

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	DIVISION ONE
Respondent,	)	
	)	No. 63239-6-1
v.	)	
	)	UNPUBLISHED OPINION
WINDY MICHELLE PLEADWELL,	)	
	)	
Appellant.	)	FILED: August 2, 2010
_____	)	

Dwyer, C.J. — Windy Michelle Pleadwell appeals from her conviction of possession of marijuana with intent to deliver. She contends that the trial court should have suppressed evidence discovered in a search of her automobile during a traffic stop on the basis that the search was in violation of article I, section 7 of the Washington Constitution. Finding no error, we affirm.

During the traffic stop, which occurred at night in a high-crime area of the city of Bellingham, a certified narcotics detection dog sniffed around the exterior of Pleadwell's vehicle and alerted to the presence of narcotics near the passenger doors, which were above a storm drain. Suspecting that someone in the vehicle might have dropped narcotics into the storm drain from an open passenger window, Deputy Jason Nyhus ordered the vehicle's occupants to exit the vehicle. Pleadwell stepped out of the vehicle clutching a medium-sized purse, the exterior of which Deputy Nyhus frisked for weapons. Unable to determine the purse's contents based on that frisk, Deputy Nyhus opened the purse and found a medium-sized, opaque pill bottle, the contents of which made

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a nonuniform rattling noise when Deputy Nyhus shook the bottle. At a subsequent suppression hearing, Deputy Nyhus testified that he was concerned that the bottle did not contain the pills advertised on the label because of the nonuniform rattling noise, which was inconsistent with the type of pills advertised, that he had discovered razor blades and folding knives in containers smaller than the bottle, and that to ensure his safety while Pleadwell stood behind him with her purse while he inspected the storm drain, he opened the bottle to ascertain its contents. Upon doing so, Deputy Nyhus discovered pills that he recognized as being "Ecstasy." Pleadwell was arrested, and a search of the vehicle incident to arrest was conducted. During that search, the narcotics detection dog alerted to the presence of narcotics in the locked glove box, which was later opened after the issuance of a search warrant and found to contain marijuana.

Contrary to Pleadwell's assertions, the dog's initial sniffing around the exterior of her vehicle did not constitute an unlawful search. Whether a "canine sniff is a search depends on the circumstances of the sniff itself." State v. Hartzell, 153 Wn. App. 137, 149, 221 P.3d 928 (2009) (citing State v. Boyce, 44 Wn. App. 724, 729, 723 P.2d 28 (1986)), remanded on other grounds, 168 Wn.2d 1027, 230 P.3d 1054 (2010). "[A]s long as the canine 'sniffs the object from an area where the defendant does not have a reasonable expectation of privacy, and the canine sniff itself is minimally intrusive, then no search has

occurred.” Hartzell, 153 Wn. App. at 149 (quoting Boyce, 44 Wn. App. at 730). As the dog herein sniffed the exterior of Pleadwell’s automobile, which was stopped on the side of a public roadway, the sniffing did not intrude into an area where Pleadwell had a reasonable expectation of privacy. No violation of article I, section 7 occurred during the initial dog sniff.

In addition, during the protective frisk of Pleadwell’s purse, Deputy Nyhus was justified in opening the pill bottle. An investigating law enforcement officer may examine an item after performing a protective frisk if the identity of the item is questionable and “has the size and density such that it might or might not be a weapon.” State v. Hudson, 124 Wn.2d 107, 113, 874 P.2d 160 (1994) (citing Terry v. Ohio, 392 U.S. 1, 30, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). The investigating officer “must be able to point to particular facts from which he reasonably inferred that the individual was armed and dangerous.” State v. Bee Xiong, 164 Wn.2d 506, 511, 191 P.3d 1278 (2008) (internal quotation marks omitted) (quoting State v. Galbert, 70 Wn. App. 721, 724–25, 855 P.2d 310 (1993)). Deputy Nyhus testified that he was concerned that the pill bottle might have contained a dangerous object specifically because of the rattling noise and because he had discovered weapons in containers smaller than the bottle. The inspection of the pill bottle was not done in violation of article I, section 7. Therefore, the ensuing arrest and search of the car incident to arrest were proper. The trial court did not err in denying Pleadwell’s motion to suppress.

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Affirmed.

Dupe, C. S.

We concur:

Appelwick, J.

Jan, J.