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DIVISION II

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STATE OF WASHINGTON

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No. 34025-9-II

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IN THE COURT OF APPEALS, DIVISION II
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON

Appellant,

v.

RANDALL PATTON,

Respondent.

BRIEF OF APPELLANT

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I. ASSIGNMENT OF ERROR

Assignment of Error No. 1

The Court erred in entering Conclusion of Law 2.

Assignment of Error No. 2

The Court erred in entering Conclusion of Law 3.

Assignment of Error No. 3

The Court erred in entering Conclusion of Law 4.

Assignment of Error No. 4

The Court erred in entering the Order of Suppression and Dismissal With Prejudice (Count I).

II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

A. Whether Mr. Patton was placed under arrest when Deputy Converse drove up behind his vehicle, told Mr. Patton to put his hands behind his back, and also told him that he was under arrest. (Assignment of Error No. 1).

B. Whether a warrantless search of the

vehicle was justified by the search incident to arrest exception to the warrant requirement when Mr. Patton was told he was under arrest while still within his vehicle, but then fled before he was placed in actual physical custody several minutes later. (Assignment of Error No. 2).

C. Should the defendant's Motion to Suppress have been denied as this case involved a valid search of a vehicle incident to the occupant's arrest. (Assignment of Error Nos. 3-4).

III. STATEMENT OF THE CASE

The State of Washington charged Randall Patton by information on 7/26/05 with one count of Violation of the Uniform Controlled Substances Act - Possession of Methamphetamine RCW 69.50.4013 and one count of Resisting Arrest RCW 9A.76.040. Clerk's Papers [CP] 1. The defendant filed a Motion to Suppress the drugs, which was heard by the trial court on October 27, 2005. CP 3. Report of Proceedings [RP] 1. The Court suppressed the drugs and dismissed the VUCSA -

Possession of Meth count. RP 24. CP 18 - 21. The State appeals.

The facts of the case are as set forth in the findings of fact from the suppression hearing, which were stipulated by the parties. RP 18. CP 15 - 17.

On March 19, 2005, Deputy Tim Converse of the Skamania County Sheriff's Office was watching a trailer in Stevenson Washington hoping to locate Randall J. Patton in order to arrest him on an outstanding felony warrant. RP 18 - 19. CP 16 (Findings of Fact [FF] #1). He observed a blue Chevy parked in front of the trailer and ran the license through his dispatch to confirm that the vehicle belonged to Randall Patton. RP 19. CP 16 (FF #1). The vehicle was confirmed to be Patton's. RP 19. CP 16 (FF #1). Deputy Converse called for back-up and drove around the block to observe the vehicle while he waited for a back-up officer to arrive. RP 19. CP 16 (FF #1).

After a short time waiting, Deputy Converse observed the dome light in the car come on, and saw a

person who looked like Randall Patton rummaging around inside the driver's door of the vehicle. RP 19. CP 16 (FF #2). Believing that Patton may try to drive away, Deputy Converse drove up to the back of Patton's vehicle. RP 19. CP 16 (FF #2). Deputy Converse got out of his patrol vehicle and began to approach Patton. RP 19. CP 16 (FF #2). Deputy Converse instructed Patton to place his hands behind his back, and that he was under arrest. RP 19. CP 16 (FF #2). When Deputy Converse gave these instructions to Patton, Patton's head was still in the vehicle. RP 19. CP 16 (FF #2).

When Deputy Converse gave the instructions to Patton, Patton immediately stood up and ran to the front door of the trailer and ran inside. RP 19. CP 16 (FF #3). Deputy Converse pursued Patton, but was unable to open the door to the trailer, and could hear Patton barricading the door. RP 19. CP 16 (FF #3). Patton continued to ignore Deputy Converse's verbal commands to exit the trailer. RP 19 - 20. CP 16 (FF #3). While waiting for back-up, Deputy

Converse observed Patton try to crawl out a window. RP 20. CP 16 - 17 (FF #3). When Patton saw Deputy Converse, he crawled back inside. RP 20. CP 17 (FF #3).

Sgt Brett Robison of the Skamania County Sheriff's Office arrived as back-up a few minutes later. RP 20. CP 17 (FF #4). After a short deliberation, Sgt Robison and Deputy Tim Garrity, who also responded as back-up, decided to enter the trailer to apprehend Patton. RP 20. CP 17 (FF #4). They did so and discovered Patton hiding behind a bedroom door. RP 20. CP 17 (FF #4).

Patton was taken to the back of Deputy Converse's patrol vehicle and handcuffed. RP 20. CP 17 (FF #5). A few minutes subsequent to his apprehension, the vehicle Patton fled from when first told he was under arrest by Deputy Converse was searched incident to arrest. RP 20. CP 17 (FF #5). Sgt Robison discovered \$122 and two plastic baggies containing suspected methamphetamine under the driver's seat in the vehicle. RP 20. CP 17 (FF #5).

