IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, v. FAWN ALMA BRIDGES, Respondent.	No. 40903-8-II UNPUBLISHED OPINION

Hunt, P.J. — The State of Washington appeals the trial court's suppression of evidence and pretrial dismissal of charges against Fawn Alma Bridges. The State argues that the trial court erred in concluding that when a state trooper legally stopped and arrested the vehicle's driver, he did not have an independent cause to ask passenger Bridges for identification. Bridges responds that, because the State failed to assign error to the trial court's findings of fact, they are binding and fatally undermine the State's appellate challenge to the trial court's ruling. Agreeing with Bridges, we affirm.

FACTS

State Trooper Russell Sanders made a traffic stop of a vehicle and arrested the driver for driving with a suspended license. An hour later, the trooper asked the vehicle's two passengers

for identification, which he took back to the patrol car to run records checks. He found an outstanding warrant for passenger Fawn Bridges. Incident to her arrest, another trooper searched Bridges' purse and found "pills, baggies, and money." Verbatim Report of Proceedings (VRP) at 21. The State charged her with one count of possession with intent to sell or to deliver a legend drug.

Bridges moved to suppress physical and testimonial evidence obtained as a result of this allegedly unlawful search. After a CrR 3.5 hearing, the trial court ruled:

> I'm not basing it on the idea that the pipe was seized unlawfully, or the idea that the jacket was searched unlawfully. I'm saying that when [the other passenger] and Ms. Bridges were seized; i.e. asked, their identification was taken, that there wasn't articulable, individualized articulable suspicion to believe that they were engaged in criminal activity, the only evidence being that [the driver] was engaged in criminal activity.

VRP at 74. The trial court also entered the following findings of fact[1] and conclusions of law and dismissed with prejudice the charge against Bridges.

FINDING OF FACTS

> 1. On December 10, 2009 at approximately 1320 hours, Trooper Sanders lawfully stopped a vehicle on Highway 101 for having the front fender sticking out in a hazardous manner, in violation of RCW 46.37.517(1). This stop was lawful under the statute.
>
> 2. There were three persons in the vehicle. The driver was Zachary Ryan Oravetz, the front passenger was Kathleen Robertson-Baker and in the passenger back seat was Fawn Alma Bridges.
>
> 3. When Trooper Sanders made contact and questioned the driver of the vehicle he smelled a moderate odor of marijuana coming from the vehicle, indicating to the Trooper that marijuana had been smoked.

[1] Because we treat the trial court's unchallenged findings of fact from the CrR 3.5 suppression hearing as verities on appeal, we present them verbatim.

4. Acting on that suspicion, Trooper Sanders asked to see Mr. Oravetz['s] driver's license. Trooper Sanders conducted a driver's check on Mr. Oravetz and determined his driver's license was suspended in the [third] degree in Washington. Trooper Sanders placed Mr. Oravetz under arrest for driving while his license was suspended in the third degree.

5. Trooper Sanders preformed field sobriety tests on Mr. Oravetz. Mr. Oravetz passed the field sobriety tests.

6. Mr. Oravetz was not placed under arrest for driving under the influence.

7. When Mr. Oravetz was placed in custody, Trooper Sanders specifically told him that he was not under arrest for possession of marijuana, but was under arrest for driving while license was suspended.

8. Trooper Sanders asked Mr. Oravetz about the smell of marijuana and Mr. Oravetz responded by telling Trooper Sanders that there was a marijuana pipe in the console of the vehicle and stated that was probably what Trooper Sanders smelled.

9. Trooper Sanders went and found a marijuana pipe in the console of the vehicle as indicated by Mr. Oravetz.

10. Trooper Sanders thought Oravetz was telling the truth but did not know whom the pipe belonged to.

11. Trooper Sanders proceeded to search the vehicle.

12. During this time, passengers Ms. Robertson-Baker and Ms. Bridges remained in the vehicle.

13. Then Trooper Sanders saw a large blue jacket in the back driver's seat. Trooper Sanders reported and testified that the jacket appeared to belong [to] a male. Trooper Sanders proceeded to search the jacket and within the jacket found a modified soda can. Trooper Sanders testified that in his training and experience these cans are modified to hide drugs. Trooper Sanders opened the modified soda can and found what he believed to be heroin and methamphetamine.

