

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

TABLE OF AUTHORITIES ii

I. COUNTERSTATEMENT OF THE ISSUES.....1

II. STATEMENT OF THE CASE.....1

III. ARGUMENT6

 A. DAS’S ARGUMENT THAT AN OFFICER MAY NOT PULL OVER A DRIVER FOR A “DE MINIMIS” TRAFFIC VIOLATION IS WITHOUT MERIT AND IS CONTRARY TO WASHINGTON LAW.6

 B. THE TRIAL COURT DID NOT ERR IN DENYING DAS’S CLAIM THAT THE TRAFFIC STOP IN THE PRESENT CASE WAS PRETEXTUAL BECAUSE: (1) THE TRIAL COURT’S FINDING THAT OFFICER RENFRO PULLED DAS OVER FOR TWO TRAFFIC INFRACTIONS WAS SUPPORTED BY SUBSTANTIAL EVIDENCE; (2) THERE WAS NO EVIDENCE THAT THE TRAFFIC STOP WAS USED A PRETEXT TO INVESTIGATE A CRIMINAL MATTER UNRELATED TO DAS’S DRIVING; AND, (3) THE TRIAL COURT’S FINDINGS (AND THE RECORD BELOW) SUPPORT THE TRIAL COURT’S CONCLUSION THAT THE STOP WAS NOT PRETEXTUAL.....13

IV. CONCLUSION.....21

TABLE OF AUTHORITIES
STATE CASES

Fisher Properties, Inc. v. Arden-Mayfair, Inc.,
115 Wn. 2d 364, 798 P.2d 799 (1990).....14

Nystuen v. Spokane County,
194 Wash. 312, 77 P.2d 1002 (1938).....12

Olmstead v. Department of Health,
61 Wn. App. 888, 812 P.2d 527 (1991).....14

State v. Carpenter,
52 Wn. App. 680, 763 P.2d 455 (1988).....8

State v. DeSantiago,
97 Wn. App. 446, 983 P.2d 1173 (1999).....17

State v. Frazier,
82 Wn. App. 576, 918 P.2d 964 (1996).....14

State v Heath,
929 A.2d 390 (Dela. Super. 2006).....12

State v. Henderson,
114 Wn. 2d 867, 792 P.2d 514 (1990).....8

State v. Hoang,
101 Wn. App. 732, 6 P.3d 602 (2000).....15, 16, 19

State v. Jeannotte,
133 Wn. 2d 847, 947 P.2d 1192 (1997).....14

State v. Ladson,
138 Wn. 2d 343, 979 P.2d 833 (1999)..... 13-16, 19

State v. Lemus,
103 Wn. App. 94, 11 P.3d 326 (2000)..... 11-12

<i>State v. Montes-Malindas</i> , 144 Wn. App. 254, 182 P.3d 999 (2008).....	9
<i>State v. Nichols</i> , 161 Wn. 2d 1, 162 P.2d 1122 (2007).....	9, 15
<i>State v. Olsson</i> , 78 Wn. App. 202, 895 P.2d 867 (1995).....	9
<i>State v. Prado</i> , 145 Wn. App. 646, 186 P.3d 1186 (2008).....	11
<i>State v. Ross</i> , 106 Wn. App. 876, 26 P.3d 298 (2001).....	14
<i>State v. Smith</i> , 82 Wn. App. 153, 916 P.2d 960 (1996).....	8
<i>State v. Studd</i> , 137 Wn. 2d 533, 973 P.2d 1049 (1999).....	8
<i>Tardif v. Hellerstedt</i> , 37 Wn. 2d 940, 226 P.2d 908 (1951).....	12

STATE STATUTES

RCW 46.61.021(2).....	10
RCW 46.37.390	9
RCW 46.61.140(1).....	11
RCW 46.61.305	11

I. COUNTERSTATEMENT OF THE ISSUES

1. Whether Das's argument that an officer may not pull over a driver for a "de minimis" traffic violation is without merit and is contrary to Washington law?

