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THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

SHANE PEDERSEN,

Appellant.

Appeal from the Superior Court of Washington for Lewis County

Respondent's Brief

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I. ISSUES

- A. Did the trial court err when it found Officer Lowrey had reasonable suspicion to detain Pedersen when the Washington Crime Information Center database indicated Pedersen was driving a stolen vehicle?

II. STATEMENT OF THE CASE

On November 16, 2016, Officer Lowrey of the Centralia Police Department observed a Honda Civic and ran its license plate through the Washington Crime Information Center (WACIC¹). CP 21, 25; RP (4/12/17) 10-11. The WACIC check showed the vehicle was listed as stolen. CP 22, 26; RP (4/12/17) 11.

Officer Lowrey followed the Honda until it pulled into a nearby gas station. CP 22, 26; RP (4/12/17) 12. While Officer Lowrey was following the Honda, he also observed an Acura was following close behind and appeared to be travelling with the Honda. CP 22, 26; RP (4/12/17) 13. When the Honda pulled into the gas station, the Acura also pulled into the station. CP 22, 26; RP (4/12/17) 13. After the Honda stopped, Officer Lowrey activated his overhead lights to investigate the stolen vehicle report. CP 22, 26; RP (4/12/17) 12.

The driver of the Honda was identified as Shane Pedersen. CP 22, 26. A check on Pedersen through dispatch showed he had

¹ Abbreviated as WCIC in the Findings of Fact and Conclusions of Law in both the CrR 3.6 Hearing and Bench trial. CP 21-28.

an active protection order prohibiting contact with Tasha Overstake, his ex-girlfriend. CP 22, 26; RP (4/12/17) 13. The female driver of the vehicle was contacted and identified as Tasha Overstake. CP 23, 26; RP (4/12/17) 13. Pedersen was placed under arrest for violating the protection order. CP 23, 26; RP (4/12/17) 14.

During a search incident to arrest, a plastic baggie was located on Pedersen's person. CP 23, 26; RP (4/12/17) 14-15. The baggie contained a crystalline substance that was tested by the Washington State Patrol Crime lab and found to contain methamphetamine. CP 23, 26-27; RP (4/12/17) 15.

At some point during the contact with Pedersen, after Officer Lowrey discovered the existence of the no contact order, Officer Lowrey received confirmation the vehicle had been recovered and impounded two days prior. CP 22; RP (4/12/17) 14-15, 19-20.

Pedersen was charged with Possession of Methamphetamine and Violation of a Court Order – Domestic Violence. CP 1-3. Pedersen moved to suppress all evidence obtained, challenging the basis of the stop. CP 7-15. At a suppression hearing, the trial court heard testimony from Deputy Brown and Officer Lowrey. RP (4/12/17) 3, 10.

On November 9, 2016, Deputy Brown received a stolen vehicle report from Pedersen. RP (4/12/17) 4-5, 9. Deputy Brown had the vehicle information entered into WACIC and listed as stolen. RP (4/12/17) 5-6. On November 14, 2016, Deputy Brown recovered and impounded the vehicle and requested the vehicle be removed from WACIC as stolen. RP (4/12/17) 8-9.

On November 16, 2016, when Officer Lowrey ran the Honda's license plate, the vehicle was still listed in WACIC as stolen. RP (4/12/17) 11. When Officer Lowrey initially contacted Pedersen, Officer Lowrey detained Pedersen for the sole purpose of investigating the reported stolen vehicle. RP (4/12/17) 12, 18. When Officer Lowrey determined there was a possible violation of a protection order, he was still investigating the possible possession of a stolen vehicle. RP (4/12/17) 14. However, when Officer Lowrey placed Pedersen under arrest, it was only for violation of the protection order. RP (4/12/17) 14.

When Officer Lowrey initially contacted Pedersen, Pedersen told Officer Lowrey he had just picked up the vehicle from Grant's Towing and provided Officer Lowrey with a handwritten note from Grant's stating Pedersen had picked up the vehicle and paid the impound fees. RP (4/12/17) 18, 21. Officer Lowrey did not consider

this definitive proof the vehicle was not stolen. RP (4/12/17) 20. Officer Lowrey later received confirmation from another deputy that the vehicle was in fact recovered and there had been a request to have it removed as stolen from WACIC. RP (4/12/17) 21-22.

After considering the testimony and arguments of the parties, the trial court denied the motion to suppress. CP 24; RP (4/12/17) 36. The trial court found Officer Lowrey's reliance on the WACIC information was reasonable and provided reasonable suspicion to conduct an investigatory stop. CP 23; RP (4/12/17) 37-38. During that brief and reasonable investigatory stop, Officer Lowrey developed probable cause to arrest Pedersen for the separate offense of violating a court order. RP (4/12/17) 37. The trial court found Officer Lowrey's actions were logical and reasonable. RP (4/12/17) 38.

