Supreme Court No. 100135-5
Division I No. 81203-3

IN THE SUPREME COURT
OF THE
STATE OF WASHINGTON

State of Washington,

Respondent,

v.

Zachery K. Meredith,

Petitioner.

Snohomish County Superior Court
Cause No. 18-1-01538-31

Snohomish County District Court, Everett Division
Cause No. 4434A-18D

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Zachery K. Meredith, the Appellant, asks this Court to accept review of the decision designated in Part B.

B. DECISION ON REVIEW

The published opinion from Court of Appeals, Division I, filed on July 26, 2021. A copy of this opinion is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Whether the finding that consent is an exception to the warrant requirement for seizures of an individual's person conflicts with precedent analyzing the consent exception and the plain language of article 1, section 7.

2. Whether the holding that passengers enter a contractual relationship with Swift transit when they enter the bus and voluntarily consent to their suspicionless seizures conflicts with well-established precedent analyzing the consent exception and the formation of contracts.

3. Whether the finding that RCW 81.112.210(2)(b)(i) may reduce the constitutional protections against suspicionless seizures for bus passengers is in conflict with this Court's decision in *Villela*.

4. Whether the answer provided by the decision's holding involves a significant constitutional question with wide-reaching consequences.

5. Whether the constitutionality of seizures performed under 81.112.210(2)(b)(i) is an issue of substantial public interest that should be determined by this Court.

D. STATEMENT OF THE CASE

Deputy Dalton, Sergeant Zelaya, and another officer were investigating whether passengers on the Swift bus line had proof that they paid fare. CP 78, 90-91, 94. Deputy Dalton's standard practice for these

investigations was to approach passengers and say, "proof of payment or ORCA card." CP 105. He would then use a device to scan the ORCA card or transit ticket to see whether the passenger paid to ride the bus. CP 90. If passengers did not comply or have proof, Deputy Dalton would pull them off the bus to give them a warning, issue an infraction under RCW 81.112.220(2)(b) for failure to provide proof of fare, or arrest them for Theft in the Third Degree. CP 92.

The officers followed their standard practice with Mr. Meredith. CP 105. Mr. Meredith was riding the bus when Deputy Dalton entered the back door and another officer entered the middle door. CP 94-95, 105. Deputy Dalton approached Mr. Meredith and said, "proof of payment or ORCA card." CP 105. Deputy Dalton never watched any video surveillance, never received any witness statements about whether Mr. Meredith paid, and never heard Mr. Meredith say that he did not pay. CP 102-03.

Mr. Meredith said he had proof and began looking through his pants and backpack. CP 105-06. After searching, he was unable to find it. CP 99. Deputy Dalton then ordered Mr. Meredith off the bus and told him to identify himself. CP 99-100. Mr. Meredith said he was from Colorado and his name was "Jason McGumery." CP 100. Deputy Dalton asked

dispatch to confirm Jason McGumery's identity, but dispatch was unable to do so. CP 100. Deputy Dalton then arrested Mr. Meredith. CP 93-94.

Sergeant Zelaya was in his patrol vehicle behind the bus. CP 79. After Deputy Dalton arrested Mr. Meredith, Sergeant Zelaya walked over to them with a Mobile Identification device and identified Mr. Meredith using his fingerprints. CP 94, 100-01.

Mr. Meredith was charged with one count of Making a False or Misleading Statement to a Public Servant in Snohomish County District Court, Everett Division. CP 280. Mr. Meredith moved to dismiss the charge, arguing that his statements and the results from the fingerprint scan must be suppressed because he was unlawfully seized, but the trial court denied his motion, finding that Deputy Dalton's order to provide "proof of payment or ORCA card" was lawful to enforce RCW 81.112.220(2)(b), which makes bus passengers liable for an infraction if they "[fail] to produce proof of payment . . . when requested to do so by a person designated to monitor fare payment." CP 328-333. Mr. Meredith then proceeded to a jury trial where he was convicted of the crime charged. CP 304.

Mr. Meredith timely appealed to the Superior Court, which affirmed his conviction, finding that Deputy Dalton's demand for "proof of payment" did not invade Mr. Meredith's right to privacy and was

justified under RCW 81.112.210(2)(b)(i), which permits law enforcement to request proof of payment from passengers. CP 7-10. Mr. Meredith timely filed a motion for discretionary review of the decision to Division I of the Court of Appeals, and the court granted his request.

On appeal, Mr. Meredith maintained that his right to privacy was violated when Deputy Dalton seized him without any suspicion of unlawful activity. He argued that he was seized when Deputy Dalton's demanded "proof of payment" because no reasonable person would feel free to terminate the encounter or decline to answer because doing so would make him liable for an infraction under RCW 81.112.220(2)(b). He also argued that the authority provided to Deputy Dalton under RCW 81.112.210(2)(b)(i) to make these demands is unconstitutional because it permits law enforcement to arbitrarily and erratically seize passengers without any suspicion that they are engaged in unlawful activity.

Division I affirmed Mr. Meredith's conviction, finding that consent is a well-established exception to the warrant requirement for seizures of an individual's person under article 1, section 7. App. A at 8-11. The court then held that Mr. Meredith voluntarily consented to his seizure because, by entering the bus, he contracted with Swift transit and thereby agreed to comply with all terms of transportation, which included the authority

provided to law enforcement under RCW 81.112.210(2)(b)(i) to request proof of payment from anyone riding the bus. App. A. at 11-17.

Mr. Meredith petitions this Court for review.

E. ARGUMENT

Mr. Meredith was seized when Deputy Dalton ordered him to provide "proof of payment or ORCA card." A person is seized under article 1, section 7 if, by means of physical force or show of authority, his freedom of movement is restrained and a reasonable person would believe he is not free to leave or otherwise decline the officer's request. *State v. Harrington*, 167 Wn.2d 656, 663, 222 P.3d 92 (2009); *State v. Butler*, 2 Wn. App. 2d. 549, 561, 411 P.3d 393 (2018) (defendant seized when told to "stop"). No reasonable person in Mr. Meredith's position would have believed that he could terminate the encounter or decline to answer since doing so would have made him liable for an infraction under RCW 81.112.220(2)(b).[1]

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[1] Specifically, the statute says:

> (2) The following constitute civil infractions punishable according to the schedule of fines and penalties established by the authority under RCW 81.112.210(1):
>
> (b) Failure to produce proof of payment in the manner required by the terms of use established by the authority including, but not limited to, the failure to produce a validated fare payment card when requested to do so by a person designated to monitor fare payment.

