

FILED
Court of Appeals
Division II
State of Washington
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NO. 53033-3-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

vs.

MATTHEW CHRISTIAN CALDWELL,

Appellant.

RESPONDENT'S BRIEF

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HALL OF JUSTICE
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I. REPLY TO ASSIGNMENT OF ERROR

The trial court properly denied Caldwell's motion to suppress because Detective Ripp had probable cause to believe Caldwell had committed a violation of the traffic code and the seizure was therefore lawful.

II. STATEMENT OF THE CASE

On September 6, 2018, the Street Crimes Unit of the Longview Police Department was serving a search warrant at Room 120 of the Monticello Hotel. RP 6. Detective Calvin Ripp was outside of the hotel in the parking lot with the subject of that search warrant when he observed a passenger vehicle pull into the parking lot. RP 6. When the driver saw Detective Ripp, his eyes widened and he tried to quickly leave the parking lot. RP 7, 18. Additionally, Detective Ripp noticed that there was no muffler on the car and that it was very loud. RP 7. While Detective Ripp did not actually see the car drive on a public roadway, it appeared that it had come from the road and was attempting to go back out to the road. RP 8.

Detective Ripp walked up to the driver's side of the car and told the driver why he was being stopped. RP 9. The driver was Matthew Caldwell, the defendant, though he initially gave a fake name. RP 9.

Specifically, Detective Ripp's reason for the stop was that the car either had no muffler or an altered muffler, either of which would be a violation of the traffic code. RP 10. He did also think that Caldwell may have been in that location to engage in drug activity, based on Caldwell's behavior upon seeing Detective Ripp at the hotel. RP 9. When asked whether the muffler violation was an excuse to contact Caldwell, Detective Ripp stated, "No, it's a violation. We make stops all the time for that violation." RP 16.

Detective Ripp learned that Caldwell had an active warrant for his arrest; when he was searched incident to arrest, Detective Ripp found over \$5000.00 in cash in his pocket. His vehicle was also searched and officers found approximately 9.7 grams of methamphetamine, a scale, and packaging materials. CP 18.

Caldwell was charged with one count of possession of methamphetamine with intent to deliver. CP 4. Caldwell moved to suppress the evidence found after his detention, but the court denied the motion after an evidentiary hearing. CP 41-42. The court ruled that Detective Ripp had probable cause to believe that the defendant had committed a traffic violation by driving a vehicle with no muffler, providing a lawful basis for the stop. CP 42.

After being convicted as charged based on a trial by stipulated facts, Caldwell now timely appeals. RP 32, CP 19, CP 36.

III. ARGUMENT

An appellate court reviews a trial court's findings of fact in a suppression hearing for substantial evidence. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Unchallenged findings are verities on appeal. *State v. Valdez*, 167 Wn.2d 761, 767, 224 P.3d 751 (2009). Questions of law are reviewed de novo. *Id.* Therefore, the question at issue is whether Detective Ripp had probable cause to believe Caldwell had committed a violation of the traffic code.

A traffic stop is constitutional if the officer has probable cause to believe a person has violated the traffic code. *City of Bremerton v. Spears*, 134 Wn.2d 141, 158, 949 P.2d 347 (1998). Probable cause exists where the facts and circumstances within the arresting officer's knowledge are sufficient to warrant a person of reasonable caution to believe that an offense has been committed. *State v. Fricks*, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979) (holding that the determination will rest on the totality of facts and circumstances within the officer's knowledge at the time of the arrest). A traffic stop is a "seizure" for the purpose of constitutional analysis, no matter how brief. *State v. Ladson*, 138 Wn.2d 343, 350, 979 P.2d 833 (1999).

The court in *Ladson* defines a “pretext stop” as when “police are pulling over a citizen, not to enforce the traffic code, but to conduct a criminal investigation unrelated to the driving.” *Id.* at 349. They go on to say that “the problem with a pretextual traffic stop is that it 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.” *Id.* at 351. “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.” *Id.* at 358–59. The discovery of evidence of other crimes as the result of a traffic stop does not transform an otherwise legal stop into a pretext stop. When a driver is stopped by police investigating a crime or traffic infraction, this does not preclude the police from investigating another crime that has occurred. *See State v. Hoang*, 101 Wn. App. 732, 742, 6 P.3d 602 (2000).

