IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,		**No. 28802-1-III**
Respondent,	)	
	)	**Division Three**
v.	)	
	)	
RANDY JAMES JERRED,	)	
	)	**UNPUBLISHED OPINION**
Appellant.	)	
	)	

Sweeney, J. — This appeal follows a conviction for possession of methamphetamine. The defendant was identified as one associated with a number of people shoplifting at a Walmart. Employees pointed out the car the suspects arrived in and someone told a responding officer that the defendant was in the car. Police found him hiding in the back seat. The defendant makes a number of assignments of error on appeal. But his primary complaint is that the trial court failed to suppress the drug evidence seized following his arrest. We conclude that the officer had ample authority to seize and search the defendant based on probable cause to believe he shoplifted, his false statement about his identity, and the valid arrest pursuant to a warrant discovered after

police learned his true identity. We therefore affirm the conviction for possession of methamphetamine.

FACTS

Yakima Police Officer Ira Cavin responded to a report of shoplifting at Walmart at 5:40 a.m. on October 24, 2009. Another officer also responded and had already arrested one female suspect when Officer Cavin arrived. A second suspect, a male, was also identified as being involved in the incident. The officers seized him and searched him; they found a razor blade cutting knife.

A Walmart employee then told Officer Cavin that one more person was hiding in a nearby car that the other suspects had come from and the employee pointed to the car. Officer Cavin walked over to the car. He saw Randy Jerred lying down on the back seat. Mr. Jerred had his hands clutched to his chest and moved so as to hide something. He ordered Mr. Jerred out of the car. Mr. Jerred complied.

Officer Cavin asked Mr. Jerred for identification. Mr. Jerred replied he had none with him, but that his name was Frank J. Cruz, that his birth date was January 11, 1963, and that he was from Texas. Officer Cavin found no records using the information that Mr. Jerred supplied. Officer Cavin then arrested Mr. Jerred for providing a false statement to a police officer.

Officer Cavin and another officer searched Mr. Jerred and found a wallet containing a Department of Corrections identification card with Mr. Jerred's name. Mr. Jerred then admitted that he was the person named on the card. He had an outstanding warrant. Police arrested him on authority of the warrant and again searched him and this time found a cigarette package that contained methamphetamine.

The State charged Mr. Jerred with possession of methamphetamine. He moved to suppress the drug evidence and argued that the initial contact, arrest, and subsequent search were all unlawful. The trial court denied the motion. The court found Mr. Jerred guilty as charged following a trial on stipulated facts.

DISCUSSION

False Statement To Police (Yakima Municipal Code 6.48.010)

Mr. Jerred contends that his conduct (providing Officer Cavin with false information) does not fall within the conduct prohibited by the Yakima Municipal Code because language in the code makes it unlawful to make a false statement or report to the police *department*—not police officers. Former Yakima Municipal Code (YMC) 6.48.010 (2009).[1] He does so for the first time here on appeal. Mr. Jerred does not argue that the statute, facially or as applied to him, is unconstitutional, other than to note that

[1] YMC 6.48.010 was repealed by Ordinance No. 2011-29 (effective Aug. 7, 2011).

"[t]he ordinance omits the requirement of 'materiality.' As such, it covers a broader spectrum of conduct which includes protected speech." Br. of Appellant at 5. We then need not address his assignment of error. RAP 2.5(a)(3).

Nevertheless, we consider and reject the assignment of error for a couple of reasons. Mr. Jerred had been identified as one of the culprits involved with shoplifting in Walmart. The officer saw him hiding in the car that he and the others had arrived in. He was then making furtive gestures in the back of that car. The officer can consider those gestures. *State v. Hobart*, 94 Wn.2d 437, 445, 617 P.2d 429 (1980). The officer then had a valid reason to order Mr. Jerred out of the car.

