

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

Case No. 94054-1

On review from:

Court of Appeals No. 33427-9-III

STATE OF WASHINGTON, Respondent,

v.

JUSTIN DEAN VANHOLLEBEKE, Petitioner.

SUPPLEMENTAL BRIEF OF PETITIONER

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I. INTRODUCTION

Justin Vanhollebeke was driving a borrowed vehicle when police stopped him and requested permission to search it. When he refused, police detained him, contacted the registered owner, and obtained the owner's consent to search. Returning to the vehicle, the police then searched it without a warrant and over Vanhollebeke's express refusal. The Court of Appeals affirmed the denial of Vanhollebeke's motion to suppress evidence in a published opinion. *State v. Vanhollebeke*, 197 Wn. App. 66, 387 P.3d 1103 (2016).

This Court granted review of the following question: Is the express refusal of a driver in lawful possession of a vehicle overridden by the consent of a non-present owner, thereby relieving police of the obligation to obtain a warrant?

II. ASSIGNMENTS OF ERROR

1. The Court of Appeals erred in holding that "a vehicle owner's consent to search overrides the borrower's express objection."
Vanhollebeke, 197 Wn. App. at 68.
2. The Court of Appeals erred in affirming the denial of Vanhollebeke's motion to suppress evidence obtained from a warrantless search of the vehicle.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Does the validity of a warrantless search performed with the consent of one co-occupant over the express refusal of another depend upon the law of property governing the respective relationships with the searched item?
2. Does art. 1, § 7 of the Washington Constitution protect a privacy interest in a borrowed vehicle to a greater degree than the Fourth Amendment to the U.S. Constitution?

IV. STATEMENT OF THE CASE

Vanhollebeke's statement of the case is set forth in full in the Petition for Review filed herein.

V. ARGUMENT

The question presented is one of first impression in the State of Washington and asks simply whether one who borrows personal property and uses it as his own has the right to prevent police from searching it without first obtaining a warrant. In answering this question in the negative, the Court of Appeals rejected the reasoning of the U.S. Supreme Court on common authority, established a standard that is unworkable in practice, and ignored the expanded protection afforded to vehicles under article 1, section 7 of the Washington Constitution. Because these reasons

all support a conclusion that one with common authority over a legally possessed vehicle has independent authority to prevent a warrantless search, the Court of Appeals' ruling should be reversed.

A. The Court of Appeals' reliance on a theory of bailments to uphold the search is contrary to the U.S. Supreme Court's recognition that the respective rights of parties should not be litigated at the scene of the search, but should be resolved in favor of obtaining a warrant.

When one with common authority over property refuses consent to search, the recourse of police is not to search out a person with a superior interest in the property to override the refusal – instead, the recourse is the constitutionally preferred remedy of obtaining a warrant. There is neither a legal nor a practical reason to distinguish real property from personal property in applying this rule. The Court of Appeals' decision improperly deviates from the principles established in the common authority jurisprudence by inappropriately elevating a property law analysis to allow police to search out superior claims to the property to override the lawful possessor's consent. Because the decision is inconsistent with the established principles and the rule it adopts is unworkable, the decision should be reversed.

1. The jurisprudence of common authority holds that authority to refuse a warrantless search of shared property arises from social expectations about when one may enter consensually, not from evaluating principles of property law.

In the first case considering whether searching shared property with the consent of one of the owners was permissible under the Fourth Amendment, the U.S. Supreme Court upheld a warrantless search of a duffel bag that was shared by two men, one of whom consented and one of whom was absent. *Frazier v. Cupp*, 394 U.S. 731, 740, 89 S. Ct. 1420, 22 L. Ed. 2d 684 (1969). In *Frazier*, the Court rejected the argument that the respective property rights of the parties to different compartments in the bag determined the outcome, characterizing the potential interests as “metaphysical subtleties.” *Id.* Instead, the *Frazier* Court held the petitioner assumed the risk that the other would allow someone to look inside the bag when he left it unattended. *Id.*

Subsequent decisions involving absent co-occupants fleshed out this concept that consent to search shared property is not a matter of parsing property rights, but a question of the expectations police and the shared property owners would reasonably have concerning third-party access. In *Coolidge v. New Hampshire*, 403 U.S. 443, 446, 91 S. Ct. 2022,