Mr. Meredith petitions this Court for review of Division I's holding that he consented to this suspicionless seizure. This Court will only accept review:

> (1) If the decision of the Court of Appeals is in conflict with a decision of the Supreme Court; or
>
> (2) If the decision of the Court of Appeals is in conflict with another decision of the Court of Appeals; or
>
> (3) If a significant question of law under the Constitution of the State of Washington or of the United States is involved; or
>
> (4) If the petition involves an issue of substantial public interest that should be determined by the Supreme Court.

RAP 13.4(b).

This Court should accept review because Division I's holding conflicts with decisions of this Court and the Courts of Appeals, involves a significant question of law under the Constitution of the State of Washington, and is an issue of substantial public interest that should be determined by this Court.

1. **This Court should accept review under RAP 13.4(b)(1) and (b)(2) because the finding that consent is an exception to the warrant requirement for seizures of an individual's person conflicts with precedent analyzing the consent exception and the plain language of article 1, section 7**

Consent is not an exception to the warrant requirement under article 1, section 7 for seizures of an individual's person.

Under article 1, section 7, "[n]o person shall be disturbed in his private affairs . . . without authority of law." The "authority of law" required is a valid warrant unless the State shows that a search or seizure falls within one of the jealously guarded and carefully drawn exceptions to the warrant requirement. *State v. Villela*, 194 Wn.2d 451, 458, 450 P.3d 170 (2019). The State bears the heavy burden of demonstrating that a warrantless search or seizure falls within one of these exceptions. *Id.*

One such exception is consent. *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004). However, consent has not been approved as an exception to the warrant requirement under article 1, section for seizures of an individual's person. *State v. Thorp*, 71 Wn. App. 175, 181, 856 P.2d 1123 (1993).

Thorp is one of the few cases addressing this issue. There, the officer stopped the defendant to determine whether he had a permit to haul the cedar in his truck. *Id.* at 177. Under RCW 76.48.070(2), it was unlawful for any person to transport cedar products without a specialized permit. *Id.* at 179-180 (citing the now repealed statute). In conjunction with the statute, an ordinance provided the officer with power to warrantlessly stop any person hauling cedar. *Id.* After the stop, the officer discovered a misdemeanor warrant for the defendant's arrest and found

marijuana on his person. *Id.* at 177. The defendant was charged with unlawful possession of marijuana. *Id.*

The defendant successfully moved the trial court to suppress all evidence obtained after his stop, arguing that he was unconstitutionally seized. *Id.* On appeal, the State argued that the officer was authorized to seize the defendant to check for a permit because he was engaged in a pervasively regulated industry, effectively arguing that the defendant impliedly consented to his seizure by hauling cedar. *Id.* at 177, 179.

Division II found that the theory of implied consent cannot justify suspicionless seizures or "roving stops" of an individual's person under article 1, section 7. *Id.* at 179-182. The court reasoned that the United States Supreme Court previously rejected such arguments under the Fourth Amendment. *Id.* (citing *United States v. Munoz*, 701 F.2d 1293, 1299 (9th Cir. 1983)). And article 1, section 7 provides even greater protection than its federal counterpart – law enforcement cannot seize members of the public without an individualized suspicion of unlawful activity. *Id.* at 181-82 (comparing *City of Seattle v. Mesiani*, 110 Wn.2d 454, 755 P.2d 775 (1988) (finding sobriety checkpoints prohibited under article 1, section 7) with *Michigan Dep't of State Police v. Sitz*, 496 U.S. 444, 110 S. Ct. 2481, 110 L. Ed. 2d 412 (1990) (upholding constitutionality of sobriety checkpoints under the Fourth Amendment)).

While Division I found *Thorp* distinguishable here because it "discussed consent only as it related to . . . pervasively regulated businesses," it failed to cite any authority specifically finding that individuals may consent to seizures of their person under article 1, section 7. App. A at 8-11.[2] Moreover, the holding of *Thorp* reaches beyond the pervasively regulated industry doctrine. Division II found that implied consent failed to justify the defendant's seizure under article 1, section 7

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[2] *Reichenbach*, 153 Wn.2d at 131 (notes general rule that consent is an exception to the prohibition against warrantless searches and seizures, but fails to apply the exception to seizures of an individual's person); *State v. Bustamante-Davila*, 138 Wn.2d 964, 982-83, 983 P.2d 590 (1999) (approving consent as exception for entry into a home); *United States v. Scroggins*, 599 F.3d 433, 443-46 (5th Cir. 2010) (approving consent as an exception to warrant requirement under the Fourth Amendment for entry into a home but still requiring a reasonable, articulable suspicion to seize individuals inside the home); *United States v. Shrum*, 908 F.3d 1219, 1231 (10th Cir. 2018) (analyzing consent as an exception under the Fourth Amendment to warrantless seizure of property, not persons); *United States v. Garces*, 133 F.3d 70, 74 (D.C. Cir. 1998) (analyzing consent as an exception under the Fourth Amendment to warrantless seizure of property, not persons); State *v. Carter*, 472 Md. 36, 58, 244 A.3d 1041 (2021) (Maryland court rejecting implied consent as a basis under the Fourth Amendment to warrantlessly seize a bus passenger to show proof of payment); *People v. Gardner*, 45 A.D. 3d 1371, 844 N.Y.S.2d 803 (N.Y. App. Div. 2007) (New York court approving consent as exception to the warrant requirement under either its state constitution or the Fourth Amendment for entry into a third party's home, not the defendant's seizure); *State v. Kearns*, 75 Haw. 558, 568-69, 867 P.2d 903 (1994) (Hawaii court approving consent as exception to seizures under its state constitution, but only insofar as the consent extends to encounters with law enforcement and not restraint of the individual's person by a show of authority).

even after assuming arguendo that the defendant was engaged in a "pervasively regulated industry." *Thorp*, 71 Wn. App. at 178-182. This means that individuals do not consent to their suspicionless seizures despite "hav[ing] a diminished expectation of privacy" for engaging in a pervasively regulated industry and impliedly consenting to some form of government intrusion into their private affairs,. *Thorp*, 71 Wn. App. at 178 (citing *Marshall v. Barlow's, Inc.*, 436 U.S. 307, 313, 98 S. Ct. 1816, 56 L. Ed. 2d 305 (1978); *Munoz*, 701 F.2d at 1299).

The extent of this holding is understandable considering the freedom impinged by seizures. While searches and seizures both disturb the right to privacy, the seizure of one's person interferes with the most fundamental freedom afforded to individuals by article 1, section 7 – the freedom to move about or stand still. *State v. White*, 97 Wn.2d 92, 99, 640 P.2d 106 (1982); *State v. Rankin*, 151 Wn.2d 689, 694-95, 92 P.3d 202 (2004). When individuals are seized, they are restrained by an officer's show of authority, unable to walk away or refuse an officer's request. *State v. Johnson*, 8 Wn. App. 2d 728, 737, 440 P.3d 1032 (2019). In other words, this show of authority prevents individuals from being able to choose whether to walk away. *Butler*, 2 Wn. App. 2d. at 561.

