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DIVISION III
STATE OF WASHINGTON

NO. 29787-0-III

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION THREE

STATE OF WASHINGTON,

Respondent,

v.

GABRIELA BARRON,

Appellant.

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

APPELLANT'S OPENING BRIEF

NANCY P. COLLINS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
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A. SUMMARY OF ARGUMENT.

Gabriela Barron was strip searched by a police dispatcher when she was booked for a disorderly conduct charge. The court justified the strip search based solely on her apparent nervousness after being arrested.

However, the police did not have a lawful basis to detain her, arrest her, or strip search her. Barron was unlawfully seized when she was detained inside a locked police car and deprived of her belongings at a time when there was no evidence she committed a crime. There was no probable cause justifying her subsequent arrest for disorderly conduct. Finally, the police strip searched Barron when booking her into the local jail without getting mandatory approval from a supervisor, failing to attempt statutorily required efforts of a less intrusive search, and absent individualized reasonable suspicion that she was concealing contraband inside her body.

B. ASSIGNMENTS OF ERROR.

1. The police impermissibly detained and arrested Barron without probable cause, contrary to the Fourth Amendment and Article I, section 7 of the Washington Constitution.

2. The police impermissibly strip searched Barron without individualized reasonable suspicion that she was concealing something on her person that constituted a security threat to the facility and contrary to the controlling statute.

3. The court improperly entered Finding of Fact 20 following the CrR 3.6 hearing because it is not supported by substantial evidence in the record. CP 77.¹

4. The court improperly entered Finding of Fact 21 following the CrR 3.6 hearing because it is not supported by substantial evidence in the record. CP 77.

5. The court improperly entered Finding of Fact 25 following the CrR 3.6 hearing because it is not supported by substantial evidence in the record. CP 78.

6. The court improperly entered Finding of Fact 26 following the CrR 3.6 hearing because it is not supported by substantial evidence in the record. CP 78.

8. To the extent the court's conclusions of law following the CrR 3.6 hearing are construed as findings of fact, the court improperly entered Conclusions of Law 8, 9, 11, 27, 28, 31, 32, 33,

¹ The findings of fact from the CrR 3.6 hearing are attached as Appendix A.

34, and 35 following the CrR 3.6 hearing because they are not supported by substantial evidence in the record. CP 79-81.

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR.

1. A seizure occurs when an individual's freedom of movement has been restrained and the individual would not believe he or she was free to leave or decline a request due to an officer's use of force or display of authority. A police officer asked Barron to enter the back of a police patrol car without evidence she had committed a crime. She was not warned that she could not leave after entering the patrol car and she was physically separated from her belongings. Barron's freedom of movement was restrained for a significant time when she was held inside of the locked patrol car without cause to arrest her. Did the police officer unlawfully seize Barron when he placed her in the locked patrol car?

2. To arrest someone without a warrant for disorderly conduct, an officer must have probable cause that he or she disturbed the peace by physically fighting in a public place, committing noisy, riotous, tumultuous conduct, or using abusive language to intentionally create a risk of assault. Here, Orth

arrested Barron for disorderly conduct when he knew only that she had been involved in an altercation inside a residence and had fled outside. Barron's actions do not constitute disorderly conduct under RCW 9A.84.030 and Sunnyside Mun. Code 9.60.010. Did the police officer unlawfully arrest Barron for disorderly conduct without probable cause?

3. A strip search is a substantial invasion of privacy that is not authorized by mere arrest alone. No person may be strip searched without a reasonable suspicion that the search is necessary to discover weapons, criminal evidence, contraband, or other concealed objects that constitute a threat to the security of the holding facility. This determination must be individualized. Barron was strip searched based on illegally obtained evidence from her purse and based on her nervousness while being booked into the Sunnyside City Jail. The trial court suppressed the evidence illegally seized from her purse, but justified the strip search based on her nervousness alone. Was Barron's nervousness alone a sufficient factual basis to support an individualized reasonable suspicion that she had concealed an item on her body that constituted a threat to the security of the facility?

4. By statute, no strip search may occur without prior written approval from the jail unit supervisor unless the arrest is for an offense not pertinent to Barron's case. Here, the officers did not seek any form of prior approval for the strip search as required by statute. Did the officers impermissibly strip search Barron by not receiving written approval before the strip search?

5. Reasonable efforts must be made to use other less-intrusive means, such as pat-down, electronic metal detector, or clothing searches before any strip search is conducted, according to statute. The determination of whether reasonable suspicion or probable cause exists to conduct a strip search must be made only after less-intrusive means have been used. Here, the officers did not attempt less-intrusive means and ordered Barron to be strip searched upon arrival at the Sunnyside City Jail. Was Barron unlawfully strip searched when the officers did not follow statutory procedure and did not attempt less-intrusive means before beginning the strip search?

D. STATEMENT OF THE CASE.

Officer Thomas Orth responded to a call of an assault with a knife. 12/14/10 RP 5, 13.² When Orth arrived at the scene, he found Barron and four others standing in a front yard. 12/14/10 RP 5, 14. Barron's knee was bleeding. 12/14/10RP5, 14-15. Orth questioned Barron and learned that she had fallen and injured her leg while being chased from Melinda Garcia's home. 12/14/10RP15-16. Barron told Orth that Garcia had attacked her with a knife over the supposed theft of a hundred dollars. 12/14/10 RP 5, 16. Barron pointed out Garcia's home a few doors away. 12/14/10 RP 17.

Officer Jamie Prieto then arrived at the scene. 12/14/10 RP 6. Both officers expressed interest in investigating the incident further at Garcia's residence. 12/14/10 RP 6, 18. Orth asked Barron if she would get into the back of the patrol car so they could investigate at Garcia's home. 12/14/10 RP 6, 18-19. Orth did not warn her that once he closed the door, she would be unable to open the door from the inside. 12/14/10 RP 19. Barron entered the back of the patrol car and remained there for 15 to 20 minutes

² The verbatim report of proceedings (RP) are referred to by date of the proceeding followed by the page number.

while the police officers and Sergeant John Chumley investigated at Garcia's residence. 12/14/10 RP 18, 29. At the time Orth placed Barron in the back of the patrol car, he did not know whether she was a victim or a suspect. 12/14/10 RP 19-20.

When Barron entered the back of the patrol car, Orth told her that for security reasons she could not take her purse into the back seat. 12/14/10 RP 31, 37. Orth took Barron's purse and placed it in the front seat of the patrol car. 12/14/10 RP 7, 37. Barron could not reach or access her purse for the entire time she was detained in the back of the patrol car. 12/14/10 RP 32-33.

