

FILED
Oct 26, 2015
Court of Appeals
Division III
State of Washington

NO. 33149-1-III

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

STATE OF WASHINGTON,

Respondent,

v.

JACLYN SLEATER,

Appellant.

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

The Honorable Alexander Ekstrom, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

ARREST ON A FELONY WARRANT IN THE MIDDLE OF THE NIGHT WAS AN UNREASONABLE MEANS TO EFFECTUATE THE STATE'S INTEREST IN DETERMINING WHETHER SLEATER WAS ABLE TO PAY HER LEGAL FINANCIAL OBLIGATIONS.

The State does not dispute that the warrant issued in this case was not for a felony, despite the fact that it was described as a "felony warrant." The State agrees with Sleater that this case involved a civil contempt proceeding designed to execute a judgment and coerce payment. Brief of Respondent at 7-8. The question the State fails to answer is whether the government has any reasonable interest in having a person arrested on a felony warrant in the middle of the night merely to collect on a financial debt.

First, the State makes several arguments that have only a tangential relationship to the issues raised in Sleater's appeal. Second, the State fails to give this Court any reason why the drastic invasion of Sleater's liberty in this case was necessary.

The State argues that because the statute contemplates jailing a person who willfully fails to pay legal financial obligations, it must also contemplate midnight arrests on felony warrants. Brief of Respondent at 6-7. This argument fails to address Sleater's concerns. The statutory language cited by the State authorizes imprisonment *after* a court has explicitly found a willful failure to pay. Nothing about that language suggests the need for a

felony warrant to hale the person into court in order to make that determination.

The State also cites Bearden v. Georgia, 461 U.S. 660, 668, 103 S. Ct. 206, 476 L. Ed. 2d 221 (1983), to argue that the State has a valid interest in jailing those who willfully refuse to pay legal financial obligations. Brief of Respondent at 9. Sleater does not dispute this. See Brief of Appellant at 7. But it does not follow that the State also has a reasonable need to have the person arrested in the middle of the night and booked into jail before any determination of whether there has been a willful refusal to pay.

The State also argues the stop of Sleater's car was not pretextual, the officers reasonably relied on the warrant, and the search was permissible as an incident to arrest or as an inventory search. Brief of Respondent at 10-20. These arguments are entirely beside the point. Under Article I, Section 7 of the Washington Constitution, the fruits of unlawful searches must be excluded, regardless of the officer's good faith that the search was constitutional. State v. Afana, 169 Wn.2d 169, 179-84, 233 P.3d 879 (2010). Thus, that the officers reasonably relied on the warrant does not matter. Sleater's only challenge to the search is as the result of the unreasonable arrest, the fruit of the poisonous tree.

The validity of a search incident to arrest rests entirely on the validity of the arrest. See, e.g., State v. Parker, 139 Wn.2d 486, 496, 987 P.2d 73

(1999) (“[A] lawful custodial arrest is a constitutionally required prerequisite to any search incident to arrest.”) (citing State v. Cyr, 40 Wn.2d 840, 843, 246 P.2d 480 (1952)). If the arrest were valid, which Sleater does not concede, a search incident to arrest would certainly be permissible. But the lawfulness of a search incident to arrest tells this Court nothing about the reasonableness of the underlying arrest.

The State also argues the evidence obtained as a result of this unreasonable arrest was sufficient to convict her of violating the uniform controlled substances act. Brief of Respondent at 22-24. Again, Sleater argues only that the evidence was illegally obtained, not that it was insufficient as a matter of law.

The State’s brief makes only one argument that directly responds to Sleater’s challenge to the unreasonableness of the arrest in this case. The State argues arrest was reasonable because the State provided Sleater with a means to avoid arrest by appearing in court and scheduling a hearing on her ability to pay. Brief of Respondent at 5-6. But that is not what reasonableness under the law requires. A person should be jailed for civil contempt to coerce payment or other non-criminal reasons only when no reasonable alternative exists. Smith v. Whatcom Cnty. Dist. Court, 147 Wn.2d 98, 12-13, 52 P.3d 485, 492-93 (2002); State v. Klinker, 85 Wn.2d 509, 522, 537 P.2d 268 (1975). In short, the question is not whether Sleater

had any alternative; the question is whether the State did. The State has given no explanation why it could not simply have issued a notice or summons requiring Sleater to appear and explain why she had not paid.

An arrest on a felony warrant in the middle of the night is a drastic measure indeed. The State has giving this Court no reason why that was necessary or reasonable in order to compel Sleater to either pay her financial obligations or appear in court to explain why she could not. There was no evidence she had failed to respond to summons or notices in the past. On the contrary, she had made at least semi-regular payments. The record in this case strongly indicates a misunderstanding rather than a willful failure to pay. But that is a question for the lower court to determine. The State has given no reason why it was necessary to arrest Sleater on a felony warrant in the middle of the night in order to make that determination.

The heart of the Fourth Amendment is reasonableness. Maryland v. King, 133 S. Ct. 1958, 1969, 186 L. Ed. 2d 1 (2013) (quoting Vernonia School Dist. 47J v. Acton, 515 U.S. 646, 652, 115 S. Ct. 2386, 132 L. Ed. 2d 564 (1995)). The goal is to guard against intrusions on liberty that “are not justified in the circumstances.” Id. (quoting Schmerber v. California, 384 U.S. 757, 770, 86 S. Ct. 1826, 16 L. Ed. 2d 908 (1966)). The arrest in this case was simply unreasonable and unjustified under the circumstances. All

the resulting evidence should be suppressed as the result of an unlawful seizure and the case dismissed.

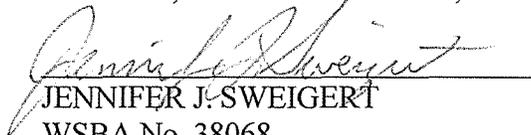
B. CONCLUSION

For the foregoing reasons and for the reasons stated in the opening Brief of Appellant, Sleater requests this Court reverse her conviction.

DATED this 26th day of October, 2015.

Respectfully submitted,

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No. 33149-1-III

Certificate of Service

I Patrick Mayovsky, declare under penalty of perjury under the laws of the state of Washington that the following is true and correct:

That on the 26th day of October, 2015, I caused a true and correct copy of the **Reply Brief of Appellant** to be served on the party / parties designated below by email per agreement of the parties pursuant to GR30(b)(4) and/or by depositing said document in the United States mail.

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Signed in Seattle, Washington this 26th day of October, 2015.

X  _____