14. At that point, in the Trooper's mind, neither Ms. Bridges nor Ms. RobertsonBaker were free to leave.

15. Trooper Sanders asked for [i]dentification of Ms. Robertson-Baker and Ms. Bridges. Ms. Robertson-Baker provided her Costco card and Ms. Bridges provided her driver's license. The Trooper took those back to his car, and told Ms. Robertson-Baker that she could move over to the driver's seat and could start the vehicle to warm up the inside of the car.

16. It was an hour from the time the car was stopped until the time Trooper Sanders took the identification from the passengers. At that point he was doing an investigation and asked for the passengers['] identification pursuant to that investigation.

17. Trooper Sanders determined that both passengers had warrants for their arrest.

18. Trooper Sanders arrested both Ms. Robertson-Baker and Ms. Bridges.

CONCLUSION OF LAW

1. Under *State v. Valdez*, 167 [Wn.2d] 761, 224 P.3d 751 (2009) and *State v. Patton*, 167 [Wn.2d] 379, 219 P.3d 651 (2009), an officer can search a vehicle after arrest only if there is a belief that the vehicle contains weapons or something that affects the safety of the officer. The officer can only search for destructible evidence that is related to the crime of arrest.

2. Trooper Sanders stated to Mr. Oravetz that he was not arrested for any drug offense.

3. Under *Valdez* and *Patton*, Trooper Sanders can search the vehicle only for evidence of the crime of arrest, which in this case is driving while license suspended in the third degree.

4. *State v. Grande*, 164 [Wn.2d] 135, 187 P.3d 248 (2008) states that law enforcement officers are prohibited from effecting a seizure against a passenger unless that officer has articulable suspicion that the person is involved in criminal activity.

5. Although, both passengers could reach the jacket, there was no individualized articulable suspicion that the passengers were involved in any criminal activity. In *State v. George*, 146 [Wn.] App. 906, 193 P.3d 693 (2008), the court found that even though marijuana was found at the feet of the passenger, there was no evidence associating the passenger to a crime and there was not enough evidence to prove that the passenger had actual or constructive possession of the marijuana.

> The evidence in the present case is less because although both passengers could reach the jacket, there was no individualized articulable suspicion that they [were] involved in criminal activity.
>
> 6. Under *State v. Larson*, 21 [Wn.] App. 506, 587 P.2d 171 (1978) and *State v. Rankin*, 151 Wn.2d 689, 92 P.3d 202 (2004), when a law enforcement officer requests identification from a passenger it constitutes a seizure unless there is a reasonable basis for the inquiry.
>
> 7. Here, Trooper Sanders asked for identification of Ms. Robertson-Baker and Ms. Bridges for investigative purposes. Ms. Robertson-Baker and Ms. Bridges were unlawfully seized when Trooper Sanders requested their identification, as there was no individualized articulable suspicion that they were engaged in criminal activity, the only evidence being that Mr. Oravetz was engaged in criminal activity.
>
> 8. This Court makes no ruling on the issue of whether Trooper Sanders could search the console of the vehicle or the jacket.
>
> 9. There was no probable cause for arrest of Ms. Robertson-Baker or Ms. Bridges.
>
> 10. Any charges arising from the arrests of Ms. Robertson -Baker and Ms. Bridges should be dismissed.
>
> 11. This Court grants the Defendant's motion to suppress and dismisses all charges arising from the illegal arrest.

Clerk's Papers (CP) at 25-30 (Findings of Fact (FF) and Conclusions of Law (CL)).

The State appeals.