Orth spoke with Garcia and her roommate, Katie Everham. 12/14/10 RP 7-8. Barron, Garcia, and Everham all agreed there had been a physical altercation inside of Garcia's residence and that Garcia had chased Barron out into the front yard. 12/14/10 RP 26-27. There was no evidence that the fight continued outside of Garcia's house. 12/14/10 RP 27. Both Garcia and Everham denied anyone had used a knife. 12/14/10 RP 27.

Orth returned to his patrol car after speaking with Garcia and Everham. 12/14/10 RP 9. Orth arrested Barron for disorderly conduct for her fight with Garcia. 12/14/10 RP 9. Orth then

searched Barron's purse and found two glass pipes with suspected drug residue and unused baggies.³ 12/14/10 RP 9.

Orth took Barron to the Sunnyside Police Station, where he began to book her for disorderly conduct. 12/14/10 RP 33. Upon arrival at the station, Orth instructed Dispatcher Mary Evalon to conduct a strip search on Barron. 12/14/10 RP 11, 33. Orth based his decision to have Barron strip searched on the number of unused baggies he found in Barron's purse, as well as that Barron had begun acting nervous and was quick to answer questions. 12/14/10 RP 11, 34. Orth and Evalon did not seek any permission from a supervisor to conduct the strip search. 12/14/10 RP 36, 37-38, 46. Nor did Orth seek a warrant before searching Barron's person. 12/14/10 RP 37.

Evalon took Barron to a changing room and explained the strip search procedure to her. 12/14/10 RP 43. Evalon directed her which clothes to remove first. 12/14/10 RP 43. Barron began crying and stated that she wanted to come clean and had something concealed. 12/14/10 RP 43. Evalon then asked Barron

³ Orth testified that the residue from the pipes was never tested. 12/14/10 RP 36. The trial court's written findings say that the pipe contained marijuana residue. CP 77 (Finding of Fact 20). Finding of Fact 20 is not supported by the evidence because there is no proof the pipe contained

to start undressing. 12/14/10 RP 44. Barron began to remove her clothing and took off her pants and continued crying.⁴ 12/14/10 RP 44, 45. Then Barron grabbed her genital region and asked to use the restroom. 12/14/10 RP 44. Eivalon told Barron she could not use the restroom until after the strip search. 12/14/10 RP 44. Barron lowered her underpants and removed an envelope from her vaginal area. 12/14/10 RP 44-45. Eivalon concluded the strip search and took the envelope to Orth in the booking room. 12/14/10 RP 46, 51-52. Inside the envelope Orth and Eivalon found \$20 and pieces of aluminum foil containing 0.6 of a gram of methamphetamine. 12/14/10 RP 46, 52; 1/6/11 RP 81.

After the suppression hearing, the trial court ruled that Orth unlawfully searched Barron's purse and concluded that the evidence from her purse must be suppressed. 12/14/10 RP 75; CP 81 (Conclusions of Law 24-25). However, the trial court justified the strip search based solely on Barron's nervousness following her arrest for disorderly conduct. 12/14/10 RP 76-77; CP 81 (Conclusions of Law 35-36). After a stipulated trial, Barron was

marijuana residue.

convicted for possession of a controlled substance with intent to deliver based on the substance seized during the strip search.

1/6/11 RP 83; CP 83-91 (Felony Judgment and Sentence).

E. ARGUMENT.

1. DETAINING BARRON IN A POLICE CAR WITHOUT ACCESS TO HER PURSE WAS AN UNLAWFUL SEIZURE

a. Article I, section 7 provides greater protection against warrantless searches than the Fourth Amendment. Article I, section 7 of the Washington Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Wash. Const. art. I, § 7. Further, “as a general rule, warrantless searches and seizures are per se unreasonable.” State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984) (citing Coolidge v. New Hampshire, 403 U.S. 443, 29 L.Ed.2d 564, 91 S.Ct. 2002 (1971)). The protection of privacy and individual rights afforded by Article I, section 7 is greater than that guaranteed by the Fourth Amendment and “recognizes a person’s right to privacy with no express limitations.”

⁴ Barron was instructed to take off her shoes, pants, and then underwear. 12/14/10 RP 44. The trial court’s Finding of Fact 26 states that Barron was instructed to take off her socks, pants, and then underwear. CP 78. Eviolon’s testimony contradicts a portion of the court’s finding.

State v. O'Neill, 148 Wn.2d 564, 584, 62 P.2d 489 (2003) (citing State v. White, 97 Wn.2d 92, 108, 110, 640 P.2d 1061 (1982); State v. Ferrier, 136 Wn.2d 103, 111, 960 P.2d 927 (1998)); see also U.S. Const. amend IV.⁵

b. Barron was seized when Orth put her in the locked backseat of the patrol car because she was physically detained and unable to leave. The question of whether a seizure occurred is reviewed *de novo*. State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996); State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). A person has been “seized” when “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. Bailey, 154 Wn.App. 295, 300, 224 P.2d 852, rev. denied, 169 Wn.2d 1004, 236 P.3d 205 (2010) (citing State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004) (internal quotations omitted). This standard is entirely objective. United States v. Mendenhall, 446 U.S. 544, 544, 64 L.Ed.2d 497, 100 S.Ct. 1870 (1980); State v. Young, 135 Wn.2d 498, 501, 957 P.2d 681 (1998) (rejecting inclusion of subjective

⁵ The Fourth Amendment provides: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and

criteria in seizure analysis as found in California v Hodari D., 499 U.S. 621, 111 S.Ct. 1547, 113 L.Ed.2d 690 (1991)); Bailey, 154 Wn.App. at 300; State v. Carney, 142 Wn.App. 197, 201, 174 P.2d 142 (2007); State v. Ellwood, 52 Wn.App. 70, 73, 757 P.2d 547 (1988). Such authority is shown by the “threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” Mendenhall, 446 U.S. at 554 (citing Terry v. Ohio, 392 U.S. 1, 19 n.16, 88 S.Ct.1868, 20 L.Ed.2d 889 (1968)). The key question is “whether the officer either uses force or displays authority in a way that would cause a reasonable person to feel compelled to continue the contact.” Bailey, 154 Wn.App. at 300 (citing Rankin, 151 Wn.2d at 695).

A stop may “mature or transform into a seizure when the officer’s actions create a situation where the individual no longer feels free to leave,” even if the initial stop itself does not qualify as a seizure. State v. Crane, 105 Wn.App. 301, 309, 19 P.2d 1100 (2001), overruled on other grounds, O’Neill, 148 Wn.2d at 571;

seizures, shall not be violated.”

