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Supreme Court of the State of Washington

Opinion Information Sheet

Docket Number: 72509-8

Title of Case: State of Washington V. James Bruce Rankin

V State of Washington V. Kevin D. Staab

File Date: 06/10/2004

Oral Argument Date: 01/23/2003

SOURCE OF APPEAL

Appeal from Superior Court,

County

JUSTICES

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IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)

) No. 72509-8

Respondent,)

)

v.) En Banc

)

JAMES BRUCE RANKIN,)

)

Petitioner.)

)

STATE OF WASHINGTON,)

)

Respondent,)

)

v.)

)

KEVIN D. STAAB,)

)

Petitioner.)

) Filed June 10, 2004

ALEXANDER, C.J.--The principal issue we are asked to resolve in this consolidated case is this: whether a police officer violates article I, section 7 of the Washington Constitution when the officer requests identification from a passenger in a lawfully stopped vehicle but lacks an articulable suspicion that the passenger has engaged in criminal activity. The Court of Appeals concluded that although an officer in such a circumstance cannot demand identification from a passenger, an officer does not violate the state constitution by merely requesting that the passenger produce identification. We disagree with the Court of Appeals, concluding

that the aforementioned constitutional provision affords automobile passengers a right of privacy that is violated when an officer requests identification from a passenger for investigative purposes, absent an independent basis for making the request. The Court of Appeals must, therefore, be reversed in both cases before us.

I.

State v. Rankin

On September 17, 1999, a vehicle driven by Karena Gunn was stopped by a Snohomish County sheriff's deputy. The deputy did so because he observed Gunn's vehicle 'roll over a marked stop line,' a noncriminal traffic offense. Rankin's Clerk's Papers at 5. James Rankin was a passenger in Gunn's vehicle. Although the deputy did not observe Rankin engaged in any criminal activity on this occasion, he recalled that he had arrested Rankin approximately a month earlier for possession of a stolen vehicle and possession of controlled substances.

The deputy requested Gunn's driver's license, and then asked Rankin if he had any identification on his person. Rankin and Gunn each responded by providing the deputy with identification cards. The deputy used the personal information from the cards to run a check to see if there were warrants outstanding for either of the individuals. He learned that there were no warrants for Gunn but that there was an outstanding warrant for Rankin's arrest for allegedly violating a no-contact order. Consequently, he placed Rankin under arrest. During a search incident to the arrest, the deputy discovered a knife and about one ounce of methamphetamine on Rankin.

Rankin was charged in Snohomish County Superior Court with possession of a controlled substance. Rankin then moved to suppress the evidence that was seized from him at the time of his arrest. The trial court granted the motion and suppressed the evidence, concluding that the encounter was a seizure. It then dismissed the case, concluding that the State possessed insufficient evidence to maintain the charges against Rankin.

State v. Staab

On March 3, 1999, an officer from the Tukwila Police Department stopped a vehicle for the traffic offense of not having a license plate light. The officer asked the driver and his passenger, Kevin Staab, to produce their driver's licenses. Staab testified that the officer 'was not politely asking when he wanted to see my driver's license,' an assertion that the officer did not deny. Staab Report of Proceedings at 41. When Staab reached into his shirt pocket for his identification card, a clear plastic bag containing a white chalky substance fell out. Staab then put the bag back in his pocket and told the officer his name. After determining that there were no outstanding warrants for Staab, the officer arrested Staab based on his belief that the plastic bag contained cocaine. Staab admitted to the officer that the bag contained approximately three grams of cocaine. Staab was thereafter charged in King County Superior Court with a violation of the Uniform Controlled Substances Act, chapter 69.50 RCW. At a subsequent hearing on the admissibility of the cocaine, the trial court determined that an officer may ask a passenger for identification even if the officer lacks a reasonable suspicion that the passenger is engaged in

criminal activity. Consequently, it denied Staab's motion to suppress the cocaine. Staab was later found guilty of the charge.

At the Court of Appeals

Staab appealed his conviction to Division One of the Court of Appeals. The State appealed the order suppressing evidence in Rankin's case to that same court. The Court of Appeals consolidated the appeals and held that while an officer may not require a passenger to provide identification, unless there are independent grounds to question the passenger, the officer may request identification. State v. Rankin, 108 Wn. App. 948, 951, 954, 33 P.3d 1090 (2001), review granted, 147 Wn.2d 1014, 56 P.3d 991 (2002). It, therefore, affirmed Staab's conviction and reversed the trial court's suppression of evidence in Rankin's case, remanding the latter case for trial.

II.

Rankin and Staab both contend that the officers' requests for identification violated article I, section 7 of the Washington Constitution. The determination of whether undisputed facts constitute a violation of that provision of the Washington Constitution is a question of law, which is reviewed de novo. State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996), overruled on other grounds by State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003). Here, the determinative facts of this case are not in dispute. Our review, therefore, is de novo.

