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NO. 53331-6-II

COURT OF APPEALS, DIVISION II
STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

TERESA JUNE YORK,

Appellant.

Appeal from the Superior Court of Pierce County
The Honorable Jack Nevin

No. 18-1-00300-0

BRIEF OF RESPONDENT

MARY E. ROBNETT
Prosecuting Attorney

KRISTIE BARHAM
Deputy Prosecuting Attorney
WSB # 32764
930 Tacoma Ave., Rm 946
Tacoma, WA 98402
(253) 798-7400

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I. INTRODUCTION

The State charged Teresa York with possession of a controlled substance after she was found in possession of methamphetamine after a lawful search incident to arrest on a valid warrant. York filed a motion to suppress the evidence, which was properly denied by the trial court. The unchallenged findings of fact are verities on appeal and support the trial court's conclusion that the stop was lawful because the officer had a reasonable and articulable suspicion that York was engaged in criminal activity at the time of the stop. The stop was properly limited in scope and duration where York, who had no identification, was detained for less than nine minutes with no physical restraints while the officer waited for assistance to conduct the investigation and check for warrants. The intrusion was minimal and reasonable under the circumstances. Further, the pre-existing warrant for York's arrest attenuated the connection between any alleged unlawful stop and the evidence seized during a search incident to arrest. The arrest warrant also provided an independent source for admissibility of evidence discovered during a lawful search incident to arrest. The trial court properly denied the motion to suppress, and this Court should affirm.

II. RESTATEMENT OF THE ISSUES

- A. Did the trial court properly deny York's motion to suppress where the unchallenged findings of fact support the trial court's conclusion that the officer had a reasonable and articulable suspicion that she was engaged in criminal activity based on the totality of the circumstances?
- B. Did York's detention exceed the permissible scope and duration of the stop where she was detained without any physical restraints for less than nine minutes while the officer waited for assistance to conduct the investigatory stop and check for warrants?
- C. Does the existence of a valid arrest warrant attenuate the connection between the stop and the search and provide an independent source for admissibility of the drugs discovered during a lawful search incident to arrest?

III. STATEMENT OF THE CASE

On January 22, 2018, the State charged York with one count of unlawful possession of a controlled substance (methamphetamine). CP 1-2. York filed a motion to suppress evidence pursuant to CrR 3.6. CP 3-13. York argued, and the State conceded, that she was seized when the officer shined his spotlight on her and asked her to place her hands in her lap. CP 6-9, 20. York also argued that the officer lacked reasonable suspicion to make an investigatory stop. CP 3-6. The State disagreed. CP 14-23.

At the 3.6 hearing, Officer Christopher Roberts testified on behalf of the State. 1RP 3-48.¹ No other witnesses testified at the 3.6 hearing. RP

¹ The verbatim report of proceedings (RP) is contained in three separately paginated volumes and will be referred to as follows: 1RP – 6/25/18; 2RP – 6/26/18; and 3RP – 2/8/19.

48. On January 19, 2018, at approximately 1:30 am, Officer Roberts was in uniform and on patrol in a fully marked patrol car near Berkeley Avenue in Fircrest. 1RP 6-8.² He is familiar with this residential area and had patrolled the area “thousands and thousands of times” over the course of twelve years. 1RP 7-8. He has been a Fircrest patrol officer for more than twelve years. 1RP 4. Prior to that, he was a police officer in Alaska and a reserve officer in Washington. 1RP 4-5. He testified about his training and experience as a law enforcement officer. 1RP 5-6.

As Officer Roberts passed Berkeley Avenue, he saw headlights from a Cadillac on the wrong side of the road approximately thirty feet from a Suzuki Grand Vitara. 1RP 9, 11-13. The engine of the Suzuki was not running, but its headlights were on. 1RP 11, 16, 19-20. The engine of the Cadillac was running, and it was blocking the road. 1RP 16, 19-20. There had been a number of vehicle prowls in the area, and Officer Roberts was concerned that a vehicle prowl was in progress. 1RP 11.

