

71196-2

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NO. 71196-2-I

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

STATE OF WASHINGTON,

Respondent,

v.

BRADLEY McALLISTER

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR WHATCOM COUNTY

The Honorable Deborra Garrett, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THAT A MALE WAS DRIVING THE CAR AND A MALE WITH AN OUTSTANDING WARRANT WAS ASSOCIATED WITH THE CAR DID NOT LEGALLY JUSTIFY THE INVESTIGATIVE SEIZURE.¹

The State contends because the officer knew there was “a warrant connected with the vehicle” for a “male” and a “male” was driving the car that these facts establish an articulable reasonable suspicion the driver was the man named in the warrant and an investigative seizure of the driver was justified. Brief of Respondent (BOR) at 7. The State relies on State v. Bliss, 153 Wn.App. 197, 222 P.3d 107 (2009) to support its contention. BOR at 6-7. Bliss, however, is factually distinguishable.

In Bliss, the officer saw a van driven by a white or light-skinned female with light-colored hair. A registration check showed that a Charlotte Bliss was the registered owner, that “she had outstanding felony and misdemeanor arrest warrants, and that she was a white female, 5 feet 6 inches tall, 140 pounds, with blond hair.” Bliss, 153 Wn.App. at 200. The Bliss court held the facts were sufficient to create a substantial possibility that it was Bliss driving the van because the officer “knew there were outstanding arrest warrants for the van's registered owner, Bliss...knew that the van's registered owner, Bliss, was a white woman

¹ Appellant does not believe a reply to the State’s response on the issue of the court’s failure to enter findings and conclusions is necessary.

with blond hair; and...he had observed that the van's driver was a white or light-skinned female with light-colored hair, which fit the physical description accompanying Bliss's vehicle registration.” Id. at 204. As the Bliss court noted, “there were direct connections among the van, the owner's description, the suspected criminal activity, and the driver.” Id. at 207.

Here, on the other hand, there are no such direct connections. Unlike in Bliss, when officer Hubby stopped the car all he knew was that there was a warrant for driving while license suspended and failure to transfer title issued by the Lynden Municipal Court for a Bradley McAllister, who was not the car’s owner but merely associated with the car’s owner. Unlike in Bliss, where it was reasonable for the officer to believe the driver was the car’s owner because the owner was the same person named in the warrants, and the description of the car’s owner was consistent with the officer’s observation of the driver, Hubby had no information to connect the man driving the car with the McAllister named in the warrant. The State’s reliance on Bliss is misplaced.

“A reasonable, articulable suspicion means that there ‘is a 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)). 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). “In determining whether the officer's suspicion was reasonable, courts look to the totality of the circumstances.” Bliss, 153 Wn.App. at 204 (citing State v. Randall, 73 Wn.App. 225, 229, 868 P.2d 207 (1994)).

The facts here may have reasonably supported a hunch the McAllister named in the warrant was the man driving the car. But, without more, like the physical similarity the Bliss court found significant, under the totality of the circumstances there was not a “substantial probability” to support an articulable reasonable suspicion the driver was the McAllister named in the warrant and not just some other man.

Moreover, when stripped to its essence, the State’s argument is that Hubby’s stop was justified because a man was behind the wheel and a man with outstanding warrants was associated with the car. Like identity of race, this Court should find identity of gender an insufficient basis to justify an investigatory stop. See United States v. Bautista, 684 F.2d 1286, 1289 (9th Cir.1982) (race is insufficient basis for investigatory police stop).

Because Hubby did not have an articulable reasonable suspicion the driver was the McAllister named in the warrant, there was no legal

basis to stop the car. The evidence obtained as a result of the stop should be suppressed.

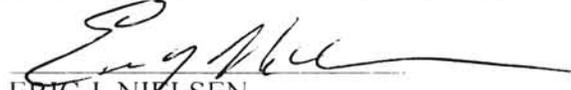
B. CONCLUSION

The State fails to show the stop was justified. The evidence obtained from McAllister's illegal seizure should be suppressed, and McAllister's conviction reversed.

DATED THIS 11 day of July 2014.

Respectfully submitted,

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DIVISION ONE

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 71196-2-1
)	
BRADLEY McALLISTER,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 11TH DAY OF JULY 2014 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

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- [X] BRADLEY McALLISTER
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SIGNED IN SEATTLE WASHINGTON, THIS 11TH DAY OF JULY 2014 2014.

X *Patrick Mayovsky*

2014 JUL 11 PM 4:11
CLERK OF COURT
STATE OF WASHINGTON