

Court of Appeals No. 42057-1

COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION TWO

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STATE OF WASHINGTON

Plaintiff/Respondent,

v.

SANTORIO LORENZO BONDS,

Defendant/Appellant.

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BRIEF OF APPELLANT

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Appeal from the Superior Court of Pierce County,  
Cause No. 09-1-03585-9  
The Honorable Susan K. Serko, Presiding Judge

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**I. ASSIGNMENTS OF ERROR**

1. Mr. Bonds assigns error to Finding of Fact II, which states:

That on July 31, 2009, in the early afternoon a vehicle passed by Officers Frisbie and Caber. Officer Caber ran the license plate and learned that the vehicle had been sold over a year ago and the title had not been transferred within 45 days as required. At the same time, Officer Frisbie observed the defendant in the passenger seat of the car. CP 133.

2. Mr. Bonds assigns error to Finding of Fact III, which states:

That Officer Frisbie was not 100 percent sure it was the defendant but reasonably believed it was the defendant in the vehicle. Officer Frisbie and Caber knew the defendant from previous contacts and knew he had a felony DOC warrant at the time. CP 133.

3. Mr. Bonds assigns error to Finding of Fact IV, which states:

That Officers Frisbie and Caber turned there [sic] vehicle around and contacted the vehicle for the failure to transfer violation and because the defendant had a warrant for his arrest. CP 133.

4. Mr. Bonds assigns error to Finding of Fact V, which states:

That the vehicle stopped and Officer Frisbie contacted the driver and Officer Caber contacted the defendant. Officer Caber recognized the defendant on site because of the prior contacts and knew he was Santorio Bonds. CP 133.

5. The trial court erred in denying Mr. Bonds' Motion to Dismiss.

6. There was insufficient admissible evidence to convict Mr. Bonds of violation of the no contact order with Surina Crumble.

## **II. ISSUES PRESENTED**

1. Was the stop of the vehicle lawful where the officers had no factual or legal basis for Officers Frisbie and Caber to stop the vehicle in which Mr. Bonds was a passenger? (Assignments of Error No. 1, 2, 3, 4, 5).

2. Was it error to deny the Motion to Dismiss where the officers lacked any legitimate reason to stop the vehicle? (Assignments of Error No. 1, 2, 3, 4, and 5).

3. Did the State present sufficient evidence to convict Mr. Bonds where all evidence that Mr. Bonds was in the vehicle should have been suppressed? (Assignments of Error No. 1, 2, 3, 4, 5, and 6).

## **III. STATEMENT OF THE CASE**

### **A. Factual Background**

On July 31, 2009, Tacoma Police Officers Timothy Caber and Randall Frisbie were stopped for a red light facing south bound on East McKinley at E. 72<sup>nd</sup> when Officer Caber observed a vehicle with license plate number 690YDK turn north bound on McKinley from East 72<sup>nd</sup> St. CP 86. Officer Caber performed a record check that “returned with a Vehicle Sold Tag dated 7/28/08.” *Id.*

While Officer Caber was performing the record check, Officer Frisbie “believed he had recognized the front seat passenger of the vehicle as Mr. Bonds” (RP 18), although “[h]e wasn’t a hundred percent certain.” RP 29. Officer Caber “wasn’t looking in the passenger compartment of the car” because he “was looking at license plates, running them through the computer.” RP 29. At that time, the officers believed that there was a DOC warrant for Mr. Bonds’ arrest. RP 18.

The officers “executed a U-Turn in an attempt to catch up to the vehicle and conduct a traffic stop on it for investigation of failure to transfer title within 45 days.” CP 87. Officer Caber testified that they “attempted to catch back up to the vehicle to effect a traffic stop to investigate further.” RP 19.

The officers effected a “traffic stop” at 5900 East McKinley (RP 19) by activating the police sedan lights and sirens. RP 148. The officers both went to the vehicle, contacting the driver and Mr. Bonds simultaneously. *Id.*; RP 148. Officer Frisbie told the driver “of the failure to transfer title and told her why we were stopping her.” RP 149. Officer Frisbie testified that the driver handed her Washington ID card to him, identifying her as Surina Crumble. RP 149. Mr. Bonds testified that Surina Crumble was not the driver of the vehicle, but that Cozetta Booth (“CoCo”) was the driver at the time the officers stopped the car. RP 221-

224.

When asked whether he looked at Mr. Bonds after the stop, Officer

Frisbie testified:

Q. Now while you were contacting the car and talking with Ms. Crumble, did you also look over at the defendant in the passenger seat at any time?