2. Whether the trial court erred in denying Das's claim that the traffic stop in the present case was pretextual when: (1) the trial court's finding that Officer Renfro pulled Das over for two traffic infractions was supported by substantial evidence; (2) there was no evidence that the traffic stop was used a pretext to investigate a criminal matter unrelated to Das's driving; and, (3) the trial court's findings (and the record below) support the trial court's conclusion that the stop was not pretextual?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Shalam Das was charged by information filed in Kitsap County Superior Court with possession of methamphetamine. CP 87. Prior to trial, Das filed a motion to suppress, which the trial court denied. CP 51. A jury found Das guilty of the charged offense, and the trial court imposed a standard range sentence. CP 110, 111. This appeal followed.

B. FACTS

On October 22, 2009, Bremerton Police Officer Billy Renfro saw a vehicle that failed to properly signal a turn and that had an unmuffled

exhaust. RP (12/24/09) 12, 33. Officer Renfro initiated a traffic stop. Later during the stop, methamphetamine was found in the car, and this was the basis of the charged offense. RP (12/24/09) 25-26.

Prior to trial, Das filed a CrR 3.6 motion to suppress, arguing (among other things) that the traffic stop was unlawful because it was a pretextual stop. CP 18. The State filed a written response arguing that the stop was lawful and that there was no evidence to support the claim that Officer Renfro stopped Das as a pretext to investigate some matter unrelated to driving. CP 46.

A hearing on the 3.6 motion was held on December 24, 2009. At the hearing, Officer Renfro testified that he was working as one of the two “graveyard sergeants.” RP (12/24/09) 9. At approximately midnight, Officer Renfro pulled out of the police station parking lot and was driving westbound on Burwell Street in Bremerton when he saw a car in front of him approach State Street. RP (12/24/09) 11-12, 31-32. The car initially signaled an intention to turn left but then changed the turn signal to the opposite direction and turned right. RP (12/24/09) 12, 32-33. Officer Renfro explained that this was a violation as the driver had failed to signal the turn for 100 feet. RP (12/24/09) 12, 33.¹ Officer Renfro also observed that the car had an

¹ Officer Renfro explained that in his report he indicated that the turn signal had been given “about two vehicle lengths” before the turn. RP (12/24/09) 33. At trial he explained that two

“unmuffled exhaust” which was a “defective equipment violation.” RP (12/24/09) 12.² Officer Renfro did not know that Das was the driver of the car at this point. RP (12/24/09) 11.

Officer Renfro then initiated a traffic stop and pulled the car over. RP (12/24/09) 12-13. Officer Renfro contacted the driver on the driver’s side of the car. RP (12/24/09) 13. At this point Officer Renfro was still unaware of the identity of the driver. RP (12/24/09) 13. Officer Renfro also testified that he was not familiar with Das prior to the stop and did not think he had ever dealt with Das before. RP (12/24/09) 13.

When Officer Renfro contacted Das he asked for his license and registration, but Das explained that he did not have his license or registration on his person and that they were in the trunk of the car. RP (12/24/09) 13-14.

Officer Renfro explained that he did not want Das “digging through the trunk” as there could always be a weapon in the trunk, so Das gave Officer Renfro permission to go into the trunk to find the license. RP (12/24/09) 13-14, 16-17.

Officer Renfro testified that on a graveyard shift he typically

vehicle lengths was about 40 feet. RP (12/24/09) 33.

² Officer Renfro also explained that with respect to the driving that he had observed, there were “a number of things that could be related to that type of driving.” RP (12/24/09) 12. He further explained that his experience had been that “people that make certain traffic violations, like failing to properly signal and that type of thing, could be under the influence of a controlled substance or alcohol, possibly a DUI driver.” RP (12/24/09) 12.

encounters an average of one DUI, and that he has had specific training with regards to determining if an individual is under the influence of drugs. RP (12/24/09) 10. Officer Renfro also explained that before walking up to Das's car, he had pointed his spotlight at the passenger compartment of the car, as was his normal practice with nighttime traffic stops. RP (12/24/09) 14-15. When Officer Renfro approached the car he noticed that Das had an "adverse reaction" to the light and that it was clear that the light made Das "uncomfortable" and appeared to be painful to Das. RP (12/24/09) 14-15. Officer Renfro explained that, based on his training and experience, Das's reaction to the light was an indicator that he could be under the influence of a central nervous system stimulant. RP (12/24/09) 15. Officer Renfro also later observed that Das's pupils were dilated and that his tongue was discolored in a manner consistent with someone who had used a central nervous system stimulant such as methamphetamine or cocaine. RP (12/24/09) 17-18.