29 L. Ed. 2d 564 (1971), after calling the defendant away to take a lie detector test, other police officers went to the defendant's home, spoke to his wife, and obtained from her guns belonging to the defendant and clothes the wife believed he might have been wearing on the night in question. Because the wife volunteered to give the items to police, believing they would clear her husband, and because police behaved courteously and made no attempt to coerce or manipulate her, the *Coolidge* Court did not conclude that police acted with any impropriety that would warrant constitutional protection. *Id.* at 488-89. Because the Fourth Amendment provides protection against police misconduct, not voluntary citizen assistance, the *Coolidge* Court declined to find a constitutional violation where the wife voluntarily provided the property in an attempt to clear the defendant. *Id.*

Next, in *U.S. v. Matlock*, 415 U.S. 164, 166-67, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974), the defendant was arrested in the yard of the house where he lived with several other people and shared a room with a Mrs. Gayle Graff. After the arrest, Graff allowed officers to enter the house and consented to them searching the shared bedroom, where they found evidence later introduced at trial. *Id.* In *Matlock*, the U.S. Supreme Court rejected the argument that the State must show Graff had the defendant's permission to allow the search, concluding that she had "authority to

consent in her own right, by reason of her relationship to the premises.” *Id.* at 167. As a result, the *Matlock* Court expressly held, “the consent of one who possesses common authority over premises or effects is valid as against the absent, nonconsenting person with whom that authority is shared.” *Id.* at 169.

These precedents establish that the relationship to shared property carries with it the authority to consent to a search, in the absence of a contemporaneous objection from the other co-owner. Under these rules, the validity of the search depends upon whether the person who consented had authority to do so. *See, e.g., State v. Vidor*, 75 Wn.2d 607, 452 P.2d 961 (1969) (upholding search of visiting son’s room performed with consent of mother who owned house); *also compare State v. Mathe*, 102 Wn.2d 537, 688 P.2d 859 (1984) (invalidating search of rent-paying tenant’s room because landlord lacked authority to give consent) and *State v. Christian*, 95 Wn.2d 655, 628 P.2d 806 (1981) (upholding search of former tenant’s apartment because landlord had authority to enter after leasehold expired and apartment was being vacated).

But because both owners have authority over shared property, the relationship to the property alone cannot govern the resolution of a dispute between common owners about whether to consent to a warrantless

search. Both have independent authority to consent or refuse. In circumstances where people with independent interests in the property disagree, the court must determine which party's authority prevails when police wish to enter and search without a warrant.

Whether police may constitutionally rely upon one common owner's consent to conduct a warrantless search when another common owner is present was first presented to this Court in *State v. Leach*, 113 Wn.2d 735, 782 P.2d 135 (1989). There, the Court noted the distinction between the situation presented in *Matlock*, where an absent co-occupant assumes the risk that others will permit third-party entry in his absence, and a case where the defendant is present and "has not assumed that a cohabitant will permit entrance over his objection." *Id.* at 743. The *Leach* Court concluded that when both co-occupants are present, "persons with equal 'rights' in a place would accommodate each other by not admitting persons over another's objection while he was present." *Id.* at 740 (quoting 3 W. LaFare, *Search and Seizure* § 8.3(d), at 251-52 (2d ed. 1987)). Accordingly, the *Leach* Court held that because the co-habitants had equal control over the premises, when both were present, consent of both to the entry was required. *Id.* at 744.

In reaching this conclusion, the *Leach* Court notably did not rely upon common law principles governing the rights of co-tenants.¹ In reaching the contrary result, the *Leach* Court instead relied upon two factors. First, it deferred to the ordinary expectations of courteous accommodation between common owners. *Leach*, 113 Wn.2d at 740-42. Because the interest at stake in a police intrusion is more than a mere property interest, but a constitutionally protected right to privacy, “a present, objecting party should not have his constitutional rights ignored because of a leasehold or other property interest shared with another.” *Id.* at 741 (*quoting* *Silva v. State*, 344 So.2d 559, 532-63 (Fla. 1977)). Second, the Court noted that where police have ample opportunity to obtain a warrant, they should do so, rather than risk an illegal search and seizure by relying upon third-party consent. *Id.* at 744. Because a present