A. Yes.

Q. Okay. And did you confirm that it was actually the defendant that you saw in there?

A. Confirmed it like later on. We confirmed it after he was in custody, yes.

RP 151.

Officer Caber testified that when he contacted Mr. Bonds, he “asked him to produce his identification to basically just confirm my suspicions that he was the front seat passenger.” RP 20; RP 176. Mr. Bonds indicated that he did not have any identification, and at point, Officer Caber ordered Mr. Bonds from the car, placed him in handcuffs, and formally arrested him. RP 20; RP 87; CP 133; RP 176-177.

When Mr. Bonds asked why he was being arrested, Officer Caber told him that he had a DOC warrant. Mr. Bonds responded by telling the officer that he couldn’t have a warrant and that he had just been to DOC the previous day. **Officer Caber claimed that it was this admission that confirmed that the person he was arresting was in fact Mr. Bonds.**

RP 87 (emphasis added).

After placing Mr. Bonds in handcuffs, Officer Caber searched Mr. Bonds, and found a Washington State identification card “in the defendant’s name” in Mr. Bonds’ “left front pants pocket.” RP 177.

Subsequently, the Officers learned that there was an existing no-contact order between Mr. Bonds and Surina Crumble. CP 134; RP 152.

On August 3, 2009, Mr. Bonds was charged with violation of the no-contact order with Surina Crumble. CP 1. On April 26, 2011, Mr. Bonds was found guilty as charged and sentenced to 60 months in prison. CP 117-131.

#### **B. Procedural Background**

As a result of the allegations in the present matter the Pierce County Department of Corrections held a violation hearing at which sworn statements of witnesses were obtained from S.C., Tanya Lynn Tucker (T.T.) and Cozetta Booth (CoCo). . . . According to the attached report of Russell Alfaro, Community Corrections Officer 2, dated October 5, 2009, “[a]ll of the statements were turned over to the prosecutor, so they could be given to the investigating officer.”

CP 9-10. *See also* CP 104-105.

On October 1, 2009, Mr. Bonds’ then-counsel (James E. Oliver) filed a Notice of Appearance and Request for Discovery, which stated: “Defendant further requests the prosecuting attorney provide any and all discovery materials relative to the above-referenced matter.” CP 17.

On August 25, 2010, Mr. Jones, through his then-counsel (Sean P.

Wickens) filed a Motion and Declaration to Compel State to Produce Evidence (CP 9-19), stating “[t]o date, nearly a year later, Plaintiff has failed to provide Defendant or his counsel with copies of the witness statements that were ‘turned over to the prosecutor’ by the Department of Corrections, as referenced in the October 5, 2009 report of DOC Officer Russell Alfaro.” CP 10.

On November 16, 2010, Sean Wickens withdrew as counsel for Mr. Bonds. CP 20. On February 10, 2011, Mr. Oliver substituted as Mr. Bonds’ attorney once again.

On April 4, 2011, Mr. Oliver filed a Motion to Dismiss and Memorandum in Support Thereof, asserting (1) that there was no “reasonable and articulable suspicion that a traffic violation had occurred” (CP 89-91), that seizure of the vehicle occupants was unreasonable and the fruits of the stop should be suppressed (CP 91-92), that the traffic stop was a pretext to investigate activity unrelated to driving (CP 93-97), that the detention of the driver exceeded the scope of a lawful Terry stop (CP 97-98), and that the court should dismiss the charges because the prosecutor withheld exculpatory evidence and statements that the prosecutor’s office had obtained before October 25, 2009. CP 98-99.

On April 26, 2011, the trial court entered Findings of Fact and Conclusions of Law (CP 132-138), concluding:

- Mr. Bonds' statement to Officer Caber that he had been to the DOC the previous day "was made prior to the defendant being in custody for purposes of *Miranda*." CP 136.

- The Officers "had a reasonable, articulable basis to stop the vehicle. The officers had a reasonable belief the defendant was in the vehicle and he had a warrant for his arrest. The officers also had a reasonable belief that the title to the vehicle had not been transferred and that was a crime. Either of these reasons provided a basis for the officers to stop the vehicle." *Id.*

- There was no prosecutorial misconduct in regards to the DOC records. CP 137.

- The State complied with its discovery obligations. *Id.*

- The defense had not shown that it was prejudiced by the alleged prosecutor misconduct. CP 138.

On April 7, 2011, Mr. Bonds was found guilty of violation of a domestic violence court order. RP 294. Mr. Bonds was sentenced on April 26, 2011 to 60 months in prison.

