

**FILED: July 30, 2014**

IN THE COURT OF APPEALS OF THE STATE OF OREGON

STATE OF OREGON,  
Plaintiff-Respondent,

v.

STACY LYNN DIERKS,  
Defendant-Appellant.

Multnomah County Circuit Court  
110545450

A149290

On remand from the Oregon Supreme Court, *State v. Dierks*, 354 Or 837, 325 P3d 738 (2014).

Alicia A. Fuchs, Judge.

Submitted on remand April 18, 2014.

Peter Gartlan, Chief Defender, and Morgen E. Daniels, Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

Ellen F. Rosenblum, Attorney General, Anna M. Joyce, Solicitor General, and David B. Thompson, Senior Assistant Attorney General, filed the briefs for respondent.

Before Ortega, Presiding Judge, and Sercombe, Judge, and Hadlock, Judge.

HADLOCK, J.

Affirmed.

1 HADLOCK, J.,

2 In our original opinion in this case, we reversed a judgment that found  
3 defendant in contempt for having violated the terms of a no-contact order issued by a  
4 Washington court. *State v. Dierks*, 257 Or App 88, 90, 306 P3d 653 (2013) (*Dierks I*),  
5 *vac'd and rem'd*, 354 Or 837, 325 P3d 738 (2014) (*Dierks II*). We did so after concluding  
6 that a police officer had "stopped" defendant without reasonable suspicion, in violation of  
7 Article I, section 9, of the Oregon Constitution, and that the trial court erred when it  
8 denied defendant's motion to suppress the evidence that the officer discovered as a result  
9 of that stop. *Dierks I*, 257 Or App at 97-98. The Supreme Court subsequently vacated  
10 that opinion and remanded the case to us for reconsideration in light of its decisions in  
11 *State v. Backstrand*, 354 Or 392, 313 P3d 1084 (2013), and other cases. *Dierks II*, 354  
12 Or 837. We now conclude that the pertinent actions of the officer did not amount to a  
13 stop and, therefore, the trial court did not err by denying defendant's motion to suppress.  
14 Accordingly, we affirm.<sup>1</sup>

15 We recount the historical and procedural facts as described in *Dierks I*:

16 "On the day in question, Gresham Police Officer Barrett was on patrol in  
17 the Rockwood neighborhood, which he described as 'a high-crime, high-  
18 drug, high-gang area.' Barrett spotted a single car parked in a small parking  
19 lot where, in the past, he had encountered people who were engaged in drug  
20 deals. Barrett, who was in uniform, pulled his marked patrol car into the  
21 parking lot; as he arrived, he saw the two occupants of the other car 'look  
22 up at [him] and realize [he] was there.' Barrett parked without blocking the  
23 other car and without turning on his emergency lights. He then approached

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<sup>1</sup> We reject without discussion the arguments that defendant makes in her second and third assignments of error.

1 the parked car and spoke with defendant, who appeared to be the driver,  
2 and defendant's passenger, explaining that they were in 'a very high-drug,  
3 high-crime area.' Barrett asked defendant and the passenger whether they  
4 had seen anything suspicious; he also asked what they were doing.  
5 Defendant and the passenger told Barrett that they were waiting for a  
6 friend.

7 "Barrett then asked defendant and the passenger for their names.  
8 Defendant said that her name was Stacy Lynn Burke and that she was  
9 licensed to drive in Washington, but did not have the license with her. The  
10 passenger responded to Barrett's inquiry by identifying himself and  
11 providing Barrett with his driver's license. Barrett returned to his car and  
12 ran the name Stacy Lynn Burke through the Law Enforcement Data System  
13 (LEDS) in both Oregon and Washington, but nothing came up in either  
14 state. When Barrett ran the passenger's name, he testified, he discovered  
15 that the passenger 'had a valid restraining order against someone by the  
16 name of Stacy Lynn Dierks, \* \* \* which was very similar to Stacy Lynn  
17 Burke \* \* \*.' At that point, Barrett thought that defendant had lied to him  
18 about her identity.

19 "Because Barrett thought that defendant might be the Stacy Lynn  
20 Dierks against whom the no-contact order had issued, he asked if she had  
21 any photo identification with her. As defendant looked through her purse,  
22 Barrett saw her twice pass by a paper copy of a Washington driver's license.  
23 Barrett pointed that out to defendant, who then handed him the document,  
24 which reflected her true identity.