At some point when Officer Renfro walked back up to the passenger compartment of the Das's vehicle, Officer Renfro recognized that the passenger in the car was someone he had seen on a "DOC wanted flier," and it was later found that this passenger had an outstanding felony arrest warrant. RP (12/24/09) 19-20. The passenger was, therefore, arrested. RP (12/24/09) 20. While the passenger had been sitting in Das's car he had had a backpack between his legs, and Officer Renfro asked both Das and the passenger about

the backpack, but both denied ownership of the backpack. RP (12/24/09) 20-21. Das then gave the officer permission to search the backpack, and Officer Renfro searched the backpack and found 14.8 grams of methamphetamine, as well as paperwork suggesting that the backpack belonged to the passenger. RP (12/24/09) 22-23.

Officer Renfro then asked Das for permission to search the car, and Das consented. RP (12/24/09) 23-24. During the subsequent search, Officer Renfro found a black eyeglass case next to the driver's seat, and that case was found to contain methamphetamine. RP (12/24/09) 25. Das was then arrested for possession of methamphetamine. RP (12/24/09) 26.

At the conclusion of the testimony at the 3.6 hearing, defense counsel touched only briefly on the argument regarding the stop being a pretext stop. Counsel specifically acknowledged that the officer had the authority to cite Das for an improper signal and for the defective muffler. RP (12/24/09) 106-07. Defense counsel, however, argued that the officer indicated that an improper signal can be an indication that a driver might be under the influence, and that testimony supported a conclusion that the real reason for the stop was to investigate a possible DUI and not for the two traffic infractions. RP (12/24/09) 106-07.

The trial court, however, found that the stop was not pretextual, and

that the stop was properly made due to the traffic infractions. RP (12/24/09) 112. In addition, as additional factors presented themselves, the stop appropriately evolved into an investigation for DUI and then into an investigation regarding possession of methamphetamine. RP (12/24/09) 112-15. The trial court also entered written findings of fact and conclusions of law finding that that Officer Renfro “stopped the Defendant’s vehicle for improper signaling and an improper muffler,” and that “Officer Renfro stopped the vehicle to issue citations.” CP 51. The trial court also concluded that the “stop of the Defendant’s vehicle was not pretextual.” CP 53.

III. ARGUMENT

A. DAS’S ARGUMENT THAT AN OFFICER MAY NOT PULL OVER A DRIVER FOR A “DE MINIMIS” TRAFFIC VIOLATION IS WITHOUT MERIT AND IS CONTRARY TO WASHINGTON LAW.

Das argues that the traffic stop in the present case, based on the improper signal given and the muffler violation, was unreasonable. App.’s Br. at 6-12. Specifically, Das argues that: (1) it is improper for the police to pull over a vehicle for a “de minimis” traffic violation; and (2) that there was insufficient evidence that Das’s muffler was “improper.” These claims, however, were not raised below and Das, therefore, is precluded from raising them for the first time on appeal.

Although Das raised several arguments in the written suppression motion and in the suppression hearing, Das never argued that the improper signal or the defective muffler were insufficient grounds to justify a traffic stop. Rather, Das argued that although the traffic infractions would have justified a stop and a citation, the stop was unlawful because the stop was a pretext and that the officer's true motivations must have been something other than a traffic stop. RP (12/24/09) 106-07. For instance, at the suppression hearing, defense counsel argued that the officer's "motivations" for the stop were not the infractions, but rather were to investigate a potential DUI. RP (12/24/09) 106-07. In the course of this brief argument, defense counsel argued that the fact the "de minimis" nature of the improper signal violation support this pretext argument. RP (12/24/09) 106-07. The trial court then immediately interrupted defense counsel and asked,

THE COURT: You are not arguing that he didn't have the authority to give him a ticket?