We also apply the usual rules of statutory construction and reject Mr. Jerred's reading of former YMC 6.48.010. Our aim is to determine the city council's intent. *Dep't of Ecology v. Campbell & Gwinn LLC*, 146 Wn.2d 1, 9-10, 43 P.3d 4 (2002). "Plain meaning is discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole." *Christensen v. Ellsworth*, 162 Wn.2d 365, 373, 173 P.3d 228 (2007).

Subparagraph (A) of former YMC 6.48.010 provides that

> [i]t is unlawful for any person to cause to be made or make any willfully untrue, false, misleading, unfounded or exaggerated statement or report to the police department of the City of Yakima.

Here, Mr. Jerred certainly made a false statement to Officer Cavin. Officer Cavin is an agent of the police department. So a false statement to Officer Cavin is, for us, a false statement to the police department. This analysis fits with the ordinary meaning of the statute. So whether the statement is to a clerical officer of the police department or an officer in the field, we would conclude that it is a statement to the police department.

The municipal code prohibits false statements to police officers; they are agents of the police department.

Search Incident To Arrest

Mr. Jerred contends that the police had no legal authority to search him because they did not have probable cause to arrest when Officer Cavin first contacted him. He argues that the shoplifting took place in the store and the officer's first contact with Mr. Jerred was as a potential witness to events. And police discovered the warrant only after they searched Mr. Jerred, something again he maintains they had no authority to do.

We review a suppression ruling to determine whether substantial evidence supports the challenged findings of fact, and whether the findings of fact support the conclusions of law; we review the conclusions of law de novo. *State v. Armenta*, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997). Unchallenged findings are verities on appeal. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 808, 828 P.2d 549 (1992). We also review constitutional questions of law

de novo. *State v. Grande*, 164 Wn.2d 135, 140, 187 P.3d 248 (2008).

Mr. Jerred does not challenge the factual findings in this appeal. He challenges the court's legal conclusion that Officer Cavin had the necessary authority to contact him in the first place. He argues, in the alternative, that even if the initial contact was proper and there was probable cause to arrest, the scope of the search incident to that arrest was unconstitutional. We then review his arguments de novo. *Id.*

Investigative Stop

The Fourth Amendment to the United States Constitution generally requires that a police officer get a judicial warrant before seizing a crime suspect. *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967). An investigative stop is an exception to the warrant requirement. A police officer may conduct an investigative stop based upon less evidence than is required for probable cause to make an arrest. *State v. Glover*, 116 Wn.2d 509, 513, 806 P.2d 760 (1991). A brief investigative stop is allowed whenever the police officer has a reasonable suspicion, grounded in specific and articulable facts, that the person stopped has been involved in a crime. *United States v. Hensley*, 469 U.S. 221, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985).

"In evaluating the reasonableness of an investigative stop, courts consider the totality of the circumstances, including the officer's training and experience, the location

of the stop, and the conduct of the person detained." *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003). Courts also consider the reason for the stop, the length of time, and the amount of physical intrusion upon the suspect's liberty. *Id.* Police officers making a lawful investigative stop may conduct a search for weapons whenever there is reason to believe the suspect is armed and dangerous. *Id.* Police officers may also ask for identification. *State v. White*, 97 Wn.2d 92, 105, 640 P.2d 1061 (1982).

Here, Officer Cavin arrived on the scene to find one suspect under arrest and another being patted down for officer safety. A razor blade cutting knife was found on that suspect. A Walmart employee then told Officer Cavin that someone else was hiding in the same car the others had come from. Officer Cavin approached the car and found Mr. Jerred lying on the back seat, clutching his chest, and acting furtively. Officer Cavin ordered Mr. Jerred from the car because he feared for his own safety. Officer Cavin testified,

> I wasn't comfortable contacting him in that position or making contact with him in that position for my safety. I opened the door, asked him to exit the vehicle so I could safely contact him.

Report of Proceedings at 16-17. Officer Cavin asked him for identification.

