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Court of Appeals
Division III
State of Washington

31587-8-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

ALEXIS M. ARVAYO, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF YAKIMA COUNTY

APPELLANT'S BRIEF

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in entering Finding of Fact 6:

At Yakima's CRC, weapons and drugs are contraband items. Further, the CRC requires incoming children be searched for contraband prior to admittance. A sign posted at CRC reads 'All youth entering the SC must be thoroughly searched and patted down in front of the OHANA staff by law enforcement.'

(Findings of Fact & Conclusions of Law, p. 2)

2. The trial court erred in entering Conclusion of Law 4:

A civil commitment search is not limited to patting the detained person for weapons. 'A search incident to civil detention is not limited to Terry considerations.' State v. Dempsey, 88 Wn. App. 918, 924 (1997); State v. Lowrimore, 67 Wn. App. 949, 956-57 (1992).

(Findings of Fact & Conclusions of Law, p. 4)

3. The trial court erred in entering Conclusion of Law 5:

The reason Terry allows a pat-search of a suspect reasonably believed to be armed is for the protection of the officer detaining the suspect. Interestingly, in this case we see the same thing. Even though this was a civil commitment, the policy is to pat-search for weapons prior to transport. That is clearly authorized under statute and Terry.

(Findings of Fact & Conclusions of Law, p. 4)

4. The trial court erred in entering Conclusion of Law 6:

The real issue here boils down to whether or not there was a basis for the search on civil detention, whether such a search is reasonable. Per Dempsey, a civil commitment search has the primary purpose of

protecting not only the officer, but rather the affected individual and others that may come into contact with him while rendering aid. Dempsey dealt with the mentally ill and the Court of Appeals spend considerable time dealing with issues of what it is to be a danger to self or others. They reasonably concluded that the civil detention created a medical emergency exception to the warrant requirement of Article I, section 7.

(Findings of Fact & Conclusions of Law, p. 4)

5. The trial court erred in entering Conclusion of Law 7:

This case is somewhat similar; it is not a medical emergency, but Respondent was taken into ‘custody,’ meaning civilly detained, simply for transport to the CRC. The officer clearly had authority to pat him down, and no weapons were found. The issue was whether he went beyond the ability to search by reaching into his pockets. What is apparent in Dempsey and Lowrimore is that it comes down to reasonableness. In this circumstance it was reasonable to search defendant knowing he was going to be transported to the CRC, a facility for youth in crisis, where drugs and weapons are contraband and not allowed. The search was conducted as a result of a civil detention, not as a search incident to arrest.

(Findings of Fact & Conclusions of Law, p. 4-5)

6. The trial court erred in entering Conclusion of Law 8:

The court determines that it was reasonable to conduct the search, either at the time he was taken into custody or at the time of admission at the CRC.

(Findings of Fact & Conclusions of Law, p. 5)

7. The court erred in concluding that a search incident to a civil detention is not subject to the constitutional prohibition of unreasonable searches.
8. The trial court should have suppressed the fruits of the warrantless search of A.A.
9. The trial court erred in finding A.A. guilty of violating RCW 69.50.4013 by possessing methamphetamine and violating RCW 69.50.4014 by possessing marijuana.

B. ISSUES

1. Officer Escamilla detained A.A. after his mother reported him as a runaway. When Officer Escamilla found A.A., he was walking down an alley, and he was not doing anything dangerous to himself or others, or anything criminal. Prior to transporting A.A. in his patrol car, Officer Escamilla thoroughly searched A.A.'s person, and found controlled substances. Did Officer Escamilla violate provisions prohibiting unreasonable searches and seizures, Const. Art. I, § 7 and the Fourth Amendment, by searching A.A. without a warrant?

C. STATEMENT OF THE CASE

A.A.'s mother contacted law enforcement to report that A.A. ran away from home. (RP 5-6) His mother requested that the police transport A.A. to a Crisis Residential Center (CRC), a secure facility for juveniles, if he was found. (RP 6) Although A.A.'s mother mentioned to law enforcement that there would be a warrant for A.A.'s arrest, a warrant was never issued. (RP 6, 10-11)

Yakima Police Officer Cesar Escamilla found A.A. walking down an alley. (RP 8) He stopped and detained A.A., planning to take him to the CRC. (RP 8-11) In order for a juvenile to enter the CRC, he must be searched. (RP 9) A sign at the CRC states that “[a]ll youth entering the SC must be thoroughly searched and patted down in front of the OHANA¹ staff by Law Enforcement.” (CP 35; RP 9, 17; Resp’t. Ex. A) Officer Escamilla searched A.A.. (RP 11) He found methamphetamine in the small coin pocket of A.A.’s pants, and marijuana in another pocket. (Pl.’s Ex. 1) Officer Escamilla then took A.A. to the Yakima County juvenile detention center, rather than the CRC. (RP 18)

The State charged A.A. with one count of possession of a controlled substance, methamphetamine, and one count of possession of a controlled substance, less than 40 grams of marijuana. (CP 47) A.A. moved to suppress the evidence found on his person during the search by Officer Escamilla. (CP 27-29, 31-35, 36-42)

¹ The acronym OHANA is not defined in the record.

