

FILED
JULY 30, 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

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The court erred in finding appellant's arrest was not unlawful. CP 68.

2. The court erred in denying appellant's motions to suppress and concluding the evidence was admissible. CP 91, 96.

3. The court erred in concluding RCW 10.01.180 authorized the warrant for appellant's arrest for failing to pay her legal financial obligations (LFOs). CP 90.

4. The court erred in concluding the officers lawfully stopped appellant. CP 91.

5. The court erred in concluding appellant was lawfully searched. CP 69, 96.

6. The court erred in finding appellant guilty and entering judgment against appellant. CP 69, 71.

Issue Pertaining to Assignments of Error

Under the Fourth Amendment, arrest warrants must be reasonable. Custodial arrests for civil disputes are generally unreasonable when a summons would have sufficed. Appellant fell behind in payments on her legal financial obligations to the Benton County Superior Court. The clerk issued a felony bench warrant for her arrest. Was appellant's arrest a

violation of her Fourth Amendment rights because the arrest warrant was unreasonable?

B. STATEMENT OF THE CASE

Appellant Jaclyn Sleater owed several thousand dollars in legal financial obligations pursuant to criminal convictions in 2009, 2010, and 2012. CP 26-37. On May 3, 2013, she signed a Benton County Superior Court order placing her in its “Pay or Appear” program. CP 39-40. Under that order, she was required to make payments by the 30th day of each month. CP 39. If unable to make a payment, she was to appear at the Clerk’s Office by the 15th day of the following month to schedule a hearing to explain why she had not paid. CP 39. The order further stated, “If the Defendant has not made the payment as required herein and has failed to report to the Clerk’s office as required herein . . . a warrant will be issued for the Defendant’s arrest.” CP 39.

By April of 2014, clerk’s office records showed Sleater was several months behind in her payments on each of the three cause numbers, but no warrant had yet issued. 1RP¹ 9. Sleater’s mother made an online payment of \$150 on April 16. 1RP 7-8, 15. The payment was applied to only one of the three cause numbers, and no warrant issued on that cause number. 1RP 7-8, 10-11. However, \$150 was not sufficient to bring her up to date on the

¹ There are two volumes of Verbatim Report of Proceedings referenced as follows: 1RP – Oct. 29, 2014, Feb. 23, 2015; 2RP – Dec. 31, 2014.

other cause numbers, and the clerk's office issued bench warrants for her arrest on the other two cause numbers on April 22, 2014. CP 18, 19; 1RP 10-11.

On May 16, around 11 or 12 p.m., Sleater was leaving the parking lot of the Road Brothers Clubhouse with her boyfriend when she was pulled over by police. 2RP 5-6, 14-15. The officers testified they ran the license plate, saw that the car was registered to Sleater, and saw that she had felony warrants for her arrest. 2RP 15-16. One of the officers could see that the driver was female and appeared to match the general description of Sleater that accompanied the warrant. 2RP 16.

After confirming the warrant, they transported Sleater to the jail where she was searched in the process of being booked. 2RP 18, 26. The search revealed a vial of methamphetamine that she admitted she possessed. 2RP 18, 20.

Sleater first moved to suppress the evidence, arguing the warrant was based on the clerk's mistaken belief she had not paid and citing her mother's April 16, 2014 payment. CP 6-22. In her reply brief, Sleater also argued the arrest warrant was invalid because there was no showing she had any ability to pay the LFOs. CP 24-25.

Sleater also moved to either suppress the evidence or dismiss the case for governmental misconduct under CrR 8.3(b). CP 24. The basis for

this motion was the court clerk's testimony that enforcement of the warrant provision of the pay or appear program is rather haphazard, and that sometimes warrants do not issue until several months after a person has failed to pay. CP 24.

Finally, Sleater moved to suppress the evidence on the grounds that the arrest warrant was a pretext for the police to investigate the Road Brothers Clubhouse and her reasons for being there. CP 51, 56. The court denied the various motions to suppress and/or dismiss. 1RP 26, 32.

In a stipulated facts bench trial, the court found Sleater guilty of possessing methamphetamine. CP 69, 71. The court imposed a standard range sentence of 9 months and \$3,560 in new LFOs. CP 74, 76. At sentencing, Sleater agreed she was able to pay LFOs. 1RP 45. Notice of appeal was timely filed. CP 86.

C. ARGUMENT

THE EVIDENCE AGAINST SLEATER MUST BE SUPPRESSED BECAUSE IT WAS OBTAINED AS A RESULT OF AN UNLAWFUL ARREST.