As soon as Officer Roberts pulled up in his patrol car, a man later identified as Todd Hanson, turned off the headlights in the Suzuki, quickly exited the driver’s seat, and walked to the passenger side of the Cadillac. 1RP 11-12. Hanson “hurriedly” tried to enter the Cadillac after attempting

² Unless otherwise noted, all references to the testimony of Officer Roberts is from the 3.6 hearing held on June 25, 2018.

to open the passenger side door and asking the driver, later identified as Teresa York, to open the door. 1RP 12, 14. Based on his training and experience, Officer Roberts believed that Hanson had been prowling the Suzuki and that York was waiting in the Cadillac to act as a getaway driver. *See* 1RP 11-12, 17, 26, 37-38, 47-48.

Officer Roberts testified that it is not uncommon for people to work vehicle prowls together and that the majority of vehicle prowls he responds to involve victims who have left their doors unlocked. 1RP 17-18. He had previously encountered similar vehicle prowls in the middle of the night on the same street. 1RP 18, 23, 35-38. Officer Roberts noted that the positioning of the Cadillac allowed for easy acceleration and a "quick get away." 1RP 20, 38.

Officer Roberts exited his patrol vehicle and used its spotlight to illuminate the area of the Cadillac. 1RP 14-15, 19. Upon questioning, Hanson stated that he was just trying to help a friend start her car. 1RP 26-27. York subsequently made a similar statement. *See* 1RP 37. But the vehicles were not aligned or nose-to-nose and were approximately thirty feet apart, which was not close enough for the use of jumper cables. 1RP 13.³

³ Cars must be within six to eight feet of each other to use jumper cables. 1RP 13.

Officer Roberts asked Hanson to place his hands on the hood of the car and asked York to place her hands in her lap. 1RP 14. They both complied. 1RP 18, 29. He did not observe any tools in either person's hands. 1RP 18. He asked both Hanson and York for their identification, and neither person had any form of identification. 1RP 20-21.

Officer Roberts asked for their names and dates of birth in order to run a computer search and check on driving status and warrants. 1RP 21, 31-33. He decided to wait for an additional backup unit to respond to the scene before leaving them unattended because officers never know when a compliant person "might become not compliant." 1RP 21, 30. While waiting for backup, he maintained an "officer safety distance" from York and Hanson. 1RP 39.

An additional unit arrived within three minutes of Officer Roberts' arrival at the scene. 1RP 42, 45. A second unit responded one minute later. 1RP 45. Officer Roberts then returned to his patrol car to run a computer search of the names, which occurred six minutes after his initial contact with York and Hanson. 1RP 32-33, 44, 46. The search revealed that York had an active warrant for her arrest for theft in the third degree. 1RP 21-22. This warrant was discovered nine minutes after Officer Roberts' initial contact with York. 1RP 44-45. York was arrested on the warrant. *See* 1RP 22. The search also revealed that Hanson had a suspended driver's license. 1RP 22.

At the conclusion of the 3.6 hearing, the trial court concluded that Officer Roberts made a proper investigatory stop and denied York's motion to suppress. 1RP 69; CP 43-45. The court concluded that based on the totality of the circumstances, Officer Roberts had a reasonable and articulable suspicion that York was engaging in or about to engage in criminal activity. CP 44. The court subsequently entered written findings of fact and conclusions of law for the 3.6 hearing, which stated in relevant part:

FINDINGS OF FACT

1. The Court observed Fircrest Police Officer Chris Roberts during his testimony at the hearing. He was a credible witness and his testimony was credible. His credibility was established in a number of ways; to include (a) demonstrated recollection of details, (b) consistency, (c) demeanor, (d) experience, and (e) no credible evidence calling his candor with the court in doubt.
2. Officer Roberts has significant experience as a law enforcement officer. Officer Roberts has 15 continuous years of combined service as a commissioned police officer in Alaska and Washington. He has served as a Fircrest Police Officer for 12.5 years. He also has served two different tours of duty as reserve officer.
3. On Friday, January 19, 2018, Officer Roberts contacted Teresa June York at approximately 0130 hours in the 1300 block of Berkeley Ave in Fircrest, Pierce County, WA.
4. Berkeley Ave is a residential street. There are no businesses or services in the immediate area. At 0130 hours, there are not many people out on the street. Residents park their cars on the sides of the street. Berkeley Ave is in an area where vehicle prowls occur. Officer Roberts has investigated numerous vehicle prowls in the past and knows

that vehicle prowls commonly occur during the hours of darkness. It is not uncommon for prowled vehicles on Berkeley Ave to show no sign of forced entry because residents have left their parked vehicles unlocked. It is not uncommon for two people to engage in vehicle prowling together.