¹ At common law, each co-tenant holds an undivided interest in the entire property, may possess and enjoy the entire property, and may even take rents or produce from the property for his own use to the exclusion of his co-tenants. *See In re Foreclosure of Liens*, 130 Wn.2d 142, 148, 922 P.2d 73 (1996) (describing attributes of tenancy in common); *McKnight v. Basilides*, 19 Wn.2d 391, 394, 143 P.2d 307 (1943) (noting that exclusive possession of commonly-held property alone does not constitute an ouster of co-tenants). Indeed, the common law co-tenant’s interest in the entire property permits the co-tenant to lease the entire property to a third party, subject only to the non-joining co-tenant’s right to co-possession of the entire property. *Carr v. Deking*, 52 Wn. App. 880, 884, 765 P.2d 40 (1988). Applying these principles to consensual searches would appear to permit each co-occupant to consent to entry onto the entire premises over the other’s objection, so long as the objecting co-occupant is not thereby deprived of his own right of entry. *See generally Carr*, 52 Wn. App. at 884-85 (“A nonjoining tenant may not demand exclusive possession as against the lessee, but may only demand to be let into co-possession”; further noting that objecting tenant has no right to eject tenant from property).

co-tenant has constitutionally protected interests in the shared property, allowing police to search without a warrant or the consent of the present co-tenant “exalts expediency over an individual’s Fourth Amendment guarantees.” *Id.*

Subsequently, the U.S. Supreme Court adopted the same reasoning in *Georgia v. Randolph*, 547 U.S. 103, 126 S. Ct. 1515, 164 L. Ed. 2d 208 (2006). There, police asked the defendant to consent to a search of the home he shared with his wife, and he refused. Police then asked the wife for consent, which she gave, and the search was conducted. *Id.* at 107. In invalidating the search, the *Randolph* Court expressly acknowledged that as Fourth Amendment rights are not limited by property law, so a third-party’s common authority “is not synonymous with a technical property interest.” *Id.* at 110. Instead, the touchstone of determining whether a consensual search is reasonable for Fourth Amendment purposes is “the great significance given to widely shared social expectations, which are naturally enough influenced by the law of property, but not controlled by its rules.” *Id.* at 111.

Evaluating these “shared social expectations,” the *Randolph* Court hypothesized that in a circumstance where a person sought entry into a shared residence by the consent of one occupant while the other occupant

stood by and said “Stay out,” “no sensible person would go inside under those conditions.” *Id.* at 113. Regardless of the objective legal rights of the parties, the *Randolph* Court reasoned that a prospective entrant would not attempt to assert some legal authority to justify the entry, but would rather seek a voluntary accommodation. *Id.* at 113-14. Further, the Court recognized that a co-tenant’s interest in reporting criminal activity in shared quarters can be protected without overriding the defendant’s right to refuse the search, by allowing the co-tenant to independently provide evidence or information to police to assist in obtaining a warrant. *Id.* at 115-16. Applying these principles, the *Randolph* Court held that “a physically present inhabitant’s express refusal of consent to a police search is dispositive as to him, regardless of the consent of a fellow occupant.” *Id.* at 122-23.

The common thread throughout this jurisprudence is that while a person’s property interests may establish their authority over property as to police, legal interests are not dispositive of their authority to override each other’s wishes about allowing police to enter. The scene of a prospective search is not the time or the place to adjudicate the nature of the parties’ interests or the scope of their authority over the shared property. Instead, property rights are merely a starting point for ascertaining a cohabitant’s authority to consent to a search, not the final

answer. The answer instead depends upon whether a reasonably courteous person, seeking to examine property another possesses, would ordinarily take “No” for an answer.

In light of this reasoning, no rationale exists why these principles should not apply with equal force to the search of shared personal property. It is just as unlikely that an entrant facing a lawful refusal to search personal property would ignore the refusal and search the property anyway, as it is in the case of entry into real property. Nor are police deprived of any opportunity they already had to obtain a warrant to search the property, or to enter without consent due to exigent circumstances, merely because the property in question is personalty rather than realty. That the common authority jurisprudence as a whole derives from *Frazier*, which involved a shared duffel bag, further indicates that the same reasoning applies to warrantless searches of real and personal property.