State v. Richardson, 64 Wn.App. 693, 696-97, 825 P.2d 754 (1992); State v. Aranguren, 42 Wn.App. 452, 456-457, 711 P.2d 1096 (1985). The totality of the circumstances can create a progressive intrusion that makes a person not feel free to disengage with a police officer or decline an officer's requests. State v. Harrington, 167 Wn.2d 656, 668, 222 P.3d 92 (2009); Crane, 105 Wn.App. at 309 (citing Royer, 460 U.S. at 503; Aranguren, 42 Wn.App. at 456); State v. Soto-Garcia, 68 Wn.App. 20, 25, 841 P.2d 1271 (1992); State v. Stroud, 30 Wn.App. 392, 394-395, 634 P.2d 316 (1981). The court focuses on the degree of the progressive intrusion into the defendant's constitutionally protected privacy. Harrington, 167 Wn.2d at 670.

A seizure occurs when an officer holds a detainee's identification card to run a warrant check. Crane, 105 Wn.App. at 310 ("It is well established that if an officer retains the suspect's identification while conducting a warrants check away from the suspect, there has been a seizure") (citing State v. Coyne, 99 Wn.App. 566, 572, 995 P.2d 78 (2000)). Likewise, in Aranguren, the court found a seizure occurred when a police officer took identification cards to his patrol car to run a warrant check, because the defendants reasonably and objectively would not feel

free to leave without their identification cards. Aranguren, 42 Wn.App. at 457. Similarly, in Armenta the court found a seizure occurred when an officer took the defendants' money for safe storage while he provided assistance to the defendants whose car had broken down. State v. Armenta, 134 Wn.2d 1, 12, 948 P.2d 1280 (1997). The court found that the defendants objectively would not feel free to leave without their money. Id.

A seizure may occur when the defendant voluntarily enters the back of a police patrol car. State v. Avila-Avina, 99 Wn.App. 9, 14, 991 P.2d 720 (2000) (overruled on other grounds, State v. Winterstein, 167 Wn.2d 620 635, 220 P.2d 1226 (2009)). There, police stopped Avila-Avina on the road as he walked towards the scene of a reported killing. Avila-Avina, 99 Wn.App. at 12. The officer asked Avila-Avina to stay with him and Avila-Avina voluntarily entered the police car to escape the cold. Id. at 14. After the police asked Avila-Avina for identification, he waited with the officers for more than hour before a Spanish-speaking agent arrived to ask him questions. Id. at 12. The court found that Avila-Avina was seized when he was placed in the car even though he had entered it voluntarily. Id. at 14. The court pointed to the continued presence of police officers outside of the vehicle and in

the front seats and held that “[a] reasonable person in this situation would have concluded that he was not free to leave.” Id. at 14.

Here, Barron was seized when she entered the patrol car because her freedom of movement was restrained. 12/14/10 RP 24; CP 77 (Finding of Fact 18). Barron could not leave the patrol car without the permission and help of a police officer. Id. Barron was not informed that she would not be able to leave on her own before she was locked inside of the patrol car. 12/14/10 RP 19.

Further, as in Crane, Aranguren, and Armenta, Orth used his authority when he arrived at the scene by immediately questioning Barron and then separating her from her purse and other belongings. 12/14/10 RP 16, 37; CP 76 (Findings of Fact 8-9). Orth also displayed his authority when he explained that he needed to go back up his partner at Garcia's residence immediately before asking Barron to enter the patrol car. CP 76 (Findings of Fact 5-6). When Orth took Barron's purse and placed it in the front seat of the patrol car, he removed it from her control. CP 76 (Findings of Fact 8-10). Orth also described this to Barron as a safety precaution, which further asserted his authority over her. CP 76 (Findings of Fact 8-10).

Barron's circumstances are analogous to the seizures in Crane, Aranguren, and Armenta. Barron would not feel free to leave even if she could have exited the car, because Orth had taken her belongings away from her. CP 76 (Findings of Fact 8-10). As in Avila-Avina and Mendenhall, the arrival of two other officers, Prieto and Chumley, who said they "needed" to follow up and wanted Barron to wait while they investigated contributed to Barron's objectively reasonable belief she could not leave. Mendenhall, 446 U.S. at 554; Bailey, 154 Wn.App. at 302 (noting the presence of two officers "create[s] more of an environment of investigation"); Avila-Avina, 99 Wn.App. at 11-12, 14; 12/14/10 RP 6, 18, 20.

The trial court's conclusion that Orth would not have forced Barron into the patrol car had she refused to enter willingly is speculative and irrelevant to the seizure analysis. Richardson, 64 Wn.App. at 697 n.1 (holding "unexpressed subjective intent to permit the men to walk away is immaterial on the issue of whether a reasonable person would feel free to leave.") (citing Ellwood, 52 Wn.App. at 73); CP 79 (Conclusion of Law 7). The standard for whether a person has been seized is entirely objective and does not involve what a police officer would have done. See e.g.,

Young, 135 Wn.2d at 501; Bailey, 154 Wn.App. at 300; Carney, 142 Wn.App. at 201. Further, Orth did not explicitly testify that he would not have forced Barron into the patrol car had she refused to enter it on her own. Neither speculation about what Orth would have done if Barron had not cooperated nor whether Barron honestly believed she was not free to leave are relevant to the objective seizure analysis. Young, 135 Wn.2d at 501.

Barron was seized by this progressive intrusion into her protected rights because her movement was restrained after entering the patrol car and the police took away her purse. The repeated use of police authority, the continued presence of multiple police officers, and the separation between Barron and her purse would convince an objective, reasonable person in her situation that he or she was not free to leave or decline the officers' requests.

c. Barron's seizure was unlawful. A seizure must be based on "specific and articulable facts" that reasonably warrant the intrusion. Bailey, 154 Wn.App. at 300 (citing Terry, 392 U.S. at 21-22); Carney, 142 Wn.App. at 201 (citing State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991)). A detention is only warranted when a police officer has a well-founded suspicion

based on specific and articulable facts that “indicated that someone has committed or is committing a crime.” Ellwood, 52 Wn.App. at 73-74 (citing Terry, 392 U.S. at 21-22, 30). See also Carney, 142 Wn.App. at 202 (citing Glover, 116 Wn.2d at 514).

A stop must be reasonably related in scope to the circumstances that justified the interference. Terry, 392 U.S. at 19-20; Avila-Avina, 99 Wn.App. at 14. Courts balance the public interest against the individual’s constitutionally protected right to personal security and freedom from arbitrary interference by law officers. Texas v. Brown, 443 U.S. 47, 51-52, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979) (citing Pennsylvania v. Mimms, 434 U.S. 106, 109, 98 S.Ct. 330, 54 L.Ed.2d 331 (1977); United States v. Brignoni-Ponce, 422 U.S. 873, 878, 95 S.Ct. 2574, 45 L.Ed.2d 607 (1975)). A citizen’s right to be free of governmental interference with his movements means, at a minimum, that when such interference must occur, it be brief and related directly to inquiries concerning the suspect. Williams, 102 Wn.2d at 741. Courts look to at least three factors to determine whether the scope of the seizure is so substantial that it required probable cause: (1) the purpose of the stop, (2) the amount of physical intrusion upon the

suspect's liberty, and (3) the length of time the suspect is detained. Avila-Avina, 99 Wn.App. at 14 (citing Williams, 102 Wn.2d at 740).