#### **IV. ARGUMENT**

**A. There was no factual or legal basis for Officers Frisbie and Caber to stop the vehicle in which Mr. Bonds was a passenger.**

1. It was unlawful for the Officers to stop the vehicle

on the basis that they believed the title had not been transferred within 45 days of sale.

Officer Caber testified that “[a] routine check of license plate returned” on the vehicle in which Mr. Bonds was a passenger “with a vehicle sold tag on the registration dated for almost a year prior.” RP 16. At that point, Officer Caber “believe[d] . . . the title of the vehicle had not been transferred according to the law.” RP 18. Even if title had not been transferred “according to the law,” the stop of the vehicle in which Mr. Bonds was a passenger based on Officer Caber’s belief regarding transfer of title was unlawful.

A person who buys a car must apply to transfer the title within 15 days after delivery of the vehicle. RCW 46.12.101(3). If the person does not do so, he or she will be assessed \$25 for the 16th day, and \$2 for each day thereafter, not to exceed \$100. RCW 46.12.101(6). Failure to apply for a transfer of the title within 45 days after delivery of the vehicle is a misdemeanor. RCW 46.12.101(6).

*State v. Green*, 150 Wn.2d 740, 82 P.3d 239 (2004).

A law enforcement officer cannot make a warrantless arrest for a misdemeanor unless the crime is **committed** in the officer’s presence. RCW 10.31.100; *City of Tacoma v. Harris*, 73 Wn.2d 123, 126, 436 P.2d 770 (1968). RCW 46.12.101(6) does not make the misdemeanor of failing to transfer title within 45 days an ongoing misdemeanor. *Green*, 150 Wn.2d at 744, 82 P.3d 239. Instead, “[t]he misdemeanor is committed

only when 45 days have passed since the date of delivery of the vehicle, **and is completed at that point.**” *Id.* (emphasis added).

No misdemeanor was committed in the presence of Officers Caber and Frisbie because the sale of the vehicle had taken place more than a year earlier, and the misdemeanor of failing to transfer title within 45 days had been completed long before the officers stopped the vehicle to investigate the transfer.

In *Green*, officers stopped a car “because they thought the car had been sold and the purchaser had failed to transfer the title, a misdemeanor.” *Green*, 150 Wn.2d at 742, 82 P.3d 239. The driver was arrested for failure to transfer the title to a car. *Green*, 250 Wn.2d at 743, 82 P.3d 239. The Supreme Court wrote:

Green thus did not commit a misdemeanor in the presence of the arresting deputies. Her arrest and the subsequent search were unlawful.

We hold that failure to transfer title under RCW 46.12.101(6) is not an ongoing misdemeanor offense. Green's arrest was thus unlawful, and the trial court erred by not suppressing the evidence obtained as a result of that arrest. We reverse the Court of Appeals and remand with instructions to vacate Green's conviction.

*Green*, 150 Wn.2d 740, 744, 82 P.3d 239.

In this case, the officers believed that the misdemeanor of failing to transfer title had taken place nearly a year before they “effect[ed] a

traffic stop to investigate further.” RP 19. There was therefore nothing to be “investigated,” and no legal or factual basis to make a traffic stop for this purpose.

2. The traffic stop was pretextual because its real purpose was to confirm the identity of Mr. Bonds.

[T]he 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. Therefore the reasonable articulable suspicion that a traffic infraction has occurred which justifies an exception to the warrant requirement for an ordinary traffic stop does not justify a stop for criminal investigation.

*State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999).

In this case, the officers effected the traffic stop of the vehicle in which Mr. Bonds was a passenger because they had a suspicion that they recognized Mr. Bonds as the subject of a DOC arrest warrant: however, they were not certain of his identity and only confirmed it **after** they arrested him.<sup>1</sup>

The real purpose of stopping the vehicle was to make contact with the passenger and conduct an investigation to confirm whether the

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<sup>1</sup> Officer Caber gave conflicting testimony regarding the confirmation of Mr. Bonds' identity. In his report of the arrest, he wrote that it was Mr. Bonds' statement that he had been to DOC the day before -- which was made **after** his arrest -- that confirmed his identity. CP 87. At the hearing on Defendant's Motion to Dismiss, Officer Caber testified that he "recognized" Mr. Bonds when he first contacted him in the vehicle. RP 176. Officer Frisbie testified at trial that Mr. Bonds' identity was confirmed "after he was **in custody**." RP 151. Thus, Officer Frisbie's testimony corroborates Officer Caber's written report, which indicates that Mr. Bonds' identity was not confirmed until **after** he was arrested.

passenger was Mr. Bond, which was wholly unrelated to enforcing the traffic code. In fact, the police did not cite or arrest the driver of the vehicle in spite of the fact that a records check on the name of Surina Crumble revealed a suspended driver's license. RP 22.

