leave.
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2 15. Trooper Sanders asked for Identification of Ms. Robertson-Baker and Ms.
3 Bridges. Ms. Robertson-Baker provided her Costco card and Ms. Bridges
4 provided her driver's license. The Trooper took those back to his car, and told
5 Ms. Robertson-Baker that she could move over to the driver's seat and could
6 start the vehicle to warm up the inside of the car.

7 16. It was an hour from the time the car was stopped until the time Trooper Sanders
8 took the identification from the passengers. At that point he was doing an
9 investigation and asked for the passenger's identification pursuant to that
10 investigation.

11 17. Trooper Sanders determined that both passengers had warrants for their arrest.

12 18. Trooper Sanders arrested both Ms. Robertson-Baker and Ms. Bridges.

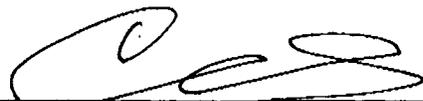
13
14 **CONCLUSION OF LAW**

- 15 1. Under *State v. Valdez*, 167 Wash.2d 761, 224 P.3d 751 (2009) and *State v.*
16 *Patton*, 167 Wash.2d 379, 219 P.3d 651 (2009), an officer can search a vehicle
17 after arrest only if there is a belief that the vehicle contains weapons or
18 something that affects the safety of the officer. The officer can only search for
19 destructible evidence that is related to the crime of arrest.
- 20 2. Trooper Sanders stated to Mr. Oravetz that he was not arrested for any drug
21 offense.

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4 3. Under *Valdez and Patton*, Trooper Sanders can search the vehicle only for
evidence of the crime of arrest, which in this case is driving while license
suspended in the third degree.
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8 4. *State v. Grande*, 164 Wash.2d 135, 187 P.3d 248 (2008) states that law
enforcement officers are prohibited from effecting a seizure against a passenger
unless that officer has articulable suspicion that the person is involved in criminal
activity.
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18 5. Although, both passengers could reach the jacket, there was no individualized
articulable suspicion that the passengers were involved in any criminal activity.
In *State v. George*, 146 Wash. App. 906, 193 P.3d 693 (2008), the court found
that even though marijuana was found at the feet of the passenger, there was no
evidence associating the passenger to a crime and there was not enough
evidence to prove that the passenger had actual or constructive possession of
the marijuana. The evidence in the present case is less because although both
passengers could reach the jacket, there was no individualized articulable
suspicion that they are involved in criminal activity.
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23 6. Under *State v. Larson*, 21 Wash.App. 506, 587 P.2d 171 (1978) and *State v.*
Rankin, 151 Wn.2d 689, 92 P.3d 202 (2004), when a law enforcement officer
requests identification from a passenger it constitutes a seizure unless there is a
reasonable basis for the inquiry.

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7. Here, Trooper Sanders asked for identification of Ms. Robertson-Baker and Ms. Bridges for investigative purposes. Ms. Robertson-Baker and Ms. Bridges were unlawfully seized when Trooper Sanders requested their identification, as there was no individualized articulable suspicion that they were engaged in criminal activity, the only evidence being that Mr. Oravetz was engaged in criminal activity.
 8. This Court makes no ruling on the issue of whether Trooper Sanders could search the console of the vehicle or the jacket.
 9. There was no probable cause for arrest of Ms. Robertson-Baker or Ms. Bridges.
 10. Any charges arising from the arrests of Ms. Robertson -Baker and Ms. Bridges should be dismissed.
 11. This Court grants the Defendant's motion to suppress and dismisses all charges arising from the illegal arrest.

16 Dated: 6/18/10



Judge/Commissioner

18 Respectfully Presented By:

18 Witnessed and Approved
19 For Presentation:

20
21 
22 Mindy Walker, WSBA #38423
23 Attorney for Defendant Ms. Bridges

21
22 Christopher R. Ashcraft, WSBA # 41692
23 Deputy Prosecuting Attorney

Excerpts: Partial Trial Court's Oral Ruling

“This is an emerging area of the law and it's, it's difficult to square what goes on in the real world a lot of times with what the Supreme Court has ruled on a number of different times. And, you know, none of those holdings in *Valdez* or in *Grande*, well *Grande's* the wrong, but *Grande* was pre-*Gant*, so I'm not sure about that one. But in *Valdez* and *Patton* and, and, um, what's the other case?...

Patten and *Valdez*, okay, those are the two I'm thinking of them. I was thinking of another one, too. Um, those cases make it clear that when a subjugator is arrested that the officers can search only if there's a belief of weapons or something in the vehicle that could affect the officer's safety...

And even though you know, you smell the marijuana and that takes us back to *Grande*, um, where it says that, but I think *Grande*, is subject to, I mean, *Grande* says, yeah, you can search. You get everybody out. In this case you didn't get them out because it was cold outside. But I think *Gant*, I mean, well, the decision since *Gant*, that's *Patton* and, um, *Valdez* says different.

So, where does that get us here? Specifically, um, specifically *Grande* says unless the officer has an articulable suspicion that a person is involved in criminal activity, the passenger can't be seized. So even if we uphold, even if I say okay, it's okay to look in the console and get the pipe and it's okay to get the jacket. Matter of fact, I'm not going to rule on those because, uh, it's, I'm not going to rule on those because the next step is what really clinches it. *Grande*, and that's at 164 Wn.2d 135, a 2008 case, says the officer has to have articulable suspicion that the individual person that's seized is involved in criminal activity.” RP 71-3.

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COUNTY OF KITSAP)

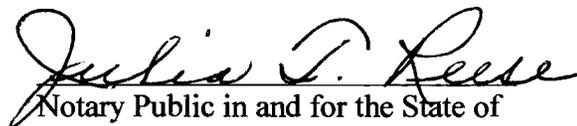
James L. Reese, III, being first duly sworn on oath, deposes and says:

That he is a citizen of the United States, a resident of the State of Washington, over the age of eighteen years, not a party to the above-entitled action, and competent to be a witness herein.

That on the 27th day of December, 2010, he hand delivered for filing, the original and one (1) copy of Respondent's Brief in State of Washington v. Fawn Alma Bridges, No. 40903-8-II to the office of David Ponzoha, Clerk, Court of Appeals, Division Two, 950 Broadway, Ste. 300, Tacoma, WA 98402-4454; mailed one (1) copy of the same to the office of Jefferson County Prosecuting Attorney, P.O. Box 1220, Port Townsend, WA 98368-1220; and deposited in the mails of the United States of America, postage prepaid, one (1) copy of the same to Respondent at her last known address; Fawn Alma Bridges, 203 N. Matriotti, Sequim, WA 98382



Signed and Attested to before me this 27th day of December, 2010 by James L. Reese, III.



Notary Public in and for the State of
Washington residing at Port Orchard.
My Appointment Expires: 4/04/13