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State of Washington
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NO. 53033-3-II

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

STATE OF WASHINGTON,

Respondent,

v.

MATTHEW CALDWELL,
Appellant.

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

The Honorable Anne M. Cruser, Judge

BRIEF OF APPELLANT

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A. ASSIGNMENT OF ERROR

1. The trial court erred by denying Mr. Caldwell's motion to suppress because Detective Ripp illegally seized Mr. Caldwell for criminal investigation under the pretext of stopping him for a muffler violation.

Issue Presented on Appeal

1. Did the trial court err when it denied Mr. Caldwell's motion to dismiss where Detective Ripp illegally seized Mr. Caldwell for criminal investigation under the pretext of stopping him for a muffler violation?

B. STATEMENT OF THE CASE

Substantive Facts

On September 6, 2018, Detective Calvin Ripp of the Longview Police Department, with multiple other officers, served a search warrant on a room at the Monticello Hotel. RP 6. Detective Ripp detained the target of the search warrant outside of the hotel while his team searched the room. RP 6. Detective Ripp testified that a vehicle entered the parking lot while he was outside:

[DET. RIPP]: A vehicle showed up, it was a passenger car, had a loud muffler. It looked like it was coming to like park at the room I was at. There was several open stalls there, and then the driver, Mr. Caldwell, saw me, I seen his eyes just

get huge like, oh, my gosh, the police are at the room I'm going to, is what I was thinking. And I noticed that there was no muffler on the car, it was very loud . . . Mr. Caldwell tried to look at me, he had problems getting the car into gear to get out of the parking lot. Again, I knew he just came from the road. The car wasn't there earlier, he drove in, he had the loud muffler. In addition to that, he appeared like he was coming to the room that we were serving a drug search warrant on. And so I contacted him and told him to stop his car in the parking lot, and I contacted him on the driver's side of his car.

RP 6-7.

Detective Ripp asked the driver for identification. RP 9. The driver initially provided a false name but Detective Ripp eventually identified the driver as Matthew Caldwell. RP 6, 9. Mr. Caldwell lived in the apartment above the one Detective Ripp and his team were searching. RP 13. Mr. Caldwell was arrested on an active warrant. CP 18. While searching Caldwell incident to arrest, Detective Ripp discovered \$5,269.00 in cash in Mr. Caldwell's pocket. CP 18. Officers searched Mr. Caldwell's vehicle and discovered a backpack containing plastic bags, a scale, and a white crystalline substance that tested positive for methamphetamine. CP 18.

Procedural Facts

The state charged Mr. Caldwell with one count of unlawful

possession of a controlled substance with intent to deliver and alleged that the crime was committed within 1000 feet of a school. CP 4. Mr. Caldwell filed a motion to suppress the evidence collected from his backpack and vehicle under CrR 3.6. CP 8-14. The trial court held an evidentiary hearing and denied Mr. Caldwell's motion. RP 26-27; CP 41-42. The trial court made the following finding:

As Detective Ripp was standing there, a white passenger car driven by the defendant pulled into the parking lot as if it was going to park in front of room 120. It was obvious to Detective Ripp that the vehicle had no muffler because of how loud it was. Additionally, the driver's behavior changed when he observed Ripp standing with the occupant of room 120. His eyes got wide and he seemed to be trying to leave the parking lot in a hurry.

Detective Ripp contacted the driver of the car, Matthew Caldwell, because of the obvious lack of muffler on his vehicle and because Ripp had concerns about the defendant possibly being involved in drug activity.

CP 18. The court made the following oral ruling:

[TRIAL COURT]: I have a real problem with the observations being sufficient in and of themselves. I think any citizen – and if I drove into a lot and there was an officer with a tactical vest, I'm getting the hell out of there because that's what you do because otherwise you get yelled at by the officers if you enter a crime scene. And that's from personal experience of pulling into a place that you shouldn't be, you get out of there. So I think the idea that if somebody pulls up, sees an officer in a tactical vest, somebody handcuffed, that they're going to get out of there. I mean, I understand the

officer has a lot of experience in dealing with folks who are responding in that situation, but I think from a practical standpoint, that would not be sufficient for a stop on its own right.

RP 26-27.

Mr. Caldwell stipulated to the facts outlined above and agreed to proceed to trial on those facts. RP 30-32; CP 17-18. Based on the stipulation, the trial court found Mr. Caldwell guilty as charged and that he committed the crime within 1000 feet of a school. RP 32; CP 19-20. Mr. Caldwell filed a timely notice of appeal. CP 36-37.

C. ARGUMENT

1. THE TRIAL COURT ERRED WHEN IT DENIED MR. CALDWELL'S MOTION TO SUPPRESS BECAUSE DETECTIVE RIPP SEIZED CALDWELL AS PART OF AN ILLEGAL PRETEXTUAL STOP

Both the Fourth Amendment to the United States Constitution and art. I, § 7 of the Washington State Constitution protect Washington citizens from unreasonable searches and seizures. U.S. Const. Amend. IV; Wash. const. art. I, § 7. Generally, warrantless seizures are per se unreasonable. *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999) (citing *State v.*

Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996)).

Art I, § 7 of our state constitution provides defendants with even greater protections than the Fourth Amendment. *State v. Reeder*, 184 Wn.2d 805, 813-14, 365 P.3d 1243 (2015). One of the protections afforded to Washington citizens under art. I, § 7 is the prohibition on pretextual stops. *Ladson*, 138 Wn.2d at 358.

A pretextual stop “is a search or seizure which cannot be constitutionally justified for its true reason (i.e., speculative criminal investigation), but only for some other reason (i.e., to enforce traffic code) which is at once lawfully sufficient but not the real reason.” *Ladson*, 138 Wn.2d at 351. A traffic stop constitutes a seizure regardless of whether it was pretextual. *Ladson*, 138 Wn.2d at 350 (citing *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)).

