90289-5

Court of Appeals No. 44107-1-II
Supreme Court NO. 12-1-01105-2

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent

Vs.

PAVEL FEDOROVICH ZALOZH,
Petitioner

PETITION FOR REVIEW

Submitted By Pavel F. Zalozh
13501 NE 50th WAY,
Vancouver WA, 98682
360-513-0454

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

State Cases

I. IDENTITY OF PETITIONER

Petitioner, Pavel F. Zalozh respectfully requests for this Court to review the Court Of Appeals decision.

II. COURT OF APPEALS DECISION

Petitioner requests review of the Court of Appeals, Division II's decision in reversing the Trial courts ruling to a motion suppressing all evidence from stop.

III. ISSUES PRESENTED

A. The State did not have any credible persons/witnesses(Houg & Mr. Zalozh's Parents) to back up the statements of the petitioner being at his ex girlfriends Ms. Maksimenko's house, and that the petitioner was violating a no-contact order. Just because the petitioner use to live there in the past, BEFORE the no-contact order was placed in effect, does not mean that when Mr. Houg, was being questioned by officers of the petitioners whereabouts, that when he told the officers from what he knew that Pavel Zalozh use to live and spend time with his friends and ex girlfriend Ms. Maksimenko in the past, does not mean and give any supporting facts to their suspicion that the petitioner is violating the no-contact presently on that day. Mr. Houg knew Pavel F. Zalozh had violated a no-contact in the PAST, and when he told the officers the only places he knew of that Pavel Zalozh stayed at was home, and if he wasn't home he said from what he knew in the past Mr. Zalozh was with either friends or Ms. Maksimenko. The officers had no reasonable suspicion that Mr. Zalozh would be violating at that moment because of the past. Therefor there is a big issue at hand if the statements of Mr. Houg or the petitioners Parents were credible and should give any reason to the officers to believe or suspect that Mr. Zalozh was violating.

B. The state cannot justify the un constitutional stop and had no probable cause to arrest the petitioner for violating a no-contact order, Just because a person said their hunch is that petitioner could be with Ms. Maksimenko, because in the past the petitioner use to stay there and spent a lot of time with Ms. Maksimenko, does not mean that there statements are credible and give any substantial facts or evidence to assume or believe the petitioner is violating a no-contact order at present. Therefore there is a issue in how there can be probable cause to arresting the petitioner on those grounds because there is not enough facts or evidence supporting their suspicion.

C. In the past the petitioner never harassed or assaulted Ms. Maksimenko when violating the no-contact order, nor did Ms. Maksimenko ever report the violations. Therefore the officers had no evidence or ANY information

that Ms. Maksimenko was in danger and needed their assistance during the stop. So obviously there is an issue here when Officer Yakhour states that she was worried for Ms. Maksimenko's safety when in the past, Ms. Maksimenko never reported any violations OR ever told the police she is scared for her safety because she was afraid of Mr. Zalozh. So the officers shouldn't have had any worries for Ms. Maksimenko and her safety when conducting the terry stop.

D. The state erred to notice that during trial court Officer Ford openly admitted that he had no idea how the petitioner looked like, when the police reports stated that he was shown a picture of Mr. Zalozh. There for that raises a issue if the officers testimony's and reports were factually even truthful?
E. The state failed to show any evidence of identifying Mr. Zalozh of being the passenger in the back seat of the BMW.
F. The state failed to show any articulate facts established by the testimony of the officers that would warrant the stop of the BMW where Mr. Zalozh was a passenger.

IV. STATEMENT OF THE CASE

By information filed on June 21, 2012, later amended, Clark County Prosecutors office charged Pavel Fedorovich Zalozh with first degree Burglary, two counts Theft Of Firearm, and two counts of Possession Of Stolen Property 2nd Degree. After stopping a vehicle where Pavel F. Zalozh was a passenger of, the Police obtained evidence supporting his participation in these crimes. Mr. Zalozh than moved forward to filing a motion to suppress all of the evidence obtained in the seizure of the vehicle upon the argument that the officers did not have a reasonably articulate suspicion based on objective facts sufficient to justify stopping the vehicle, where the petitioner was a backseat passenger.