ANALYSIS

The State argues that the trial court erred in concluding that Sanders did not have an independent cause to ask Bridges for her identification, asserting that Oravetz had authorized Bridges to drive the vehicle rather than have it impounded and that Sanders was merely checking to see if Bridges was licensed to drive. Bridges responds that the trial court properly suppressed the evidence and that, because the State does not assign error to crucial findings of fact, the State

cannot support its argument on appeal. We agree with Bridges that the State's failure to challenge the trial court's findings of fact fatally undermines its argument on appeal.

I. Standard of Review

As Bridges correctly notes, the State did not assign error to any of the trial court's findings of fact. We treat unchallenged findings of fact entered following a suppression hearing as verities on appeal. *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003); RAP 10.3.[2] The binding effect of these unchallenged findings precludes our review of the State's argument to the extent that it cites apparently contrary facts in the record; in other words, we do not independently examine the record to determine whether it supports these unchallenged findings, as we would do if the State had assigned error to them. *See State v. Hill*, 123 Wn.2d 641, 644-45, 870 P.2d 313 (1994).

Treating the trial court's findings of fact as verities on appeal, we review de novo whether these unchallenged findings support the trial court's conclusion of law that Sanders impermissibly seized Bridges in violation of article I, section 7 of the Washington Constitution. *State v. Rankin*, 151 Wn.2d 689, 694, 92 P.3d 202 (2004). We hold that these findings support the trial court's conclusions of law and suppression of the evidence.

II. Unconstitutional, Warrantless Seizure of Passenger

Article I, section 7 of the Washington Constitution and the Fourth Amendment to the United States Constitution protect people from unreasonable searches and seizures and invasions of privacy. Wash. Const. art. I, § 7; U.S. Const. amend IV. We consider a warrantless search or seizure per se unconstitutional unless it falls within an exception to the warrant requirement.

[2] *See also Riley v. Rhay*, 76 Wn.2d 32, 33, 454 P.2d 820, *cert. denied*, 396 U.S. 972 (1969); *State v. Christian*, 95 Wn.2d 655, 656, 628 P.2d 806 (1981); *Tomlinson v. Clarke*, 118 Wn.2d 498, 501, 825 P.2d 706 (1992).

State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). Absent such exception, the trial court suppresses evidence seized from an illegal search under the exclusionary rule, including the fruit of the poisonous tree doctrine. *State v. Gaines*, 154 Wn.2d 711, 716-18, 116 P.3d 993 (2005) (recognizing independent source exception to warrant requirement under article I, section 7).

"[N]ot every encounter between a police officer and a citizen is an intrusion requiring an objective justification." *United States v. Mendenhall*, 446 U.S. 544, 553, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980). For example, when a police officer merely stops the vehicle in which a passenger is riding, the officer does not thereby seize the passenger. *Rankin*, 151 Wn.2d at 695. Nevertheless, under article I, section 7, a stop based on the driver's parking violation does not provide an officer with reasonable grounds to require passengers' identification "unless other circumstances give the police *independent cause* to question [the] passengers."[3] *Rankin*, 151 Wn.2d at 695 (emphasis added) (quoting *State v. Larson*, 93 Wn.2d 638, 642, 611 P.2d 771 (1980)). It is this independent cause exception on which the State bases its argument here.

Generally, when analyzing police-citizen interactions, we first determine whether a warrantless search or seizure has occurred, and, if it has, whether an exception to the warrant requirement justifies the action. *O'Neill*, 148 Wn.2d at 574. The State argues that no seizure of Bridges occurred because the State had an independent cause to question the passengers. But as we have already noted, the unchallenged findings of fact do not support the State's argument.

[3] *See State v. Gaines*, 154 Wn.2d at 722 ("The admission of evidence under the independent source exception to exclusionary rule complies with article I, section 7 of the Washington Constitution.").