The Fourth Amendment limits arrest warrants to those that are reasonable, based on probable cause, and supported by a sworn statement. U.S. Const. amend IV. Similarly, Article I, Section 7 of Washington's constitution requires "authority of law," which has been interpreted as being satisfied by a warrant issued upon a sworn statement showing probable

cause. State v. Miles, 160 Wn.2d 236, 244, 156 P.3d 864 (2007); City of Seattle v. McCready, 123 Wn.2d 260, 273, 868 P.2d 134 (1994). Bench warrants are not excluded from these fundamental principles:

When served, a warrant of arrest disturbs a person in his private affairs. Thus, a warrant of arrest shall not issue “without authority of law,” regardless of whether it is labelled an “administrative” warrant, an “arrest” warrant, a “bench” warrant, or something else

State v. Walker, 101 Wn. App. 1, 5-6, 999 P.2d 1296 (2000).

Here, the trial court ruled the arrest warrant was authorized under RCW 10.01.180. 1RP 27-28. RCW 10.01.180 provides a civil contempt penalty for failure to pay a judgment. State v. Nason, 168 Wn.2d 936, 947, 233 P.3d 848 (2010) (quoting Smith v. Whatcom Cnty. Dist. Court, 147 Wn.2d 98, 105, 52 P.3d 485, 492-93 (2002)). Civil contempt is remedial, rather than punitive; the goal is to coerce the subject to perform the court-ordered action. King v. Dep’t of Soc. & Health Servs., 110 Wn.2d 793, 799, 756 P.2d 1303 (1988). Specifically, the statute provides, “A defendant sentenced to pay a fine or costs who defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW. The court may issue a warrant of arrest for his or her appearance.” RCW 10.01.180.

The bench warrant that purported to authorize Sleater’s arrest for failure to pay her LFOs or appear to schedule a show cause hearing was

invalid because it was unreasonable. It was unreasonable and exceeded the limits on the court's contempt power because the court did not exhaust other alternatives such as issuing a summons before having Sleater arrested and jailed in the middle of the night. The evidence obtained as a result of this unlawful arrest should be suppressed. Without the methamphetamine found in the booking search and Sleater's subsequent statements, the evidence is insufficient and the case must be dismissed.

Generally, issuance of warrants is reviewed for abuse of discretion. State v. Erickson, 168 Wn.2d 41, 45, 225 P.3d 948 (2010). However, when a question of law is presented, review is de novo. Id. For example, in Erickson, the issue was whether the court could issue a bench warrant without a formal finding of probable cause on the underlying allegations after a probationer failed to appear at a probation violation hearing. Id. Similarly, this case presents a question of law: is a felony bench warrant unreasonable in violation of the Fourth Amendment when the only "crime" is failure to pay LFOs? As in Erickson, this Court's review should be de novo. 168 Wn.2d at 45.

- a. The Warrant Was Invalid Because It Purported to Authorize Arresting Sleater Without Any Attempt at Less Restrictive Alternatives.

The Fourth Amendment requires that seizures be reasonable. U.S. Const. amend. IV. "For an arrest to be 'reasonable' it must serve some

governmental interest which is adequate to justify imposition on the liberty of the individual.” State v. Fisher, 145 Wn.2d 209, 232, 35 P.3d 366 (2001). Similar in effect to the Fourth Amendment reasonableness requirement is the limit on the court’s contempt power that a person guilty of contempt of court should only be jailed as a last resort ““when no reasonable or effective alternatives are available.”” Smith, 147 Wn.2d at 112-13 (quoting King, 110 Wn.2d at 802). The record must show that ““all less restrictive alternatives . . . failed.”” Id.

The government has a valid interest in imprisoning those who willfully refuse to pay their LFOs. Bearden v. Georgia, 461 U.S. 660, 668, 103 S. Ct. 206, 476 L. Ed. 2d 221 (1983). But the government has no valid interest in having such persons arrested on criminal felony warrants in the middle of the night when the court could simply issue a summons requiring them to appear in court to explain their failure to pay.

The officers were notified that the warrant for Sleater’s arrest was a felony warrant. 2RP 15, 26. But failing to pay legal financial obligations is not a felony. If intentional, it is contempt. Smith, 147 Wn.2d at 112. Even criminal contempt cannot be classified as a misdemeanor or a felony. United States v. Cohn, 586 F.3d 844, 845 (11th Cir. 2009). The statute at issue here authorizes only civil contempt penalties. Nason, 168 Wn.2d at 947. So despite the characterization of the bench warrant in this case as a “felony”

warrant, the State's interest is not akin to an interest in arresting a person suspected of a felony.