Based on the totality of the circumstances, including Officer Cavin's training and experience, there were specific and articulable facts supporting Officer Cavin's

reasonable suspicion that Mr. Jerred was involved in the crime. Officer Cavin's initial contact with Mr. Jerred was part of an ongoing investigation and was a proper and lawful exercise of police authority.

Probable Cause To Arrest

Mr. Jerred next argues that Officer Cavin did not have probable cause to arrest him. He believes that merely being present at the scene of a crime does not necessarily constitute a crime.

Probable cause to arrest exists when an officer knows of circumstances that would lead a reasonably cautious person to believe that the suspect has committed a crime. *State v. Terrovona*, 105 Wn.2d 632, 643, 716 P.2d 295 (1986). "Probable cause is not a technical inquiry. In any given case it is a set of factual circumstances and practical considerations governing the actions of reasonable and prudent people in their normal, everyday affairs." *State v. Dorsey*, 40 Wn. App. 459, 468-69, 689 P.2d 1109 (1985).

Here, Mr. Jerred was doing more than just waiting in the Walmart parking lot. His actions and the surrounding circumstances linked him to the shoplifting. We have already concluded that those circumstances gave Officer Cavin the authority to ask him for identification. And when he was asked, Mr. Jerred lied about his identity. Accordingly, he was arrested for providing a false statement to a police officer when no

records were found. But whether it was lying to police or his reported involvement with the shoplifting and the events that followed, this police officer had the necessary probable cause to seize, search, and arrest Mr. Jerred.

Search Incident To Lawful Arrest

Mr. Jerred next argues that if probable cause did exist to arrest him based on his providing false information concerning his identity, then only a limited pat-down search was permissible. Of course, if the arrest was valid then the subsequent search was also valid. *State v. Potter*, 156 Wn.2d 835, 843-44, 132 P.3d 1089 (2006).

A warrantless search is presumed unreasonable except in a few established and well-delineated exceptions. *Katz*, 389 U.S. at 357. A search incident to lawful arrest is an exception to the warrant requirement. *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973). This exception is based on a concern for officer safety and the need to prevent destruction of evidence. *State v. Johnson*, 128 Wn.2d 431, 447, 909 P.2d 293 (1996).

"[A] search incident to arrest is valid under the Fourth Amendment: (1) if the object searched was within the arrestee's control when he or she was arrested; and (2) if the events occurring after the arrest but before the search did not render the search unreasonable." *State v. Smith*, 119 Wn.2d 675, 681, 835 P.2d 1025 (1992).

Here, the wallet and the cigarette package were in Mr. Jerred's control when he was arrested. *See id.* at 681-82 (object must be within arrestee's reach immediately prior to, or at the moment of, the arrest). And there is no evidence of anything, such as a delay between the arrest and the search, which leads us to conclude that the search was "unreasonable." The warrantless search was within the scope of his arrests. And case law in this state says as much.

In *State v. White*, the police found cocaine in a cosmetic case located in the defendant's coat pocket during a search incident to arrest. 44 Wn. App. 276, 722 P.2d 118 (1986). The defendant claimed that the scope of the search was excessive. *Id.* at 277. This court held that the cosmetic case in the defendant's pocket was within the scope of the search incident to arrest:

> First, property seized incident to a lawful arrest may be used to prosecute the arrested person for a crime other than the one for which he was initially apprehended. . . .
>
> Second, once arrested there is a diminished expectation of privacy of the person which includes personal possessions closely associated with the person's clothing.

Id. at 278.

Also, in *State v. Gammon*, the defendant claimed that the search of his person incident to arrest for shoplifting exceeded the permissible scope because the arresting officer opened a prescription pill bottle found in the defendant's pocket, which resulted in the discovery of a small rock of cocaine.