5. Officer Roberts was on patrol driving westbound on Emerson Street passing Berkeley Ave. Officer Roberts looked northbound onto the 1300 block of Berkeley Ave and observed a vehicle with its headlights illuminated facing southbound. The vehicle was on the wrong side of the road. Officer Roberts circled the block and turned southbound onto the 1300 block of Berkeley Ave.

6. Once on Berkeley Ave, Officer Roberts observed a 1999 Cadillac Deville facing southbound in the middle of the roadway. The Cadillac was not moving but its engine was running. The Cadillac was positioned the wrong way in the roadway in a manner that would block oncoming traffic. The Cadillac would have an unobstructed driving path if it were to accelerate forward. A female, later identified as the defendant, Teresa June York, was the sole occupant seated in the driver's seat of the Cadillac.

7. Approximately 30 feet away from the Cadillac, a 2002 Suzuki Vitara was parked on the side of the street, facing northbound. The front of the Cadillac was facing the front of the Suzuki, but the vehicles were not flush hood to hood, or even left headlight to left headlight, the way that two vehicles would be if individuals were attempting to jump start a vehicle. The Suzuki's lights were on but its engine was not running. A man, later identified as Todd Hanson, was the sole occupant seated in the driver's seat of the Suzuki.

8. Officer Roberts believed that Hanson was prowling the Suzuki and that the defendant was acting as Hanson's getaway driver in the Cadillac. As Officer Roberts came within proximity of the vehicles, Hanson turned off the Suzuki's headlights, exited the car, walked to the passenger side of the Cadillac, and attempted entry into the Cadillac. These actions occurred quickly. Hanson said something to

the effect of, "Hey, let me in." Officer Roberts did not observe Hanson lock the Suzuki's door as he exited. Hanson did not appear to have any theft tools or keys in his hands. Neither the Cadillac or the Suzuki appeared to have been forcibly entered. One could reasonably infer that the car of a resident could be parked on the side of the street. A 30 feet distance between vehicles is an unreasonable distance for mechanical repairs. If there was to be repair or jump start of a vehicle, it would stand to reason that the vehicles would be closer to each other. It would stand to reason that when attempting to jump start a vehicle, the two vehicles would be flush hood to hood or headlight to headlight.

9. Officer Roberts shined his spotlight on the Cadillac and advised the defendant to place her hands on her lap and Hanson to place his hands on the hood of the Cadillac. This was Officer Roberts's first personal interaction with the defendant. The State conceded that this constituted a seizure of the defendant.

10. The female identified herself verbally as Teresa June York, the defendant. Officer Roberts ran the defendant's name through South Sound 911 records and found that the defendant had a confirmed active warrant for her arrest in Pierce County for FTA-Theft 3rd.

11. Officer Roberts arrested the defendant on the active warrant. Defense conceded that Officer Roberts had probable cause to arrest the defendant on an active warrant.

CONCLUSIONS OF LAW

...

3. Officer Roberts conducted a proper investigative stop on the defendant. An officer having less than probable cause, but having reasonable suspicion, may make a brief investigative stop to determine identity and investigate suspicion of a crime. *State v. White*, 97 Wn.2d 92, 640 P.2d 1061 (1982). To evaluate the lawfulness of the stop, the Court inquires as to whether the initial stop was justified at its inception and whether the stop was excessive in scope. *State v. Williams*, 102 Wn.2d 733, 689 P.2d 1065 (1984). Officer Roberts was justified in stopping the defendant on

suspicion of assisting in a vehicle prowl. The scope of the stop was not excessive.

4. Officer Roberts had a reasonable, articulable suspicion that criminal activity was afoot. Reasonable suspicion is a substantial probability that criminal conduct has occurred or is about to occur. *State v. Kennedy*, 107 Wn.2d 1, 726 P.2d 445 (1986); *see also State v. Doughty*, 170 Wn.2d 57, 239 P.3d 573 (2010); *State v. Fuentes*, 183 Wn.2d 149, 352 P.3d 152 (2015); *State v. McLean*, 178 Wn. App. 236, 313 P.3d 1181 (2013). Reasonableness is not determined using exactitude and the Court looks at the totality of the circumstances known to the police officer at the inception of the stop. *State v. Kennedy*, 107 Wn.2d 1, 726 P.2d 445 (1986). The Court also takes into consideration the officer's experience and training. *U.S. v. Arvizu*, 534 U.S. 266, 122 S.Ct. 744 (2002). Considering Officer Roberts's significant training and experience as a law enforcement officer, the totality of circumstances support a substantial likelihood that the defendant was engaging or about to engage in criminal activity. The totality of circumstances would support a reasonable person in believing that the defendant was aiding Hanson in a vehicle prowl. Officer Roberts had a reasonable, articulable suspicion that the defendant was acting as a getaway driver for a vehicle prowl.

