

**IN THE CIRCUIT COURT OF THE STATE OF OREGON
FOR THE COUNTY OF MULTNOMAH**

The State of Oregon,)	
)	
Plaintiff,)	Case No. 18CR17532
)	
v.)	OPINION AND ORDER ON DEFENDANT'S
)	MOTIONS TO SUPPRESS
Rosa Giovanna Valderrama,)	
)	
Defendant.)	

On August 22, 2018, this matter came before the Court on the following pretrial motions:

1. Defendant's Motion to Suppress – Unlawful Stop and Seizure, and
2. Defendant's Motion to Suppress Statements.

State appeared by Katie Suver, Special Deputy District Attorney. Defendant appeared personally, out of custody, and with her attorney, Noah Horst.

The Court reviewed the prehearing written submissions of the lawyers, received into evidence certain exhibits, and heard testimony from the following witnesses: Mary Fetch, Deanna George, West Helfrich, and defendant Rosa Giovanna Valderrama. Thereafter, the lawyers submitted written arguments. Based upon the foregoing, the Court makes the findings and conclusions set forth below.

Credibility Findings:

All of the witnesses who testified were generally credible. However, with respect to the crucial events surrounding what exactly occurred at the scene, I find the testimony of Deanna George and West Helfrich to be more credible than that of defendant Rosa Giovanna Valderrama, because of the shock and distress the defendant was experiencing at the time the events were occurring, because of the manner and demeanor of defendant while testifying, and because of defendant's bias and interest in the outcome of the case. Specifically, I do not find that defendant was intentionally untruthful in her testimony, only that her ability to perceive what was occurring, to remember those events clearly, and to testify accurately about the events impaired her credibility as a witness.

Findings of Fact:

I find the facts of what occurred consistent with the testimony of Deanna George and West Helfrich.

Deanna George is employed by TriMet¹ as a Road Supervisor. One of her duties is to act occasionally as a fare inspector. West Helfrich is a Portland Police Officer, assigned to the Transit Division. His duties include assisting TriMet fare inspectors in checking passengers on or departing TriMet's MAX² light rail trains to determine if passengers have paid their fare.

TriMet, a mass transit district, is a public body created by the Oregon Legislative Assembly pursuant to ORS 267.010 et. seq. ORS 267.200 provides that "[a] mass transit district shall constitute a municipal corporation of this state, and a public body, corporate and politic, exercising public power." TriMet is governed by a Board of Directors, appointed by the Governor. ORS 267.090.

TriMet has authority to "[f]ix and collect charges for the use of the transit system..." ORS 267.200(6). Passengers riding TriMet's MAX light rail trains are not required or permitted to show proof of payment of the fare while boarding the train. Passengers are, however, required to possess proof of payment while onboard MAX and while in certain areas associated with boarding and disembarking from MAX.

TriMet employees, assisted by police officers of the Transit Division³ periodically conduct fare inspection missions, in which they check passengers either while on the MAX trains or as passengers depart the MAX trains to see if passengers have paid their fare. During fare inspection missions, fare inspectors and/or police officers ask passengers to show proof of payment.

There are a variety of ways in which passengers can pay the fare for riding the MAX trains. Passengers can possess an annual pass, they can possess a valid "transfer" document, indicating they paid the fare for a previous ride, they can pay for and possess a valid paper ticket, they can pay electronically with a "Hop card,"⁴ or they can possess on a mobile telephone an "e-ticket."⁵

¹ TriMet is a short-hand term for the Tri-County Metropolitan Transportation District of Oregon.

² MAX is an acronym for Metropolitan Area Express, a system of light rail.

³ The police officers assigned to the Transit Division come from all or most of the local police agencies from the tri-county area in which TriMet operates its transit system.

⁴ A Hop card is in effect a debit card, bearing a prepaid sum of money credits. Passengers use the Hop card by taping it on a card reader each time the passenger enters the transit vehicle.

⁵ A passenger who in advance has loaded an e-ticket onto a mobile phone is required to "activate" the e-ticket before boarding the transit vehicle, thereby "consuming" that prepaid fare.

Passengers who fail to pay the required fare are subject to a variety of charges, some of which bear possible violation penalties, i.e. a fine, and some of which bear possible criminal penalties. Examples of possible criminal charges include Theft in the Third Degree, Criminal Trespass, Interfering with a Peace Officer (for failure to obey a lawful order), and Theft of Services. These possible criminal charges include the possibility of a jail sentence upon conviction.