The petitioner than had a hearing with the state calling DOC Officer and three other Clark County Deputies as witnesses. After hearing the their testimony's and

both the prosecutors and the defendants arguments, the Superior Court granted the petitioner the Motion To Suppress all Evidence seized as well as the identity of the driver and the defendant. After the courts ruling, the state then dismissed all charges against the petitioner because it did not have any sufficient evidence to proceed with the case.

The State then filed its notice of Appeal 30 days after the court dismissed all charges against Pavel F. Zalozh.

After reviewing the Appeal(s) The Court Of Appeals Of The State Of Washington, granted the state the appeal, and ordered to reverse all charges against the petitioner.

V. Findings Of Facts

On the morning of June 11, 2012, the petitioner was being sought by the Clark County Sheriffs Department for allegedly being a suspect in a burglary that occurred about a week prior to the terry stop. Also the officers had probable cause to arrest Mr. Zalozh believing he was violating a no-contact order.

The officers prior to conducting surveillance on Ms. Maksimenko's house interviewed the petitioners Parents and also the petitioners parents neighbor, Todd Houg who had previously posted Mr. Zalozh's bail. Based on the officers reports, both the neighbor and the petitioners parents stated that from their knowledge from the past that they knew that Pavel Zalozh hangs out only with his friends and his ex girlfriend. And that he lived at Ms. Maksimenko's in the past. How ever the officers had no actual evidence that he would be with Ms. Maksimenko.

When conducting the investigation DOC officer Brian Ford was called for assistance because he had an unmarked police vehicle. During the morning of June 11 2012 officer Ford was stationed 4-5 houses away from Ms. Maksimenko's residence in his unmarked vehicle performing surveillance. Officer Ford witnessed a unidentified female walk out the door with two children and walk them to their school bus, and afterwards return to her home. Later Officer Ford observed a silver BMW back out of the residence house and precede to drive towards his way. As the

female drove by, Officer Ford was unable to identify the female driver or who the BMW belonged to. He also observed a adult figure laying down in the back seat of the BMW. He also was unable to identify the adult because he was wearing a hood and a hat with sunglasses.

After the BMW drove past officer Ford, he relayed that the vehicle was driving towards the other Clark County Sheriffs officers who were performing an arrest on another person who was wanted on a felony warrant, that Deputy Yakhour just happened to know. Deputy Yakhour called for assistance from deputies Butler and Buckner in apprehending the person for the felony Warrant. As they were doing that the Silver BMW approached Deputy Buckner stepped out into the roadway of the moving vehicle and put out his right hand to stop the BMW. He then preceded to walk to the driver and tell her to open the window. When the female driver opened her window Pavel Zalozh sat up. Deputy Buckner then ordered the male to step out of the vehicle and was arrested. However prior to Deputy Buckner stepping out in front of the BMW none of the Officers knew who the car belonged to, who the female driver was and who the unidentified adult in the back seat was.

Ms. Maksimenko consented to the search of her car witch resulted in obtaining a backpack that had evidence of Mr. Zalozh being the burglar. The Defendant then moved to file a Motion to suppress all evidence because the seizure was Unlawful.

VI. ARGUMENT

In a seizure analysis, the relevant question is weather a reasonable person in the petitioner's position would feel he or she was being detained. State v. Harrington, 167 Wn.2d 656, 222 P.3d 92 (2009). Under the Washington constitution, the officer's subjective suspicion is irrelevant to question whether a seizure has occurred. State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003). And finally, a passenger holds "an independent, constitutionally protected privacy interest not diminished merely upon stepping into an automobile driven by another". State v. Byrd, 110 Wash.App. 259, 262-263, 39 P.3d 1010 (2002) citing State v.

Parker, 139 Wash.2d 486, 498, 987 P.2d 73 (1999). "A person is "seized" within the meaning of the Fourth Amendment only when, by means of physical force or a show of authority, his freedom of movement is restrained." State v. Stroud, 30 Wash.App. 392, 396, 634 P.2d 316 (1981), review denied, 96 Wash.2d 1025 (1982) summarizing United States v. Mendenhall, 446 U.S. 5444, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980); Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). "There is a "seizure" when, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. This rule also applies to the stopping of an automobile and detention of its occupants." Id. Citing Delaware v. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979).

