

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,)	
)	No. 66516-2-1
Respondent,)	
)	
v.)	
)	UNPUBLISHED OPINION
SEBASTIAN LARRY LUBERS,)	
)	
Appellant.)	
_____)	FILED: October 24, 2011

Per Curiam. Sebastian Lubers appeals his convictions for five counts of identity theft and three counts of possessing stolen property. He contends, and the State concedes, that the trial court erred in concluding that police lawfully seized the items supporting his convictions from his vehicle. The parties agree that while the items supporting Lubers’s convictions were in open view, they were in a constitutionally protected area and therefore could not be seized absent a warrant or an applicable exception to the warrant requirement. State v. Kennedy, 107 Wn.2d 1, 10, 726 P.2d 445 (1986) (when an officer “looks into a car from the outside and sees a weapon or contraband in the car, he has not searched the car,” but “[o]nce there is an intrusion into the constitutionally protected area, article [I], section 7 is implicated and the intrusion must be justified if it is made without a warrant”); State v. Jones, No. 39573-8-II, 2011 WL 3821613 , at *3 (Wash. Ct. App. August 30, 2011) (acknowledging privacy

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interest in automobiles and their contents, following Kennedy, and holding that open view doctrine does not permit warrantless entry of vehicle to seize contraband seen in open view); State v. Swetz, 160 Wn. App. 122, 134, 247 P.3d 802 (2011) (following Kennedy and holding that seizure of items seen in open view must be justified by a warrant or valid exception if items are in a constitutionally protected place); accord State v. Posenjak, 127 Wn. App. 41, 52-53, 111 P.3d 1206 (2005); State v. Ferro, 64 Wn. App. 181, 182, 824 P.2d 500 (1992); State v. Mierz, 72 Wn. App. 783, 791 n.6, 866 P.2d 65 (1994). But see State v. Louthan, 158 Wn. App. 732, 746, 242 P.3d 954 (2010), petition for review filed, No. 85608-7 (Wash. Feb. 8, 2011) (stating in dicta that police outside vehicle who see contraband in vehicle may seize it without a warrant or exigent circumstances); State v. Barnes, 158 Wn. App. 602, 613-14, 243 P.3d 165 (2010) (officers lawfully seized gun case from vehicle because it was “in open view at the time of his arrest for felony harassment”); State v. Sistrunk, 57 Wn. App. 210, 214, 787 P.2d 937 (1990) (suggesting that open view doctrine allows officers to seize contraband from vehicle without a warrant).

We accept the State’s concession, reverse the convictions, and remand with directions to dismiss the charges.

FOR THE COURT:



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Spencer, J.