MS. SMITH: Certainly not, Your Honor.

THE COURT: And for the muffler, are you?

MS. SMITH: Certainly not, Your Honor. However, I don't believe that those were the officer's motivations in this case, per his own testimony. So that, Your Honor, is my argument regarding pretext.

RP (12/24/09) 107.

Pursuant to RAP 2.5(a), the appellate court may refuse to review any

claim of error that was not raised in the trial court. Here, Das did not argue below that Washington law precludes an officer from making a traffic stop based on a “de minimis” violation, nor did Das argue that Officer Renfro did not have a reasonable suspicion regarding the defective muffler violation. Those, issues, therefore, were not properly preserved for appeal.

Furthermore, the invited error doctrine prohibits a party from introducing an error at trial and then challenging it on appeal. *State v. Henderson*, 114 Wn.2d 867, 868, 792 P.2d 514 (1990). By conceding below that but for the issue of pretext the officer had authority to stop Das for the two traffic violations, Das is precluded under the invited error doctrine from arguing that a traffic stop based on the “de minimis” signal violation or the muffler violation was somehow unlawful. *See State v. Studd*, 137 Wn.2d 533, 546-47, 973 P.2d 1049 (1999); *See also State v. Smith*, 82 Wn. App. 153, 162-63, 916 P.2d 960 (1996) (defendant could not challenge trial court's finding of deliberate cruelty where defense counsel had conceded deliberate cruelty existed). Furthermore, even where constitutional issues are involved, invited error precludes review. *State v. Carpenter*, 52 Wn. App. 680, 684, 763 P.2d 455 (1988).

Nevertheless, even if Das had properly preserved this issue (or if the issue involved a manifest constitutional error not waived by invited error), Das’s argument would still be without merit as there is no support under

Washington law for Das's claim that a traffic stop is unlawful if the traffic violation was only a de minimis violation.

Das argues that "there is a growing body of law that de minimis traffic violations that are promptly corrected by the driver may not be used as grounds to pull over the vehicle." App.'s Br. at 7.³ Das cites *State v. Montes-Malindas*, 144 Wn. App. 254, 259, 182 P.3d 999 (2008) as support for this claim. That case, however, is distinguishable. In *Montes-Malindas* the court was examining the issue of whether a stop was a *pretext* and appropriately examined the "totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior." *Montes-Malindas*, 144 Wn. App. at 260, (quoting *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999)). The Court, however, did not

³ Das also argues that the trial court improperly concluded that the traffic stop was also justified due to an improper muffler. App.'s Br. at 11. RCW 46.37.390, however, requires every motor vehicle to be equipped with a muffler in good working order to prevent excessive or unusual noise. The Court of Appeals has held that this statute is not unconstitutionally vague and that actions that would constitute a violation of this statute is "a matter of common knowledge and is as capable of ascertainment as other circumstances in which law enforcement officers must depend upon their senses to determine whether a violation of law has occurred." *State v. Olsson*, 78 Wn. App. 202, 207, 895 P.2d 867 (1995). In the present case Officer Renfro testified that he had observed that Das's car had an "unmuffled exhaust" which was a "defective equipment violation." RP (12/24/09) 12. Although Das now complains that there was not extensive testimony on this issue, that is hardly surprising since Das did not challenge this issue below and actually conceded that the officer had authority to issue a citation for the defective muffler. In addition, it must be noted that the issue of whether a traffic stop is legitimate does not "turn on whether a violation in fact occurred . . . Rather, an officer must have probable cause that an infraction occurred." *State v. Nichols*, 161 Wn.2d 1, 13, 162 P.2d 1122 (2007). Thus, Officer Renfro's testimony that Das's vehicle had an "unmuffled exhaust" was sufficient to establish that Officer Renfro had probable cause for the stop. Thus the trial court did not err in finding that one basis for the stop was the "improper muffler" (as this finding was supported by substantial evidence).