When TriMet fare inspectors conduct a fare inspection mission (including when assisted by police officers) at the MAX platform, they always ask for proof of payment from every passenger exiting the train. They do not discriminate in any way in selecting whom to ask for proof of payment – they ask every exiting passenger. The TriMet employees and/or police officers ask persons departing from the train for proof of payment with no individualized suspicion that any particular passenger has not paid the fare.

TriMet fare inspectors, while conducting fare inspection missions, always wear a uniform clearly identifying themselves as TriMet employees. Ms. George’s TriMet uniform included a jacket with a TriMet badge and an American flag. Likewise, police officers from the Transit Division also wear uniforms clearly identifying themselves as police officers.

When fare inspectors or police officers check for proof of payment of fare as passengers exit the MAX train, the intrusion varies for each passenger depending on the type of payment the passenger has used to pay the fare. Passengers possessing valid transfers and paper tickets regularly just hold up their proof of payment as they pass by the fare inspector, sometimes without even stopping to interact with the fare inspector. When disembarking passengers do pause to show proof of payment, some pause for only a few seconds. Passengers who paid with a Hop card must pause so the fare inspector can use a handheld card reader device to determine if the Hop card was used for that ride. Passengers who paid with an e-ticket on a mobile phone must show the fare inspector the phone so the fare inspector can determine if the e-ticket was “activated,” i.e. “used” for that ride.

On March 13, 2018, TriMet Road Supervisor Deanna George was engaged in a fare inspection mission for passengers disembarking from the MAX train at the Old Town/China Town MAX platform in Portland. Present to conduct the fare inspection, in addition to Ms. George, were other TriMet employees and two police officers from the Transit Police. The TriMet employees positioned themselves on the platform at the train’s exit doors to intercept every person exiting the train to ask for proof of payment of the fare. Nearby to assist if needed was Officer Helfrich and another police officer. Passengers possessing an annual pass, a paper ticket, or a transfer merely held up their proof of payment with little or no need to slow down and break stride as they exited the train.

Defendant Rosa Giovanna Valderrama was a passenger on the MAX train that stopped at the Old Town/China Town MAX stop. As defendant exited the train, Ms. George asked defendant for proof of payment of her fare. Defendant, who was holding her mobile telephone, responded by holding out her phone. Ms. George observed defendant “activate” the e-ticket on defendant’s phone in her presence. This indicated to Ms. George that defendant had not paid the fare for defendant’s ride on MAX.⁶

Because at this point Ms. George believed defendant had not paid the required fare, Ms. George asked defendant for her identification. Defendant responded that she did not have any identification with her.⁷ Ms. George repeated her request for defendant to furnish identification several times. In response, defendant asked why she had to supply her identification. Defendant eventually produced a credit card bearing the name of an employer and also the name “A. Valderrama.”

Officer Helfrich observed the interaction between Ms. George and the defendant and came from close by to where they were standing. When Officer Helfrich saw that defendant had no proof of payment of the fare, Officer Helfrich subjectively believed he had both reasonable suspicion and probable cause to believe defendant had committed a crime. Officer Helfrich asked defendant for her identification several times. Defendant told Officer Helfrich her name was “Anna Valderrama.” She gave an August 30, 1986 date of birth. Officer Helfrich “ran” her name⁸ and was unable to locate an individual named “Anna Valderrama” with that date of birth, either in Oregon or in New York, where defendant told Officer Helfrich she came from. Officer Helfrich then arrested defendant for both Theft of Services and Giving False Information to a Peace Officer in Connection with a Citation.⁹

The only questions Ms. George asked defendant was for defendant to show her proof she had paid her fare. The only questions Officer Helfrich asked defendant were related to trying to determine defendant’s identity, e.g. requests for defendant’s identification, her name and her date of birth.

⁶ A passenger who purchased an e-ticket to be loaded on a phone, in advance of doing so, activated an “app” on the phone indicating the passenger’s agreement and understanding that for each ride on the transit vehicle, the e-ticket must be activated before embarking on the ride. If a passenger purchased an e-ticket but did not activate it for the ride, that e-ticket remained available for use on a future ride, thereby not actually paying the fare for the ride for which the e-ticket was not activated.

⁷ After defendant was arrested in a search of her purse incident to arrest, the police officer found an Oregon identification card bearing her correct name, date of birth and an address.

⁸ Officer Helfrich first “called in” her name to the dispatcher in an attempt to verify her name and he next walked to his parked police car to use the computer terminal in the car to attempt to verify her name.