'It is well settled that article I, section 7 of the Washington Constitution provides greater protection to individual privacy rights than

the Fourth Amendment to the United States Constitution.' State v. Jones, 146 Wn.2d 328, 332, 45 P.3d 1062 (2002). Therefore, we need not engage in an analysis under State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986). State v. White, 135 Wn.2d 761, 769, 958 P.2d 982 (1998).

The Washington Constitution provides that '{n}o person shall be disturbed in his private affairs, or his home invaded, without authority of law.' Const. art. I, sec. 7. This provision protects 'those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.' State v. Myrick, 102 Wn.2d 506, 511, 688 P.2d 151 (1984). Indeed, a warrantless search or seizure is considered per se unconstitutional unless it falls within one of the few exceptions to the warrant requirement. State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). When analyzing police-citizen interactions, we must first determine whether a warrantless search or seizure has taken place, and if it has, whether the action was justified by an exception to the warrant requirement. O'Neill, 148 Wn.2d at 574. Here, the State does not contend that the encounters were justified by any exception to the warrant requirement. The State argues only that no seizure occurred. '{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). However, a seizure occurs, under article I, section 7, when considering all the circumstances, an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a

request due to an officer's use of force or display of authority. O'Neill, 148 Wn.2d at 574. This determination is made by objectively looking at the actions of the law enforcement officer. State v. Young, 135 Wn.2d 498, 501, 957 P.2d 681 (1998). Moreover, it is elementary that all investigatory detentions constitute a seizure. State v. Armenta, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997).

An automobile passenger is not seized when a police officer merely stops the vehicle in which the passenger is riding. State v. Mendez, 137 Wn.2d 208, 222, 970 P.2d 722 (1999). Under article I, section 7, however, passengers are unconstitutionally detained when an officer requests identification 'unless other circumstances give the police independent cause to question {the} passengers.' State v. Larson, 93 Wn.2d 638, 642, 611 P.2d 771 (1980). In Larson, officers observed several individuals sitting in an illegally parked automobile. As the officers drove up to the parked automobile, the driver of the automobile began to drive it away. The officers then activated their emergency lights and stopped the automobile. Upon confronting the driver and his passengers, the officers 'asked' for their identification. Id. at 640. When one of the passengers attempted to comply with the request by opening her purse to locate her identification, an officer observed a plastic bag of marijuana in the purse. After the passenger was arrested for possession of a controlled substance, she moved to suppress the evidence that was obtained as a result of 'the request for identification.' Id.

The trial court ordered suppression, reasoning that the police officers did

not have any legal justification for 'requesting' identification from the passenger. State v. Larson, 21 Wn. App. 506, 507, 587 P.2d 171 (1978). The Court of Appeals reversed the trial court's decision, determining that 'the police may ask for identification from passengers as well as the driver.' Id. at 509 (emphasis added). This court reversed the Court of Appeals, concluding

that the police officer who detained the petitioner for the purpose of requiring her to identify herself did so in violation of the fourth amendment to the United States Constitution and Const. art. 1, sec. 7, because none of the circumstances preceding the officer's detention of petitioner justified a reasonable suspicion that she was involved in criminal conduct.

Larson, 93 Wn.2d at 645. Although in Larson we referred to the officer's interaction as a 'demand' in some sections of the opinion, the decision must be read in light of the facts of that case, which were that the officer merely 'asked' the passenger for the identification.1 Id. at 640-41. Moreover, we determined that the officer's request for identification amounted to a 'detention' of the passenger for investigative purposes. Id. at 645. As noted above, all investigative detentions2 constitute seizures. Armenta, 134 Wn.2d at 10.

The dissent3 relies heavily on Young where we held that asking for identification from a pedestrian does not constitute a seizure. Young, 135 Wn.2d at 511. Significantly, Young did not overrule or even mention our

decision in Larson. We think there are good reasons for making a distinction between pedestrians and passengers. As we have said, "many {individuals} find a greater sense of security and privacy in traveling in an automobile than they do in exposing themselves by pedestrian or other modes of travel." City of Seattle v. Mesiani, 110 Wn.2d 454, 457, 755 P.2d 775 (1988) (quoting Delaware v. Prouse, 440 U.S. 648, 662, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979)). Indeed, a passenger faced with undesirable questioning by the police does not have the realistic alternative of leaving the scene as does a pedestrian. As the noted commentator Professor LaFave observed, the passenger is forced to abandon his or her chosen mode of transportation and, instead, walk away into a frequently foreign location thereby risking the departure of his or her ride while away. See Wayne R. LaFave, The Present and Future Fourth Amendment, 1995 U. Ill. L. Rev. 111, 114-15. Despite the dissent's suggestions to the contrary, Larson is consistent with Young.