Pedersen proceeded with a stipulated facts bench trial, with the intent to appeal the trial court's ruling on the motion to suppress. RP (6/2/17) 2. The trial court reviewed the stipulated facts and found Pedersen guilty of Possession of Methamphetamine and Violation of a Court Order – Domestic Violence. CP 27, 29; RP (6/2/17) 4. This appeal follows. CP 40.

The State will supplement the facts as necessary throughout its argument below.

III. ARGUMENT

A. THE TRIAL COURT CORRECTLY DENIED PEDERSEN'S MOTION TO SUPPRESS THE EVIDENCE.

Pedersen argues the trial court incorrectly denied his motion to suppress the evidence found incident to arrest when the initial investigatory stop was based on outdated WACIC information. The trial court correctly ruled Officer Lowrey's mistaken suspicion that Pedersen was driving a stolen vehicle was reasonable and it was lawful for Officer Lowrey to conduct a stop to investigate. This Court should find the motion to suppress the evidence obtained was correctly denied.

1. Standard Of Review.

When an appellant challenges a trial court's denial of a motion to suppress, the reviewing court determines whether there is substantial evidence to support the challenged findings of fact and whether those findings support the trial court's conclusions of law. *State v. Campbell*, 166 Wn. App. 464, 469, 272 P.3d 859 (2011).

Findings of fact entered by a trial court after a suppression hearing will be reviewed by the appellate court only if the appellant has assigned error to the fact. *State v. Hill*, 123 Wn.2d 641, 647, 870

P.2d 313 (1994). Findings of fact not assigned error are considered verities on appeal. *State v. Stevenson*, 128 Wn. App. 179, 193, 114 P.3d 699 (2005). In the present case, Pedersen does not assign error to any of the findings of fact, they are therefore verities on appeal.

A trial court's conclusions of law are reviewed de novo, with deference to the trial court on issues of weight and credibility. *State v. Sadler*, 147 Wn. App. 97, 123, 193 P.3d 1108 (2008). Pedersen does assign error to the trial court's conclusions of law.

2. Officer Lowrey's Suspicion That Pedersen Was Driving A Stolen Vehicle, Though Mistaken, Was Reasonable, And The Investigatory Stop Was Therefore Justified.

An investigatory stop of a person is justified if the officer can "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. White*, 97 Wn.2d 92, 105, 640 P.2d 1061 (1982); *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). The level of articulable suspicion necessary to support an investigatory stop is "a substantial possibility that criminal conduct has occurred or is about to occur." *Kennedy*, at 6. When reviewing the merits of an investigatory stop, a court must evaluate the totality of circumstances presented to the investigating officer. *State v. Glover*, 116 Wn.2d

509, 514, 806 P.2d 760 (1991). The court takes into account an officer's training and experience when determining the reasonableness of the stop. *Id.* Subsequent evidence showing an officer was in error regarding some of his facts will not render an investigatory stop unreasonable. *State v. Seagull*, 95 Wn.2d 898, 908, 632 P.2d 44 (1981).

Even if it is later determined the defendant did not actually violate the law for which the officer had suspicion, if the officer's suspicion was reasonable and articulable, the investigatory stop may still be lawful. *State v. Snapp*, 174 Wn.2d 177, 198, 275 P.3d 289 (2012) (the officer's stop was justified when he stopped the driver on a dark evening for failure to have his headlights illuminated only 24 minutes after sunset.) However, where an officer's mistaken suspicion is unreasonable in light of the objective reality with which he is presented, the stop is not justified. *State v. Creed*, 179 Wn. App. 534, 541, 319 P.3d 80, 83 (2014).

In *Creed*, the officer misread the license plate number of a vehicle he was observing. 179 Wn. App. at 537-38. The misread number was run through WACIC and returned as stolen. *Id.* at 538. The officer realized his error after initiating a stop. *Id.* After then running the correct number and finding the vehicle was not stolen,

the officer approached Creed's door to inform her of the error and that she was free to go. *Id.* While doing this, the officer observed Creed throw something into the backseat, illuminated it with his flashlight, and observed what appeared to be heroin. *Id.*

The Court in *Creed* held the officer's suspicion, based on his own error, was not reasonable, and the officer lacked lawful authority to proceed with the actions he took after realizing he lacked reasonable suspicion for the investigatory stop. *Id.* at 545.

Unlike in *Creed*, Officer Lowrey's suspicion was not based on his own error. CP 22; RP (4/12/17) 8-9, 21-22. Also unlike in *Creed*, Officer Lowrey did not have confirmation the vehicle was not stolen until after he already formed probable cause to arrest Pedersen for a separate crime. CP 22; RP (4/12/17) 14-15, 19-20.