Nevertheless, the Court of Appeals’ opinion in this case rejects the “social expectations” rule of common authority and follows the path rejected by *Leach* and *Randolph* of rendering property rights dispositive of the right to refuse consent. First, the Court of Appeals concluded that Vanhollebeke’s right to use the truck derived from “the owner’s unrevoked permission.” *Vanhollebeke*, 197 Wn. App. at 73. But other

than establishing that Vanhollebeke's use was permissive – in other words, that he did not steal the truck – the record is silent as to the agreement between Vanhollebeke and the truck's owner, Bill Casteel. As a result, it is entirely unknown whether Vanhollebeke provided consideration for borrowing the truck or whether his use was gratuitous, when and under what circumstances Vanhollebeke was required to return the truck to Casteel, or anything else concerning the nature of the agreement between Vanhollebeke and Casteel that would provide a factual basis for ascertaining their interests and expectations relative to the truck.

Second, the Court of Appeals then concluded that the law of bailments applied and because Casteel could have retaken the truck at any time, Vanhollebeke possessed a diminished expectation of privacy in it. *Vanhollebeke*, 197 Wn. App. at 73-74. Again, the court's assumption as to the nature of the agreement between Vanhollebeke and Casteel as one of bailment is unsupported in the record. Nevertheless, the Court of Appeals reasoned that because "owner" and "borrower" have hierarchical interests in the property, different social expectations may arise than the default to non-entry discussed in *Randolph*. *Vanhollebeke*, 197 Wn. App. at 75. But the Court of Appeals did not assert that such different expectations actually do arise in the case of personalty. Indeed, it is difficult to imagine a situation where an ordinarily courteous person,

seeking to obtain property from another who possesses it and refuses to turn it over, would take it anyway on the grounds that the other is merely borrowing it.

In reaching the conclusion that Vanhollebeke's privacy rights were diminished because he only borrowed the truck, the Court of Appeals ignored the express reasoning of *Leach* and *Randolph* that constitutionally-protected privacy rights are not limited by strictly-construed property interests, but are rather defined by expectations about how people actually behave toward each other and their property. Moreover, the Court of Appeals' conclusion is both unsupported factually, and is contrary to ordinary social expectations that persons who may have less than full ownership of property to nevertheless may possess it unmolested. For these reasons, the Court of Appeals' ruling is contrary to the reasoning exhibited in the common authority jurisprudence arising from both this Court and the U.S. Supreme Court.

2. Following the Court of Appeals' reasoning that property interests allow police to override a refusal to search would yield an unpredictable and unworkable standard.

As a matter of policy, the Court of Appeals' decision to elevate a property law analysis to primacy in evaluating privacy interests is badly

misguided. Property interests can arise in innumerable permutations, and the rights of individuals relative to the property can be modified by conditions, reliance, contractual agreements, and other factors. But police officers are not property lawyers, and neither can nor should be expected to parse these factors in order to ascertain whether warrantless entry is allowed or unlawful in any particular situation. As a result, the most likely results of the Court of Appeals' rule are inconsistent application, judicial inefficiency in litigating relationships with property, and unpredictability on the part of police and suspects as to whether a search authorized by a third-party is valid or not.

This Court should consider the need for “a single familiar standard” upon which police can rely in the wide range of potential circumstances they encounter. *State v. Johnson*, 128 Wn.2d 431, 452, 909 P.2d 293 (1996) (*quoting New York v. Belton*, 453 U.S. 454, 460, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981)). Trucks, for example, can be possessed by someone other than the registered owner under a variety of arrangements. A driver can rent a truck from a rental agency and have a written contract that plainly delineates the term of the rental, the conditions of the agreement, and the driver's right to exclusive possession. A driver can rent a truck from a private person, in exchange for money or services, on an oral agreement. A driver can borrow a truck gratuitously

for a particular term, such as until the driver's own truck is repaired. A driver can borrow a truck gratuitously to fulfill a certain purpose, such as to assist the driver in moving residences. A driver can borrow or rent a truck subject to terminable conditions – for example, so long as the driver is validly licensed and exercises reasonable care in the truck's operation. And a driver can operate a motor vehicle for another under a contract of carriage, or through ride-sharing agreements.