5. This case is distinguishable from *State v. Sandoz*, 183 Wn.2d 149, 352 P.3d 152 (2015), where the police did not have reasonable suspicion because there was no conduct for police to observe. In *Sandoz*, the suspect was only observed entering and exiting a suspicious apartment complex before police contacted the suspect. *Id.*

6. Officer Roberts had probable cause to arrest the defendant for a valid-pre-existing arrest warrant.

7. Defense motion to suppress is denied.

CP 40-45.

Following the 3.6 hearing, York waived her right to a jury trial, and the court held a bench trial. 1RP 70-73; CP 24. At trial, Officer Roberts'

testimony was similar to his testimony at the 3.6 hearing. *See* 1RP 90-121. He further testified that he searched York incident to arrest and located a glass pipe in her pocket that is commonly used to smoke drugs. 1RP 100-02. York denied having any drugs on her on at least four separate occasions. 1RP 102, 105-06; 2RP 9.

Prior to being booked into jail, York was searched by a female officer who located a bag inside York's bra containing a white crystalline substance that appeared to be methamphetamine. 1RP 106-08; 2RP 9-10. York admitted the substance was methamphetamine. 1RP 115. And subsequent testing revealed it was methamphetamine. 1RP 135-36. York did not testify at trial or present any witnesses. 2RP 20.

At the conclusion of the bench trial on June 26, 2018, the court found beyond a reasonable doubt that York is guilty of unlawful possession of a controlled substance (methamphetamine). 2RP 32-33; CP 31. The court allowed York to remain in the community pending sentencing. 2RP 33-36. York failed to appear at sentencing, the court issued a warrant for her arrest, and the State charged her with bail jump. 3RP 1-5.

On February 8, 2009, York appeared in court and was arraigned on the bail jump charge and sentenced for the possession of a controlled substance conviction. 3RP 3-8, 12-13; CP 46-60. The court followed the agreed recommendation of the parties and imposed a standard range

sentence of 30 days in jail. 3RP 9-13; CP 49, 55. The State dismissed the bail jump as part of the agreed recommendation. 3RP 16-17. York filed a timely notice of appeal seeking review of the order denying her motion to suppress. *See* CP 61.

IV. ARGUMENT

York argues that the trial court erred by denying the motion to suppress evidence “stemming from her illegal seizure on January 19, 2018.” Br. of App. at 1. She argues that the officer lacked reasonable suspicion for the stop and that the detention exceeded the permissible scope and duration. Br. of App. at 8-12. York’s claims lack merit.

The unchallenged findings of fact support the trial court’s conclusion that the investigatory stop was lawful because Officer Roberts had a reasonable and articulable suspicion that York was engaged in criminal activity based on the totality of the circumstances. And the stop was properly limited in scope and duration where York, who possessed no identification, was detained for less than nine minutes with no physical restraints while the officer waited for assistance to investigate the stop. The intrusion was minimal and reasonable under the circumstances. Moreover, York had a pre-existing and valid warrant for her arrest, which attenuated the connection between any alleged unlawful stop and the evidence seized during a lawful search incident to arrest. The arrest warrant also provided

an independent source of admissibility of the evidence. The trial court properly denied York's motion to suppress.

A. Standard of Review

When reviewing the denial of a suppression motion, an appellate court determines whether substantial evidence supports the challenged findings and whether the findings support the conclusions of law. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Substantial evidence is evidence sufficient to persuade a fair-minded person of the truth of the finding. *Id.* Appellate courts review conclusions of law in an order suppressing evidence de novo. *Id.* Credibility determinations are for the trier of fact and are not subject to review. *State v. Thomas*, 150 Wn.2d 821, 874, 83 P.3d 970 (2004). Appellate courts defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and persuasiveness of the evidence. *Id.* at 874-75.