First, the purported purpose of the stop was to determine if Barron had committed an assault. 12/14/10 RP 21-22. From this initial investigation Orth had only learned that a fight had occurred and that Barron had fled. 12/14/10 RP 25-28. Orth then locked Barron into the patrol car when she seemed to be the victim of the assault and when he had no evidence that she was the perpetrator. 12/14/10 RP 5, 19-20. He did not have any information implicating Barron as the perpetrator of a crime until after he placed her in the patrol car. 12/14/10 RP 8, 19-20.

Second, the physical intrusion upon Barron's liberty was substantial, because she was placed in a car locked from the outside, separated from her purse, and unable to leave until an officer allowed her to do so. CP 76-77 (Findings of Fact 6, 8-10, 18).

Third, Orth detained Barron for 15 to 20 minutes, which is a similar length of time as Williams was detained after police reported to a suspected burglary. Williams, 102 Wn.2d at 741; CP 77 (Finding of Fact 18). There, the court found that the length of time Williams was detained in the police patrol car was

unreasonably long and that detaining Williams amounted to an unlawful seizure. Williams, 102 Wn.2d at 741. The same conclusion applies here. The detention was unauthorized and unreasonable.

d. The evidence resulting from Barron's unlawful seizure must be suppressed. “[A]ll evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a state court.” Mapp v. Ohio, 367 U.S. 643, 655, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); see also Wong Sun v. United States, 371 U.S. 471, 485, 83 S.Ct. 407, 9 L.Ed.2d 441 (1963). The exclusionary rule of article I, section 7 is more exacting than its federal counterpart and requires “immediate application . . . whenever an individual's right to privacy” has been violated. White, 97 Wn.2d at 111-112.

Here, Barron was unlawfully seized by Orth when she was placed in the car and had her belongings separated from her. Barron's seizure was an unwarranted intrusion into Barron's protected right of freedom from invasions into private affairs. Wash. Const. art. I, § 7. Additionally, the initial seizure of Barron was unlawful because it was not based on specific and articulable facts pointing to her having committed a crime. Because Barron's

initial seizure was unlawful, the court should suppress all evidence resulting from the unlawful seizure of Barron in the police patrol car. See Mapp, 367 U.S. at 655 (holding “all evidence obtained by searches and seizures in violation of the Constitution is . . . inadmissible in a state court.”); Wong Sun, 371 U.S. at 485; White, 97 Wn.2d at 111-12; State v. Thorson, 98 Wn.App. 528, 540, 990 P.2d 446 (1999); Aranguren, 42 Wn.App. at 457.

2. THERE WAS NOT PROBABLE CAUSE TO ARREST BARRON FOR DISORDERLY CONDUCT BECAUSE HER ACTIONS DO NOT CONSTITUTE THE OFFENSE UNDER SUNNYSIDE MUNICIPAL CODE 9.60.010 OR RCW 9A.80.030.

An individual's right to privacy means that the police may not disturb a person's private affairs unless objective facts indicate that the individual is committing a crime. State v. Grande, 164 Wn.2d 135, 141 187 P.3d 248 (2008). An officer has probable cause to arrest a person if the facts and circumstances within his knowledge are sufficient to cause a person of reasonable caution to believe that the suspect is committing or has committed a crime. State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996) (quoting State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986)). The totality of the facts and circumstances is an objective

reasonableness standard. Id. at 724 (quoting State v. Fore, 56 Wn.App. 339, 343, 783 P.2d 626 (1989) (quoting State v. Fricks, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979)), review denied, 114 Wn.2d 1011 (1990)).

a. The fight between Barron and Garcia could not be disorderly conduct under the Sunnyside Municipal Code. The Sunnyside Municipal Code defines disorderly conduct as when a person “[f]ights, quarrels or encourages others to fight in any public place . . .” or if a person “[b]y noisy, riotous or tumultuous conduct, disturbs the peace and quiet of the City . . .” Sunnyside Mun. Code 9.60.010. The statute must be construed in light of a person’s First Amendment right to freedom of speech and association. See e.g., Terminiello v. Chicago, 337 U.S. 1, 4, 69 S.Ct. 894, 93 L.Ed 1131 (1949); State v. Montgomery, 31 Wn.App. 745, 758, 644 P.2d 747 (1982).

Barron’s fight with Garcia does not qualify as disorderly conduct under Sunnyside’s ordinance 9.60.010(A)(1) because it did not occur in a public place. Instead, the fight began in Garcia’s home and ended when Barron was chased into the front yard. 12/14/10 RP 26. There was no evidence that the disturbance had continued outside. 12/14/10 RP 20-21, 26. The fact that Barron

waited for the police in a yard down the street from Garcia's house highlights the fact that the altercation had ended when Barron entered a public place. 12/14/10 RP 14-15. The only information that the Orth had was that the disagreement had occurred inside and that Barron was chased from the home. 12/14/10 RP 25-26. Accordingly, Barron's involvement in the fight does not qualify as disorderly conduct under Sunnyside Mun. Code 9.60.010(A)(1).

Further, it cannot be that Barron disturbed the peace and quiet of the city by merely fleeing a fight at Garcia's residence. It would be unreasonable to construe the statute as treating mere flight from a fight or physical altercation as "noisy, riotous or tumultuous" conduct. The court's primary duty in interpreting a statute is to "discern and implement the intent of the legislature." State v. J.P., 149 Wn.2d 444, 450, 69 P.3d 318 (2003) (citing Nat'l Elec. Contractors Ass'n v. Riveland, 138 Wn.2d 9, 19, 978 P.2d 481 (1999)). When construing a statute, the court presumes that the legislature did not intend an absurd result. E.g., State v. Coucil, 170 Wn.2d 704, 707, 245 P.3d 222 (2010); State v. Eaton, 168 Wn.2d 476, 480, 229 P.3d 704 (2010). To construe Barron's flight from a physical altercation as disorderly conduct would discourage people involved in violent disputes from seeking safety by fleeing

into public. Here, the information given to Orth by dispatch and gathered from the witnesses did not describe noisy, riotous, or tumultuous behavior that disrupted the peace of the city. 12/14/10 RP 5, 7, 25-26. Instead, Barron appeared to be seeking safety from a potentially violent incident. 12/14/10 RP 5, 15-16. Orth's testimony does not state Barron was being noisy or tumultuous. Rather, Orth described her as cooperative and relatively calm for having been involved in such an incident. 12/14/10 RP 7, 14-16, 22.