In the present case, the petitioner's vehicle of which he was a passenger of, is constitutionally seized when Deputy Buckner stepped in front of the vehicle, put his hand up and stopped the vehicle. Before this show of authority, there was no reasonable articulable suspicion of any crime or traffic infraction to justify the stop of the vehicle where the petitioner was a passenger. Just because the officers had a mere hunch without any substantial evidence to support their suspicion, does not justify the stop and seizure.

Under Washington Constitution, Article 1, & 7, and United States Constitution, Fourth Amendment, Warrantless searches are per se unreasonable. State v. Simpson, 95 Wn.2d 170, 622 P.2d 1199 (1980). As

such, the courts of this state will suppress the evidence seized as a fruit of that warrantless detention unless the prosecution meets it burden of proving that the search falls within one of the various "jealously and carefully drawn" exceptions to the warrant requirement. R. Utter, Survey of Washington Search and Seizure Law: 1988 Update, 11 U.P.S. Law Review 411, 529 (1988).

As one of the exceptions to the warrant requirement, the police need not have probable cause in order to justify a brief investigatory stop. Terry v. Ohio, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968). However, in order to justify such action, the police must have a "reasonable suspicion, based on objective facts, that the individual is involved in criminal activity." Brown v. Texas, 443 U.S. 47, 51, 61 L.Ed.2d 357, 99 S.Ct. 2637 (1979). Subjective good faith is not sufficient. Terry v. Ohio, 392 U.S. at 22, 20 L.Ed.2d at 906, 88 S.Ct. at 1880.

When considering in totality, the circumstances known to the officers at the time they decided to stop the car, it did not give rise to a reasonable and articulable suspicion that the occupants were engaged in criminal conduct, Brown v. Texas, supra, BUT at best amounted to nothing more substantial than an inarticulate hunch. See Terry v. Ohio.

In the petitioners case at hand, even though the officers had a mere hunch, and were basing their suspicion on the hunch's of the petitioners parents and neighbor, does not justify their un constitutional stop.

1, There was no identification of the defendant nor the driver of the vehicle before Deputy Buckner unprofessionally stepped out into the roadway in front of the vehicle and put up his hand to stop the moving vehicle. And even before the stop the officers failed to even run and check the plates of the BMW, to see even if they are stopping the right vehicle. The Deputies acted on a mere hunch that the BMW is indeed Ms. Maksimenko's, and that the driver was indeed Ms. Maksimenko. So how does that justify there "suspicion" in scizing the vehicle, when indeed the officers had no reasonable articulate facts backing there hunch and suspicion?

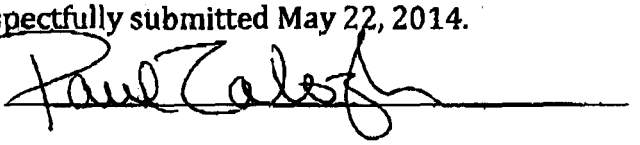
The state is in err, when arguing that the stop was constitutional. The state obviously failed to show that the deputies had reasonable articulate suspicion to justify the actions of the Deputies when un constitutionally seizing the vehicle, when infact the deputies were acting out on pure speculation. Everything from beginning to end, was all simply pure speculation.

Thus, with the case at hand, it is obvious the Trial Court did not err when it found that the state had failed to prove that the police had a reasonable articulative suspicion based upon objective facts sufficient to legally justify a stop of the vehicle in which the petitioner was riding. As a result, the trial court did not err when granting the Motion To Suppress.

VII. CONCLUSION

The Petitioner is respectfully asking This Court to review.

Respectfully submitted May 22, 2014.

By: 

Pavel F. Zalozh Petitioner

SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent

Vs.