It is also well established that the plain language of article 1, section 7 protects this fundamental freedom to a greater extent than the

Fourth Amendment. *State v. Valdez*, 167 Wn.2d 761, 771-72, 224 P.3d 751 (2009). As this Court explained in *Valdez*:

> [W]here the Fourth Amendment precludes only "unreasonable" searches and seizures without a warrant, article I, section 7 prohibits any disturbance of an individual's private affairs "without authority of law." This language not only prohibits unreasonable searches, but also provides no quarter for ones that, in the context of the Fourth Amendment, would be deemed reasonable searches and thus constitutional. This creates an almost absolute bar to warrantless arrests, searches, and seizures, with only limited exceptions. The privacy protections of article I, section 7 are more extensive than those provided under the Fourth Amendment.

Id. at 772 (internal citations and quotations omitted). Accordingly, when compared with the Fourth Amendment, article 1, section 7 requires the State make a stronger showing that the interference with an individual's freedom to move about or stand still is justified by an exception to the warrant requirement. *State v. Z.U.E.*, 183 Wn.2d 610, 618, 352 P.3d 796 (2015). The text of article 1, section 7 does not change regardless of whether an individual is a pedestrian or a bus passenger.

Thus, Division I's finding that consent is an exception to the warrant requirement under article 1, section 7 conflicts with *Thorp*, *Valdez*, and their progeny.

2. The holding that passengers enter a contractual relationship with Swift transit when they enter the bus and voluntarily consent to their suspicionless seizures conflicts with well-established precedent analyzing the consent exception and the formation of contracts.

Even if consent is an exception to warrant requirement for seizures under article 1, section 7, members of the public do not consent to their suspicionless seizures when they enter or use the public transit system.

To establish consent, the State must show that it was made voluntarily and that the search or seizure did not exceed the scope of the consent. *Reichenbach*, 153 Wn.2d at 131. This depends on the totality of the circumstances, including whether the individual knew what he or she was consenting to. *See State v. Ferrier*, 136 Wn.2d 103, 116, 960 P.2d 927 (1998) (law enforcement must notify the residents of their request to search when seeking consent to search his or her home); *see also State v. Carter*, 472 Md. 36, 59-61, 244 A.3d 1041 (2021) ("It is difficult to understand how someone can impliedly consent to a search or seizure without having [express] notice that the search or seizure may occur").

A well-established and basic requirement for forming a contract is very similar. The terms the parties assent to must be sufficiently definite, meaning parties must know the terms of the contract to "avoid trapping parties in surprise contractual obligations." *Keystone Land & Dev. Co. v.*

Xerox Corp., 152 Wn.2d 171, 177-78, 94 P.3d 945 (2004) (internal citations omitted).

Carter is persuasive authority on this point. In *Carter*, Maryland's highest court – the Court of Appeals – reviewed a seizure like the one at issue here. The defendant was on a car of a stationary light rail train when several officers boarded then announced they were checking for proof of fare. 472 Md. at 44. Signs on the light rail platforms stated: "Ticket or Pass Required Before Boarding Trains." *Id.* at 59. Officers issued $50 citations for those who do not comply with their requests for proof of fare. *Id.* One officer walked up to the defendant and made this request. *Id.* at 44. When the defendant said he did not have proof, the officer told him to step off the train. *Id.* After doing so, another officer approached him and obtained his information. *Id.* The officer gave the information to dispatch, who revealed that the defendant had a warrant, leading to the defendant's arrest and the discovery of a gun unlawfully in his possession. *Id.* The defendant was convicted of firearm charges and he appealed, arguing he was unlawfully seized. *Id.* at 44-45.

The court first found that the defendant was seized when the officer announced the fare sweep. *Id.* at 57-58. The court then determined the defendant did not consent to this seizure, reasoning that the signs on the rail platform stating, "Ticket or Pass Required Before Boarding Train,"

did not provide him with any express notice that he would be subject to a seizure. *Id.* at 59-61. The court stated, "It is difficult to understand how someone can impliedly consent to a search or seizure without having notice that the search or seizure may occur." *Id.* at 61.

In dicta within its consent analysis, the court also implied the defendant may not have been seized if a single civil fare inspector, who lacked authority to issue citations or make arrests, asked him for proof of payment on a moving train. *Id.* at 59-61. However, the court was only analyzing whether a seizure occurred under the Fourth Amendment and not article 1, section 7. *Id.* at 55-56. It is also unclear whether passengers would still be liable for an infraction if they failed to comply with the civil fare inspector's request. Moreover, it does not matter under article 1, section 7 whether the barrier-free transit was moving or five officers approached a passenger to demand proof of payment instead of one – a demand from one officer to show "proof of payment or ORCA card" seizes the passenger because it is a show of authority that cannot be ignored.

Much like the lacking notice in *Carter*, passengers in Washington are not notified that they must undergo suspicionless seizures to use public transit. Even if the conditions of riding public are provided through statute, RCW 81.112.210(2)(b)(i) only proclaims that law enforcement

may request proof of payment from passengers and RCW 81.112.220(2)(b) only states that passengers are liable for an infraction if they fail to do so. The statutes do not warn passengers that law enforcement may makes requests, and effectively seize them, without any reason to believe they did not have proof of fare. This means passengers like Mr. Meredith do not make an informed or voluntary decision to subject themselves to suspicionless seizures or enter a contract where this "surprise contractual obligation" may be enforced against them. *Keystone Land & Dev. Co.*, 152 Wn.2d at 177-78.

Thus, Division I's holding that Mr. Meredith entered into a contract with Swift transit and thereby consent to his suspicionless seizure is in conflict with well-established precedent analyzing the consent exception and the formation of contracts. This Court should accept review under RAP 13.4(b)(1) and (b)(2).

3. The finding that RCW 81.112.210(2)(b)(i) provided Deputy Dalton with authority of law to suspicionlessly seize Mr. Meredith is in conflict with this Court's decision in Villela.

Constitutional protections against warrantless seizures "cannot be amended by statute, and while the legislature can give more protection to constitutional rights through legislation, it cannot use legislation to take that protection away." *Villela*, 194 Wn.2d. at 454. Accordingly, a statute only provides law enforcement with authority of law to warrantlessly seize

an individual if it "is consistent with the guaranties of article 1, section 7." *Id.* at 459.