25 "After she was charged with contempt for having violated the no-  
26 contact order, defendant moved to suppress the evidence of her identity that  
27 Barrett had obtained during the parking-lot encounter, arguing that Barrett  
28 had seized her by asking for her name and performing a warrants check.<sup>1</sup>  
29 Under those circumstances, defendant argued, a reasonable person would  
30 not have felt free to leave, particularly given the officer's retention of the  
31 passenger's license while he checked LEDS. The state responded that  
32 Barrett did not stop defendant simply by questioning her and asking for her  
33 identification. In any event, the state argued, Barrett had reasonable  
34 suspicion that defendant had committed a crime (providing false  
35 information to a police officer) as soon as he checked LEDS and found  
36 nobody named Stacy Lynn Burke in either Oregon or Washington.  
37 Defendant acknowledged that Barrett had probable cause to believe that she  
38 was engaged in criminal activity once he ran the LEDS check, but  
39 questioned 'how they get to that stage'; in defendant's view, she already had

1           been detained, without reasonable suspicion, before Barrett checked the  
2           false name that she had given him.

3                       "The trial court denied defendant's suppression motion. Two aspects  
4           of the trial court's ruling inform our analysis. First, the trial court found  
5           that Barrett developed reasonable suspicion that defendant had given him a  
6           false name when he ran the name Stacy Lynn Burke through LEDS 'and  
7           [came] up with no matches but a similar name with a restraining order \* \*  
8           \*.' Second, the court ruled that everything that occurred before that point  
9           was 'mere conversation.' After the court denied defendant's suppression  
10          motion, the contempt case proceeded immediately to trial. The court found  
11          that defendant had violated the no-contact order and entered the judgment  
12          finding her in contempt.

13           \_\_\_\_\_

14           "<sup>1</sup>       We use the term 'warrants check' in a generic sense in this opinion,  
15           as the record does not reflect the precise nature of the information that  
16           Barrett sought when he ran the passenger's name and the name Stacy Lynn  
17           Burke through LEDS."

18   *Dierks I*, 257 Or App at 90-92. As explained in *Dierks I*, defendant acknowledges that  
19   Barrett had probable cause to believe that defendant had committed a crime (providing  
20   false information to a police officer) once he ran the LEDS checks. *Id.* at 91-92. And the  
21   state does not contend that Barrett developed reasonable suspicion of criminal activity at  
22   any point before he ran those checks. *Id.* at 93 n 2. Accordingly, the only question  
23   before us is whether Barrett had stopped defendant before he developed reasonable  
24   suspicion as a result of running the LEDS checks, *i.e.*, when he conversed with defendant  
25   and her companion, and then returned to his patrol car to run those checks.

26                       In supplemental briefing, defendant argues that the circumstances in this  
27   case amounted to a stop because

28                       "the combination of the content of the officer's questions and his actions--  
29                       writing down defendant's identifying information, taking her companion's

1 identification and going to run a warrants check--conveyed to any  
2 reasonable person that he intended to restrict defendant's freedom of  
3 movement to investigate (1) her identity, (2) whether she or her companion  
4 had outstanding warrants, and (3) what criminal conduct she and her  
5 companion might be engaging in in this 'suspicious' location. The officer  
6 told them at the beginning of the interaction that they had parked in a high-  
7 crime area and asked them to explain what they were doing there. A  
8 reasonable person would believe that the officer was investigating her  
9 possible involvement in a drug crime, not just satisfying his curiosity about  
10 their presence in that location."

