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Court of Appeals
Division II
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NO. 53308-1-II

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

STATE OF WASHINGTON,

Appellant,

v.

DANIEL KEEN,

Respondent / Cross-Appellant

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

The Honorable Andrew Toynbee, Judge

REPLY BRIEF OF RESPONDENT/CROSS-APPELLANT

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A. ISSUE IN REPLY

Mr. Keen has standing to appeal findings and conclusions underlying the trial court order the State seeks to reverse.

B. ARGUMENT IN REPLY

THE STATE CONTENDS THAT EVERY TRIAL COURT RULING ADVERSE TO MR. KEEN IS A VERITY ON APPEAL; THIS ARGUMENT IS CONTRARY TO DECADES OF PRECEDENT AND MULTIPLE RULES OF APPELLATE PROCEDURE

Citing Tacoma v. Taxpayers of Tacoma, 108 Wn.2d 679, 685, 743 P.2d 793 (1987), the State contends Mr. Keen lacks standing to challenge any of the findings or conclusions underlying the order of dismissal, since he is not an “aggrieved party” under RAP 3.1 Appellant’s / Cross-Respondent’s Reply Brief at 1. The State apparently misreads Taxpayers, 108 Wn.2d at 685.

Taxpayers holds that, even though only an “aggrieved party” may initiate an appeal, a respondent on appeal may assign error to any relevant trial court finding or conclusion. Id. This means that such a respondent may “offer additional reasons in support of the judgment, even if the trial court rejected such reasoning.” Id. That is exactly what Mr. Keen is doing in this response / cross-appeal.

The State also contends Mr. Keen may not now challenge any trial court error not specifically identified in his notice of appeal. Appellant’s / Cross-Respondent’s Reply Brief at 2. Again, this is incorrect. Even if Mr.

Keen had filed no notice of cross-appeal at all, he would still be entitled to make any properly preserved argument for affirming the trial court's order. State v. Davis, 79 Wn. App. 355, 901 P.2d 1094 (1995).

In Davis, the trial court suppressed drugs seized from the defendant, ruling that police lacked probable cause to arrest him when they purported to execute a "search incident to arrest." Id. at 358. In response to the State's appeal, the defendant conceded there had been probable cause to arrest him, but also argued that the subsequent search exceeded the scope permissible incident to arrest. Id. The State argued that, because the defendant did not cross-appeal or specifically assign error to the trial court's conclusion regarding the scope of the search, he should not be allowed to challenge that conclusion on appeal. Id.

The Court of Appeals rejected that argument, reasoning that—especially where the issue was preserved in the trial court—a respondent may advance any argument that "naturally flows" from the other issues being addressed. Id. at 358-59. It explained that an issue "naturally flows" from another on appeal if it is an alternative basis on which to affirm the trial court ruling in question. Id. at 359 (distinguishing State v. Greve, 67 Wn. App. 166, 834 P.2d 656 (1992), in which defendant appealed trial court order allowing admission of suppressed statements for impeachment purposes and State

attempted to challenge entirely separate trial court order, which it had not cross-appealed).

Put another way, just because a defendant receives a favorable ruling in the trial court, this does not mean he must concede, on cross-appeal, every finding and conclusion giving rise to that ruling. The State's contrary position conflicts with case law. State v. Poston, 138 Wn. App. 898, 905, 158 P.3d 1286 (2007) (appellate court may affirm trial court on any basis supported by the record); Davis, 79 Wn. App. at 359; Taxpayers, 108 Wn.2d at 685. It also elevates procedure over substance, in violation of multiple Rules of Appellate Procedure. See RAP 1.2(a) ("These rules will be liberally interpreted to promote justice and facilitate the decision of cases on the merits."); RAP 2.4 ("appellate court will review a trial court order or ruling not designated in the notice . . . if (1) the order or ruling prejudicially affects the decision designated in the notice, and (2) the order is entered, or the ruling is made, before the appellate court accepts review").

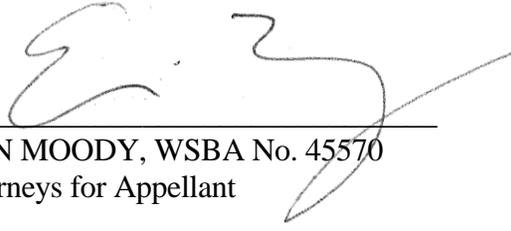
D. CONCLUSION

Findings and conclusions underlying the trial court ruling at issue are inherently within the scope of review on appeal. Thus, a respondent may argue alternative bases on which to affirm that ruling, even if he is not an “aggrieved party” under RAP 3.1, and even if he files no notice of cross-appeal. The State’s contrary argument conflicts with decades of precedent and multiple RAPs.

DATED this 26th day of November, 2019.

Respectfully submitted,

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