

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 77484-6
)	
v.)	En Banc
)	
ALEX UNDRAE PAUL MOORE,)	
)	Filed October 11, 2007
Petitioner.)	
)	

OWENS, J. -- Alex Undrae Paul Moore appeals his conviction for possession of a controlled substance with intent to manufacture or deliver, contending that the trial court erred in denying his motion to suppress evidence discovered in a search incident to his arrest. We agree and hold that the evidence is inadmissible. We reverse the Court of Appeals and remand to the trial court.

Facts

According to the trial court's unchallenged findings of fact, on April 27, 2003, Everett Police Officer Jamie French stopped a vehicle in which Moore was a passenger. Officer French recognized Moore from a previous encounter but could not

recall his name. When asked, Moore told Officer French that his name was “Antoine

Carver.” Clerk’s Papers (CP) at 53. Officer French suspected that Antoine Carver was not Moore’s true name. During the stop, Officer French observed a pit bull sitting on Moore’s lap in the backseat. She arrested Moore for having a dangerous dog outside of an enclosure in violation of Everett Municipal Code sections 6.08.010(B)-(C) and .015. She also arrested Moore for “Refusal to Give Information/Cooperate with an officer.” *Id.* at 54. A second officer at the scene then searched Moore and found cocaine, methadone pills, and approximately \$800 in cash. Later that same day, Officer French filed a supplemental report mentioning that she had noticed that none of the passengers were wearing seatbelts when she approached the vehicle. *Id.* at 73.

The State charged Moore with possession of a controlled substance with intent to manufacture or deliver. Before trial, Moore moved to suppress the evidence discovered in the search on the grounds that his arrest was unlawful. The trial court held that Officer French did not have probable cause to arrest Moore for having a dangerous dog outside of an enclosure because the car constituted a suitable enclosure. Report of Proceedings (RP) (Apr. 23, 2004) at 52. The court also deemed that probable cause did not exist to arrest Moore for refusal to give information/cooperate with an officer because “[g]iving false identification is not a crime in and of itself unless the person is being stopped and charged with a traffic infraction.” *Id.* at 50. The court explained:

In this case, Officer French hadn’t identified any traffic infraction that

[Moore] was being investigated on, and instead, apparently, was under the impression if you give false identification under any circumstance you're committing a misdemeanor. She's simply wrong on that case.

. . . Mr. Moore had no obligation to give his name in the first place, and so to arrest him for giving a wrong name is inappropriate.

Id. at 50-51. Nonetheless, the trial court held the arrest was valid, ruling that a “hidden reason” supported Moore’s arrest. *Id.* at 53. Based on Officer French’s observation that Moore was not wearing a seatbelt and belief that Moore provided false identification, the trial court reasoned that “[t]he officers didn’t arrest Mr. Moore for a seat belt violation, but, in hindsight, it appears that they could have.” *Id.* at 54. The court thus concluded that Officer French “had lawful authority to ask the defendant his name for committing the traffic infraction of a seatbelt violation” and that “when the defendant provided a false name to them, officers then had probable cause to arrest” him for failing to identify himself pursuant to an investigation of a traffic infraction under former RCW 46.61.021(3) (1997).¹ CP at 59. The court upheld the search and denied Moore’s motion to suppress. *Id.* at 60.

During a bench trial, the court found Moore guilty of possessing a controlled substance with intent to manufacture or deliver. Moore appealed and the Court of

¹ Under this provision, “[a]ny person requested to identify himself or herself to a law enforcement officer pursuant to an investigation of a traffic infraction has a duty to identify himself or herself, give his or her current address, and sign an acknowledgement of receipt of the notice of infraction.” Former RCW 46.61.021(3). Violation of RCW 46.61.021(3) is a misdemeanor. RCW 46.61.022.

Appeals affirmed. *State v. Moore*, noted at 128 Wn. App. 1017, 2005 Wash. App. LEXIS 1523, at *2. We granted Moore’s petition for review at 156 Wn.2d 1023, 132 P.3d 1094 (2006).

Issue

Was the search incident to Moore’s arrest lawful under article I, section 7 of the Washington Constitution?

Analysis

Standard of Review. Moore does not challenge the trial court’s findings of fact. We therefore view these findings as verities. *See State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (citing *State v. O’Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003)). Instead, Moore challenges the trial court’s conclusion that the evidence obtained in the search was admissible. We review this conclusion of law de novo. *See id.* (citing *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *abrogated by Brendlin v. California*, 127 S. Ct. 2400, 168 L. Ed 2d 132 (2007)).

Search Incident to Arrest. The Washington Constitution mandates that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” Wash. Const. art. I, § 7. In contrast to the Fourth Amendment to the United States Constitution, the article I, section 7 provision “recognizes a person’s right to privacy with no express limitations.” *O’Neill*, 148 Wn.2d at 584. A warrantless

search is per se unreasonable unless it falls within one of the few narrowly drawn exceptions. *State v. Parker*, 139 Wn.2d 486, 496, 987 P.2d 73 (1999).

“[T]he search incident to arrest exception to the warrant requirement is narrower” under article I, section 7 than under the Fourth Amendment. *O’Neill*, 148 Wn.2d at 584. Under the Washington Constitution, a lawful custodial arrest is a constitutional prerequisite to any search incident to arrest. *Id.* at 587. The lawfulness of an arrest stands on the determination of whether probable cause supports the arrest. *State v. Potter*, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006). Probable cause exists when the arresting officer has “knowledge of facts sufficient to cause a reasonable [officer] to believe that an offense has been committed” at the time of the arrest. *Id.*

In the instant case, officers searched Moore without a warrant, incident to his arrest for having a dangerous dog outside of an enclosure and for refusal to give information/cooperate with an officer. The State does not challenge the trial court’s finding that probable cause does not support either of these bases for Moore’s arrest. The State nonetheless argues that Officer French had additional probable cause to support an arrest of Moore for violating former RCW 46.61.021(3), which provides in pertinent part that “[a]ny person requested to identify himself or herself to a law enforcement officer *pursuant to an investigation* of a traffic infraction has a duty to identify himself or herself.” (Emphasis added.)

The record does not support the State's argument that Officer French conducted an "investigation" of the seatbelt violation. The crime of failing to correctly identify one's self under RCW 46.61.021(3) requires more than the mere observation of a traffic infraction and an unrelated request for identification. Rather, the officer must ask the individual for identification *pursuant to an investigation* of a traffic infraction. Officer French did not cite any passengers for the seatbelt violation and only mentioned her observation that the passengers were not wearing seatbelts in a supplemental report. Officer French also clarified at a subsequent hearing that she did not ask Moore for his name pursuant to an investigation of the seatbelt infraction. RP (Apr. 9, 2004) at 41, 45-46. Based on the objective fact that Officer French was not investigating the seatbelt infraction, a reasonable officer would not have concluded that Moore violated former RCW 46.61.021(3) by failing to correctly identify himself pursuant to an investigation of a traffic infraction. Accordingly, we conclude that probable cause does not support Moore's arrest.

Conclusion

Officer French did not have probable cause to arrest Moore for failure to identify himself in violation of former RCW 46.61.021(3). Therefore, the arrest and search were unlawful under article I, section 7 of the Washington Constitution and the evidence obtained during the search is inadmissible. We reverse the Court of Appeals

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and remand.

AUTHOR:

Justice Susan Owens

WE CONCUR:

Chief Justice Gerry L. Alexander

Justice Tom Chambers

Justice Charles W. Johnson

Justice Richard B. Sanders

Justice James M. Johnson
