

WASHINGTON SUPREME COURT

State v. Bee Xiong

164 Wash. 2d 506 (2008) · No. 163 Wn.2d 1001 · Decided September 11, 2008

SUMMARY

The Washington Supreme Court held that police lacked specific, articulable facts supporting a reasonable belief that Bee Xiong was armed and presently dangerous when they reached into his pants pocket after handcuffing and patting him down. The court upheld suppression of the pipe and the evidence obtained from the subsequent search of the minivan, reversed the Court of Appeals, and concluded that the trial court properly suppressed the contraband.

CASE DETAILS

COURT	Washington Supreme Court
WRITING FOR THE COURT	Alexander, C.J.; Johnson, J.; Madsen, J.; Sanders, J.; Chambers, J.; Owens, J.; Fairhurst, J.; Stephens, J.
JURISDICTION	Washington
DECIDED	September 11, 2008
DOCKET	163 Wn.2d 1001
DISPOSITION	reversed
PROCEDURAL POSTURE	The State sought review after the Washington Court of Appeals reversed the trial court's order suppressing evidence and dismissing the charge. The Washington Supreme Court reversed the Court of Appeals.
STANDARD OF REVIEW	Conclusions of law in an order pertaining to suppression of evidence are reviewed de novo.
PRECEDENTIAL VALUE	Published, precedential Washington Supreme Court opinion
PARTIES	Bee Xiong v. State of Washington

TOPICS

- search and seizure
- fourth amendment
- suppression of evidence
- criminal procedure

PRACTICE AREAS

- Criminal procedure
- Search and seizure
- Evidence suppression
- Constitutional law

QUESTIONS PRESENTED

1. Whether officers had specific, articulable facts supporting an objectively reasonable belief that Bee Xiong was armed and presently dangerous, thereby justifying a protective frisk that extended into his pants pocket.
2. Whether the evidence seized from Bee's person and the evidence obtained from the minivan search incident to his arrest should be suppressed.

HOLDINGS

1. A protective frisk requires specific, articulable facts creating an objectively reasonable belief that the suspect is armed and presently dangerous; generalized safety concerns are insufficient. Because the officers lacked such facts as to Bee Xiong, the intrusion into his pants pocket was unlawful.
2. The subsequent arrest of Bee Xiong was unlawful because it resulted from the unlawful pocket search, and the search of the minivan incident to that arrest was likewise unlawful.

KEY QUOTATIONS

“If an officer cannot point to specific articulable facts that create an “objectively” reasonable belief that a suspect is armed and “presently” dangerous, then no further intrusion is justified.” (164 Wash. 2d at 513-514)

“Although the officers who confronted Bee may legitimately have had some generalized concerns about safety, none were specific to Bee and, thus, the officers had no basis for searching his pants pocket.” (164 Wash. 2d at 514)

FACTUAL BACKGROUND

Officers went to what they believed was Kheng Xiong's residence to serve an arrest warrant and mistakenly identified Bee Xiong, Kheng's brother, as the warrant's target. They handcuffed and frisked Bee, then squeezed a bulge in his pocket despite his denial that it contained anything capable of hurting an officer and his statement that he did not want to be searched. An officer reached into the pocket and seized a glass pipe, after which Bee was arrested and officers searched his minivan, finding methamphetamine, a scale, and cash. Bee was cooperative, made no threatening movements, remained handcuffed, and was later identified as Bee rather than Kheng.

PROCEDURAL HISTORY

Law enforcement seized a glass pipe from Bee Xiong's pants pocket during a protective search and then arrested him, finding methamphetamine and other evidence in a search of his minivan. The Spokane County Superior Court suppressed the evidence and dismissed the possession-with-intent-to-deliver charge. In a split decision, the Court of Appeals reversed, but the Washington Supreme Court granted review and reversed the Court of Appeals.

DISPOSITION

reversed

CASES CITED

- State v. Bee Xiong, 137 Wn. App. 720, 725, 154 P.3d 318 (2007)
- State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)
- State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996)
- Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007)
- State v. Galbert, 70 Wn. App. 721, 855 P.2d 310 (1993)
- Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)
- State v. Broadnax, 98 Wn.2d 289, 293-95, 654 P.2d 96 (1982)
- Sibron v. New York, 392 U.S. 40, 64, 88 S. Ct. 1889, 20 L. Ed. 2d 917 (1968)
- State v. Sweet, 44 Wn. App. 226, 234, 721 P.2d 560, review denied, 107 Wn.2d 1001 (1986)
- Ybarra v. Illinois, 444 U.S. 85, 92-94, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979)
- State v. Setterstrom, 163 Wn.2d 621, 626-27, 183 P.3d 1075 (2008)
- State v. Collins, 121 Wn.2d 168, 173, 847 P.2d 919 (1993)
- State v. Hudson, 124 Wn.2d 107, 112, 874 P.2d 160 (1994)
- Madison v. State, 161 Wn.2d 85, 104 n.10, 163 P.3d 757 (2007)