Pedersen argues his case is similar to *State v. Mance*, 82 Wn. App. 539, 918 P.2d 527 (1996) because the officer's actions were based on a vehicle being incorrectly listed as stolen when the police should have updated its records. Brief of Appellant 16-18. However, *Mance* can be distinguished from this case.

In *Mance*, officers conducted a stop and arrested Mance because the vehicle he was driving appeared on the officers' "hot sheet" as recently stolen. *State v. Mance*, 82 Wn. App. 539, 540-41,

918 P.2d 527 (1996). While struggling against the arrest, Mance spit out a rock of crack cocaine. *Id.* at 541. Mance was originally charged with possession of narcotics and possession of a stolen car. *Id.* The latter charge was dropped because it was determined the vehicle was reported as stolen in error. *Id.* at 540-41.

The Court in *Mance* held the police did not have probable cause to arrest Mance because the police were at fault in permitting the records to remain uncorrected and, under the “fellow officer” rule, accurate, exonerating information “within the collective knowledge of the police” should be “imputed to the *arresting* officers.” *Id.* at 543-45 (emphasis added). The Court noted its holding was based on the fact that Mance’s arrest occurred first in the sequence of events and, had he simply been detained for investigation at the time he spat out the cocaine, the arrest for possession of narcotics might have been lawful. *Id.* at 545.

Unlike in *Mance*, Pedersen’s arrest did not occur first in the sequence of events. Initially, Pedersen was simply detained for investigation. CP 22, 26; RP (4/12/17) 12. It was only after Officer Lowrey confirmed the existence of the no contact order and determined the protected party was present that he arrested Pedersen for a separate crime. CP 22; RP (4/12/17) 14-15, 19-20.

Pedersen also cites *State v. O’Cain*, 108 Wn. App. 542, 31 P.3d 733, 734 (2001) to argue Lowrey did not have a sufficient factual foundation to justify his investigatory stop. Brief of Appellant 18-21. However, *O’Cain* can also be distinguished from this case.

In *O’Cain*, an officer observed what he suspected to be a completed narcotics transaction. 108 Wn. App. at 546. The officer ran a license check on the vehicle that had been present, and was informed by police dispatch the vehicle had been reported stolen. *Id.* O’Cain, the driver of the vehicle, was ultimately charged with and convicted of unlawful possession of a firearm. *Id.* at 547.

At a suppression hearing, the officer testified he had followed up on the stolen vehicle report and confirmed the vehicle had been stolen from a rental agency and O’Cain had been driving the vehicle without the owner’s permission. *Id.* However, there was nothing in the record as to the identity of the person who reported the vehicle stolen and no way for the reviewing court to measure that person’s reliability and the basis of his or her knowledge. *Id.* at 554-55. Because of this, the Court in *O’Cain* likened the stolen vehicle report to an anonymous tip. *Id.* at 555.

The Court held there was no evidence in the record to corroborate the reliability of the dispatch report. *Id.* at 556. The Court

noted this burden could have been satisfied by presenting evidence regarding the procedures utilized by WACIC if such procedures were designed to enhance reliability and “actually work that way most of the time.” *Id.* The Court also noted the burden could have been satisfied by eliciting testimony from the officer to determine the source of the information and factual basis underlying the stolen vehicle report. *Id.*

Here, unlike in *O’Cain*, there was testimony regarding WACIC and how information is entered and removed from the system. RP (4/12/17) 5-9, 22. Deputy Brown testified WACIC is commonly relied upon by law enforcement. RP (4/12/17) 6. Although the information was not up to date in this instance, the testimony provided suggests the procedures utilized by WACIC are designed to enhance reliability and do “actually work that way most of the time.” RP (4/12/17) 9. There was also testimony regarding the source of the information and factual basis underlying the stolen vehicle report. RP (4/12/17) 4-6.

In this case, Pedersen himself was the source for the stolen vehicle report. RP (4/12/17) 4-6. Although the information about the vehicle was not updated at the time Officer Lowrey ran the vehicle’s license plate, there had been a reliable, factual source for the report

and the basis for the information was not akin to an anonymous informant.

Officer Lowrey's suspicion that Pedersen was driving a stolen vehicle was reasonable under the totality of the circumstances. By the time Officer Lowrey confirmed the vehicle was not stolen, he had probable cause to arrest Pederson for violating a court order. Therefore, the methamphetamine discovered on Pederson's person was found pursuant to a lawful search incident to arrest. This Court should affirm the trial court's ruling denying the motion to suppress.

IV. CONCLUSION

This Court should affirm the trial court's conclusions of law from the CrR 3.6 Hearing and Pedersen's convictions for Possession of Methamphetamine and Violation of a Court Order – Domestic Violence.

RESPECTFULLY submitted this 23rd day of May, 2018.

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