Without probable cause to arrest Barron for having committed disorderly conduct as defined by Sunnyside Mun. Code 9.60.010, her arrest under that ordinance is invalid. Grande, 164 Wn.2d at 141; Graham, 130 Wn.2d at 724.

b. The fight between Barron and Garcia was not disorderly conduct under RCW 9A.84.030. Under RCW 9A.84.030, a person commits disorderly conduct if the person “[u]ses abusive language and . . . intentionally creates a risk of assault; [or] intentionally disrupts any lawful assembly or meeting of persons without lawful authority” RCW 9A.84.030.

Orth did not discover evidence from interviewing Barron, Garcia, and Everham that Barron used abusive language to

intentionally create a risk of assault. 12/14/10 RP 25. Barron's presence in Garcia's home and the ensuing incident do not qualify as Barron disrupting a lawful assembly or meeting.

Thus, Orth lacked reasonably trustworthy information indicating that Barron had committed disorderly conduct, and did not have probable cause to arrest Barron for violating RCW 9A.84.030. Without probable cause to arrest Barron for disorderly conduct under RCW 9A.84.030, the arrest is invalid. Grande, 164 Wn.2d at 141; Graham, 130 Wn.2d at 724.

Additionally, Orth's police report lists the disorderly conduct statues under which Barron was arrested as RCW 9.14.030 and Sunnyside Municipal Code 9.60.010. CP 49. RCW 9.14.030 does not exist. It is possible that Orth meant to suggest charges under RCW 9A.84.030, which codifies disorderly conduct. However, it is apparent that Orth was not familiar with the state statues regarding disorderly conduct when he arrested Barron.

c. The evidence resulting from the unlawful arrest for disorderly conduct must be suppressed, because Barron's arrest was not supported by probable cause. Because there was not probable cause to arrest Barron for disorderly conduct under Sunnyside Mun. Code 9.60.010 or RCW 9A.84.030, all evidence

resulting from the unlawful arrest and subsequent search of Barron must be suppressed by the court. Mapp, 367 U.S. at 655; White, 97 Wn.2d at 111-12; see also State v. Winterstein, 167 Wn.2d 620, 632, 220 P.3d 1226 (2009). The Court should reverse the trial court and suppress all evidence that resulted from the unlawful arrest of Barron that was not supported by probable cause.

3. BARRON'S STRIP SEARCH WAS UNLAWFUL BECAUSE BEING NERVOUS ONCE ARRESTED AND TOLD TO REMOVE ALL YOUR CLOTHES DOES NOT CONSTITUTE INDIVIDUALIZED REASONABLE SUSPICION THAT A PERSON IS A SECURITY THREAT OR IS HIDING CONTRABAND

- a. A search of a person's body cavities is not permitted absent statutory authority and individual cause. A strip search is a substantial intrusion of an individual's right to not be disturbed in his or her private affairs without the authority of law. State v. Audley, 77 Wn.App. 897, 905, 894 P.2d 1359 (1995) (finding "the strip search authorizes a significant intrusion into a person's privacy interest . . . that goes far beyond the scope of an officer's authority to conduct a warrantless search pursuant to an arrest"); U.S. Const. amend. IV; Wash. Const. art. I, § 7. Strip searches of an arrestee may not be justified as a search incident to

arrest, but require a different standard. Audley, 77 Wn.App. at 907; see also Giles v. Ackerman, 746 F.2d 614 (9th Cir. 1984), cert. denied, 471 U.S. 1053, 85 L. Ed. 2d 479, 105 S. Ct. 2114 (1985) (holding intrusions into an arrestee's body are not authorized by arrest alone).

To determine whether a strip search was reasonable, the court must find that the security needs of the local jail outweigh the constitutionally protected interest in freedom from invasion of an individual's private affairs. Audley, 77 Wn.App. at 907. The decision to conduct a strip search must be based on an individualized, reasonable suspicion that the arrestee is concealing contraband that poses a threat to the facility's security. Giles, 746 F.2d at 617; Audley, 77 Wn.App. at 908. Using this test, federal courts have found that blanket policies permitting strip searches of all arrestees booked into a detention center violates the protections guaranteed by the Fourth Amendment. Audley, 77 Wn.App. at 907-908 (citing Chapman v. Nichols, 989 F.2d 393, 395 (10th Cir. 1993)).

Barron was unconstitutionally strip searched and her rights were violated when Orth ordered Eviolon to search her without reasonable suspicion to support the search. 12/14/10 RP 34.

b. A strip search requires an individualized determination of reasonable suspicion or probable cause that the search is necessary. No person in custody at a holding, detention, or local correctional facility may be strip searched without (1) reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other things concealed on the body of the person that constitute a threat to the security of the facility; or (2) probable cause to believe that the strip search is necessary to discover other criminal evidence concealed on the body of the person that do not constitute a threat to the facility's security. RCW 10.79.120; RCW 10.79.130.⁶ Reasonable suspicion of carrying contraband is not defined in the statute, but has been interpreted to mean a "substantial possibility" that the individual is concealing something on his or her body. State v. Harris, 66 Wn.App. 636, 643, 833 P.2d 402 (1992) (quoting State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986)).

By statute, reasonable suspicion permitting a strip search is deemed present when the person has been arrested for (1) a

⁶ RCW 10.79.130 through 10.79.160 apply to Barron because she was in custody at a holding, detention, or local correctional facility. RCW 10.79.120; CP 77 (Finding of Fact 21).

violent offense as defined by 9.94A.030; (2) an offense involving escape, burglary, or the use of a deadly weapon; or (3) an offense involving possession of a drug or controlled substance. RCW 10.79.130(2). If an individual is arrested for an offense not included under RCW 10.79.130(2), then an *individualized* determination of reasonable suspicion or probable cause is necessary for a valid strip search. RCW 10.79.140. “A person arrested for other than a violent offense, a drug offense or an offense involving escape, burglary or the use of a deadly weapon may be strip searched *only upon an individual determination that reasonable suspicion or probable cause exists*” to believe that the strip search is necessary to find hidden evidence or security threats. Plemmons v. Pierce Cnty., 134 Wn.App. 449, 461, 140 P.2d 601 (2006) (citing RCW 10.79.060, 1986 Final Legislative Report, 49th Wash. Leg. at 39-40) (emphasis in original).