hold or suggest that the law in Washington is that an officer may not make a traffic stop if the violation is only a “de minimis” violation. Rather, the court was only stating the long-established rule that a traffic stop may not be used as a pretext to investigate some criminal offense unrelated to the driving. Thus, while *Montes-Malindas* reiterates the well-established notion that the de minimis nature of a traffic violation might be relevant to a trial court’s determination of the objective intent of an officer and the reasonableness of the officer’s action with respect to a pretext claim, this in no way implies that in some general sense a traffic violation that is “de minimis” must always be ignored. In short, there is nothing in *Montes-Malindas* that suggests that an officer may not pull over a driver for a traffic violation if the violation can somehow be characterized as “de minimis.”⁴

Furthermore, RCW 46.61.021(2) authorizes officers to detain persons for traffic infractions “for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person’s license, insurance identification card, and the vehicle’s registration, and complete and issue a notice of traffic infraction.” The statute, therefore, provides no support for Das’s claim that a driver may not be stopped for a

⁴ Furthermore, if this were the rule it would render the entire traffic code meaningless and rather unenforceable. For instance who is to say whether speeding 10 miles over the posted speed limit is “de minimis” or not? Would it only be an enforceable infraction if one was speeding 12 m.p.h. over the limit? 15 m.p.h. over the limit? Common sense dictates that a violation of the traffic law is a violation of the traffic law, and may be enforced as such.

mere “de minimis” violation.

Das also cites *State v. Prado*, 145 Wn. App 646, 186 P.3d 1186 (2008) as further support for his claim that Washington law does not allow a traffic stop for a mere “de minimis” violation. App.’s Br. at 7. In *Prado*, the court however, the relevant statute, RCW 46.61.140(1), provided that a vehicle shall be driven “as nearly as practicable” entirely within a single lane. The court then held that the Legislature’s use of the language “as nearly as practicable” demonstrated a recognition that brief incursions over the lane lines will happen. *Id* at 649. As the defendant in *Prado* had only crossed the lane line “for one second by two tire widths on an exit lane,” the court found that this action did not justify a belief that the vehicle was operated unlawfully. *Id.* *Prado*, however, is easily distinguishable because the relevant statute in the present case (RCW 46.61.305) does not contain the same “as nearly as practicable” language.

Rather, RCW 46.61.305(2) plainly requires that a turn signal “shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.” Thus, in *State v. Lemus*, 103 Wn. App. 94, 99, 11 P.3d 326 (2000) the Court of Appeals held that the language of RCW 46.61.305(2) “clearly requires a signal for at least 100 feet before” a turn or

move to the right or left.⁵ The Washington Supreme Court has long held that it is as necessary to give the required signal indicating a turn as it is to give the signal to stop as both are required by statute and “both are for the purpose of giving notice to other travelers of the driver's intention so that they may govern themselves accordingly.” *Nystuen v. Spokane County*, 194 Wash. 312, 319, 77 P.2d 1002 (1938). Furthermore, drivers on Washington roads have the right to presume that other drivers (such as a driver of an overtaken vehicle) will comply with the law and signal before making any intended turn. *Tardif v. Hellerstedt*, 37 Wn.2d 940, 943, 226 P.2d 908 (1951).

As Das’s actions violated the plain language of this statute, Officer Renfro was authorized under Washington law to pull over Das for the infraction.⁶

⁵ In *Lemus*, the defendant was stopped after he did not activate his turn signal until the tire of his vehicle began to cross the lane line. *Lemus*, 103 Wn. App. at 99. The Court of Appeals held that the plain language of the statute required a signal for at least 100 feet *before* the lane change, and thus the officer had probable cause to believe that the defendant had committed an infraction. *Lemus*, 103 Wn.App at 99-100.