PAVEL FEDOROVICH ZALOZH,
Petitioner

NO. 44107-1-II

AFFIRMATION OF SERVICE/DELIVERENCE

I, Pavel F. Zalozh states the following under the penalty of perjury under the laws of Washington State. On May 22nd, 2014, I personally faxed/E- Filed the following documents to indicated parties:

1. PETITION FOR REVIEW

950 Broadway
Ste 300, MS TB-06
Tacoma, WA 98402-4454

General Information: 253-593-2970
Fax: 253-593-2806

Anne Mowry Cruser
Deputy Prosecuting Attorney
PO Box 5000
Vancouver, WA 98666-5000

Dated this 22nd, day of May, 2014.

Pavel F. Zalozh
Petitioner

COPY & PRINT DEPOT™

FAX SERVICES

Complimentary Fax Cover Sheet

TO: COURT OF APPEALS DIV. II FROM: PAVEL F. ZALOZH

FAX NUMBER: 253-593-2806 SENDER'S PHONE #: 360.513.0454

DATE: May 22, 2014 # OF PAGES:

CUSTOMER'S NOTES:

RECEIVED
MAY 22 20..
CLERK OF COURT OF APPEALS DIV ..
STATE OF WASHINGTON

OFFICE DEPOT'S TERMS OF USE

SENDER AGREES NOT TO USE THIS FAX TO: (I) TRANSMIT MATERIAL WHOSE TRANSMISSION IS UNLAWFUL, HARASSING, LIBELOUS, ABUSIVE, THREATENING, HARMFUL, VULGAR, OBSCENE, PORNOGRAPHIC OR OTHERWISE OBJECTIONABLE; (II) CREATE A FALSE IDENTITY, OR OTHERWISE ATTEMPT TO MISLEAD OTHERS AS TO THE IDENTITY OF THE SENDER OR THE ORIGIN OF THIS FAX; (III) POST OR TRANSMIT ANY MATERIAL THAT MAY INFRINGE THE COPYRIGHT, TRADE SECRET, OR OTHER RIGHTS OF ANY THIRD PARTY; (IV) VIOLATE ANY FEDERAL, STATE OR LOCAL LAW IN THE LOCATION, OR (V) CONDUCT ACTIVITIES RELATED TO GAMBLING, SWEEPSTAKES, RAFFLES, LOTTERIES, CONTESTS, PONZI SCHEMES OR THE LIKE.

PLEASE NOTE THAT OFFICE DEPOT DOES NOT REVIEW THE CONTENTS OF ANY FAX SENT USING ITS SERVICES. FURTHER, BY SIGNING BELOW THE SENDER OF THIS FAX HEREBY AGREES TO INDEMNIFY OFFICE DEPOT TO THE FULLEST EXTENT OF THE LAW AND FOR ANY AND ALL CLAIMS, SUITS, OR DAMAGES ARISING OUT OR IN CONNECTION WITH THE REQUEST TO SEND OR SENDING THIS FAX.

CUSTOMER SIGNATURE (REQUIRED): Paul Zaloz

THANK YOU FOR USING OFFICE DEPOT'S CUSTOMER FAX SERVICES

STORE INFORMATION

First Page Local Fax 833-071	First Page Long Distance Fax 833-081	First Page International Fax 833-191
Additional Local Fax 456-687	Additional Long Distance Fax 833-091	Additional International Fax 833-201

REV 3/19/12

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Appellant, v. PAVEL F. ZALOZH, Respondent.	No. 44107-1-II UNPUBLISHED OPINION

MAXA, J. – The State appeals a trial court order suppressing all evidence from the investigative stop of a vehicle in which Pavel Zalozh was a passenger and dismissing the charges against Zalozh on which the suppressed evidence depended. We hold that the stop was justified because the law enforcement officers reasonably suspected that Zalozh, whom they had probable cause to arrest, was the person they saw hiding in the back seat of the vehicle. Accordingly, we reverse the trial court's order suppressing the evidence seized during the stop and its dismissal of the related charges against Zalozh, and remand for trial.

FACTS

On the morning of June 11, 2012, a team of officers was attempting to locate Zalozh because he allegedly had violated a no contact order with his girl friend, Oleysa Maksimenko,[1] and because he was a suspect in a recent burglary. The officers had probable cause to arrest Zalozh. The officers suspected that Zalozh might be at Maksimenko's house because (1) he had lived with her in the past, (2) officers previously had located him there in violation of a no contact order, (3) a person who recently had paid Zalozh's bail told officers that Zalozh often was with Maksimenko, and (4) Zalozh's parents stated that he might be staying with Maksimenko. However, the officers did not have any actual evidence that Zalozh was at Maksimenko's house on June 11.