c. Barron was not arrested for a crime that permits a strip search without individualized reasonable suspicion. Barron's arrest does not trigger presumed reasonable suspicion because her arrest for disorderly conduct does not fall under the categories listed in RCW 10.79.130. Disorderly conduct is not defined as a violent offense under RCW 9.94A.030. Barron's offense for disorderly conduct also did not involve escape, burglary, or the use of a deadly weapon. CP 77 (Findings of Fact 15, 16); 12/14/10 RP 7-8. Barron's arrest also did not include possession of a controlled substance, because the evidence from her purse was suppressed and the pipe residue was never tested. CP 77 (Finding of Fact 18); CP 81 (Conclusion of Law 25); 12/14/10 RP 36. Because Barron's arrest for disorderly conduct does not fall into a category that triggers presumed reasonable suspicion portion of RCW 10.79.130, Orth required individualized reasonable suspicion or probable cause before ordering the strip search. RCW 10.79.130, .140.

d. Without the evidence from the illegal search of Barron's purse, Orth did not have a reasonable suspicion that Barron had contraband that constituted a security threat. RCW 10.79.130 states that:

No person to whom this section is made applicable by RCW 10.79.120 may be strip searched without a warrant unless:

(a) There is a reasonable suspicion to believe that a strip search is necessary to discover weapons, criminal evidence, contraband, or other things concealed on the body of the person to be searched, that constitute a threat to the security of the . . . facility . . .

RCW 10.79.130. Warrantless strip searches are only permissible “where they are supported by reasonable suspicion that an arrestee is concealing contraband that poses a threat to jail security.” Audley, 77 Wn.App. at 907 (finding reasonable suspicion present based on arrest for drug offense and suspicious conduct prior to arrest). A determination of reasonable suspicion is based on “all information and circumstances known to the officer authorizing the strip search.” RCW 10.79.140(2). Reasonable suspicion for a strip search is present when there is a “substantial possibility” that a defendant was concealing something on his or

her body. Harris, 66 Wn.App. at 643 (quoting Kennedy, 107 Wn.2d at 6).

Orth did not have articulable facts supporting a reasonable suspicion that Barron had concealed contraband on her body without the evidence illegally obtained from the purse search. Orth relied on the pipes with residue and the unused baggies he found in Barron's purse to justify the strip search. 12/14/10 RP 34. However, these items were the fruit of an invalid seizure and were suppressed by the court. CP 81 (Conclusions of Law 24, 25). The court found these poisoned fruits could not be used to justify an individualized reasonable suspicion or probable cause that Barron was concealing something on her person. CP 81 (Conclusions of Law 25); e.g., Mapp, 367 U.S. at 655; White, 97 Wn.2d at 111-12; Thorson, 98 Wn.App. at 540; see also Winterstein, 167 Wn.2d at 632.

The court used Barron's nervousness when confronted with a strip search as the sole basis permitting the search after

suppressing the illegally seized baggies and residue. CP 81;⁷ 12/14/10 RP 34. But general nervousness alone does not provide reasonable suspicion that Barron was concealing contraband and posed a security treat. There are many reasonable explanations for Barron exhibiting nervousness while being booked into the Sunnyside City Jail, such as the fact of her arrest alone. There are no Washington state decisions stating that nervousness by itself is a sufficient basis for ordering an intrusive strip search.⁸

Barron had just been in an altercation with Garcia, she had just been arrested for disorderly conduct, and she was about to be placed into holding at the Sunnyside City Jail. 12/14/10 RP 27. It is entirely reasonable that she would be upset, afraid, and nervous. Without the pipes and baggies found as a result of Orth's unlawful purse search, his observation that Barron was acting "nervous" and

⁷ Finding of Fact 21 states that "[b]ased upon what was in the purse, and upon her nervousness and appearance alone" the strip search was ordered. CP 77. However, Orth testified that he based his desire for a strip search on *both* the illegally obtained evidence from Barron's purse and her nervousness. 12/14/10 RP 34. Finding of Fact 21 is not supported by the evidence to the extent it misstates Orth's basis for the strip search. CP 77.

⁸ Several federal cases discuss nervousness as a basis for a strip search performed on people entering the country at border crossings. See United States v. Mastberg, 503 F.2d 465 (9th Cir. 1974) (finding nervousness can be used to determine reasonable suspicion, but not stating nervousness alone is sufficient); United States v. Carter, 480 F.2d 981 (9th Cir. 1973). These cases do not hold that nervousness alone is sufficient, but find that it may be combined with other evidence, such as visible track marks, to find reasonable suspicion. Mastberg, 503 F.2d at 465; Carter, 480 F.2d at 981.

“really quick to answer questions” cannot be used alone to support a reasonable suspicion. 12/14/10 RP 11.

Further, according to Evalon’s testimony, Barron did not become overly agitated, grab her genitals, or ask to use the restroom until after Orth had ordered the strip search. 12/14/10 RP 43-44. All of this occurred after Evalon had begun the strip search.⁹ 12/14/10 RP 44. Barron’s nervousness and actions after the police had initiated that strip search procedure and after the officer ordered Barron to disrobe may not retroactively provide the reasonable suspicion or probable cause needed to conduct the search, because these reactions were prompted by the search itself. RCW 10.79.130, .140.

⁹ Evalon testified that the search had already begun and Barron had removed her shoes and pants before she grabbed her genitals and asked to use the restroom. 12/14/10 RP 43-44. Evalon’s testimony directly contradicts Finding of Fact 25, which states Barron was fully clothed when she asked to use the restroom and touched her genitals. CP 78. Finding of Fact 25 is not supported by the evidence.

e. Evidence gathered as a result of the illegal search and seizure must be suppressed. The police officer's strip search of Barron was not supported by an individualized reasonable suspicion that she had concealed an item that posed a security threat to the facility, nor was it supported by probable cause that she had secreted criminal evidence on her person. Because the strip search was not justified by an individualized determination of reasonable suspicion or probable cause, the strip search was illegal. RCW 10.79.130, .140. All of the evidence found during the unlawful strip search, including the envelope containing methamphetamine, must be suppressed and excluded as the fruits of an illegal search. Mapp, 367 U.S. at 655; White, 97 Wn.2d at 111-12; Thorson, 98 Wn.App. at 540; see also Winterstein, 167 Wn.2d at 632.