The State argues that the trial court erred in concluding that Sanders did not have an independent cause to ask Bridges for her identification because (1) the driver, then in custody, had authorized Bridges to drive his vehicle, rather than have it towed and impounded; and (2) Sanders had both a duty and statutory authorization under RCW 46.61.020 to verify that she could legally drive the vehicle away from the scene. We disagree. Regardless of whether Sanders had or did not have a statutory duty to verify that Bridges could legally drive the vehicle, such verification would have been relevant only if Bridges had been free to leave at the time Sanders asked for her license. But the unchallenged findings show, in essence, (1) that Bridges was not free to leave; and (2) contrary to the State's assertion, that she was, in fact, seized.

The trial court found that, after Sanders discovered what he believed to be heroin and methamphetamine in the vehicle and then asked the passengers for identification, "in the Trooper's mind, neither Ms. Bridges nor [the other passenger] were free to leave."[4] CP at 27 (FF 14).[5] Although the trooper did not expressly tell the passengers that they were not free to leave,

[4] In our view, finding of fact 14 that "in the Trooper's mind, neither Ms. Bridges nor [the other passenger] were free to leave" does not imply some subjective hope by Sanders that a "social contact" with the passengers might have led to a criminal investigation; on the contrary, as the trial court found in finding of fact 16, at this point Sanders' investigation was already underway. CP at 28 (FF 16). Thus, we treat finding of fact 14 as reflecting the objective circumstances at the time, namely that the passengers were not free to leave, especially when coupled with finding of fact15 that Sanders instructed the passengers that they could turn on the vehicle to keep warm. *See Mendenhall*, 446 U.S. at 555 n.6 (subjective secret intention of the officer to detain was irrelevant; officer's conveyed intent to detain was relevant).

[5] Although, as the State argues, Sanders may have asked for Bridges' identification, in part, for the practical reason of allowing the remaining two passengers to take shelter from the cold in the vehicle, the State failed to challenge the trial court's finding of fact that Bridges was not free to leave.

he implicitly conveyed this message[6] when, an hour after stopping the vehicle, he took their identification back to his patrol car and "told [the other passenger] that she could move over to the driver's seat and could start the vehicle to warm up the inside of the car." CP at 28 (FF 15). From these unchallenged findings and the other passenger's testimony that she did not feel free to leave,[7] we reasonably infer that Sanders would have compelled Bridges to stay had she attempted to leave[8] and that she was, in fact, not free to leave.

The unchallenged findings of fact, which we treat as verities on appeal, defeat the State's argument that Sanders had independent cause to question Bridges about her ability to drive the vehicle away and that, therefore, he did not impermissibly seize her when he asked for her identification. Accordingly, we hold that the unchallenged findings of fact support the trial court's conclusion of law that "[the other passenger] and Ms. Bridges were unlawfully seized [under article I, section 7][9] when Trooper Sanders requested their identification, as there was no

---

[6] *See, e.g.*, *Mendenhall*, 446 U.S. at 555 n.6 ("We agree with the District Court that the subjective intention of the DEA agent in this case to detain the respondent, had she attempted to leave, is irrelevant *except insofar as that may have been conveyed to the respondent*.") (Emphasis added).

[7] The other passenger, Bridges' mother, Robertson-Baker, testified that, when she remained in the vehicle after Sanders removed the driver, she did not feel free to start the engine and drive away.

[8] For other examples of when a person might be deemed seized, even without having been thwarted attempting to leave, *see State v. Young*, 135 Wn.2d 498, 512, 957 P.2d 681 (1998):

> Examples of circumstance[s] that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

(citations omitted) (quoting *Mendenhall*, 446 U.S. at 554-55).

[9] *See O'Neill*, 148 Wn.2d at 574.

individualized articulable suspicion that they were engaged in criminal activity." CP at 30 (CL 7). The State having failed to establish an exception to the warrant requirement justifying Sanders' seizure of Bridges, we hold that the unchallenged findings before us on appeal support the trial court's legal conclusions. Accordingly, we affirm the trial court's suppression of evidence and dismissal of the charges against Bridges based on this suppressed evidence.

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.

Hunt, P.J.

We concur:

Quinn-Brintnall, J.

Van Deren, J.