In an attempt to locate Zalozh, one officer conducted surveillance of Maksimenko's house. The officer saw an unidentified adult female open the front door and watch two children walk to the bus stop. Later, the officer observed a silver car back out of the garage. As the car drove by him, he saw that it was driven by the same unidentified female. The officer also noticed an adult person wearing a hooded sweatshirt lying down in the back seat of the car. The officer, who had experience apprehending fugitives in the past, concluded that the person in the back seat was attempting to hide.

The officer relayed his observations to other officers who were several blocks away conducting an unrelated arrest and advised them that the silver car was heading toward their location. As the car matching the first officer's description approached, an officer stepped into the roadway and put his hand out to stop it. The female driver, who officers later identified as

[1] We note that Oleysa Maksimenko's name is spelled three different ways in the record. For this opinion we opt to use the spelling from the trial court's findings of fact and conclusions of law.

Maksimenko, complied with the officer's directive. When the car came to a stop, the back-seat passenger sat up. Officers making the stop immediately recognized the person as Zalozh and arrested him. Prior to this stop, none of the officers had identified the driver, the back-seat passenger, or the registered owner of the car.

Maksimenko consented to a search of the car. During the search officers located a backpack and jewelry from burglaries in which Zalozh was a suspect.

The State charged Zalozh with one count first degree burglary, two counts theft of a firearm, and two counts second degree possession of stolen property. Zalozh moved to suppress the evidence seized from the car. The trial court concluded that officers lacked a reasonable articulable suspicion to stop the car. Therefore, the trial court granted Zalozh's motion to suppress the evidence obtained as a result of the unlawful seizure. The trial court then dismissed the charges against Zalozh. The State appeals.

ANALYSIS

A. STANDARD OF REVIEW

When reviewing the trial court's grant of a CrR 3.6 suppression motion, we determine whether substantial evidence supports the challenged findings of fact and whether the findings of fact support the conclusions of law. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). "Evidence is substantial when it is enough 'to persuade a fair-minded person of the truth of the stated premise.' " *Garvin*, 166 Wn.2d at 249 (quoting *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999)). Unchallenged findings of fact are considered verities on appeal. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011). We review de novo the trial court's conclusions of law pertaining to the suppression of evidence. *Garvin*, 166 Wn.2d at 249.

Findings of fact mislabeled as conclusions of law are treated as findings of fact on review. *State v. Marcum*, 24 Wn. App. 441, 445, 601 P.2d 975 (1979).

B. JUSTIFICATION FOR INVESTIGATIVE STOP

The trial court concluded that there were no articulable facts that would justify the stop of Maksimenko's car. We disagree. Although the officers did not have actual knowledge that Zalozh and Maksimenko were riding together in the car they stopped, the officers did have a reasonable suspicion based on the totality of the circumstances that both Zalozh and Maksimenko were in the car. Accordingly, the investigatory stop was justified, and the trial court erred in suppressing the evidence discovered following the stop.

1. Standards for *Terry*[2] Stop

Under the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington State Constitution, a police officer generally cannot seize a person without a warrant supported by probable cause. *Garvin*, 166 Wn.2d at 249; *State v. Acrey*, 148 Wn.2d 738, 745-46, 64 P.3d 594 (2003) (addressing only Fourth Amendment). A warrantless seizure is considered per se unconstitutional unless it falls within an exception to the warrant requirement. *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004); *Acrey*, 148 Wn.2d at 746.