Each of these circumstances creates a different set of property and contractual interests, hierarchies, and expectations. If Vanhollebeke had rented the truck from a rental agency, would police have been justified in contacting the rental agency for permission to search? Would they have been required to read the rental contract first? Hypothetically, imagine the rental contract clearly provided that Vanhollebeke had the exclusive right to possess the vehicle during the rental term but was not allowed to let other individuals drive the vehicle. If Vanhollebeke's girlfriend were driving at the time of the stop, who would have the superior authority to consent or refuse a search – Vanhollebeke, his girlfriend, or the rental agency? What if Vanhollebeke borrowed the truck gratuitously, under the understanding that he needed to use it to move to another state? Would the owner be justified in demanding to immediately retake the truck when Vanhollebeke was halfway to his destination, the truck fully loaded with

his belongings? Or would the law permit Vanhollebeke a reasonable period in which to remove his possessions and find alternate transportation?

These examples illustrate the unworkability of a standard that expects police to litigate common authority on the scene, at the time of the search. The *Frazier* Court rejected as “metaphysical subtleties” the defendant’s argument that the parties had exclusive interests in different compartments of the shared duffel bag. 394 U.S. at 740. It is unlikely that this dismissiveness resulted from a failure to recognize that such property interests could, in fact, exist. Rather, it resulted from the fact that the precise nature of the parties’ relative property interests **did not matter**. Certainly, the person consenting to a warrantless search must have some interest in the property in order to have authority over it. *See, e.g., State v. Morse*, 156 Wn.2d 1, 12, 123 P.3d 832 (2005) (rejecting argument that one with apparent, but not actual, authority over property can give valid consent to a warrantless search). But asking police to determine whether a third party has some recognizable interest in property is a far cry from asking police to evaluate whether the third-party’s interest is legally superior or inferior to the interest of the defendant for purposes of authorizing a search. When the lawfulness or unlawfulness of a search

depends upon adjudicating the hierarchy of interests, mistakes and consequent illegal intrusions will be inevitable.

Social expectations, on the other hand, are more accurately relied upon in evaluating authority precisely because they are based upon a shared understanding of how people generally behave, rather than the virtually limitless possibilities of individual agreements. Under a social expectations analysis, it is far easier to identify a spurious claim to authority simply because it runs contrary to ordinary experience. Ordinary experience tells us that a person driving a car possesses it and controls who and what may enter it. In the event the driver refuses to relinquish the car to another with a claim to it, ordinary people convince each other to cooperate or employ legal process to determine and enforce their rights. These same predictable expectations of behavior should apply to police, who may obtain a warrant to enter and search.

B. Because article 1, section 7 of the Washington State Constitution provides greater protection to vehicles than the Fourth Amendment to the U.S. Constitution, the Court of Appeals erred in concluding that the search was justified because Vanhollebeke had a reduced expectation of privacy in a borrowed vehicle.

Washington courts have long recognized that article 1, section 7 of the Washington Constitution provides greater protection to vehicles than the Fourth Amendment to the U.S. Constitution. *See, e.g., State v. Parker*, 139 Wn.2d 486, 494-96, 987 P.2d 73 (1999). In concluding that *Randolph* applies only to shared residences and not to vehicles, the Court of Appeals relied upon out-of-state decisions that followed the Fourth Amendment jurisprudence in concluding that individuals have a diminished expectation of privacy in their vehicles relative to their homes. *Vanhollebeke*, 197 Wn. App. at 75-76. Because article 1, section 7 provides broader protection to vehicles than the Fourth Amendment, considering the factors set forth in *State v. Gunwall*, 106 Wn.2d 54, 61-62, 720 P.2d 808 (1986), this Court should conclude that even if the Fourth Amendment does not require application of the *Randolph* rule to vehicle searches, article 1, section 7 does.

In considering whether the state constitution independently provides greater protection than a similar provision in the U.S. Constitution, the reviewing courts consider six non-exclusive factors set forth in *Gunwall*. *State v. Ladson*, 138 Wn.2d 343, 347-48, 979 P.2d 833 (1999). Analyzing those factors as follows, this Court should conclude that article 1, section 7 of the Washington Constitution provides greater

protection than the Fourth Amendment from vehicle searches performed over the objection of a present driver with common authority.