At the hearing on the motion to suppress, Officer Escamilla testified that when he found A.A., he was “[j]ust walking down an alley.” (RP 12) He admitted that A.A. was not doing anything dangerous to himself or others, or anything criminal. (RP 13) He testified that he detained A.A. on the basis that A.A. either had a warrant for his arrest, or that he would take A.A. to the CRC, not for criminal conduct. (RP 8, 13) Officer Escamilla told the court that within minutes, he found out there was no arrest warrant, and determined he would take A.A. to the CRC. (RP 10-11) He testified that he searched A.A. based upon the CRC’s policy that juveniles must be searched before they are admitted to the facility. (RP 9) Officer Escamilla testified that narcotics are not tolerated at the CRC. (RP 10) He admitted his search of A.A. was more than a pat-down for weapons. (RP 11) He described the search as follows: “I’m searching for any objects, any items that - - youth may have either in his pockets, hidden, anything besides clothing.” (RP 9) Officer Escamilla testified he did not feel any items resembling a weapon while patting down A.A. (RP 15-16) He admitted that when he searched A.A., there was not an OHANA staff member present. (RP 17-18) The search was conducted near Officer Escamilla’s patrol car, not at the CRC. (RP 17-18)

The trial court denied A.A.’s motion to suppress. (Findings of Fact & Conclusions of Law, p. 5; RP 29-34) The trial court concluded that Officer Escamilla’s search of A.A. was justified under the “emergency situation

exception” to the warrant requirement. (Findings of Fact & Conclusions of Law, p. 4-5; RP 29-34) The trial court entered findings of fact and conclusions of law on the motion. (Findings of Fact & Conclusions of Law, p. 1-7)

Following a stipulated facts hearing, the trial court found A.A. guilty as charged. (CP 14-18; RP 34-38) The trial court imposed a manifest injustice disposition, above the standard range, of 52 weeks’ confinement. (CP 15, 17; RP 59-65) A.A. appealed. (CP 7-12)

D. ARGUMENT

1. THE TRIAL COURT SHOULD HAVE SUPPRESSED THE FRUITS OF THE WARRANTLESS SEARCH OF A.A.

In reviewing the denial of a suppression motion, the court determines whether substantial evidence supports the challenged findings of fact, and whether the findings support the conclusions of law. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *abrogated on other grounds by Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). “Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding.” *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Conclusions of law from an order on a suppression motion are reviewed *de novo*. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

As a general rule, warrantless searches and seizures are *per se* unreasonable under the Fourth Amendment and article I, § 7 of the Washington State Constitution. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). The general rule is subject to a few jealously and carefully drawn exceptions, including consent, exigent circumstances, searches incident to a valid arrest, inventory searches, plain view searches, and *Terry* investigative stops. *State v. Duncan*, 146 Wn.2d 166, 171-72, 43 P.3d 513 (2002). There is also an “emergency situation exception,” permitting warrantless searches under certain circumstances, in the area of non-criminal investigations and actions. *See, e.g., State v. Lynd*, 54 Wn. App. 18, 20-21, 771 P.2d 770 (1989). The State bears the heavy burden of showing the search falls under the exception to the warrant requirement. *Garvin*, 166 Wn.2d at 250. It must establish an exception to the warrant requirement by clear and convincing evidence. *Id.*

Under the Family Reconciliation Act, RCW 13.32A, “[a] law enforcement officer shall take a child into custody . . . [i]f a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent” RCW 13.32A.050(1)(a). “Law enforcement custody shall not extend beyond the amount of time reasonably necessary to transport the child to a destination authorized by law and to place the child at that destination.” RCW 13.32A.050(2). The statute does not expressly authorize the law

enforcement officer to search a child taken into custody pursuant to the statute. RCW 13.32A.050.

Based upon A.A.'s mother's report to law enforcement, Officer Escamilla had authority to detain A.A. pursuant to RCW 13.32A.050(1)(a). (RP 5-6) But Officer Escamilla's warrantless search of A.A. does not fall under an exception to the warrant requirement, specifically, the emergency situation exception relied upon by the trial court.

An emergency situation can justify a warrantless search. *Lynd*, 54 Wn. App. at 20. "In order for a search to come within the emergency exception, we must be satisfied that the claimed emergency was not simply a pretext for conducting an evidentiary search and instead was 'actually motivated by a perceived need to render aid or assistance.'" *Id.* at 21 (*quoting State v. Loewen*, 97 Wn.2d 562, 568, 647 P.2d 489 (1982)). For the exception to apply, the State must show "(1) the searching officer subjectively believed an emergency existed; and (2) a reasonable person in the same circumstances would have thought an emergency existed." *Id.* There must also be "some reasonable basis to associate the emergency with the place searched." *Id.* (*citing State v. Nichols*, 20 Wn. App. 462, 466, 581 P.2d 1371 (1978)).