In *Villela*, this Court held that law enforcement did not have authority of law under RCW 46.55.360 to perform mandatory impounds of vehicles. *Id.* at 460. RCW 46.55.360 required law enforcement to impound a vehicle if the driver was arrested for driving under the influence. *Id.* at 455. This Court reasoned article 1, section 7 only permits warrantless seizures of vehicles when it is reasonable under the circumstances and there are no reasonable alternatives or there is probable cause to believe it contains evidence of a crime. *Id.* at 460. Thus, requiring mandatory impounds was inconsistent with the guaranties of article 1, section 7. *Id.* at 459-463.

Much like the officer in *Villela*, Deputy Dalton did not have authority of law to seize Mr. Meredith. Both the statute in *Villela* and RCW 81.112.210(2)(b)(i) are inconsistent with the guaranties of article 1, section 7. After all, article 1, section 7 prevents law enforcement from seizing individuals without any reason to believe they are engaged in unlawful activity. *Butler*, 2 Wn. App. 2d. at, 561

Thus, Division 1's holding conflicts with this Court's holding in *Villela* because it permits RCW 81.112.210(2)(b)(i) to statutorily remove

constitutional protections under article 1, section 7. This Court should grant review under RAP 13.4(b)(1)

4. The answer provided by the decision's holding involves a significant constitutional question with wide-reaching consequences.

While analyzing the constitutionality of "spot checks" under Fourth Amendment progeny, this Court in *Marchand* highlighted its concern with unrestrained government power:

> From *Prouse*, . . . we have confusing dicta that asks us to believe that the stopping of all traffic is somehow less intrusive to a particular motorist than the stopping of that motorist alone. The logic of this belief escapes us. The critical issue presented by the *Prouse* dicta, however, appears to be whether, under the Fourth Amendment or Const. art. 1, § 7, the exercise of discretion by law enforcement officials has been sufficiently constrained. We draw this conclusion from the rationale of Prouse: "Were the individual subject to unfettered governmental intrusion every time he entered an automobile, the security guaranteed by the Fourth Amendment would be seriously circumscribed."

104 Wn.2d 434, 438 (1985) (citing *Delaware v. Prouse*, 440 U.S. 648, 662-63, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979)). Division 1's concept of implied consent brings these fears to life.

Law enforcement would be able to stop and seize any driver to demand that they show proof of registration. After all, RCW 46.64.070 authorizes Washington state patrol to stop any vehicle operating on the highway and drivers must carry proof of registration inside the vehicle and

provide this proof to law enforcement upon demand. RCW 46.16A.180(1)(b)-(c). With Division 1's holding, drivers would contract with the government whenever they use publicly funded highways and thereby consent to law enforcement's unfettered discretion under RCW 46.64.070 to suspicionlessly seize them.

Such wide-reaching consequences demonstrate how Division I's answer to whether Deputy Dalton had authority of law to seize Mr. Meredith involves a significant question of constitutional law that should be decided by this Court.

5. The constitutionality of seizures performed under 81.112.210(2)(b)(i) is an issue of substantial public interest that should be determined by this Court.

Passengers are unconstitutionally seized under RCW 81.112.210(2)(b)(i) many times per year. According to Sound Transit Public Safety in King County, officers contacted 214,645 passengers who were either given warnings, issued citations, or arrested for theft between May 1, 2015 to July 31, 2019.[3] These contacts have resulted in minorities being disproportionately cited by transit fare enforcement.[4]

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[3] Matthew Brenton, *Fare Enforcement Data* (August 6, 2019), https://assets.documentcloud.org/documents/6434966/Sound-Transit-Fare-Enforcement-Demographics.pdf.

[4] Heidi Groover, *Black passengers cited, punished disproportionately by Sound Transit fare enforcement*, SEATTLE TIMES (Oct. 4, 2019), https://www.seattletimes.com/seattle-news/transportation/faced-with-racial-disparities-sound-transit-debates-changes-to-fare-enforcement/.

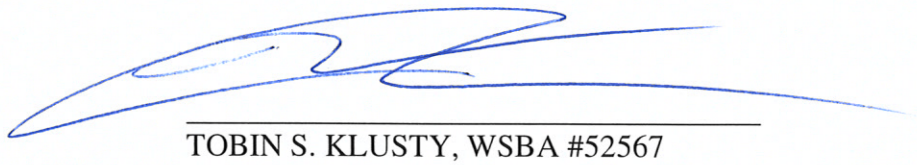
The individuals most likely to use public transit tend to belong to a lower socioeconomic status, making them disproportionately likely to identify as Black, Indigenous, or a person of color. *Id.* If individuals are deemed to have consented to suspicionless seizures when they simply step onto public transit, an individual's race would be a significant factor dictating whether they would suffer diminished protections under article 1, section 7.

Thus, this Court should grant review because the constitutionality of RCW 81.112.210(2)(b)(i) is an issue of substantial public importance that will affect thousands of Washingtonians every year.

F. CONCLUSION

For the reasons above, Mr. Meredith respectfully asks this Court to grant review of Division I's decision and reverse his conviction on appeal because Deputy Dalton seized him without authority of law.

RESPECTFULLY SUBMITTED this 25th day of August 2021.



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APPENDIX A

FILED
7/26/2021
Court of Appeals
Division I
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON, Respondent, v. ZACHERY KYLE MEREDITH, Appellant.	)	No. 81203-3-I PUBLISHED OPINION

VERELLEN, J. — Article 1, section 7 of the Washington constitution prohibits warrantless seizures, save for narrow exceptions. Consent is one well-established exception. By boarding a public bus and accepting transportation, Zachery Meredith consented to the conditions of ridership. Those conditions include paying bus fare and complying with a fare enforcement officer's request for proof of payment. Even assuming that Meredith was seized when an officer requested that he provide proof of payment, the officer's request remained within the scope of Meredith's consent. Because Meredith consented to the conditions of ridership and failed to provide proof of payment when requested, the trial court did not err by denying Meredith's motion to suppress evidence gathered by the officer conducting fare enforcement.

Therefore, we affirm.

FACTS

Zachery Meredith was riding the Swift regional transit bus in Everett late one morning when two officers from the Snohomish County Sheriff's Office boarded to conduct fare enforcement. When conducting fare enforcement, officers would board a bus at a stop and then ask individual passengers for proof of payment while the bus was driving from one stop to the next. A "chase vehicle" would follow the bus to help with identifying and processing anyone ordered off the bus for nonpayment.

Officer Timothy Dalton moved to the back of the bus and began working his way forward and saying "proof of payment or ORCA card" to each passenger in a conversational tone. His partner moved to the front of the bus and worked backward. The bus drove to its next stop while the officers checked for proof of payment. Officer Dalton requested "proof of payment or ORCA card" from Meredith, who began to check his pants and backpack. Meredith could have provided proof of payment either by showing a ticket purchased from a fare machine at a bus stop or by providing an ORCA fare card for the officer to scan with a digital reader. Failure to provide proof of payment could result in a notice of infraction or arrest. The bus continued along its route, and Meredith searched for four or five minutes without producing proof of payment. Officer Dalton ordered him to disembark at the next stop, and they left the bus together.