⁶ Das also cites a Delaware opinion, claiming that it stood for the proposition that it is unreasonable to stop a driver when he had only signaled his turn 20 or 30 feet before the turn. App.’s Br. at 9, *citing State v Heath*, 929 A.2d 390 (Dela. Super. 2006). In *Heath*, however, the officer admitted that admitted at a suppression hearing that his additional purpose in stopping the vehicle was to investigate whether the defendant or his passenger were connected with warrants that the officer had attempted to serve at a nearby residence. *Id.* at 394. The court, however, specifically, held that the evidence was sufficient to show that the officer “possessed the probable cause necessary to effectuate the traffic stop” based on the improper signal. *Id.* at 404. The court, however, went on to find that the stop was pretextual as the officer admitted that one of the reasons for the stop was because the defendant was from out of town and was driving in a “drug area” and the officer wanted to continue the “investigation” of the Defendant's reason for driving in that area and to ascertain whether the Defendant or his passenger had been involved in the drug investigation the officer had been involved with (and attempting to serve warrants on). *Id.* at 405. In short, *Heath* is nothing

In short, neither *Montes-Malindas, Prado*, or any of the other cases cited by Das stand for the proposition that a law enforcement officer may not pull a vehicle over for a “de minimis” traffic violation. Rather, when the allegation is that a stop was pretextual, a court may “consider the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior.” *Ladson*. 138 Wn.2d at 358-59. This does not mean, however, that all traffic stops based on a “de minimis” are somehow unlawful, and Das’s suggestion to the contrary is plainly without merit.

B. THE TRIAL COURT DID NOT ERR IN DENYING DAS’S CLAIM THAT THE TRAFFIC STOP IN THE PRESENT CASE WAS PRETEXTUAL BECAUSE: (1) THE TRIAL COURT’S FINDING THAT OFFICER RENFRO PULLED DAS OVER FOR TWO TRAFFIC INFRACTIONS WAS SUPPORTED BY SUBSTANTIAL EVIDENCE; (2) THERE WAS NO EVIDENCE THAT THE TRAFFIC STOP WAS USED A PRETEXT TO INVESTIGATE A CRIMINAL MATTER UNRELATED TO DAS’S DRIVING; AND, (3) THE TRIAL COURT’S FINDINGS (AND THE RECORD BELOW) SUPPORT THE TRIAL COURT’S CONCLUSION THAT THE STOP WAS NOT PRETEXTUAL.

Das next claims that Officer Renfro’s stop of his vehicle was a

more than a traditional pretext case and it does not stand for the proposition that a traffic stop, by definition, is unreasonable if the only violation is a failure to signal for the full distance required by statute.

“pretext stop.” App.’s Br. at 12. This claim is without merit because the trial court’s finding that Officer Renfro pulled Das over for two traffic infractions was supported by substantial evidence and there was no evidence that the traffic stop was used a pretext to investigate a criminal matter unrelated to Das’s driving.

To review a trial court's ruling on a suppression motion, an appellate court examines whether substantial evidence supports the challenged findings and whether those findings support the trial court's conclusions of law. *State v. Ross*, 106 Wn. App. 876, 880, 26 P.3d 298 (2001), *review denied*, 145 Wn.2d 1016, 41 P.3d 483 (2002). Substantial evidence is “evidence in sufficient quantum to persuade a fair-minded person of the truth of the declared premises.” *State v. Jeannotte*, 133 Wn.2d 847, 856, 947 P.2d 1192 (1997) (*quoting Olmstead v. Dep't of Health*, 61 Wn. App. 888, 893, 812 P.2d 527 (1991) (*quoting Green Thumb, Inc. v. Tiegs*, 45 Wn. App. 672, 676, 726 P.2d 1024)). An appellate court does not review credibility determinations on appeal, leaving them to the fact finder. *State v. Frazier*, 82 Wn. App. 576, 589 n. 13, 918 P.2d 964 (1996) (*citing Fisher Props., Inc. v. Arden-Mayfair, Inc.*, 115 Wn.2d 364, 369, 798 P.2d 799 (1990)).

Pretextual traffic stops are warrantless seizures that violate article I, section 7 of the Washington State Constitution. *State v. Ladson*, 138 Wn.2d

343, 358, 979 P.2d 833 (1999).⁷ The essence of every pretextual traffic stop is that “the police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to the driving.” *Ladson*, 138 Wn.2d at 349. The Washington Supreme has recently reaffirmed this principle when it stated that,

A pretextual stop occurs when an officer stops a vehicle in order to conduct a speculative criminal investigation unrelated to the driving, and not for the purpose of enforcing the traffic code.