61 Wn. App. 858, 860, 812 P.2d 885 (1991). The court stated:

> Gammon was lawfully arrested and the pill vial was discovered in the course of a permissible search. The pill vial was similar to a wallet or a cigarette package because it was an item found on Gammon or in his clothing. Under *White*, Gammon had a diminished expectation of privacy in the prescription bottle thus allowing a detailed inspection of the vial without a warrant. Even if the officer had not seen the irregularly shaped object in the vial, we hold the search was a permissible search incident to a lawful arrest.

Id. at 863.

Mr. Jerred relies on *State v. Horton* and *State v. Rison* to support his argument that police officers may not search items that are incapable of containing a weapon. *State v. Horton*, 136 Wn. App. 29, 38, 146 P.3d 1227 (2006); *State v. Rison*, 116 Wn. App. 955, 959-60, 69 P.3d 362 (2003). Those cases are distinguishable from the situation here. *Horton* involved a protective frisk that uncovered a cigarette pack containing methamphetamine. The search occurred prior to any arrest. The court held, "The intrusion was not lawful as a search incident to arrest because the search of the cigarette pack was conducted before [the defendant] was arrested." *Horton*, 136 Wn. App. at 39. Similarly, *Rison* involved a permissive search of an apartment during which police found an eyeglass case that contained illegal drugs. The defendant was not under arrest at the time of the search nor was the eyeglass case on his person. *Rison*, 116 Wn. App. at 958.

Mr. Jerred was lawfully arrested—first for providing a false statement to Officer Cavin and second on the outstanding

warrant. And, as we have noted, the police certainly had probable cause to believe he was part of the shoplifting at Walmart. A wallet and a cigarette package found in Mr. Jerred's pockets during subsequent searches were within his control when arrested. Controlled substances found inside the package were on his person during the arrests and were admissible as evidence seized during a valid search incident to arrest. The motion to suppress was correctly denied.

Adequacy of the Information

Mr. Jerred next contends that the information charging possession of methamphetamine failed to include the word "unlawful" and therefore relieved the State of its burden to prove the mens rea of the crime. He also contends that the omission of the language excluding prescription medications negates the legitimacy of the charging document.

But Mr. Jerred did not object to the adequacy of the information in the trial court, where something could have been done about it, and that failure influences our review of his assignment of error. We must liberally construe the charging document challenged for the first time on appeal in favor of validity. *State v. Goodman*, 150 Wn.2d 774, 787, 83 P.3d 410 (2004). "Under this rule of liberal construction, even if there is an apparently missing element, it may be able to be fairly implied from language within the

charging document." *State v. Kjorsvik*, 117 Wn.2d 93, 104, 812 P.2d 86 (1991).

The federal constitution (U.S. Const. amend. VI) and our state constitution (Wash. Const. art. I, § 22) require that a defendant be informed of the charged offense so that he can prepare a defense. *Goodman*, 150 Wn.2d at 784. A charging document must identify the crime charged, include all statutory and nonstatutory elements of the crime charged, and allege facts that support the elements of the crime charged. *Kjorsvik*, 117 Wn.2d at 97. "Words in a charging document are read as a whole, construed according to common sense, and include facts which are necessarily implied." *Id.* at 109.

Here, the information identified the defendant as Mr. Jerred and listed his address. The information identified the crime as: "Possession of a controlled substance, methamphetamine RCW 69.50.4013(1)." Clerk's Papers (CP) at 57. The information identified the class of the crime as a class C felony with a maximum penalty of 5 years' imprisonment and/or a $10,000 fine. CP at 57. The information stated: "On or about October 24, 2009, in the State of Washington, you possessed a certain controlled substance, methamphetamine." CP at 57.

RCW 69.50.4013(1) reads in part:

> It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

A commonsense reading of the

charging document leads us to the conclusion that the alleged possession of the methamphetamine had to be unlawful; it is not possible to possess methamphetamine by any other means. Thus, the State was not relieved of any burden to prove mens rea and Mr. Jerred has not shown otherwise. The information was sufficient to inform Mr. Jerred of the crime with which he was charged.

We affirm the conviction.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Kulik, C.J.

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Siddoway, J.