Officer Dalton asked Meredith for his name and identification. Meredith said he was from Colorado and his name was "Jason McGumery." Officer Dalton

radioed dispatch to run the name, and it produced no returns in either Washington or Colorado. Officer Dalton suspected McGumery was a fake name, so Officer Luis Zelaya arrived to help determine Meredith's identity. Officer Zelaya used a mobile fingerprint reader to scan Meredith's prints and then learned Meredith's real name and that he had two outstanding felony warrants. Meredith was arrested on the outstanding warrants and on probable cause of having committed third degree theft of services for nonpayment of fare. He was charged with making a false statement to a public servant.

Pretrial, Meredith moved to suppress evidence resulting from Officer Dalton's fare enforcement. Meredith argued the fare enforcement statute for regional transit authorities, RCW 81.112.210, was unconstitutional under both article I, section 7 of the state constitution and the Fourth Amendment because it authorized a warrantless seizure without lawful justification: Officer Dalton's request for proof of payment. The trial court denied the motion.

A jury found Meredith guilty of making a false statement. The superior court affirmed his conviction on RALJ appeal, concluding Meredith had not been unlawfully seized.

Meredith sought discretionary review. A commissioner of this court granted review pursuant to RAP 2.3(d)(3) to consider the constitutionality of RCW 81.112.210 related to Officer Dalton's initial contact with Meredith by

requesting proof of payment or an ORCA card.[1] Following oral argument, the parties were asked to provide supplemental briefing.

ANALYSIS

Meredith contends Officer Dalton violated article I, section 7 of the Washington Constitution and the Fourth Amendment by effectuating an unauthorized, warrantless seizure when he requested proof of payment or an ORCA card.[2] We presume statutes are constitutional and review challenges to their constitutionality de novo.[3] Meredith has the burden of proving the statute is unconstitutional.[4]

Meredith does not specify which portion of the statute is unconstitutional. He appears to challenge subsection RCW 81.112.210(2)(b)(i),[5] which states:

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[1] Given the scope of discretionary review, we do not consider any issues regarding Officer Dalton's conduct after his initial contact.

[2] Amici ACLU of Washington and Washington Appellate Project rely upon a wide range of evidence from outside the record to urge us to consider the social impacts of punitive fare enforcement on people of color and people experiencing poverty. Meredith is a Caucasian man with reddish, blond hair. The record does not indicate whether poverty influenced his ability to pay bus fare. While race and poverty could influence punitive fare enforcement and magnify its impacts, amici raise issues beyond the scope of this case. And aside from a passing assertion that the fare enforcement statute is unconstitutional, amici also fail to address the issue on appeal. Thus, we decline to consider their arguments. See Ctr. for Envtl. Law & Policy v. Dep't of Ecology, 196 Wn.2d 17, 36 n.14, 468 P.3d 1064 (2020) (no need to consider issues raised solely by amicus) (quoting State v. James-Buhl, 190 Wn.2d 470, 478 n.4, 415 P.3d 234 (2018)).

[3] State v. Villela, 194 Wn.2d 451, 456, 450 P.3d 170 (2019) (quoting State v. Lanciloti, 165 Wn.2d 661, 667, 201 P.3d 323 (2009)).

[4] Id.

[5] Both RCW 81.112.210 and .220 were amended during the pendency of this appeal. LAWS OF 2021, ch. 70, §§ 1-2. These amendments will become

"(b) In addition to the specific powers granted to enforcement officers under RCW 7.80.050 and 7.80.060, persons designated to monitor fare payment also have the authority to take the following actions: (i) Request proof of payment from passengers." When a passenger does not provide proof of payment, a fare enforcement officer is authorized to issue a civil infraction, to demand identification from the passenger, and to remove the passenger from the bus.[6] A police officer conducting fare enforcement can also exercise police powers and is not limited to these actions.[7]

Article I, section 7 provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." The State contends no constitutional violation occurred because there is no privacy interest in whether a bus passenger has paid their fare. But article I, section 7 protects against unauthorized seizures by government, despite not using the word "seize."[8] When a warrantless seizure occurs in a crowded public place, it could violate article I,

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effective as of July 25, 2021. Because the amendments have no impact on our analysis, we cite to the law currently in effect.

[6] RCW 81.112.210(2)(b)(ii)-(iv).

[7] See State v. K.L.B., 180 Wn.2d 735, 744, 328 P.3d 886 (2014) ("[Fare enforcement officers] do not exercise all powers police officers have. In essence, they can check riders to verify valid tickets exist and eject passengers who have not paid. Anything more and the [fare enforcement officer] summons the police."); Clerk's Papers (CP) at 238 (Officer Zelaya explaining "what we do for failure to pay fare is considered a misdemeanor violation. It's a theft 3. . . . If we can't identify [a person who did not provide proof of payment], then we will usually transport them to jail, [and] charge them with the theft so we can get them positively identified.").

[8] State v. Carriero, 8 Wn. App. 2d 641, 654, 439 P.3d 679 (2019) (citing State v. Harrington, 167 Wn.2d 656, 663, 222 P.3d 92 (2009)).

section 7 regardless of whether the government also intruded on a person's "private affairs."[9]

Here, Meredith does not allege his privacy was violated, explaining "the issue is not whether Mr. Meredith was searched, but whether he was seized."[10] We assume without deciding that Officer Dalton's request was a seizure of Meredith. But when the alleged seizure takes the form of asking a person to provide proof of payment on public transit, the application of article I, section 7 does not depend upon the "privacy" of the information requested. Because a person can be unlawfully seized without a violation of their privacy, the State's argument is unavailing.

Typically, article I, section 7 provides greater protection against seizures than the Fourth Amendment.[11] But when determining whether a public

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[9] Compare State v. Muhammed, 194 Wn.2d 577, 586, 451 P.3d 1060 (2019) (considering whether "government conduct intrude[d] on a private affair" when the defendant alleged a search of his cellphone data violated article I, § 7); State v. Puapuaga, 164 Wn.2d 515, 520-25, 192 P.3d 360 (2008) (analyzing whether a defendant whose property was seized as part of an inventory search had a privacy interest in the property), with State v. Ladson, 138 Wn.2d 343, 349-59, 979 P.2d 833 (1999) (not considering whether a defendant's private affairs were intruded upon when the defendant alleged a pretextual traffic stop was an unlawful seizure in violation of article I, § 7).

[10] Reply Br. at 1-2.