“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 358-359, 979 P.2d 833.

The totality of the circumstances in this case includes the officers' own admission that their “subjective intent” for stopping the car was to conduct an investigation to confirm whether the passenger of the vehicle was Mr. Bonds. *See* RP 18-19. The circumstances also include the fact that the driver of the car was not cited or arrested, even though a records check on the name of Surina Crumble returned the information that her driver's license was suspended.

An examination of the objective reasonableness of the officers' behavior places squarely before the Court the arrest and search of Mr. Bonds **before** his identity was confirmed. Mr. Bonds was seized “from the moment [the] car came to a halt on the side of the road when the officers stopped the car in which he was a passenger.” *Brendlin v. California*, 551 U.S. 249, 263, 127 S.Ct. 2400, 2410, 168 L.Ed.2d 132 (2007). Officer

Caber formally arrested Mr. Bonds when he was ordered out of the car, handcuffed, and told he was under arrest. Officer Caber did not have probable cause to arrest the passenger of the vehicle because he did not know his identity.

Further, the search of Mr. Bonds exceeded the permissible scope of a search incident to arrest. Officer Caber admitted that he found Mr. Bonds' Washington identification card **inside** Mr. Bonds' pants pocket. A search incident to arrest is solely for the purpose of gaining "control over a weapon or destroyable evidence of the offense prompting the arrest **when those risks are present.**" *State v. Valdez*, 167 Wn.2d 761, 769, 224 P.3d 751 (2009) (citing *Chimel v. California*, 395 U.S. 752, 763, 89 S.Ct. 2034, 23 L.Ed.2d 685 (1969)) (emphasis added). *See also State v. Robinson*, 171 Wn.2d 292, 311, 253 P.3d 84 (2011) (a search incident to arrest is "permissible **only to remove any weapons** the arrestee might seek to use in order to resist arrest or effect and escape and to avoid destruction of evidence for which he is arrested") (quoting *State v. Ringer*, 100 Wn.2d 686, 701, 674 P.2d 1240 (1983) (emphasis added)). Even if Mr. Bonds' ID card had been "destroyable evidence of the offense prompting the arrest," the risk of destruction of anything in Mr. Bonds' pants pocket was not present because Mr. Bonds was handcuffed.

The officer's behavior was not "reasonably objective." Mr. Bonds

was arrested and searched before the officers had confirmed his identity, and the post-arrest search of Mr. Bonds exceeded the permissible scope of such a search.

This Court should rule that the traffic stop of the vehicle in which Mr. Bonds was a passenger was pretextual. “When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed.” *Ladson*, 138 Wn.2d at 359, 979 P.2d 833 (citing *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986)). The evidence uncovered after the unconstitutional seizure and improper search, including Mr. Bonds’ identity and discovery of the no contact order, must be suppressed. Absent the tainted evidence, the State has no evidence to support a conviction for violation of the no contact order.

3. Officer Frisbie’s hunch that the passenger was, in fact, Mr. Bonds, was insufficient to support a *Terry* stop.

It is anticipated that the State will argue that Officer Frisbie’s “belief” that he recognized the passenger of the vehicle as Mr. Bonds was a “reasonable belief” sufficient to support a *Terry* stop of the vehicle. See RP 35 (“And so even if they didn’t know that the title was transferred, they could still stop the car because they believed somebody in that car had a warrant and had a reasonable belief to do that and could effectuate a

*Terry* stop to either confirm or deny that.”).

However, a *Terry* stop to investigate a **past** crime, as distinguished from present or suspected future criminal activity, can only be made based on “a reasonable suspicion, grounded in specific and articulable facts, that a person they encounter is wanted in connection with a completed **felony**.” *U.S. v. Hensley*, 469 U.S. 221, 229, 105 S.Ct. 675, 680, 83 L.Ed.2d 604 (1985) (emphasis added).

The DOC arrest warrant was for Mr. Bonds’ failure to report to his Community Corrections officer (CP 104), which is **not** a felony. *See* RCW 9.94A.515. Thus, the officers had no basis to make a *Terry* stop to investigate whether the passenger was Mr. Bonds, who was the subject of a DOC arrest warrant for failure to report to his Community Corrections officer.