1. The textual language of article 1, section 7 is broader than the Fourth Amendment.

Wash. Constitution article 1, section 7, states: “No person shall be disturbed in his private affairs, or his home invaded, without authority of law.” By contrast, the Fourth Amendment to the U.S. Constitution states, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . .”

Textually, while both provisions address the power of police to compel an involuntary search, Washington’s constitution prohibits the disturbance into private affairs without authority of law. The U.S. Constitution, by contrast, secures individuals’ property against unreasonable searches. Both apply to police entry into a vehicle and to searches of an individual’s property.

2. Significant differences in the texts of article 1, section 7 and the Fourth Amendment point to a desire to more broadly protect individual privacy.

The textual distinction is of great significance, as this Court has recognized on multiple occasions. In adopting article 1, section 7, the Washington framers specifically rejected language identical to the Fourth Amendment in order to recognize and explicitly protect the privacy interests of its citizens. *State v. Young*, 123 Wn.2d 173, 179-80, 867 P.2d 593 (1994); *State v. Stroud*, 106 Wn.2d 144, 148, 720 P.2d 436 (1986), *overruled on other grounds by State v. Valdez*, 167 Wn.2d 761, 224 P.3d 751 (2009).

As a result of this distinction, Washington courts have often found that article 1, section 7's "authority of law" requirement demands a warrant in circumstances where the Fourth Amendment does not. In *City of Seattle v. Mesiani*, 110 Wn.2d 454, 755 P.2d 775 (1988), this Court held that police checkpoints that stopped drivers without warrants or individualized suspicion of criminal activity violated article 1, section 7, a practice that federal courts subsequently found permissible under the Fourth Amendment. See *Michigan Dept. State of Police v. Sitz*, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990). In *Ladson*, 138 Wn. 2d 343, this Court invalidated stops of vehicles made on pretextual grounds. The U.S. Supreme Court, by contrast, concluded that the motivations of the officer performing the stop would not invalidate it under the Fourth Amendment as long as an independent violation supported the stop.

Whren v. U.S., 517 U.S. 806, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996).

This history shows that the textual differences are not mere deviations in form, but reflect fundamentally different conceptions of an individual's zone of privacy and the State's right to enter it.

3. State constitutional and common law history reflects an intention to secure privacy interests more broadly.

As discussed in *Young*, 123 Wn.2d at 179, the Washington framers specifically rejected language identical to the Fourth Amendment in favor of adopting a broader formulation that was more protective of individual rights. Unlike the Fourth Amendment, article 1, section 7 "recognizes an individual's right to privacy with no express limitations." *State v. Simpson*, 95 Wn.2d 170, 178, 622 P.2d 1199 (1980).

Washington courts have repeatedly recognized that unlike the Fourth Amendment's prohibition against unreasonable searches, which allows warrantless searches of automobiles based upon lowered expectations of privacy and increased mobility of a vehicle, article 1, section 7 does not recognize an "automobile exception." *See State v. Snapp*, 174 Wn.2d 177, 191-92, 275 P.3d 289 (2012) (discussing and comparing federal and state cases considering the automobile exception). Additionally, Washington courts have established that the article 1, section

7 analysis is not based on whether the defendant possessed a reasonable expectation of privacy in the area to be searched, but whether the State has intruded into the defendant's private affairs. *State v. Myrick*, 102 Wn.2d 506, 510-11, 688 P.2d 151 (1984).

4. Preexisting state law governing property interests in and entry into vehicles shows that independent State law analysis is appropriate

State law establishes extensive rules for titling, registering, and transferring interests in motor vehicles, including security interests. *See generally* Chapter 46.12 RCW. For example, the State has specifically prohibited ownership of a motor vehicle by a juvenile, a position which, under a property-rights based analysis of privacy interests, could limit the privacy interests of juveniles in automobiles. RCW 46.12.755. The State has further established specific rules governing the seizure, handling, and return of vehicles, including the circumstances in which police may impound a vehicle. RCW 46.55.113; *see also* RCW 46.55.070, *et seq.*

These statutes reflect the State's significant and ongoing interest in regulating its citizens' rights to own and possess motor vehicles. The State's exercise of power to affect the privacy interests of its citizens in their vehicles by prescribing how such interests can be acquired and

protected supports the application of independent State constitutional law in this case. These rules reflect the State's recognition that individuals have protectable interests in vehicles, and police should not be allowed to interfere with those interests except in specific circumstances.