Washington is not alone in holding that a mere request for identification from a passenger for investigatory purposes constitutes a seizure unless there is a reasonable basis for the inquiry. In Commonwealth v. Alvarez, 44 Mass. App. Ct. 531, 692 N.E.2d 106 (1998), the Massachusetts Court of Appeals held that an unlawful seizure occurs when a law enforcement officer interrogates 'passengers in {a} car unless the {law enforcement officer} has a 'reasonable suspicion, grounded in specific, articulable facts,' that a particular passenger in the car is involved in criminal activity or 'engaged in other suspicious conduct." Alvarez, 692

N.E.2d at 108 (quoting Commonwealth v. Torres, 424 Mass. 153, 158, 674 N.E.2d 638 (1997)). The court reasoned there that 'a random request for identification papers constitutes--the sort of request uncomfortably associated with authoritarian societies and most commonly made of persons belonging to a racial or ethnic minority.' Id. at 109; see also State v. Johnson, 645 N.W.2d 505, 510 (Minn. Ct. App. 2002) (holding 'a reasonable person would feel that he was neither free to disregard the police questions nor free to terminate the encounter' when a police officer requests identification from a passenger); Hornberger v. Am. Broad. Cos., 351 N.J. Super. 577, 613, 799 A.2d 566 (2002) (determining a passenger does not feel free to refuse an officer's request for identification); State v. Affsprung, 87 P.3d 1088, 1093 (N.M. Ct. App. 2004) (concluding 'we do not believe that a reasonable passenger would feel free to leave the area and refuse the officer's request for identification'), cert. denied, 88 P.3d 262 (N.M. 2004).

Not all jurisdictions are in agreement on this issue. The Supreme Court of Colorado, for instance, has determined that there is no seizure under the Fourth Amendment when an officer requests identification from an automobile passenger. See People v. Paynter, 955 P.2d 68, 75 (Colo. 1998). However, as noted above, the Washington Constitution affords individuals more protection than the Fourth Amendment, and we must always remain vigilant in guarding these civil rights and refrain from hastily discarding them. Jones, 146 Wn.2d at 332.

{W}hile the Fourth Amendment operates on a downward ratcheting mechanism of

diminishing expectations of privacy, article I, section 7, holds the line by pegging the constitutional standard to 'those privacy interests which citizens of this state have held, and should be entitled to hold, safe from governmental trespass absent a warrant.'

Ladson, 138 Wn.2d at 349 (quoting Myrick, 102 Wn.2d at 511). In our view, there is no reason to abandon a right that passengers have enjoyed in this state since at least 1980 when such requests for identification from passengers were deemed by this court to be in violation of article I, section 7 of our state constitution. In the absence of a compelling justification for stripping this right from the people, our constitutional jurisprudence requires us to uphold this right. Id. Therefore, we conclude that under article I, section 7, law enforcement officers are not permitted to request identification from a passenger for investigatory purposes unless there is an independent basis to support the request.4 In each of the cases before us, a police officer asked a passenger for identification for the sole purpose of conducting a criminal investigation, notwithstanding the fact that the officer lacked any articulable suspicion of criminal activity. Applying Larson, we conclude that both individuals were seized as a matter of law when the officers made the request or demand for identification. Because both individuals were seized without the benefit of a warrant and the State does not contend that the seizures were justified by any exception to the warrant requirement,5 the evidence obtained as a result of the seizures must be suppressed.

III.

In conclusion, we hold that the freedom from disturbance in 'private affairs' afforded to passengers in Washington by article I, section 7 prohibits law enforcement officers from requesting identification from passengers for investigative purposes unless there is an independent reason that justifies the request. This is not to imply that officers may not engage passengers in conversation. They may do this. However, once the interaction develops into an investigation, it runs afoul of our state constitution unless there is justification for the intrusion into the passenger's private affairs. Because the Court of Appeals concluded otherwise, we reverse its decision to overturn the suppression of the evidence seized from Rankin as well as its affirmance of Staab's conviction.

WE CONCUR:

1Even the dissenters in Larson read the majority opinion as prohibiting officers from requesting identification without an independent reason. Larson, 93 Wn.2d at 654 (Horowitz, J., dissenting). The dissenters stated: 'Petitioner contends that even if the officers had sufficient grounds to stop the car and ask the driver for his identification, they had no grounds to ask {the defendant-passenger} for her identification. The majority agrees with this contention. I cannot.' Id. (emphasis added).

2'Detention' is defined as '{t}he act or fact of holding a person in

custody; confinement or compulsory delay.' Black's Law Dictionary 459 (7th ed. 1999).

3Dissent at 12.

4As we indicated, Larson was decided under the fourth amendment to the United States Constitution as well as the state constitution. Larson, 93 Wn.2d at 645. Because article I, section 7 resolves this case, we need not apply the Fourth Amendment.

5Under the particular facts before us, the requests for identification were not reasonably related to officer safety. If there were issues of officer safety, the result might have been different. See State v. Hudson, 124 Wn.2d 107, 112, 874 P.2d 160 (1994).

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