In *Hoang*, an officer suspected Hoang of being involved in a drug deal, but officer saw no exchange take place. 101 Wn. App. at 735. He then observed Hoang make a left turn without signaling and initiated a traffic stop. *Id.* During his contact he noticed the driver holding his right hand near his left hip and that the vehicle had no license plates. *Id.* at 736.

When Hoang could not produce a driver's license, the officer placed him under arrest. *Id.* The search incident to arrest revealed that Hoang was in possession of cocaine. *Id.* Hoang was charged with possession of cocaine. *Id.* His motion to suppress the evidence was denied, and he was convicted. *Id.* at 737–38.

The Court of Appeals upheld Hoang's conviction because the failure to signal provided the officer with a valid reason to initiate a traffic stop. *Id.* at 741. The fact that the stop led to a subsequent arrest for possession of cocaine did not mean the stop was invalid, because there was an "actual reason for the stop." *Id.* at 742. Further, the Court of Appeals clarified that the fact that the officer already suspected the Defendant of criminal activity did not make the stop pretextual: "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." *Id.*

Finally, the court in *Arreola* held that a traffic stop is not unconstitutionally pretextual so long as "investigation of either criminal activity or a traffic infraction (or multiple infractions), for which the officer has a reasonable articulable suspicion, is an actual, conscious, and independent cause of the traffic stop." *State v. Arreola*, 176 Wash.2d 284, 297–98, 290 P.3d 983 (2012). In this case, Detective Ripp's reasonable

and articulable suspicion that Caldwell was driving without a muffler was an actual, conscious, and independent reason for the traffic stop.

The seizure of the defendant in this case was based on Detective Ripp's reasonable suspicion that Caldwell's vehicle was in violation of laws requiring mufflers on vehicles. Detective Ripp observed the vehicle pull into the parking lot from a public street then attempt to leave the parking lot and drive away on a public street, and heard that the car obviously had no muffler, given the volume coming from the vehicle. It is illegal to drive a vehicle on a public roadway with no muffler. Therefore, Detective Ripp's stop of Caldwell was based on probable cause that he violated the traffic code.

The stop was also not pretextual. First, Detective Ripp's subjective intent was to stop Caldwell based on his reasonable suspicion that Caldwell's vehicle was in violation of laws requiring mufflers on vehicles. Detective Ripp observed the vehicle pull into the parking lot from a public street then attempt to leave the parking lot and drive away on a public street, and heard that the car obviously had no muffler, given the volume coming from the vehicle. It is illegal to drive a vehicle on a public roadway with no muffler. In fact, Detective Ripp stated that he was unsure if he would have contacted Caldwell in absence of the apparently muffler violation. RP 16.

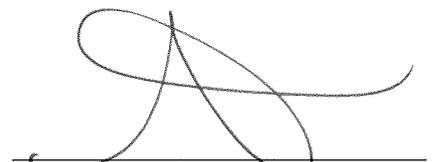
Second, Detective Ripp's conduct was objectively reasonable. He testified that he and the Street Crimes Unit conduct traffic enforcement, including muffler violations, and that they make stops "all the time" for that type of violation. RP 11, 16. Though Ripp was part of a team executing a search warrant at the time, there was sufficient man-power that he could divert his attention to a traffic violation occurring in his presence.

Investigation of a traffic infraction for which Detective Ripp had a reasonable articulable suspicion was an actual, conscious, and independent cause of the traffic stop. Therefore, his stop of Caldwell was not pretextual.

IV. CONCLUSION

Caldwell's conviction should be affirmed as the trial court did not err in denying his motion to suppress.

Respectfully submitted this 13 day of September, 2019.



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CERTIFICATE OF SERVICE

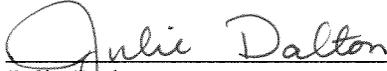
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I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

Signed at Kelso, Washington on September 13, 2019.



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COWLITZ COUNTY PROSECUTING ATTORNEY'S OFFICE

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