[11] See State v. Young, 135 Wn.2d 498, 510, 957 P.2d 681 (1998) ("Given the erosion of privacy the [California v.] Hodari D., [499 U.S. 621, 628, 111 S. Ct. 1547, 113 L. Ed. 2d 690 (1991),] decision entails, we adhere to our established jurisprudence and reject application of the test for a seizure articulated in Hodari D. to a disturbance of private affairs under article I, section 7."); see also State v. Z.U.E., 183 Wn.2d 610, 618, 352 P.3d 796 (2015) ("[B]ecause article I, section 7 provides broader privacy protections than the Fourth Amendment, our state

transportation passenger was seized, they provide the same degree of protection.[12] The critical question is whether, viewed objectively, a reasonable, innocent person approached by law enforcement "'would feel free to decline the officers' requests or otherwise terminate the encounter.'"[13] Assuming without deciding that Officer Dalton's initial request constituted a warrantless seizure,[14] the

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constitution generally requires a stronger showing by the State.") (citing State v. Acrey, 148 Wn.2d 738, 746-47, 64 P.3d 594 (2003)).

[12] See United States v. Drayton, 536 U.S. 194, 201-02, 122 S. Ct. 2105, 153 L. Ed. 2d 242 (2002) (explaining the Fourth Amendment seizure analysis adopted in Hodari D., 499 U.S. at 628, "is not an accurate measure of the coercive effect of a bus encounter") (citing Florida v. Bostick, 501 U.S. 429, 435-36, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991)); Carriero, 8 Wn. App. 2d at 654 (explaining that an article I, § 7 seizure analysis aligns with a Fourth Amendment seizure analysis, except for the analysis in Hodari D.).

[13] Drayton, 536 U.S. at 202 (quoting Bostick, 501 U.S. at 436); accord Carriero, 8 Wn. App. 2d at 655 ("police contact constitutes a seizure only if, due to an officer's use of physical force or display of authority, a reasonable person would not feel free to leave, terminate the encounter, refuse to answer the officer's question, decline a request, or otherwise go about his business") (citing State v. Thorn, 129 Wn.2d 347, 353, 917 P.2d 108 (1996)).

[14] We note that Meredith urges us to rely upon individual seizure cases, such as State v. Villela, 194 Wn.2d 451, 454-55, 450 P.3d 170 (2019), and State v Thorp, 71 Wn. App. 175, 177, 856 P.2d 1123 (1993), to determine whether a seizure occurred here. For purposes of a seizure analysis, an individual vehicle occupant or pedestrian is legally distinguishable from a bus or train passenger because the settings are factually distinct. See 4 WAYNE R. LEFAVE, SEARCH AND SEIZURE § 9.4(c), at 447 (4th ed. 2004) ("[T]he bus passenger is in a unique position, unlike that confronted by the pedestrian or by traveler at an airport."); see also Brendlin v. California, 551 U.S. 249, 262 n.6, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007) (when evaluating if a seizure occurred, noting "the relationship between driver and passenger is not the same in a common carrier as it is in a private vehicle, and the expectations of police officers and passengers differ accordingly"). Although general principles can overlap, we decline Meredith's invitation to analogize bus passengers with individuals in private vehicles.

question is whether it was authorized by one of "'a few jealously and carefully drawn exceptions.'"[15] The State has the burden of proving an exception applied.[16]

"In a society based on law, the concept of agreement and consent should be given a weight and dignity of its own."[17] A valid consent is a well-recognized exception to the warrant requirement for a seizure.[18] The totality of the

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[15] Ladson, 138 Wn.2d at 349 (internal quotation marks omitted) (quoting State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996)).

[16] Id. at 350 (citing Hendrickson, 129 Wn.2d at 71).

[17] Drayton, 536 U.S. at 207.

[18] See State v. Reichenbach, 153 Wn.2d 126, 131, 101 P.2d 80 (2004) (noting consent is an exception to the general prohibition on warrantless searches and seizures) (citing Hendrickson, 129 Wn.2d at 70-71); see, e.g., United States v. Scroggins, 599 F.3d 433, 443-46 (5th Cir. 2010) (concluding the Fourth Amendment allowed a warrantless detention of a suspect inside his home because, in part, his fiancé provided valid consent for police to enter); State v. Carter, 472 Md. 36, 58, 244 A.3d 1041 (2021) ("Consent to a search or seizure is a recognized exception to the warrant requirement.") (citing Schneckloth v. Bustamonte, 412 U.S. 218, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); Jones v. State, 407 Md. 33, 51, 962 A.2d 393 (2008)); People v. Gardner, 45 A.D.3d 1371, 1371, 844 N.Y.S.2d 803 (N.Y. App. Div. 2007) (holding warrantless arrest of a defendant in a third party's home was authorized when the third party consented to police entering the home) (citing People v. Long, 124 A.D.2d 1016, 1017, 508 N.Y.S.2d 774 (1986)); State v. Kearns, 75 Haw. 558, 568-69, 867 P.2d 903 (1994) (noting the warrant requirement in art. I, § 7 of the Hawaii constitution allows warrantless investigatory seizures if the individual consents) (citing State v. Quino, 74 Haw. 161, 173-75, 840 P.2d 358 (1992)); cf. United States v. Shrum, 908 F.3d 1219, 1231 (10th Cir. 2018) (Fourth Amendment can allow warrantless seizure of a home with valid consent) (citing Coolidge v. New Hampshire, 403 U.S. 443, 474-75, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971)); United States v. Garces, 133 F.3d 70, 74 (D.C. Cir. 1998) ("A warrantless seizure [of property] may be validated by the consent of someone with authority over the property.") (citing United States v. Matlock, 415 U.S. 164, 170-71, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974)); State v. Bustamante-Davila, 138 Wn.2d 964, 982-83, 983 P.2d 590 (1999) (concluding art. I, § 7 was not violated when a federal agent had authority to seize a firearm within an undocumented immigrant's home without a warrant because the firearm was in plain view, it was illegal for him to possess, and he implicitly consented to the officers' entry).

circumstances determines whether consent was valid.[19]

Meredith asserts, however, that article I, section 7 does not recognize consent as a valid exception to seizure of a person. He cites City of Seattle v. Mesiani[20] and State v. Thorp[21] to argue consent cannot be an exception in Washington because article I, section 7 authorizes seizure of a person only when a police officer has a warrant or "individualized suspicion to believe the individual is engaged in unlawful activity."[22]

Neither Mesiani nor Thorp support his assertion. Mesiani noted article I, section 7 allows "narrow exceptions to the warrant requirement,"[23] but it did not consider a consent exception because "[n]o argument has been presented to this court that would bring the [sobriety] checkpoint program within any possible interpretation of the constitutionally required 'authority of law.'"[24] Thorp discussed consent only as it related to the administrative search exception for pervasively regulated businesses and did not consider whether consent could authorize a warrantless seizure in another setting.[25]

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[19] State v. O'Neill, 148 Wn.2d 564, 588, 62 P.3d 489 (2003) (citing Bustamante-Davila, 138 Wn.2d at 981; State v. Jensen, 44 Wn. App. 485, 488, 723 P.2d 443 (1986)).