“The circumstances outside the criminal area in which arrest is necessary or appropriate are few indeed.” State v. Klinker, 85 Wn.2d 509, 522, 537 P.2d 268 (1975). Generally, minor traffic offenses and civil infractions do not justify arrest warrants. See State v. Hehman, 90 Wn.2d 45, 47, 578 P.2d 527 (1978) (“We hold as a matter of public policy that custodial arrest for minor traffic violations is unjustified, unwarranted, and impermissible if the defendant signs the promise to appear as provided in RCW 46.64.015.”). Even the State's interest in determining paternity of children and ensuring that the State does not unnecessarily bear the burden of providing for illegitimate children does not justify custodial arrest of putative fathers subject to paternity petitions. Klinker, 85 Wn.2d at 524 (statute authorizing arrest of subjects of paternity petitions unconstitutional). Arrest is generally warranted when a person may flee or pose a danger to others. Id. at 522 (discussing CrR 2.2). But arrest “is not justified simply by the fact that it is necessary to bring [a person] into court for trial.” Id.

“Where there is no special need for arrest, where some other means exists by which the governmental interest can be satisfied without such infringement on individual liberties, the issuance of an arrest warrant is not only unwise but constitutionally impermissible.” Id. Under Klinker, it is

unreasonable to jail a person for contempt when other alternatives exist. The same reasonable alternative exists in this case as in Klinker: a summons. Id.

So long as the summons procedure is available in the civil context, an arrest warrant is both “unnecessary and unreasonable within the meaning of the Fourth Amendment.” Id. It was likely necessary to bring Sleater into court to show cause why she had not paid her LFOs. But there was no indication she would flee or pose a danger to others. The court could have simply issued a summons to appear for a show cause hearing. A custodial arrest was an unreasonable intrusion into her liberty that was not justified by the state’s financial interest. A midnight stop and arrest on a felony warrant is not a reasonable way to vindicate the State’s interest in collecting on a debt.

b. The Violation of Sleater’s Fourth Amendment Rights Is Manifest Constitutional Error Warranting this Court’s Review under RAP 2.5(a)(3).

Issuance of a felony warrant in violation of Sleater’s Fourth Amendment rights is manifest constitutional error that warrants review even though not specifically argued to the trial court. RAP 2.5(a)(3). RAP 2.5(a)(3) reflects the policy goal that a procedural rule “should not prevent an appellate court from remedying errors that result in serious injustice to an accused.” State v. Kalebaugh, ___ Wn.2d ___, ___ P.3d ___, 2015 WL 4136540 at *2 (No. 89971-1, filed July 9, 2015). Errors may thus be raised

for the first time on appeal when the error is of constitutional magnitude and is manifest. Id. The issue here is of constitutional magnitude because it directly addresses the violation of Sleater's Fourth Amendment right to be free from unreasonable seizure.

The constitutional error is manifest because it had "practical and identifiable consequences at trial." Kalebaugh, ___ Wn.2d at ___, 2015 WL 4136540 at *3. The unconstitutional arrest led directly to the discovery of the only evidence of the offense with which Sleater is charged. The very fact of the charge and the trial are practical and identifiable consequences of her unlawful arrest.

Next, in determining whether an error is manifest, courts look to whether the trial court could have corrected the error based on the information available to the trial court at the time. Id. The trial court could have identified and remedied the violation of Sleater's Fourth Amendment rights. A suppression hearing was held, related arguments were made, and the court is presumed to know fundamental legal principles such as that arrest warrants must be reasonable and the limits of the court's contempt power. See Kalebaugh, ___ Wn.2d at ___, 2015 WL 4136540 at *3 (trial court should have known jury instruction on reasonable doubt misstated the law). The information necessary to determine this issue was also before the

court. There was no question that the warrant was for any other reason than the failure to pay legal financial obligations due to the court.

c. The Violation of Sleater's Fourth Amendment Rights Requires Suppression of the Evidence, Reversal of Her Conviction, and Dismissal of the Case.

When a person is unlawfully seized in violation of either the Fourth Amendment or Article I, Section 7 or both, the evidence obtained as a result of that seizure must be excluded. State v. Gantt, 163 Wn. App. 133, 144, 57 P.3d 682 (2011) rev. denied, 173 Wn.2d 1011 (2012) (citing State v. Harrington, 167 Wn.2d 656, 664, 222 P.3d 92 (2009)). When the untainted evidence fails to support a conviction, the conviction must be reversed. State v. Hopkins, 128 Wn. App. 855, 866, 117 P.3d 377 (2005) (reversing because conviction rested solely on evidence obtained via improper warrantless seizure). Here, the only evidence against Sleater was the methamphetamine found and her statements made during the search when she was booked into jail after an unlawful arrest. Because the arrest was unlawful, the evidence must be suppressed and her conviction reversed and the case dismissed with prejudice.

D. CONCLUSION

This Court should reverse Sleater's conviction because the evidence against her was obtained as the fruit of an unlawful arrest in violation of her constitutional rights under the Fourth Amendment and Article I, Section 7.

DATED this 30th day of July, 2015.

Respectfully submitted,

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State v. Jaclyn Sleater

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Certificate of Service by email

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 30th day of July, 2015, I caused a true and correct copy of the **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 30th day of July, 2015.

X 