Further, even if Mr. Bonds’ failure to report were a felony, the officers had, at best, a hunch that the man in the car was Mr. Bonds. The officers did not have a reasonable suspicion based on specific and articulable facts that it was, in fact, Mr. Bonds in the car. Mr. Bonds’ identity was not confirmed until after the car was stopped and Mr. Bonds was arrested.

“[W]hen the police make an illegal stop for the very purpose of arresting the person stopped, they are thereby exploiting the illegal stop in

a manner prohibited by the Fourth Amendment and the evidence obtained in a pat-down of the arrested suspect or in a search incident to the arrest must be suppressed.” *U.S. v. Hudson*, 405 F.3d 425, 440 (6<sup>th</sup> Cir. 2005). Accordingly, all evidence discovered pursuant to the stop of the vehicle, including Mr. Bonds’ presence in the vehicle, was inadmissible, and should have been suppressed.

**B. The trial court erred in denying the Motion to Dismiss.**

An appellate court reviews findings of fact related to a motion to suppress under the substantial evidence standard. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). Substantial evidence is “evidence sufficient to persuade a fair-minded, rational person of the truth of the finding.” *Id.* We review conclusions of law pertaining to suppression of evidence de novo. *Id.*

*State v. Levy*, 156 Wn.2d 709, 732, 132 P.3d 1076 (2006).

There is not substantial evidence to support the trial court’s Findings of Fact Numbers II, III, IV, and V.

1. There is not substantial evidence to support the trial court’s Finding of Fact II.

Finding of Fact II states, in pertinent part, “Officer Frisbie observed the defendant in the passenger seat of the car.” CP 133. However, Officer Frisbie did not know whether the passenger in the vehicle was, in fact, Mr. Bonds, as the Court itself wrote in Finding of Fact III. *Id.*

At the hearing on the Motion to Dismiss, only Officer Caber testified, stating, “My partner believed he had recognized the front seat passenger of the vehicle as Mr. Bonds.” CP 18. The prosecutor argued, and the trial court found, that Officer Caber’s testimony meant that Officer Frisbie “wasn’t one hundred percent sure” that the passenger of the car was actually Mr. Bonds. CP 38.

Officer Caber testified that the reason he asked Mr. Bonds for identification after the car was stopped was so that Officer Caber could “confirm [his] suspicion that Mr. Bonds was Mr. Bonds.” RP 19-20. Officer Caber also testified that he “identified Mr. Bonds” after the car had been pulled over. RP 29. There is not substantial evidence in the record to persuade a rational person that “Officer Frisbie observed” **Mr. Bonds** in the vehicle prior to the traffic stop. At best, the evidence introduced at the 3.6 hearing establishes only that Officer Frisbie observed someone he thought might be Mr. Bonds.

2. There is not substantial evidence to support the trial court’s Finding of Fact III.

Finding of Fact III states, in pertinent part, that “Officer Frisbie and Caber knew the defendant from previous contacts and knew he had a felony DOC warrant at the time.” CP 133. There is nothing in the record of the hearing on the Motion to Dismiss that supports this finding. Officer

Caber indicated that he had previously seen a photo of Mr. Bonds, but there is nothing in the record to support the finding that both officers “knew the defendant from previous contacts.”

There is also no support for the finding that the officers knew Mr. Bonds “had a felony DOC warrant at the time.” Officer Caber testified that the officers “believed that Mr. Bonds had a warrant for his arrest.” RP 18. The sworn Department of Corrections Report written by Mr. Bonds’ Community Correction Officer Russell Alfaro indicates that the DOC warrant was “for ‘Failing to Report (FTR).’” CP 104. Failing to report to a Community Corrections Officer while in community custody for violating a domestic violence no contact order is not a felony. *See* RCW 9.94A.515.

3. There is not substantial evidence to support the trial court’s Finding of Fact IV.

Finding of Fact IV states that Officers Frisbie and Caber “contacted the vehicle . . . because the defendant had a warrant for his arrest. CP 33. However, the officers did not know that the passenger in the vehicle was, in fact, Mr. Bonds until **after** the car was stopped. *See* Section C.1, above. If the officers were not sure that it was Mr. Bonds in the vehicle, then the officers could not stop the vehicle based on their knowledge that Mr. Bonds had a warrant for his arrest.