[20] 110 Wn.2d 454, 755 P.2d 775 (1988).

[21] 71 Wn. App. 175, 856 P.2d 1123 (1993).

[22] Appellant's Supp. Br. at 3.

[23] 110 Wn.2d at 457.

[24] Id. 458.

[25] 71 Wn. App. at 179-80. In a footnote, Meredith cites to Jacobsen v. City of Seattle, 98 Wn.2d 668, 674, 658 P.2d 653 (1983), to assert that "[t]he Supreme Court of Washington has even expressed doubt as to whether consent is [an]

By contrast, in Farkas v. Williams, the Ninth Circuit concluded a civilian entering a naval base to speak with naval criminal investigative service officers consented to his seizure upon entry.[26] The civilian alleged a seizure occurred because base security required that he store his wallet and other personal items in a lockbox before entering.[27] To enter the base, the civilian passed the "typical trappings" of a military base, such as barbed wire fencing, warning signs, and guarded gates.[28] And the civilian agreed to place his belongings in the lockbox before voluntarily entering.[29] The "objective circumstances" demonstrated the civilian "impliedly consented to the possibility of a Fourth Amendment intrusion," so no constitutional violation occurred.[30] Although Farkas is a Fourth Amendment decision, we find the same logic applicable to article 1, section 7 in this setting of

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exception to the warrant requirement for searches of the general public." Appellant's Supp. Br. at 1, n.1. The Jacobsen court stated, "Parenthetically, we note that even if the consent issue had been raised by defendants it is extremely doubtful, given the circumstances of this case, that they could have prevailed." 98 Wn.2d at 674. But this stray comment was irrelevant to the resolution of the issues before the Jacobsen court, making it nonbinding dicta. See Johnson v. Liquor & Cannabis Bd., 197 Wn.2d 605, 486 P.3d 125, 133-34 (2021) ("'Statements in a case that do not relate to an issue before the court and are unnecessary to decide the case constitute obiter dictum, and need not be followed.'") (internal quotation marks omitted) (quoting In re Pers. Restraint of Domingo, 155 Wn.2d 356, 366, 119 P.3d 816 (2005)). Even if it were not, the circumstances of Jacobsen are inapposite because the concert patrons in that case were unaware of the possibility of police officers searching or seizing their personal belongings prior to it occurring. 98 Wn.2d 670.

[26] 823 F.3d 1212, 1216 (9th Cir. 2016).

[27] Id. at 1213.

[28] Id. at 1216.

[29] Id.

[30] Id. at 1216-17.

public transportation. Especially where the alleged seizure consists of asking an individual to provide proof of payment for transit, impliedly agreeing to provide proof of payment upon request falls within the consent exception. Because it is well-established that a person can consent to a seizure and Meredith fails to provide contrary authority, his assertion is not persuasive.

To determine whether Meredith validly consented to being seized, we consider whether his consent was voluntary, whether the seizure was limited to the scope of the consent granted, and whether consent was granted by a party with authority to do so.[31] We consider only the first two prongs because Meredith does not allege authority to consent was missing. We determine whether consent was voluntary by considering the totality of the circumstances from the perspective of a reasonable—meaning innocent—person.[32]

Meredith chose to ride the bus. As explained to the superior court, he "was simply riding a bus like any other citizen."[33] A contractual relationship forms between the operator of a bus and person choosing to ride it "when a person, intending to become a passenger and pay his fare when demanded, having the

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[31] See State v. Blockman, 190 Wn.2d 651, 658, 416 P.3d 1194 (2018) (discussing consent to search) (citing State v. Hastings, 119 Wn.2d 229, 234, 830 P.2d 658 (1992)).

[32] Reichenbach, 153 Wn.2d at 132 (citing Bustamante-Davila, 138 Wn.2d at 981-82); see Drayton, 536 U.S. at 202 (to determine whether a person consented to be stopped and searched, courts apply the "reasonable person test," which "is objective and 'presupposes an innocent person.'") (quoting Bostick, 501 U.S. at 437-38).

[33] CP at 50.

means to do so, is permitted to board the coach."[34] As Professor LeFave explains when discussing bus seizures, a reasonable passenger knows that only those authorized by the carrier, such as bus personnel and paying ticket holders, are permitted on board.[35] As a reasonable passenger choosing to ride the bus, Meredith voluntarily entered into a contract with Swift transit: he would follow the applicable rules of ridership in return for transportation.[36] Because the Swift bus is operated by a regional transit authority, chapter 81.112 RCW applied. RCW 81.112.220(1) creates duties for passengers. It states that passengers on a Swift bus "shall pay the fare established" and "shall produce proof of payment when requested by a person designated to monitor fare payment."[37] RCW 81.112.220(2) warns that failure to pay could result in a civil infraction and in being ordered off the bus pursuant to RCW 81.112.210(1). Meredith chose freely to contract with Swift for transportation services and, accordingly, chose to comply with RCW 81.112.220(1).

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[34] Fleming v. City of Seattle, 45 Wn.2d 477, 481, 275 P.2d 904 (1954) (citing Gulf, M. & N. R. Co. v. Bradley, 167 Miss. 603, 142 So. 493 (1932); Broyles v. Central of Ga. Ry. Co., 166 Ala. 616, 52 So. 81 (1909)). Of course, if someone lacked the ability to pay and still intentionally boarded and rode a bus that required fare payment, a contract could still form between passenger and operator. See Ebling v. Gove's Cove, Inc., 34 Wn. App. 495, 499, 663 P.2d 132 (1983) ("A bilateral contract is one in which there are reciprocal promises. The promise by one party is consideration for the promise by the other. Each party is bound by his promise to the other.") (citing Cook v. Johnson, 37 Wn.2d 19, 23, 221 P.2d 525 (1950); Higgins v. Egbert, 28 Wn.2d 313, 182 P.2d 58 (1947)).

[35] 4 LE FAVE, SEARCH AND SEIZURE, § 9.4(c), at 443 (citing United States v. Rembert, 694 F. Supp. 163 (W.D.N.C. 1988)).

[36] Fleming, 45 Wn.2d at 481.

[37] RCW 81.112.220(1).