4. BARRON WAS STRIP SEARCHED IN VIOLATION OF MANDATORY STATUTORY REQUIREMENTS FOR SUPERVISORY APPROVAL AND LESS INTRUSIVE MEANS

a. Prior approval from jail unit supervisor for a strip search is required when presumed reasonable suspicion is not present. RCW 10.79.140 explicitly states, "no strip search may be conducted without the specific prior approval of the jail unit

supervisor . . .” unless reasonable suspicion can be presumed by the arresting officer. RCW 10.79.140. As discussed above, the disorderly conduct charge against Barron did not trigger presumed reasonable suspicion, and no strip search may be conducted without specific prior written approval from the jail supervisor. RCW 10.79.140; Harris, 66 Wn.App. at 664.¹⁰

Orth’s failure to gain prior written approval from the jail unit supervisor made Barron’s strip search unlawful. RCW 10.79.140, Harris, 66 Wn.App. at 664. Orth offered no explanation for his failure to obtain approval and did not describe an attempt to do so. 12/14/10 RP 36. Accordingly, the strip search was unlawful and the court should suppress the evidence resulting from it. Mapp, 367 U.S. at 655; White, 97 Wn.2d at 111-12; Thorson, 98 Wn.App. at 540; see also Winterstein, 167 Wn.2d at 632.

b. No less intrusive means were attempted before reasonable suspicion for the strip search. RCW 10.79.140(2) also requires that “[b]efore any strip search is conducted, reasonable

¹⁰ Barron’s case can be distinguished from Harris. In Harris, the court held that lack of written approval did not invalidate other proof, such as oral testimony, that showed permission was obtained prior to the strip search. Harris at 644. Here, Orth testified exactly the opposite; Orth did not seek any form of permission to conduct a strip search as required by RCW 10.79.140. CP 77 (Finding of Fact 23); 12/14/10 RP 36.

efforts must be made to use other less-intrusive means, such as pat-down, electronic metal detector, or clothing searches, to determine whether a weapon, criminal evidence, contraband, or other thing is concealed on the body.” RCW 10.79.140(2). Further, “[t]he determination of whether reasonable suspicion or probable cause exists to conduct a strip search shall be made only after such less-intrusive means have been used.” RCW 10.79.140(2).

Orth and Eivalon did not comply with the requirements of RCW 10.79.140 when they ordered and conducted the strip search. The officers did not attempt to locate contraband or other concealed items through the less-intrusive means required by statute. RCW 10.79.140(2). Orth testified that when he asked Eivalon to conduct the search he did not specify that the search should involve Barron removing her clothing and that he did not know the official policy on searching female arrestees. 12/14/10 RP 24-25. Orth also testified that everyone entering the Sunnyside City Jail needs to be searched upon their arrival, implying that he did not attempt to determine an individualized reasonable suspicion before ordering the search. CP 81 (Conclusion of Law 30); 12/14/10 RP 39. Orth and Eivalon simply skipped the mandatory

step of attempting less-intrusive means. RCW 10.79.140; 12/14/10
RP 33-34.

c. Evidence gathered as a result of the illegal strip search and seizure must be suppressed. The strip search of Barron was not conducted in accordance with the statute governing strip searches in correctional facilities. RCW 10.79.140. Because Orth and Eviolon did not follow the explicit statutory procedure in RCW 10.79.140 regarding prior supervisory approval for searches and required attempts to use less intrusive means, the strip search was unlawful. All of the evidence found during the unlawful strip search, such as the envelope containing methamphetamine, must be suppressed and excluded as the fruits of an illegal search. Mapp, 367 U.S. at 655; White, 97 Wn.2d at 111-12; Thorson, 98 Wn.App. at 540; see also Winterstein, 167 Wn.2d at 632.

F. CONCLUSION.

For the reasons stated above, Gabriela Barron respectfully asks this Court to reverse her conviction after suppressing the evidence illegally obtained following her unlawful seizure, unlawful arrest, and unlawful strip search.

DATED this 22nd day of July 2011.

Respectfully submitted,



NANCY P. COLLINS (WSBA 28806)
Washington Appellate Project (91052)
Attorneys for Appellant

APPENDIX A
(State v. Barron, COA 29787-0-III, Findings of Fact)

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FILED

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CLERK OF SUPERIOR COURT
YAKIMA COUNTY
1001 N. WASHINGTON
YAKIMA, WA 98901

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

STATE OF WASHINGTON,)	Case No. 10-1-01501-4
)	
Plaintiff,)	FINDINGS OF FACT AND
)	CONCLUSIONS OF LAW FOR THE 3.6
v.)	MOTION HEARING
)	
GABRIELA YASERTH BARRON)	
DOB: 2/25/1977,)	
)	
Defendant,)	

This matter having come on regularly for hearing before the Honorable F. James Gavin, Judge of the above-entitled court; the Defendant appearing personally and with her attorney, Aaron Case; the State of Washington appearing by and through its attorney, Leanne Foster, Deputy Prosecuting Attorney; and the court having heard the argument of counsel and being fully advised in the premises, and further incorporating by reference the oral decision made by the court following a 3.6 Motion to Suppress hearing held Friday, December 14, 2010, does now make and enter the following:

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I.

FINDINGS OF FACT

1. On September 6, 2010, Officer Orth, of the Sunnyside Police Department, was dispatched to 304 Zillah Avenue, Sunnyside, Washington, for a report of an assault with a knife.
2. When Officer Orth arrived, he made contact with the defendant, who was in the front yard of the residence crying.
3. The defendant told him that Melinda Garcia had assaulted her with a knife. She stated she then ran from Garcia and fell on the pavement, injuring her left knee.
4. The defendant stated that Garcia accused her of stealing \$100.
5. Officer Orth explained to the defendant that he needed to go back up his partner, who was inside 312 S. 3rd Street, speaking with Garcia.
6. He then asked the defendant if she would sit in the backseat of his patrol car while he continued his investigation.
7. The defendant said that she would and willingly got into the back of the patrol car.
8. Officer Orth had Ms. Barron hand her purse to him.
9. Officer Orth placed the purse in the front seat of his patrol vehicle.
10. A metal partition separated the front and back seats of the patrol car.
11. Once inside 312 S. 3rd Street, Garcia told Officer Orth that the defendant stole \$100 from her, which resulted in the two of them engaging in a physical altercation.
12. The defendant ran out of the house with Garcia chasing her into public view.
13. Garcia's roommate, Katie Everham, confirmed that she had seen the two women physically fighting.
14. Everham and Garcia stated that no knife was involved.
15. Officer Orth did not find a knife or the alleged stolen money.