One established exception is a brief investigatory detention of a person, commonly called a *Terry* stop. *Acrey*, 148 Wn.2d at 746. A police officer may conduct a warrantless investigative stop based upon less evidence than is needed to establish probable cause to make an arrest. *Acrey*, 148 Wn.2d at 746-47. But the officer must have "a reasonable suspicion, grounded in specific and articulable facts, that the person stopped has been or is about to be involved in a crime." *Acrey*, 148 Wn.2d at 747. "A reasonable, articulable suspicion means that there 'is a

[2] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

substantial possibility that criminal conduct has occurred or is about to occur.' " *State v. Snapp*, 174 Wn.2d 177, 197-98, 275 P.3d 289 (2012) (quoting *State v. Kennedy,* 107 Wn.2d 1, 6, 726 P.2d 445 (1986)). The officer's suspicion must relate to a particular crime rather than a generalized suspicion that the person detained is "up to no good." *State v. Bliss*, 153 Wn. App. 197, 204, 222 P.3d 107 (2009). A mere hunch not supported by articulable facts that the person has committed a crime is not enough to justify a stop. *State v. Doughty*, 170 Wn.2d 57, 63, 239 P.3d 573 (2010).

We determine the propriety of an investigative stop – the reasonableness of the officer's suspicion – based on the "totality of the circumstances." *Snapp*, 174 Wn.2d at 198. We must base our evaluation of reasonable suspicion on " 'commonsense judgments and inferences about human behavior.' " *State v. Lee*, 147 Wn. App. 912, 917, 199 P.3d 445 (2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000)). The focus is on what the officer knew at the time of the stop. *Lee*, 147 Wn. App. at 917. No subsequent events or circumstances can retroactively justify a stop. *State v. Mendez*, 137 Wn.2d 208, 224, 970 P.2d 722 (1999), *abrogated on other grounds by Brendlin v. California*, 551 U.S. 249, 255, 259 n. 5, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). Specifically, the fact that the officer's suspicion turned out to be correct is irrelevant. *See Mendez*, 137 Wn.2d at 224, 226.

Whether a warrantless investigative stop was justified or represented a constitutional violation is a question of law, which we review de novo. *State v. Bailey*, 154 Wn. App. 295, 299, 224 P.3d 852 (2010). The State bears the burden of showing the propriety of an investigative stop. *Acrey*, 148 Wn.2d at 746. If the initial stop was unlawful, the items seized from that stop are inadmissible as fruits of the poisonous tree. *Kennedy*, 107 Wn.2d at 4.

2. Challenged Findings of Fact

The State assigns error to three findings of fact included within the trial court's conclusions of law section. The trial court found that at the time of the stop (1) officers did not know that Zalozh was in the vehicle and there was no evidence that he had been at Maksimenko's house before the stop, (2) the officers did not have any information that Maksimenko was at risk, and (3) the officers did not know that Zalozh was currently violating the no contact order with Maksimenko.

We hold that these findings of fact (which were mislabeled as conclusions of law) were supported by substantial evidence. None of the officers testified that they had *actual* knowledge that Zalozh had been at Maksimenko's house on the day of the stop or that they had identified Zalozh as being a passenger in the car before the stop. One of the officers testified that she was concerned about Maksimenko's safety because of the possible restraining order violation, but the officer's concern was not based on any *actual* knowledge. And the officers had no *actual* knowledge that Zalozh was violating the no contact order because they did not know that he was at Maksimenko's house or in the car with her.

However, these findings of fact do not compel the legal conclusion that the stop was unjustified. In order for an investigatory stop to be lawful, officers must have only a reasonable suspicion that criminal conduct has occurred. *Acrey*, 148 Wn.2d at 747. *Actual* knowledge is not required. *See Snapp*, 174 Wn.2d at 198.[3] As a result, despite the trial court's factual findings, we must evaluate whether the officers' suspicion that Zalozh and Maksimenko were in

[3] In *Snapp*, the court held that an officer's observance of a vehicle driving without lights in dark, cold, and icy conditions justified an investigatory stop based on the officer's rational belief that the driver was violating a statute requiring that headlights be on beginning one-half hour after sunset despite not having actual knowledge of the exact time of sunset. 174 Wn.2d at 198-99.

the car together was reasonable under the "totality of the circumstances." *Snapp*, 174 Wn.2d at 198.