4. There is not substantial evidence to support the trial court's Finding of Fact V.

Finding of Fact V states, in pertinent part, that "Officer Caber recognized the defendant on site [sic] because of the prior contacts and knew he was Santorio Bonds." CP 33. There is no evidence whatsoever in the hearing record that Officer Caber had any prior contacts with Mr. Bonds. Officer Caber stated merely that he had previously seen a photo of Mr. Bonds. Officer Caber also testified that to "confirm his suspicion" regarding the passenger's identity, he asked Mr. Bonds for his identification. RP 19-20.

5. The Findings of Facts which are supported by substantial evidence are insufficient to support the trial court's conclusion of law that the stop of the vehicle was lawful.

In Conclusion of Law IV, the trial court held that "the Officers had a reasonable, articulable basis to stop the vehicle" because (1) the officers believed that Mr. Bonds was in the vehicle and had a warrant for his arrest and (2) the title to the vehicle had not been properly transferred. CP 136. However, as discussed above, the officers could not lawfully stop the vehicle based on a failure to transfer the title of the vehicle nearly a year prior to the stop, the officers lacked knowledge of sufficient facts to believe that Mr. Bonds was in the vehicle, and failure to report to a community corrections officer is not a felony. Accordingly, the findings

of fact were insufficient to support Conclusion of Law IV.

Officers Frisbie and Caber lacked any legitimate reason to stop the vehicle in which Mr. Bonds was a passenger. The trial court erred in denying the motion to dismiss.

**C. The State presented insufficient admissible evidence to convict Mr. Bonds of violation of a no contact order.**

When sufficiency of the evidence to convict the defendant of a crime is challenged on appeal, the appellate court reviews the evidence in the light most favorable to the State and determines whether any rational trier of fact could have found the elements of the crime beyond a reasonable doubt. *State v. Hernandez*, 120 Wn.App. 389, 391-392, 85 P.3d 398 (2004), *citing State v. Tilton*, 149 Wn.2d 775, 786, 72 P.3d 735 (2003). “A claim of insufficiency admits the truth of the State’s evidence and all inferences that reasonably can be drawn therefrom.” *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Because the stop of the vehicle in which Mr. Bonds was a passenger was an unlawful pretextual stop, “all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed.” *Ladson*, 138 Wn.2d at 359, 979 P.2d 833 (*Kennedy*, 107 Wn.2d at 4, 726 P.2d 445). In this case, the identity of the driver as Surina Crumble, the identity of the passenger as Santorio Bonds, and the existence of the no contact order must all be suppressed because this evidence is “fruit of the poisonous tree.” Absent the tainted evidence, the State has no evidence at

all to support the conviction of Mr. Bonds for violating the no contact order in effect to protect Surina Crumble.

This Court must therefore dismiss the charge against Mr. Bonds. *State v. Hickman*, 135 Wn.2d 97, 103, 954 P.2d 900 (1998) (retrial following reversal for insufficient evidence is “unequivocally prohibited” and dismissal is the remedy).

## **VI. CONCLUSION**

For the reasons stated above, this Court should dismiss the charge against Mr. Bonds.

DATED this \_\_\_\_\_ day of December, 2011.

Respectfully submitted,

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Sheri Arnold, WSBA No. 18760  
Attorney for Appellant

## **CERTIFICATE OF SERVICE**

The undersigned certifies that on December 6, 2011, she delivered by e-mail to the Pierce County Prosecutor's Office, [pcpatcecf@co.pierce.wa.us](mailto:pcpatcecf@co.pierce.wa.us) Tacoma, Washington 98402, and by United States Mail to appellant, Santorio L. Bonds, DOC # 715928, Cedar Creek Corrections Center, Post Office Box 37, Little Rock, Washington 98556, true and correct copies of this Brief. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on December 6, 2011.

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Norma Kinter

# ARNOLD LAW OFFICE

**December 06, 2011 - 12:27 PM**

## Transmittal Letter

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Case Name: Santorio L. Bonds

Court of Appeals Case Number: 42057-1

- Designation of Clerk's Papers  Supplemental Designation of Clerk's Papers
- Statement of Arrangements
- Motion: \_\_\_\_\_
- Answer/Reply to Motion: \_\_\_\_\_
- Brief: Appellant's
- Statement of Additional Authorities
- Cost Bill
- Objection to Cost Bill
- Affidavit
- Letter
- Copy of Verbatim Report of Proceedings - No. of Volumes: \_\_\_\_\_  
Hearing Date(s): \_\_\_\_\_
- Personal Restraint Petition (PRP)
- Response to Personal Restraint Petition
- Reply to Response to Personal Restraint Petition
- Other: \_\_\_\_\_

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