

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

JASON SILVA WILLIAMS,

Appellant.

No. 38643-7-II

UNPUBLISHED OPINION

Quinn-Brintnall, J. — A jury found Jason Williams guilty of two counts of possession of a controlled substance for possessing methamphetamine and oxycodone. Williams appeals his convictions, asserting that (1) the trial court erred by denying his motion to suppress evidence seized incident to his arrest, (2) sufficient evidence does not support his convictions, (3) his defense counsel was ineffective for failing to object to hearsay testimony and for failing to propose “mere proximity” and “unwitting possession” jury instructions, (4) the prosecutor committed misconduct by arguing to the jury that mere proximity was sufficient to support a guilty verdict, and (5) cumulative error denied his right to a fair trial. Because the trial court erred when it found that Williams lacked standing to challenge the search of the bag containing controlled substances, we remand for a new suppression hearing.

## FACTS

### Background Facts

At approximately 1 am on March 26, 2008, Tacoma Police Officer Shelly Brown saw two men sitting in a truck parked by the side of the road. As Brown observed the truck from her patrol vehicle one block away, the two men slumped down in their seats. Brown also saw a man walking toward the truck from a gas station located diagonally across the street; when the man saw the officer, he turned and walked away. Brown saw the two men get out of the truck and saw the driver, later identified as Robert Rambo, grab a gas can.

Officer Brown pulled her patrol vehicle behind the parked truck, approached the men, and asked them if everything was okay; she did not activate her emergency lights. Rambo told Brown that his truck did not work and that someone was coming to pick them up. He also told her that he had picked up a gas can because his truck was out of gas. Brown could see that the truck's gas gauge indicated it was almost half full. Brown asked Rambo if he had identification and he handed his driver's license to her; Brown wrote down his information and handed the license back to him. Brown also asked the passenger, Williams, for his identification, wrote down his information, and handed the identification back to him.

Officer Brown returned to her vehicle and ran a records check on the two men. A records check on Rambo came back clean, but Williams's record showed that he had a misdemeanor warrant for driving while under the influence (DUI). A second officer arrived and arrested Williams on the DUI warrant. As the second officer arrested Williams, Brown went to speak with Rambo about Williams's arrest, and Rambo told her that a blue satchel sitting in the middle of the truck's bench seat belonged to Williams. Brown picked up the satchel and asked Williams if it

belonged to him; he denied that it was his. Brown searched the satchel and found unspent ammunition, an unlabeled pill bottle containing oxycodone, coffee filters with methamphetamine residue, and a notebook. Brown searched the vehicle and found a small pouch lying next to where the satchel had been. The pouch contained a scale, three grams of methamphetamine, and small sealable plastic bags typically used for storing narcotics. Brown also found a pipe commonly used to consume narcotics. The officers arrested Rambo, but it is unclear from the record whether his arrest occurred before or after the search of his vehicle.

The State charged Williams with unlawful possession of a controlled substance with intent to deliver, methamphetamine, and unlawful possession of a controlled substance, oxycodone. Rambo pleaded guilty to possession of a controlled substance with intent to deliver before trial.

#### Procedural Facts

On July 23, 2008, Williams moved to suppress the evidence seized subsequent to his arrest, asserting that the officers committed an unlawful pretextual stop and lacked probable cause to arrest him. The trial court held a CrR 3.6 suppression hearing on July 30, 2008. At the suppression hearing, the trial court was also asked to address whether the officers needed a warrant to search the satchel. The trial court made an oral ruling denying Williams's suppression motion, reasoning that (1) Officer Brown did not conduct a traffic stop because the truck was parked when she approached it, (2) Brown had made a reasonable inquiry under her community caretaking function, (3) Brown did not conduct a seizure when she briefly took their licenses to write down their information, and (4) Williams waived any privacy interest prohibiting a warrantless search of the satchel by denying ownership of it. The trial court entered its written order denying Williams's suppression motion on December 23, 2008.