11 In response, the state contends that Barrett's questions to defendant were of the kind that  
12 the Supreme Court held, in *Backstrand* and its companion cases, did not constitute a stop.  
13 In making that argument, the state observes--accurately--that no evidence in the record  
14 suggests that defendant reasonably would have believed that Barrett was going to check  
15 the name she had given him for *warrants* in addition to (or instead of) running a different  
16 type of records check through LEDS.<sup>2</sup>

17 In considering the parties' arguments, we are guided by the Supreme  
18 Court's decisions in *Backstrand* and two other cases decided the same day: *State v.*  
19 *Anderson*, 354 Or 440, 313 P3d 1113 (2013), and *State v. Highley*, 354 Or 459, 313 P3d  
20 1068 (2013). In *Backstrand*, the Supreme Court explained that an encounter between a  
21 citizen and a police officer amounts to a seizure for purposes of Article I, section 9,

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<sup>2</sup> We implied as much in *Dierks I*, in which we explained that we used the term "warrants check" in a "generic sense" in that opinion, "as the record does not reflect the precise nature of the information that Barrett sought when he ran the passenger's name and the name Stacy Lynn Burke through LEDS." 257 Or App at 91 n 1. (Pre-*Backstrand*, our opinions did not always distinguish between the various types of records checks that a police officer may run on a person's identification.) Because the record does not indicate that Barrett specifically ran a *warrants* check on defendant, we do not address whether any such check would have transformed this encounter into a stop.

1           "only if the officer's conduct would be reasonably perceived as coercive in  
2           the sense that it would cause the citizen to reasonably believe that the  
3           officer is intentionally restraining the citizen's liberty or freedom of  
4           movement in a significant way--that is, in a way that exceeds the bounds of  
5           ordinary social encounters between private citizens."

6   354 Or at 400. Thus, a police officer does not stop a person merely by approaching the  
7   person and "asking a question, requesting information, or seeking [that] individual's  
8   cooperation." *Id.* at 403. "Rather, something more \* \* \* is required," which "can be such  
9   things as the content or manner of questioning, or the accompanying physical acts by the  
10   officer, if those added factors would reasonably be construed as a 'threatening or  
11   coercive' show of authority requiring compliance with the officer's request." *Id.* But an  
12   officer's inquiries by themselves, without that "something more," do not amount to a stop  
13   even though the questioned person may be "discomforted" by the "officer's approach and  
14   request for assistance or information[.]" *Id.* at 400.

15           Those principles apply to police officers' requests for identification. *Id.* at  
16   408. Thus, an officer's "mere request for identification made \* \* \* in the course of an  
17   otherwise lawful police-citizen encounter does not, in and of itself, result in a seizure."  
18   *Id.* at 410. That is true even though the person whose identification is sought "may not  
19   subjectively feel comfortable refusing the officer's request \* \* \* for any number of  
20   personal reasons or instincts[.]" *Id.* at 413. Again, such personal "motivations and  
21   feelings" are not controlling. *Id.* Rather, a seizure results from a request that a person  
22   produce identification only "when the content of the questions, the manner of asking  
23   them, or other actions that police take (along with the circumstances in which they take

1 them) would convey to a reasonable person that the police are exercising their authority  
2 to coercively detain the citizen[.]" *Id.* at 412.

3           In *Backstrand*, the Supreme Court applied those principles in holding that a  
4 police officer had not stopped a youthful-looking defendant, who was shopping at a  
5 "triple-X' store that sells adult sexual materials," when the officer asked the defendant  
6 how old he was, requested his identification, and--after obtaining the defendant's driver  
7 license--verified its validity. *Id.* at 394, 413-14. The court explained that the officer's  
8 questions were not coercive because, in the context in which they were asked, they would  
9 not have caused a reasonable person to believe that the officer was significantly  
10 restraining his or her liberty. *Id.* at 414-16. The court further held that the officer's brief  
11 retention of the defendant's license (for no more than 10 or 15 seconds) while he provided  
12 the defendant's information to dispatch did not "result in a *significant* restriction" of his  
13 liberty. *Id.* at 416 (emphasis in original). Accordingly, no seizure occurred for purposes  
14 of Article I, section 9. *Id.* at 417-18.

15           The Supreme Court reached a similar conclusion in *Anderson*, in which it  
16 addressed the constitutionality of an interaction between police officers and two people  
17 who arrived at an apartment complex where the officers were executing a search warrant.  
18 354 Or 440. Those people, including the defendant, approached the apartment that was  
19 the focus of the warrant, but they briskly returned to their car after they saw officers  
20 conducting the search. *Id.* at 443. Three of the officers followed the people back to their  
21 car, explained that they were executing a search warrant, and said they were contacting

1 the defendant and his companion to find out who they were, "what interest they might  
2 have had" with what the officers were doing at the apartment, or whether they knew the  
3 person who lived there. The officers also asked the defendant and his companion for  
4 identification. The defendant denied that he had identification with him and gave a name  
5 that one of the officers knew was incorrect. That officer said to the defendant, "you're  
6 not him, I recognize you," and asked the defendant to step out of the car. *Id.* at 444. The  
7 defendant unsuccessfully moved to suppress evidence that the officers subsequently  
8 discovered.