5. Differences in structure between the federal and state constitutions supports applying an independent state constitutional analysis.

As recognized in *Young*, 123 Wn.2d at 180, this factor always favors independent state constitutional analysis because the state constitution is a limit on the state's power imposed by the people, while the federal constitution is a grant of enumerated powers to the federal government by the states.

6. There is no need for national uniformity in evaluating the privacy interests of motor vehicle users in Washington.

“[P]rivacy matters are of particular state interest and local concern.” *Johnson*, 128 Wn.2d at 446; *State v. Boland*, 115 Wn.2d 571, 577, 800 P.2d 1112 (1990). Given that common authority over property requires some legally cognizable relationship to it, those relationships are defined by state law. *See, e.g., Morgan v. Comm. Of Internal Revenue*,

309 U.S. 78, 80, 60 S. Ct. 424, 84 L. Ed. 1035 (1940) (“State law creates legal interests and rights.”). The state’s power to expand or restrict individual rights concerning property imbues the state with a particular interest in establishing its own standards according to its own principles, regardless of how other states may choose to conduct their own affairs.

Considering the validity of the search in this case over Vanhollebeke’s express refusal, article 1, section 7’s protection of an individual’s “private affairs” prohibits the police action taken here, regardless of whether the police action was “reasonable” for Fourth Amendment purposes. In concluding that the search was permissible, the Court of Appeals considered Vanhollebeke’s interest in the truck as a borrower and stated, “This, we believe, limits Mr. Vanhollebeke’s reasonable expectation of privacy.” *Vanhollebeke*, 197 Wn. App. at 73. But this rationale is misplaced. Whether Vanhollebeke had a reasonable expectation of privacy in the area searched is relevant to Fourth Amendment analysis, not article 1, section 7 analysis, which asks simply whether he has a privacy interest that he should be entitled to hold safe from governmental intrusion without a warrant. *See Young*, 123 Wn.2d at 181-82; *see also State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996) (noting that even if defendant’s expectation of privacy in a vehicle while on work release was reduced, that reduced expectation of privacy

“does not constitute an exception to the requirement of a warrant under art. 1, § 7.”).

In Washington, even passengers with no property interests have privacy interests in the vehicles in which they ride. *See State v. Rankin*, 151 Wn.2d 689, 699, 92 P.3d 202 (2004) (recognizing vehicle passengers are protected from disturbance in their private affairs under article 1, section 7); *Parker*, 139 Wn.2d at 496 (recognizing that vehicle passengers have independent, constitutionally protected privacy interests that they do not lose merely by entering a vehicle with others). Indeed, in Washington, individuals have automatic standing to challenge searches of property in which they hold no legal interest at all, if the charge involves a crime of possession and the defendant was in possession of the contraband at the time of the contested search. *Simpson*, 95 Wn.2d at 181. The weight of authority arising under article 1, section 7 establishes that “private affairs” covers a much broader sphere of protection than merely one’s personal belongings.

Here, Vanhollebeke was in lawful possession of a borrowed car. When asked if he would consent to a warrantless search, he refused. Police could have obtained a warrant, and accordingly secured the constitutionally necessary authority of law, to justify the intrusion. The

decision to circumvent Vanhollebeke's refusal by seeking out a person with common authority over the vehicle to give consent cannot be justified under the Washington Constitution based on grounds of expedience or a weighing of interests, because those considerations do not apply to article 1, section 7 jurisprudence. While he lawfully possessed the truck, Vanhollebeke had the right to exclude others from it – including the State.

VI. CONCLUSION

For the foregoing reasons, this Court should REVERSE Vanhollebeke's conviction on the grounds that introducing the evidence obtained from the warrantless search performed over Vanhollebeke's express refusal violated his rights under the Fourth Amendment to the U.S. Constitution and article 1, section 7 of the Washington Constitution.

RESPECTFULLY SUBMITTED this 2 day of June, 2017.

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DECLARATION OF SERVICE

I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Supplemental Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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And, pursuant to prior agreement of the parties, by e-mail to the following:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 2 day of June, 2017 in Walla Walla, Washington.


Breanna Eng

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