State v. Nichols, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007), *citing Ladson*, 138 Wn.2d at 349. Furthermore, when determining whether a given stop is pretextual, the court should consider “the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior.” *Ladson*, 138 Wn.2d at 358-59.

Even under *Ladson*, however, officers whose suspicions have been aroused may still enforce the traffic code, so long as enforcement of the traffic code is the actual reason for the stop. *State v. Hoang*, 101 Wn. App. 732, 742, 6 P.3d 602 (2000), *review denied*, 142 Wn.2d 1027, 21 P.3d 1149 (2001). What an officer may not do is to utilize his or her authority to enforce the traffic code as a pretext to avoid the warrant requirement for an unrelated

⁷ Pretext is a “false reason used to disguise a real motive.” *Ladson*, 138 Wn.2d at 359 n. 11, 979 P.2d 833 (internal quotations and citations omitted).

criminal investigation. *Hoang*, 101 Wn. App. at 742, citing *Ladson*, 138 Wn.2d at 357-58.

Das relies on *Ladson*, but that case is factually distinguishable and demonstrates the lack of any support for the pretext claim in the present case. In *Ladson*, officers admitted that they relied on a vehicle's expired license tabs as a pretext to stop a vehicle and investigate suspected drug-dealing activity. The officers were part of a 'proactive gang patrol' that did not routinely enforce the traffic code, but seized on traffic code violations as a means to pull people over for questioning. *Ladson*, 138 Wn.2d at 346.

Unlike the officers in *Ladson*, Officer Renfro had just pulled out of the Bremerton Police Department parking lot when he saw Das's car. There was no evidence whatsoever to suggest that Officer Renfro was conducting any other non-traffic related criminal investigation at all. Furthermore, Officer Renfro explained that on the night in question he was working as a patrol sergeant and that although his primary duty was to supervise his shift, he also had other duties and he regularly went out did traffic enforcement as part of his job and issued about 20 citations a month. RP (12/24/09) 28-29. In addition, unlike in *Ladson*, Officer Renfro did not state that he intended to use a traffic violation as an excuse to investigate suspected criminal activity.

The present case is also distinguishable from other cases where the

courts have found pretext. For instance, in *State v. DeSantiago*, 97 Wn. App. 446, 983 P.2d 1173 (1999), a police officer followed a car he had observed in a known drug area because he suspected that the driver had purchased drugs and he wanted an excuse to stop the car to investigate his suspicions. The court found that the stop was pretextual and suppressed the drug evidence because (1) the officer was not on routine traffic patrol when he followed the defendant's vehicle; and (2) he followed the vehicle solely to find an excuse to stop the vehicle and to conduct a narcotics investigation. *DeSantiago*, 97 Wn. App. at 452-53.

In *DeSantiago*, as in *Ladson*, the officer suspected criminal activity and followed the defendant's vehicle waiting for the commission of a traffic infraction so that the vehicle could be stopped. In the present case, however, Officer Renfro not testify that he followed Das waiting for him to commit a traffic violation in order to facilitate a narcotics investigation or some other criminal investigation. Nor did Officer Renfro testify that he selectively enforced traffic regulations to facilitate investigation of other potential crimes. Rather, Officer Renfro pulled Das over after he saw what he believed to be several infractions. Also, there is no evidence that Officer Renfro was engaged in gang, drug, or another specific kind of investigation rather than on routine patrol. Rather, Officer Renfro explained that he regularly went out to do "traffic enforcement" as part of his job and issued about 20 citations a

month. RP (12/24/09) 28-29

Here, the trial court considered the officer's testimony and defense counsel's arguments and considered the officer's testimony credible. The trial court thus found that Officer Renfro "stopped the Defendant's vehicle for improper signaling and an improper muffler" and that Officer Renfro stopped the vehicle to issue citations." CP 51. The evidence also showed that Officer Renfro did not know or recognize the defendant or have any other reason to suspect Das of any non-traffic related criminal activity. Thus, the trial court's finding that "the stop of the Defendant's vehicle was not pretextual" was supported by substantial evidence in the form of Officer Renfro's testimony. The trial court, therefore, did not err in denying the suppression motion.