3. Reasonable Suspicion

If Zalozh and Maksimenko were in the car together, Zalozh was engaged in criminal activity – violation of the no contact order. As a result, whether the officers here had a reasonable suspicion that a crime was being committed depended on whether it was reasonable to suspect that Maksimenko was driving[4] and that Zalozh was the hooded person hiding in the back seat. As noted above, the standard is substantial possibility. *Snapp*, 174 Wn.2d at 197-98.

First, there was strong evidence supporting the officers' suspicion that Maksimenko was driving the vehicle they stopped. An officer was conducting surveillance at Maksimenko's known address, where the team of officers knew she lived with her two children. Based on review of past law enforcement reports, the officers also reasonably concluded that she was the only adult living there. In the morning, an officer observed a woman leave the house briefly to watch two children walk to a bus stop and then go back into the house. The officer later observed the same woman driving a car out of the house's garage. Based on these facts, there was a substantial possibility that the woman driving the car was Maksimenko.

Second, there was evidence supporting the officers' suspicion that Zalozh was at Maksimenko's house. The trial court made unchallenged findings of fact that (1) Zalozh had been located at Maksimenko's house when he previously had violated no contact orders, (2)

[4] Even if Maksimenko had not been driving, officers could have stopped the car if they knew Zalozh was in the back seat because they already had probable cause to arrest him for other offenses. *See State v. Quezadas-Gomez*, 165 Wn. App. 593, 602-03, 267 P.3d 1036 (2011) (investigatory stop to inquire of defendant's name and address was legally justified where officer already had probable cause to arrest him). However, whether there was a reasonable suspicion that Maksimenko was driving is relevant to the identity of the passenger. It is more likely that Zalozh would be riding with his girl friend rather than some unidentified female.

Zalozh had lived there in the past, (3) Zalozh's parents told police that Zalozh would be at Maksimenko's house despite the no contact order, and (4) another person told police that Zalozh spent most of his time with Maksimenko. This evidence established that there was a strong possibility that Zalozh was at Maksimenko's house that day.

Third, there was a legitimate reason the officers suspected that Zalozh rather than someone else was in back seat of the car driving away from Maksimenko's house. Instead of simply sitting in the car, the person was lying down in the back seat. And the crucial fact is the officer's testimony that based on his experience, the passenger was *hiding*.[5] If Zalozh was that passenger, he would have a reason to hide because he was violating the no contact order. There would be no known reason that someone other than Zalozh would be hiding in the back of Maksimenko's car. In light of the other circumstances, the fact that the passenger was hiding created a strong possibility that the passenger was Zalozh.

Standing alone, each of these groups of facts would not be enough to conclude that the officers' suspicion that Zalozh and Maksimenko were in the car together was reasonable. The officers had no actual knowledge regarding the identity of the people in the car. The driver could have been someone other than Maksimenko. Zalozh might not have been at Maksimenko's house. The person hiding in the back of the car might have been someone other than Zalozh.

However, we must evaluate the reasonableness of the officers' suspicion based on the totality of the circumstances. *Snapp*, 174 Wn.2d at 198. And certainty – or even probability – is not required to justify an investigatory stop. *See Snapp*, 174 Wn.2d at 198; *State v. Young*, 167 Wn. App. 922, 929, 275 P.3d 1150 (2012). Considering all the evidence, we conclude that there

[5] In the context of an investigatory stop, an officer may rely on his experience to identify seemingly innocuous facts as suspicious. *State v. Moreno*, 173 Wn. App. 479, 492-93, 294 P.3d 812, *review denied*, 177 Wn.2d 1021 (2013).

was a substantial possibility that Zalozh was the person hiding in the back of the car and Maksimenko was the person driving. As a result, we hold that the officers had a reasonable suspicion based on articulable facts that a crime was being committed, and that they were justified in making an investigatory stop.

We hold that the trial court erred in concluding that the investigatory stop was unlawful, suppressing the evidence discovered in the search following that stop, and dismissing the charges against Zalozh. Accordingly, we reverse the trial court's ruling suppressing the evidence from the investigative stop, reverse its order dismissing the charges against Zalozh, and remand for trial.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Maxa, J.

MAXA, J.

We concur:

Hunt, J.

HUNT, J.

Bjorgen, J.

BJORGEN, J.