9           On review, the Supreme Court addressed whether the officers seized the  
10 defendant before they asked him to get out of the car. The court held that no seizure  
11 occurred before that point, even though the officers' explanation of what they were doing  
12 at the apartment complex "objectively conveyed possible suspicion that [the defendant  
13 and his companion] could be involved in criminal activity related to the apartment" and  
14 "equally conveyed that the officers were interested in whatever information the two  
15 might be able to provide." *Id.* at 453. "In all events," the court explained, "by those brief  
16 verbal exchanges and inquiries alone, the officers did not communicate an exercise of  
17 authority of the kind required for a seizure--*i.e.*, authority to restrain." *Id.* The court  
18 found significant that the uniformed officers "took no physical action other than to  
19 approach the parked car" and "requested no physical action from defendant and the driver  
20 at that point." *Id.* at 454. Even though more than one officer was present, the  
21 circumstances "would not cause a reasonable person seated in the car to believe that the



1 officers were significantly restricting his or her liberty." *Id.*

2           The facts in this case are, if anything, less coercive than those involved in  
3 *Anderson*. Here, a single police officer approached a parked car, informed its occupants  
4 that they were in a high-crime area, asked if they had seen anything suspicious, and asked  
5 what they were doing. Thus, as in *Anderson*, although the officer's questions may have  
6 signaled to defendant that the officer suspected that she and her companion might be  
7 involved in criminal activity, those questions "equally conveyed that the [officer was]  
8 interested in whatever information the two might be able to provide." *Id.* at 453. Also as  
9 in *Anderson*, the police officer here "took no physical action other than to approach the  
10 parked car" and "requested no physical action from defendant and [her companion] at that  
11 point." *Id.* at 454. And *unlike* in *Anderson*, here defendant was approached by only one  
12 police officer, defendant had not associated herself with a location in which an *active*  
13 criminal investigation was underway, and the officer did not question defendant about her  
14 possible acquaintance with the subjects of any such investigation. Given the Supreme  
15 Court's conclusion that the officers in *Anderson* did not stop the defendant in that case  
16 when they asked for his identification, we readily conclude that Barrett did not stop  
17 defendant when he asked her name. *See also State v. Campbell*, 263 Or App 315, 319,  
18 \_\_\_ P3d \_\_\_ (2014) ("[U]nder *Backstrand*, a request and tender of identification does not,  
19 in itself, transform a police-citizen encounter into a seizure [ ]").

20           Nor did Barrett stop defendant when he returned to his patrol car and ran  
21 the name that she had given him, as well as her companion's name, through LEDS.

1 *Backstrand* teaches that a police officer does not stop a person merely by verifying the  
2 validity of identification provided by that person; that action does not transform an  
3 "otherwise noncoercive encounter [into] a *coercive* restraint on the person's liberty." 354  
4 Or at 413 (emphasis in original). The Supreme Court applied that principle in *Highley*,  
5 holding that a police officer does not stop a person by asking the person for identification,  
6 then retaining the person's identification "for a reasonable time" while "verify[ing] the  
7 person's identity or status." 354 Or at 469-70. That is precisely what Barrett did here.  
8 After obtaining a name from defendant and her companion's license, he returned to his  
9 car to run a LEADS check on the two names. Nothing in the record suggests that Barrett  
10 took an unreasonable amount of time to do so or took any other action that would have  
11 "objectively convey[ed] an exercise of the officer's authority to restrain the person's  
12 liberty or freedom of movement." *Backstrand*, 354 Or at 413.

13           In sum, the actions that Barrett took during his encounter with defendant  
14 and her companion would not have conveyed to a reasonable person that Barrett was  
15 exercising his authority to coercively detain them. Accordingly, Barrett did not seize  
16 defendant during that encounter. The trial court correctly denied defendant's motion to  
17 suppress.

18           Affirmed.