A jury trial began on August 25, 2008. At trial, Officer Brown testified about the events leading to Williams's arrest. She stated that after Williams was arrested and secured in the back of a patrol car, she approached Rambo to let him know what was going on. She further testified that, when she approached Rambo, he told her that a blue satchel in his truck belonged to Williams. Defense counsel did not object to this testimony. Rambo did not testify at Williams's trial.

The jury entered verdicts finding Williams not guilty of possession of methamphetamine with intent to deliver, guilty of the lesser included offense of possession of methamphetamine and guilty of possession of oxycodone. Williams timely appeals his convictions.

#### ANALYSIS

##### Standing to Contest Search

Williams first contends that the trial court erred when it denied his motion to suppress evidence seized following his March 26, 2008 arrest. Because the trial court erred when it found Williams lacked standing to contest Officer Brown's search of the satchel seized incident to his arrest, we remand for a new suppression hearing.

We review de novo a trial court's conclusions of law in a motion to suppress evidence. *State v. Acrey*, 148 Wn.2d 738, 745, 64 P.3d 594 (2003). Additionally, whether a defendant has standing to challenge a warrantless search is an issue of law that we review de novo. *State v. Link*, 136 Wn. App. 685, 692, 150 P.3d 610, *review denied*, 160 Wn.2d 1025 (2007).

Washington follows the automatic standing rule under which a defendant such as Williams, who is charged with a possessory offense, may challenge the search of the item he is alleged to have possessed. *State v. Jones*, 146 Wn.2d 328, 331-32, 45 P.3d 1062 (2002). The

automatic standing rule prevents a defendant from having to choose between admitting to possessing an item to assert his privacy right in it or denying possession and losing his ability to challenge the search. *Jones*, 146 Wn.2d at 334.

“[W]ithout automatic standing, a defendant will ordinarily be deterred from asserting a possessory interest in illegally seized evidence because of the risk that statements made at the suppression hearing will later be used to incriminate him albeit under the guise of impeachment. For a defendant, the only solution to this dilemma is to relinquish his constitutional right to testify in his own defense.”

*Jones*, 146 Wn.2d at 334-35 (quoting *State v. Simpson*, 95 Wn.2d 170, 180, 622 P.2d 1199 (1980)).

In *State v. Evans*, 159 Wn.2d 402, 413, 150 P.3d 105 (2007), our Supreme Court held that the defendant had automatic standing to contest the warrantless search of a briefcase found in the back seat of his truck, and that he did not abandon his expectation of privacy in the briefcase by denying ownership of it. Similarly here, although Williams denied ownership of the satchel containing drugs he was alleged to have possessed, he nonetheless had the right to challenge the officers’ search of the bag under Washington’s automatic standing rule. Accordingly, the trial court erred when it concluded that Williams did not have standing to contest the scope of the officers’ search of the bag incident to his arrest, and we remand for a new suppression hearing. In light of our ruling on this issue and the state of the law governing warrantless searches and resulting evidence seizures applicable at the suppression hearing on remand, we decline to address Williams’s remaining contentions pending the outcome of the new suppression hearing.

Accordingly, we retain jurisdiction over this appeal and remand to the trial court to conduct a new CrR 3.6 suppression hearing. On remand, within 60 days of the date this opinion is filed, the trial court shall (1) conduct the suppression hearing, at which both parties may present

No. 38643-7-II

additional evidence; (2) enter written findings of fact and conclusions of law pursuant to CrR 3.6(b); and (3) transmit such findings and conclusions to Division Two of the Court of Appeals.

No later than 30 days after the trial court has entered the findings and conclusions, the party which does not prevail at the suppression hearing shall file a supplemental brief in this court or notify this court that the party does not intend to file a supplemental brief. Within 20 days of service, the prevailing party may respond to such supplemental brief.

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

---

QUINN-BRINTNALL, J.

We concur:

---

ARMSTRONG, P.J.

---

HUNT, J.