⁹ On March 14, 2018, the District Attorney filed an Information of District Attorney charging defendant with Giving False Information to a Peace Officer in Connection with a Citation. The Theft of Services charge was not “issued” by the District Attorney.

Discussion:

Under Article 1, section 9 of the Oregon Constitution a “stop” occurs when a person is seized. A seizure occurs when a state actor “intentionally and significantly restricts, interferes with, or otherwise deprives an individual of that individual’s liberty or freedom of movement,... or if a reasonable person under the totality of the circumstances would believe [so].” State v. Asbaugh, 349 Or 297, 316 (2010). An action will constitute a stop or a seizure under Article 1, section 9 if it results from the conduct of any representative of the state or the government. Action by law enforcement officers is not required for a stop or a seizure to occur. See State v. Okeke, 304 Or 367 (1987) (action by employee of a publicly-funded detox facility), State v. Killion, 229 Or App 347, 353 n 5 (2009) (action by employee of Oregon Department of Fish & Wildlife). The State here concedes that TriMet fare inspectors are state actors for purposes of Article 1, section 9.

Here, when TriMet fare inspector Ms. George encountered defendant for the purpose of checking to see if defendant had paid her fare, as defendant exited the MAX train, both of the disjunctive standards for determining a stop occurred were met. Defendant’s individual liberty and her freedom of movement were significantly restricted and interfered with, and a reasonable person in defendant’s position, under the totality of the circumstances would believe that was true. Thus, when Ms. George encountered defendant, Ms. George stopped defendant for the purposes of Article 1, section 9. And, furthermore, when Officer Helfrich joined with Ms. George in confronting defendant, defendant was also stopped for purposes of Article 1, section 9.

A compelled stop of a person on a public road requires justification. Nelson v. Lane County 304 Or 97, 101 (1987). Road blocks are seizure of the person. Id. at 103. In Nelson the police stopped plaintiff at a sobriety roadblock. Absent individualized suspicion or a valid administrative procedure for doing so, “[t]his conduct was unauthorized and therefore unlawful...” Id. at 106.

Here the State advances as an alternative position that the stop and seizure of defendant was a valid administrative search. Weber v. Oakridge School District, 76, 184 Or App, 415, 433 (2002). Four conditions must exist to qualify as a valid administrative search: 1.) the search must be “noncriminal” in nature; 2.) the search must be properly authorized by a “politically accountable lawmaking body;” 3.) the search must be “designed and systematically administered so that it involves no exercise of discretion by the law enforcement person directing the search;” and 4.) the scope of the search must be “reasonable in relation to its purpose.” Id. at 434-37. These four conditions must all exist (they are in the conjunctive) for the search to be a valid administrative search.

As to the first factor, the State argues that here the search is conducted by non-law enforcement TriMet employees who have authority only to issue citations bearing a possible fine sanction, i.e. a noncriminal sanction. To the contrary, the presence of Officer Helfrich and other police officers belie the State's argument as to this first factor. Officer Helfrich testified possible criminal charges for not paying the MAX fare include Theft in the Third Degree, Criminal Trespass, Interfering with a Peace Officer (for failure to obey a lawful order) and Theft of Services. These possible criminal charges include the possibility of a jail sentence upon conviction.

As to the second factor, the State argues that by statutorily creating TriMet and giving the TriMet Board certain powers, the Legislative Assembly, a politically accountable body, authorized the search involved here. The State's position is attenuated and unpersuasive.

The third administrative search requirement is that the search must be designed and administered such that the people conducting the search exercise no discretion in doing so. The evidence here satisfies this requirement.

Finally, as to the last administrative search factor, that the search be reasonable in relation to its purpose, I find this factor satisfied as well.

Conclusions of Law:

Defendant was stopped and seized without individualized suspicion when confronted by fare inspector Deanna George, and as assisted by Officer Helfrich. The seizure of defendant does not satisfy all the requirements of a valid administrative search. Therefore, the stop of defendant was unlawful under Article 1, section 9 of the Oregon Constitution.

Based upon the foregoing, IT IS HEREBY ORDERED AS FOLLOWS:

1. Defendant's Motion to Suppress – Unlawful Stop and Seizure is granted, and
2. Defendant's Motion to Suppress Statements is denied as no interrogation of defendant took place.

Dated this 20th day of September, 2018.



John A. Wittmayer
Circuit Court Judge