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Division II  
State of Washington  
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NO. 52482-1-II

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION II

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STATE OF WASHINGTON,

Respondent,

v.

DERRICK SALAS

Appellant.

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

The Honorable Jennifer A. Forbes, Judge

REPLY BRIEF OF APPELLANT

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**A. ARGUMENT IN REPLY**

**1. THE STOP WAS UNLAWFUL BECAUSE THE OFFICERS RELIED ON A PRETEXTUAL TRAFFIC STOP IN ORDER TO GATHER ADDITIONAL EVIDENCE.**

In its response, the State argues that the appellant’s challenge based on a pretextual stop prohibited by *State v. Ladson*<sup>1</sup> and its progeny, is “frivolous.”<sup>2</sup> Mr. Salas argues in reply that the challenge to the traffic stop based on a pretext argument is not frivolous and is amply supported by the trial record.

Traffic stops are ripe for being abused as the “legitimate” basis for a pretextual, warrantless seizure. Reviewing courts must ensure that the police exercise—but not abuse—discretion in determining which traffic stops are legitimate stops by law enforcement and which are illegal pretextual stops. See e.g. *State v. Arreola*, 176 Wn.2d 284, 294-95, 297, 290 P.3d 983 (2012).

Washington courts look to a totality of the circumstances, including both the subjective intent of the officer and the objective reasonableness of his or her behavior to determine whether a traffic stop was pretextual. *Arreola*, 176 Wn.2d at 296-97; *Ladson*, 138 Wn.2d at 359. The objective review is aimed at rooting out cases where “police officers . . . simply misrepresent their reasons and motives for conducting traffic stops.” *Arreola*, 176 Wn.2d at 297

In this case, the stop by Officer Forbragt and Officer Hall was unreasonable and therefore unlawful. First, the direction to stop the truck

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<sup>1</sup> 138 Wn.2d 343, 979 P.2d 833 (1999).

<sup>2</sup>Brief of Respondent (BR) at 11-17.

by Sergeant Renfro was based only on his contention that the truck was “associated” with the house being searched and his belief that the truck was being driven by Eric Salas. RP (2/15/18) at 39; 2RP at 261-62.

The identification of the truck was very broad and vague in nature, and as it turned out, was significantly inaccurate. There was no distinguishing feature given regarding the truck. Moreover, despite the contention that it was associated with the house, the truck was not seen leaving the house or stopping at or near the house by Sgt. Renfro during the execution of the warrant, which took place during daylight. Instead, the truck was merely observed passing by the house.

Moreover, as argued in the opening brief, Derrick Salas is easily distinguishable from Eric Salas by virtue of Eric’s large neck tattoo. Last and most compellingly, Officers Forbragd and Hall observed no suspicious activity when they followed Derrick’s truck. Mr. Salas observed the rules of the road, and made no effort to flee. The officers had absolutely no knowledge that Derrick Salas, or his vehicle, had ever been associated with criminal behavior.

The only remaining reason for the stop was purely pretextual—the belief by Sgt. Renfro that the truck was somehow connected to the house, without actual evidence that Eric Salas was driving.

As Derrick Salas argues *supra* and in his opening brief, the record is sufficiently developed to allow this Court to overturn the trial court's denial of the suppression motion. The record shows that Sgt. Renfro’s subjective intent and objective reasonableness for directing the officers to stop was the truck was not reasonable given the lack of supporting evidence that (1) the truck was actually “associated” with the house and (2) that Eric Salas was in fact the driver of the truck. Given these facts, further factual development is unnecessary. *Ladson*, 138 Wn.2d at 359. Under these

circumstances, the stop cannot be upheld.

**B. CONCLUSION**

For the reasons stated herein, and in appellant's opening brief, this Court should find that the initial stop was unlawful and therefore the evidence obtained as a result should have been suppressed.

DATED: June 21, 2019

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Peter B. Tiller". The signature is written in a cursive style with large, rounded letters.

PETER B. TILLER-WSBA 20835  
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CERTIFICATE OF SERVICE

The undersigned certifies that on June 21, 2019, that this Response Brief of Appellant was sent by the JIS link to Mr. Derek M. Byrne, Clerk of the Court, Court of Appeals, Division II, 950 Broadway, Ste. 300, Tacoma, WA 98402, a copy was emailed to Randall Avery Sutton Prosecuting Attorney and copies were mailed by U.S. mail, postage prepaid, to the following:

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This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Centralia, Washington on June 21, 2019.



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