Officer Dalton approached Meredith and requested proof of payment. When Meredith failed to produce proof of payment after his lengthy search of his pockets and backpack, Officer Dalton ordered him off the bus and requested proof of identification. At each step, Officer Dalton's conduct remained within the scope of Meredith's consent to the duties resulting from his decision to contract with Swift Transit.

Critical differences between the circumstances here and those in a recent case from Maryland illustrate why Meredith provided valid consent to a seizure. In State v. Carter, the Court of Appeals of Maryland, which is the state's highest court, held that a passenger had not consented to a seizure while aboard Baltimore Light Rail.[38] As with the Swift Transit bus here, Baltimore Light Rail is a barrier-free system with no turnstiles or requirement to provide proof of payment before boarding.[39] Police are authorized to conduct fare enforcement, and a passenger who fails to produce proof of payment can be issued a citation or charged with a misdemeanor.[40]

Police officers were conducting fare enforcement through a "fare sweep" when a rider told an officer he did not have a ticket.[41] After being told to disembark and provide his identification, another officer discovered an outstanding

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[38] 472 Md. 36, 45-46, 244 A.3d 1041 (2021).

[39] Id. at 44.

[40] Id. at 47.

[41] Id. at 44.

warrant.[42] While arresting the rider on the warrant, officers discovered the rider was carrying a gun and cocaine.[43] The rider was charged with a firearms charge and possession of cocaine, among others.[44] The rider moved to suppress evidence, arguing the fare sweep constituted an unlawful seizure.[45] The trial court denied the motion, and the rider was convicted.[46]

The Court of Appeals's analysis focused on the nature of the enforcement. The "fare sweep" involved multiple police officers simultaneously boarding every car of the train within seconds of its arrival at the station.[47] Passengers were not allowed to disembark the train during the sweep, and the train would not continue its journey until after the sweep was completed.[48] Any passenger without proof of payment would be ordered off the train, issued a citation, and have a warrant check run on them.[49]

The court concluded the rider did not voluntarily consent because he lacked notice of the possibility of the sweep.[50] It explained a reasonable passenger would expect to be required to provide proof of payment, but nothing suggested to the

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[42] Id. at 48.

[43] Id.

[44] Id.

[45] Id.

[46] Id. at 50-51.

[47] Id. at 47.

[48] Id. at 57, 62.

[49] Id. at 48-49.

[50] Id. at 62.

passengers that their entire train could be detained for as long as officers deemed necessary to check for proof of fare payment from each of them.[51] Because the fare sweep constituted a warrantless and unauthorized seizure, the court concluded the evidence should have been suppressed.[52] Notably, the court identified "a significant difference between a team of armed officers seizing an entire train of passengers while the train is stopped at a station, and an individual [Maryland Transit Administration] officer or civilian fare inspector asking passengers to show proof of fare payment while a train is traveling between stations."[53]

Here, Meredith freely chose to contract with Swift Transit for transportation. He agreed to pay and provide proof of payment. And as a reasonable rider, he necessarily understood his duty to pay his fare and provide proof of payment when asked.[54] Thus, like the civilian base visitor in Farkas, Meredith was aware of the possible seizure of his person and consented to it.[55]

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[51] Id. at 61 n.9, 61-62.

[52] Id. at 76.

[53] Id. at 62.

[54] Id.; see Drayton, 536 U.S. at 202 (whether seizure occurred is viewed from perspective of a reasonable, meaning innocent, person).

[55] Meredith analogizes to Carter, arguing he had no notice he was "subject to a suspicionless seizure." Appellant's Supp. Br. at 10. But a reasonable bus passenger does not expect a free ride any more than he would expect to be seized for an unknown duration for officers to investigate other passengers' failures to pay their fares. Because the unreasonable, unlimited fare sweep in Carter is distinguishable from the limited, foreseeable stop conducted here, Meredith's analogy is unconvincing.

Unlike Carter, Officer Dalton's request for "proof of payment or ORCA card" remained within the scope of consent. RCW 81.112.220(1) obligated Meredith to pay bus fare and produce proof of payment upon request, and Officer Dalton's request did not exceed this obligation. Also unlike Carter, the alleged seizure was reasonable, occurring while the bus was in transit, and nothing suggests passengers were prohibited from exiting at a stop or otherwise detained when not speaking with an officer.

Meredith argues our conclusion would make the protections of article I, section 7 "obsolete . . . if members of the public are found to consent to unfettered government intrusion whenever a statute indicates law enforcement may arbitrarily and [without suspicion] seize them to investigate whether they are engaged in unlawful activity."[56] But this misunderstands both the circumstances of this case and the consent exception. First, for purposes of a seizure analysis, a passenger of a common carrier, such as a public bus or train, is legally distinct from a pedestrian or a person in a private automobile.[57] Second, the consent exception applies because Meredith chose to contract with Swift Transit for transportation, not because a statute provided Officer Dalton the authority to enforce Meredith's duties. Regardless, in this setting, neither the Fourth Amendment nor article I,

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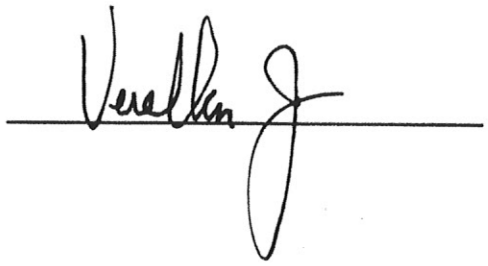
[56] Appellant's Supp. Br. at 3.

[57] Brendlin, 551 U.S. at 262 n.6; see Drayton, 536 U.S. at 201-02 (explaining why the seizure analysis for a pedestrian or driver of a private vehicle is distinct from the seizure analysis for a bus passenger).

section 7 authorize a warrantless stop as a pretext for a law enforcement purpose.[58] Meredith's arguments are not persuasive.

Meredith voluntarily consented to Officer Dalton's initial contact. He has not challenged any of Officer Dalton's subsequent conduct, so we do not consider it. Because Meredith consented to being asked to provide proof of fare payment and a valid consent provides authority of law for such a request, even if the request is deemed a seizure under article I, section 7, the superior court did not err by affirming Meredith's conviction on RALJ appeal.

Therefore, we affirm.



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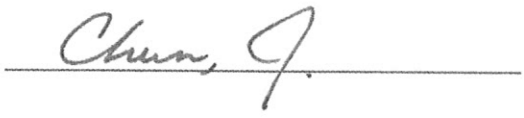

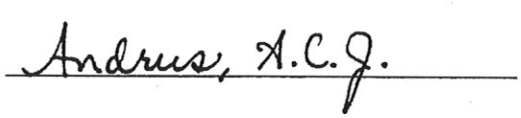

[58] United States v. Orozco, 858 F.3d 1204, 1210-16 (9th Cir. 2017); Ladson, 138 Wn.2d at 352-53.

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