Even under the less stringent federal standard, to uphold the warrantless seizure on appeal, a police officer’s actions must have (1) been justified at the stop’s inception, and (2) the stop must be “reasonably related in scope to the circumstances which justified the interference in the first place”. *Ladson*, 138 Wn.2d at 350 (quoting *Terry v. Ohio*, 392 U.S. 1, 20, 88 S.Ct. 1868, 20 L.Ed.2d

889 (1968)).

Mixed-motive stops can be permissible in Washington. *State v. Arreola*, 176 Wn.2d 284, 297-98, 290 P.3d 983 (2012). A mixed-motive stop is one where the police officer has both legitimate and illegitimate reasons for initiating a traffic stop. *Arreola*, 176 Wn.2d at 297. To constitute a mixed-motive stop, the officer must “actually and consciously make an appropriate and independent determination that addressing the suspected traffic infraction (or multiple suspected infractions) is reasonably necessary in furtherance of traffic safety and the general welfare.” *Arreola*, 176 Wn.2d at 298. The distinction between a pretextual and a mixed-motive stop is that in a mixed-motive stop, the officer still would have initiated the stop even without a suspicion of criminal activity. *Arreola*, 176 Wn.2d at 298.

In evaluating whether a stop was pretextual or mixed-motive, courts should consider “both subjective intent and objective circumstances in order to determine whether the police officer actually exercised discretion appropriately.” *Arreola*, 176 Wn.2d at 299.

A pretextual stop constitutes an unlawful seizure. *Ladson*,

138 Wn.2d at 359-60. When an unlawful seizure occurs, all evidence uncovered as a result of that seizure is fruit of the poisonous tree and must be suppressed. *Ladson*, 138 Wn.2d at 359.

In *Arreola*, the officer received a report of a possible drunk driver and observed the suspect operating their vehicle on a public highway. *Arreola*, 176 Wn.2d at 288-89. The officer noticed that the suspect vehicle had a modified exhaust system and initiated a traffic stop. *Arreola*, 176 Wn.2d at 289.

The officer testified that he would normally stop vehicles with modified exhaust systems if he was on the road behind such a vehicle and if he was not involved in a more pressing investigation. *Arreola*, 176 Wn.2d at 289. Based on this evidence, the court found the stop constitutional because the officer would have initiated the stop without a suspicion of DUI, meaning the exhaust violation was an actual reason for the stop. *Arreola*, 176 Wn.2d at 300. In *Arreola*, unlike in this case, the muffler issue was related to the DUI as both involved illegal use of a car.

The circumstances of Mr. Caldwell's seizure are significantly distinguishable from *Arreola* based on the lack of a connection in

this case between the muffler pretext and the later drug investigation. Here, Detective Ripp testified that he decided to stop Mr. Caldwell based on a suspicion that Mr. Caldwell was involved with the target of the drug search warrant rather than out of concern for traffic safety or general welfare. RP 7.

To justify the seizure, Detective Ripp testified he relied on his observations that Mr. Caldwell appeared startled by the police presence and tried to turn his car around. RP 6-7. In its oral ruling, the trial court recognized that these facts do not suggest that Mr. Caldwell was involved in any crime and Mr. Caldwell's actions were not unusual or sufficient to justify a seizure. RP 26-27. This oral ruling indicates, that unlike the facts in *Arreola*, Detective Ripp would not have stopped Mr. Caldwell for just the muffler violation. *Arreola*, 176 Wn.2d at 297.

Detective Ripp testified that the Longview Police Department conducts traffic stops for muffler violations, but he did not seize Mr. Caldwell while on patrol or performing traffic enforcement. Instead, Detective Ripp was assisting in the execution of a felony search warrant at a hotel and was actively involved in detaining the suspect in that investigation when he noticed Mr. Caldwell. RP 15.

There is no testimony in the record supporting the assertion that Longview officers regularly interrupt the execution of felony search warrants to enforce muffler infractions. The record fails to show that the muffler infraction was an “actual reason” for the stop of Mr. Caldwell rather than an unlawful, pretextual reason to expand an already ongoing criminal investigation. *Arreola*, 176 Wn.2d at 300.

The trial court’s written ruling to the contrary, that Detective Ripp’s suspicion that Mr. Caldwell might be involved in criminal activity, with the afterthought that a modified muffler could be used to justify the stop, does not meet the standard for a permissible mixed motive stop. *Arreola*, 176 Wn.2d at 297.

Detective Ripp unlawfully seized Mr. Caldwell for criminal investigation under the pretext of stopping him for a muffler violation. All of the evidence discovered in Mr. Caldwell’s vehicle and backpack stems from the initial unlawful seizure. Mr. Caldwell respectfully requests that this court reverse his conviction and remand the case for a new trial with instructions to suppress the unlawfully seized evidence offered against Mr. Caldwell. *Ladson*, 138 Wn.2d at 359.

D. CONCLUSION

Mr. Caldwell respectfully requests this Court reverse his conviction and remand for dismissal with prejudiced based on the unlawful pretextual stop.

DATED this 29th day of July 2019.

Respectfully submitted,



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I, Lise Ellner, a person over the age of 18 years of age, served the Cowlitz County Prosecutor's Office appeals@co.cowlitz.wa.us and Matthew Caldwell/DOC#783720, Washington Corrections Center, PO Box 900, Shelton, WA 98584 a true copy of the document to which this certificate is affixed on July 29, 2019. Service was made by electronically to the prosecutor and Matthew Caldwell by depositing in the mails of the United States of America, properly stamped and addressed.



Signature

LAW OFFICES OF LISE ELLNER

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