Das, however, also argues that the stop in the present case was a pretext to investigate a DUI. App.'s Br. at 12. Das also alleges that Officer Renfro "admitted in his testimony that his stop of Mr. Das was primarily to investigate secondary crimes like driving under the influence of alcohol." App.'s Br. at 13, citing RP 12. The record, however, contradicts Das's claims. Specifically, Officer Renfro never stated that he stopped Das "primarily" to investigate a DUI or any other crime. Rather, Officer Renfro merely explained that a failure to signal could be an indication that driver was under the influence. RP (12/24/09) 12. Officer Renfro never stated that the reason for the stop was to investigate a DUI. Rather, Officer Renfro only

acknowledged (as is hardly surprising) that an improper signal violation could potentially be caused by a driver being under the influence. This observation, however, does not make the stop a pretext stop.

First, as Ladson states, the essence of every pretextual traffic stop is that “the police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation *unrelated to the driving*.” *Ladson*, 138 Wn.2d at 349 (emphasis added). In the present case Officer’s Renfro testimony that a signal violation might be caused by a DUI was clearly related to the driving. Thus, even if it could be said that the record supported a finding that Officer Renfro was mindful of a possible DUI at the time of the traffic stop, such a fact does not support a finding that the stop was pretextual because there is no evidence that Officer Renfro was pulling Das over for some reason unrelated to the driving.

Secondly, under *Ladson*, even patrol officers whose suspicions have been aroused may still enforce the traffic code, so long as enforcement of the traffic code is the actual reason for the stop. *Hoang*, 101 Wn. App. at 742. Thus, even though Officer Renfro was aware that Das’s signal violation might be indicative of a driver under the influence, that fact does not make the stop pretextual. Rather, the mere fact that an officer is aware that a particular traffic violation might potentially be caused by a driver’s alcohol or drug consumption does not mean that an officer cannot still pull the driver

over for the traffic infraction. In short, an officer need not blind himself to the commonsense notion that in certain traffic infractions the driving at issue may be caused by a driver's consumption of alcohol or drugs. Rather, society should expect that the police should always be mindful of such possibilities. Although Officer Renfro noted that an improper signal violation might be associated with a potential DUI, Officer Renfro was not thereby required to ignore the violation of the traffic laws. Rather, Officer Renfro was authorized to enforce the traffic code.

In addition, there was simply no evidence that Officer Renfro somehow suspected Das of a DUI and followed him waiting for him to commit a traffic infraction. Rather, Officer Renfro's testimony that it was the traffic infraction itself that drew his attention to Das. RP (12/24/09) 11. While Officer Renfro acknowledged that improper signal violations can be caused by a driver being under the influence, any concerns or suspicions about a possible DUI did not arise *before* the infraction. Rather, they arose simultaneously with the infraction itself. Thus the present case is markedly different from the typical pretext case where an officer suspects a defendant of some crime and then follows the defendant waiting for a traffic infraction to be committed.

As Officer Renfro never stated that he stopped Das "primarily" to investigate a DUI or that he followed Das waiting for him to commit a traffic

infraction (nor does the record otherwise contradict the trial court's finding that Officer Renfro pulled Das over to issue him citations for the traffic infractions), the trial court did not err.

Given all of these facts, the trial court did not err in denying Das's suppression motion. Rather, the trial court's findings were supported by substantial evidence and the court's findings supported its ultimate conclusion that the traffic stop in the present case was not pretextual.

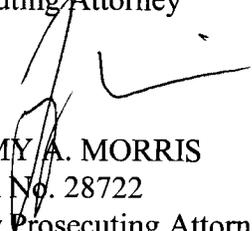
IV. CONCLUSION

For the foregoing reasons, Das's conviction and sentence should be affirmed.

DATED December 15, 2010.

Respectfully submitted,

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