IV. ARGUMENT

Mr. Patton was arrested when Deputy Converse drove up to the back of Mr. Patton's vehicle, walked towards Mr. Patton while Mr. Patton was still in the vehicle and instructed him that he was under arrest and to place his hands behind his back, and therefore the search of Mr. Patton's vehicle which occurred a few minutes later after Mr. Patton attempted to resist arrest and flee by hiding in a trailer was a lawful search incident to arrest.

The trial court erred in concluding that the search of Mr. Patton's vehicle was not incident to his arrest.

The Court relied heavily on State v. Rathbun, 124 Wash.App. 372, 101 P.3d 119 (2004) when it decided that because Mr. Patton was not actually apprehended and put in physical custody until he was a short distance away from his vehicle in a trailer where he'd fled upon being told he was under arrest, the search of the vehicle he was in when contacted was improper. The Court's reliance on State v. Rathbun was misplaced. The facts in Rathbun differ in several important respects from the facts in Mr.

Patton's case.

The Supreme Court established the idea of a search incident to arrest in Chimel v. California, where it said that police may search that area in the arrestee's "immediate control" incident to a lawful arrest. Chimel v. California, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969). A "bright line rule" was established by the Supreme Court in New York v. Belton for instances where the person arrested is an occupant of a vehicle. In those instances, police may search the entire passenger compartment incident to arrest. New York v. Belton, 453 U.S. 454, 460, 101 S.Ct. 2860, 69 L.Ed.2d 768 (1981). The Washington State Supreme Court has adopted the New York v. Belton bright line rule that an officer may search the passenger compartment for weapons or destructible evidence after arresting the occupant of a vehicle. State v. Stroud, 106 Wn. 2d 144, 152, 720 P.2d 436 (1986). This rule was expanded by the Supreme Court in Thornton v. United States to include "recent occupants" of automobiles.

Thornton v. United States, 541 U.S. 615, 124 S.Ct. 2127, 2131, 158 L.Ed.2d 905 (2004). In Thornton, the defendant parked his car and exited his vehicle before he was pulled over and arrested. So no arrest occurred until the defendant was out of his vehicle. The Supreme Court held the search to be valid because the defendant was still in close proximity to the vehicle when he was arrested. A similar issue was addressed in Washington in State v. Porter, where the defendant had exited his vehicle and walked more than 300 feet away from the vehicle before he was contacted and eventually arrested by police. State v. Porter, 102 Wash.App 327, 332, 6 P.3d 1245 (2000). In Porter, the court found the search impermissible because the defendant did not have immediate control of the vehicle when he was arrested 300 feet away. In State v. Rathbun, the defendant was seen near his vehicle, but not inside the vehicle. The defendant ran away from the vehicle before he was contacted and arrested by police. The defendant was more than 60 feet away from his vehicle when police contacted and

arrested him. State v. Rathbun, 124 Wash.App. 372, 378, 101 P.3d 119, 121 (2004).

The important distinguishing facts between Rathbun and Porter and Mr. Patton's case is that in Rathbun and Porter, the defendant's were not contacted and arrested while they were still in their vehicle, while in Mr. Patton's case he was contacted and instructed to place his hands behind his back and that he was under arrest while he was still inside the vehicle, "rummaging around." CP 16. Mr. Patton did not flee until after he was placed under arrest, which is why he was also charged by Information with Resisting Arrest. CP 1.

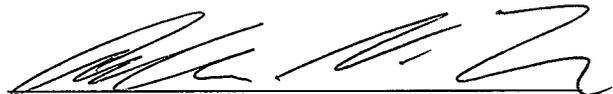
This is not an insignificant distinction. The Court of Appeals, Division Two, in Rathbun said that "the proper inquiry is whether the vehicle was within the arrestee's immediate control 'at the time the police initiate an arrest'" State v. Rathbun, 124 Wash.App. 372, 378, 101 P.3d 119, 121 (2004). Mr. Patton was rummaging around in his vehicle when Deputy Converse drove up behind his vehicle, got out

of his car, started walking towards Mr. Patton, told him to put his hands behind his back and that he was under arrest, and it was not until all of that occurred that Mr. Patton stood up and resisted his arrest by fleeing from Deputy Converse and locking himself in a trailer. CP 16. The actions of Deputy Converse placed Mr. Patton under arrest while he was inside his vehicle rummaging around. Arrest and physical custody are two separate concepts. While Mr. Patton was not taken into actual physical custody until several minutes later, and several feet from where he was initially told to stop and put his hands behind his back, he was still "arrested" by any reasonable understanding of that word in a criminal context. In fact, if Mr. Patton was not "arrested" at the point where Deputy Converse instructed him to that effect and told him to put his hands behind his back, then the State would be unable to prosecute him for resisting arrest in that situation. That result seems absurd.

V. CONCLUSION

The arrest of Mr. Patton was lawful. His arrest occurred while he was rummaging around inside his vehicle. The search of the vehicle incident to his arrest is therefore valid. The methamphetamine found in the search is admissible in evidence against him. The Order of Suppression should be reversed and vacated. This matter should be returned to the trial court to proceed to trial.

Respectfully Submitted this 24th day of May,
2006.



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