The emergency situation exception to the warrant requirement has been extended to searches of persons detained for an emergency civil commitment, pursuant to RCW 71.05. *See State v. Lowrimore*, 67 Wn. App. 949, 956-58,

841 P.2d 779 (1992); *State v. Dempsey*, 88 Wn. App. 918, 922-25, 947 P.2d 265 (1997), *abrogated on other grounds by State v. Neeley*, 113 Wn. App. 100, 104, 52 P.3d 539 (2002).

In *Lowrimore*, the court upheld a warrantless search of the defendant's purse, after she was detained pursuant to RCW 71.05. *Lowrimore*, 67 Wn. App. at 956-58. The court found that the officer who conducted the search subjectively believed an emergency existed, and that his belief was objectively reasonable. *Id.* at 958. The defendant was emotionally unstable, threatened suicide, and was carrying knives. *Id.* The court found that the warrantless search was necessary to protect the safety of those present, including the defendant. *Id.*

In *Dempsey*, the court upheld a warrantless search of the defendant's person, after he was detained pursuant to RCW 71.05. *Dempsey*, 88 Wn. App. at 922-25. The court found that it was reasonable for the officer to search the defendant, who was in an acutely paranoid state and perceived threats from passing cars. *Id.* at 924. The court found that the officer had an obligation to remove anything from the defendant that could be used to harm himself or others. *Id.*

Officer Escamilla's encounter with A.A. did not meet the requirements of an emergency situation that would justify a warrantless search of his person. *See Lynd*, 54 Wn. App. at 21; *Lowrimore*, 67 Wn. App. at 956-58; *Dempsey*,

88 Wn. App. at 922-25. Officer Escamilla conducted a full evidentiary search of A.A., without perceiving an emergency. (RP 9, 11, 15-16) When Officer Escamilla found A.A., he was merely walking down an alley. (RP 12) Officer Escamilla conceded A.A. was not doing anything dangerous to himself or others. (RP 13) He also admitted A.A. was not doing anything criminal. (RP 13) The record is devoid of any reports from A.A.'s mother to law enforcement of emergency circumstances. Officer Escamilla stated he searched A.A. based upon the CRC's policy that juveniles must be searched before they are admitted to the facility. (RP 9) Unlike *Lowrimore* and *Dempsey*, Officer Escamilla did not search A.A. because of a perceived threat of an emergency occurring. See *Lowrimore*, 67 Wn. App. at 956-58; *Dempsey*, 88 Wn. App. at 922-25. *Lowrimore* and *Dempsey* do not support extending the emergency situation exception to the warrant requirement to searches of juveniles following civil detention pursuant to RCW 13.32A.050. See *Lowrimore*, 67 Wn. App. at 956-58; *Dempsey*, 88 Wn. App. at 922-25.

Even assuming, without conceding, that the search required by the sign at the CRC is a lawful search, Officer Escamilla's search did not follow this CRC policy. (CP 35; RP 9, 17; Resp't. Ex. A) The CRC policy requires youth to be searched in front of OHANA staff. (CP 35; RP 9, 17; Resp't. Ex. A) The search here was conducted near Officer Escamilla's patrol car, not at the CRC. (RP 17-18) Officer Escamilla admitted that when he searched A.A., there was no

OHANA staff member present. (RP 17-18) Therefore, the CRC policy, as stated on the sign at the CRC, did not provide a lawful basis for Officer Escamilla's search of A.A.²

There was also no evidence that weapons and drugs were contraband items at the CRC. Officer Escamilla testified that narcotics are "not tolerated" at the CRC, not that weapons and drugs were contraband. (RP 10)

Officer Escamilla's search of A.A. did not fall under the emergency situation exception, or any other exception to the warrant requirement. Therefore, the trial court should have suppressed the fruits of the warrantless search of A.A., the controlled substances found on his person. *See State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999) (stating that "[w]hen an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed.").

E. CONCLUSION

Officer Escamilla's search of A.A. did not fall under the emergency situation exception, or any other exception to the warrant requirement. The trial court should have suppressed the fruits of the warrantless search of A.A., the

² The State cannot argue inevitable discovery, specifically, that the controlled substances would have been discovered if Officer Escamilla took A.A. to the CRC and searched him there pursuant to the CRC policy, because Washington rejects the inevitable discovery doctrine. *See State v. Winterstein*, 167 Wn.2d 620, 636, 220 P.3d 1226 (2009).

controlled substances found on his person. A.A.'s convictions for possession of a controlled substance, methamphetamine, and possession of a controlled substance, less than 40 grams of marijuana, should be dismissed.

Dated this 3rd day of September, 2013.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 31587-8-III
)	
vs.)	CERTIFICATE
)	OF MAILING
ALEXIS M. ARVAYO,)	
)	
Appellant.)	

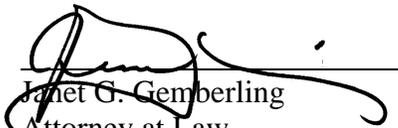
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Court of Appeals Case Number: 31587-8

Party Represented: Alexis M. Arvayo

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