16. Officer Orth believed that Barron and Garcia had engaged in mutual fighting with no primary aggressor. Whether a knife was involved or a theft occurred was not substantiated.
17. Officer Orth asked the defendant to step out of the patrol car and arrested her for disorderly conduct.
18. Ms. Barron had been in the back of Officer Orth's patrol car from the time she was initially placed into the backseat until Orth completed his investigation at the Garcia house. This investigation lasted 15 to 20 minutes. Ms. Barron was locked in and could not exit the back seat of the patrol vehicle during this time.
19. After placing the defendant into custody and again in the backseat of his patrol car, Officer Orth then searched her purse, ~~incident to arrest.~~ 
20. Inside her purse, Officer Orth found a clear glass pipe with a white burnt residue, which, due to his training and experience, he suspected to be methamphetamine. Officer Orth also found unused ziplock baggies with crowns on them, commonly used to sell narcotics, and a clear pipe with burnt marijuana residue in the bowl.
21. Officer Orth transported the defendant to the Sunnyside jail. Based on what was in the purse, and upon her nervousness and appearance alone, Officer Orth requested a female to conduct a strip search of the defendant.
22. Dispatch Officer Mary Vialon, of the Sunnyside Police Department, took the defendant to the restroom for her to be strip searched pursuant to Sunnyside Police Department regulations and standards.
23. ~~No~~ ^{Officer Orth testified that} supervisor was requested to approve or advised as to the strip search of Ms.  Barron.
24. No warrant for the strip search or the search of the purse was obtained.

25. While the defendant was fully clothed, she repeatedly asked to use the restroom while touching her genitalia. Officer Vialon denied Ms. Barron's request to use the restroom.
26. Officer Vialon instructed the defendant on how to undress. Ms. Barron removed her socks, pants and then pulled her panties to the mid thigh area.
27. Officer Vialon did not touch the defendant at any time during the search.
28. The defendant repeatedly told Officer Vialon that she wanted Officer Orth to know about something.
29. Officer Vialon asked the defendant to remove what she was hiding.
30. The defendant removed a letter sized envelope from inside her vagina.
31. Officer Vialon took possession of the envelope and removed the items therein. Inside the envelope was a \$20 bill and two rolled up pieces of aluminum foil that contained suspected methamphetamine, which later field tested positive as methamphetamine.

Based on the foregoing FINDINGS OF FACTS, the court now makes and enters the following:

II.

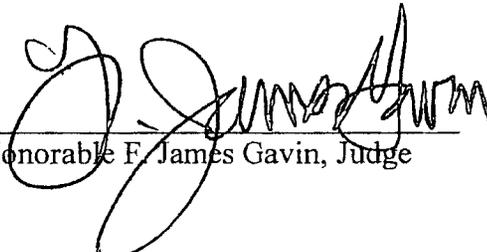
CONCLUSIONS OF LAW

1. The first issue raised by the defendant in this case relates to her being placed in the police car at the initial arrival of Officer Orth.
2. The defendant argues that she was seized because she was not free to leave.
3. Although the defendant was not free to just get out and walk away, the officer discussed with the defendant that he was investigating the incident, she was not under arrest, and needed her to get in the back of the car while he did so.
4. The officer also explained that he does not let anyone have any personal items, like purses, while they are in the backseat of the patrol car.
5. Officer Orth also explained that he was in a bit of a hurry because there were allegations of a knife being involved at Ms. Garcia's house.
6. After Officer Orth's discussion, the defendant was willing to get in the backseat of the patrol car so Officer Orth could backup his partner.
7. Although the defendant was not free to leave, there is no indication that, had the defendant refused, Officer Orth would have forced her into the patrol car.
8. Case law does not say that, under these circumstances, a person is under arrest or that this is an impermissible detention.
9. There were also exigent circumstances surrounding the detention.
10. At the time of the initial contact, Officer Orth did not know if he had a victim, witness, or perpetrator. Officer Orth had reason to believe she could be either a victim or the assailant.
11. As to the defendant's first motion, the defendant was not unlawfully seized.

12. With regard to the defense's second argument, that the officers were not permitted to arrest for disorderly conduct because it did not occur in their presence, this situation fell under one of the exceptions to the officer presence rule.
13. Here, there was a threat to physical harm, which is one of the exceptions to the officer presence rule.
14. There is no indication that the alleged theft resulted in a threats to harm.
15. Whether or not the allegations of mutual combat and assaults were the result of self defense, when this is carried out into the public, the crime itself involved physical harm.
16. The defendant's argument pertaining to officer presence is also denied.
17. On the issue of the search of the purse, it relates to searches incident to arrest and accessibility and control.
18. In this case, the purse was in the front seat of a police vehicle where there was no access to the front seat from where the defendant was sitting in the back seat.
19. The front seat of the patrol vehicle was well protected from the reach people in the back seat, because there were weapons in the front seat.
20. The defendant could not access the purse in the front seat to destroy any contraband or get a weapon that may have been in it.
21. When the officer further investigated and found that he had probable cause to arrest the defendant, he did so.
22. During the investigation, the purse did not move from the front seat of the patrol vehicle.
23. When the defendant was arrested, 15 to 20 minutes later, she still had no access to the purse. The purse was completely in the officer's control at that time and out of the defendant's control.

- The search of the purse was NOT a valid search,
24. ~~The purse was not searched incident to arrest~~ because the defendant did not have access to it at the time of her arrest. 
25. Ms. Barron's motion as to suppression of the purse and its contents is granted.
26. The next issue is, without the evidence of the baggies and pipes that were found in the purse, did Officer Orth still have reason to have her taken in and arrested.
27. The officer did have reason to arrest her, because he was arresting her for the disorderly conduct.
28. He could then take her to the station and have her booked.
29. The search at the jail was a strip search.
30. The procedure at the jail is that everyone brought into the jail is searched because they do not want people receiving contraband or destroying evidence.
31. The officer said that the way in which the defendant was acting, her nervousness and appearance, gave him reason to believe that she was concealing something. This prompted him to request that she be searched to make sure she did not have any contraband on her person.
32. The officer had reason to search her based solely upon the way she was acting and it appeared she was concealing something.
33. The section of the law pertaining to strip searches that authorizes them to be conducted when there is a suspicion that someone could be concealing contraband applies under these circumstances.
34. There is no absolute requirement in RCW 10.79.130 (1)(b) that a supervisor must give permission for a strip search to be authorized.
35. The strip search of the defendant was warranted and lawful.
36. Based on the above findings, the court suppresses any evidence that was found in the purse, but denies the defense's other motions.

DONE in court on this 8 day of March, 2011.



Honorable F. James Gavin, Judge

Presented by:

James P. Hagarty
Prosecuting Attorney
By and through the undersigned Deputy



Leanne Foster
Deputy Prosecuting Attorney
WSBA# 40509

Approved as to form only:



Aaron Case
Attorney for Defendant
WSBA# 31133

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	
)	
RESPONDENT,)	
)	
v.)	COA NO. 29787-0-III
)	
GABRIELA BARRON,)	
)	
APPELLANT.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 22ND DAY OF JULY, 2011, I CAUSED THE ORIGINAL **BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION THREE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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<input checked="" type="checkbox"/>	GABRIELA BARRON 131 E PARKLAND DR #13 SUNNYSIDE, WA 98944	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERY _____

SIGNED IN SEATTLE, WASHINGTON THIS 22ND DAY OF JULY, 2011.

X _____ 