"It is well-established law that an unchallenged finding of fact will be accepted as a verity upon appeal." *In re Contested Election of Schoessler*, 140 Wn.2d 368, 385, 998 P.2d 818 (2000); *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994); *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). Failure to assign error to the findings of fact entered by the trial court precludes appellate review of these facts and renders these facts binding on appeal. *Hill*, 123 Wn.2d at 644, 647. York does not assign error

to any of the CrR 3.6 findings of fact. Br. of App. at 1. Thus, they are verities on appeal. RAP 10.3(g); *Hill*, 123 Wn.2d at 644. An appellate court may affirm a trial court's ruling on any grounds adequately supported in the record. *State v. Costich*, 152 Wn.2d 463, 477, 98 P.3d 795 (2004).

B. The unchallenged findings of fact support the conclusion that the investigative stop was lawful because the officer had a reasonable and articulable suspicion that York was engaged in criminal activity.

The trial court properly denied York's motion to suppress evidence because the unchallenged findings of fact support the conclusion that the brief investigative stop was lawful based on the officer's reasonable and articulable suspicion that York was engaged in criminal activity.

Under article 1, section 7 of the Washington State Constitution, a person is seized when an officer restrains her freedom of movement, either physically or by a show of authority, and a reasonable person would not feel free to leave or to decline the officer's request and terminate the encounter. *O'Neill*, 148 Wn.2d at 574. The standard is an objective one that looks at the actions of the officer. *Id.* The defendant bears the burden of proving that a seizure is unconstitutional. *Id.*

Generally, the Fourth Amendment of the United States Constitution and article 1, section 7 of the Washington State Constitution prohibit an officer from seizing a person without a warrant. *State v. Fuentes*, 183 Wn.2d 149, 157, 352 P.3d 152 (2015). But warrantless searches and seizures are

constitutional if they meet an exception to the warrant requirement. *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). The State bears the burden of showing that a warrantless seizure falls within one of these narrow exceptions. *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010). The constitutionality of a warrantless stop is a question of law that appellate courts review de novo. *State v. Gatewood*, 163 Wn.2d 534, 539, 182 P.3d 426 (2008).

One exception to the warrant requirement is a *Terry*⁴ stop, which allows an officer to briefly detain a person for questioning if he has reasonable suspicion that the person is or is about to be engaged in criminal activity. *Fuentes*, 183 Wn.2d at 158. In evaluating an investigative stop, a court makes two inquiries: (1) whether the initial interference with the suspect's freedom of movement was justified at its inception; and (2) whether it was reasonably related in scope to the circumstances that justified the initial interference. *Williams*, 102 Wn.2d at 739.

A *Terry* stop 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." *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). In evaluating the reasonableness of the stop,

⁴ *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L.Ed.2d 889 (1968).

courts consider the totality of circumstances known to the officer. *Fuentes*, 183 Wn.2d at 158; *Glover*, 116 Wn.2d at 514. The totality of circumstances includes the officer's training and experience, the location of the stop, the suspect's conduct, the purpose of the stop, the amount of physical intrusion on the suspect's liberty, and the length of time the suspect is detained. *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

An officer may conduct an investigative stop based on less evidence than is needed for probable cause to make an arrest. *Id.* at 746-47. When police officers have a "well-founded suspicion not amounting to probable cause" to arrest, they may detain a suspect, request identification, and ask about the person's activities. *State v. Little*, 116 Wn.2d 488, 495, 806 P.2d 749 (1991); *State v. Bray*, 143 Wn. App. 148, 153, 177 P.3d 154 (2008). "An officer is not required to rule out all possibilities of innocent behavior before initiating a brief stop and request for identification." *State v. Anderson*, 51 Wn. App. 775, 780, 755 P.2d 191 (1988). "[P]olice officers must be permitted to act before their reasonable belief is verified by escape or fruition of the harm it was their duty to prevent." *Id.* (citing *U.S. v. Holland*, 510 F.2d 453, 455 (9th Cir. 1975)).

As the State conceded below, York was seized when Officer Roberts shined his spotlight on her and asked her to put her hands in her lap. *See* CP 20, 43. A reasonable person in York's situation would not feel free to leave

or to decline the officer's request. *See O'Neill*, 148 Wn.2d at 574. But the seizure was lawful because Officer Roberts had a reasonable and articulable suspicion that York was engaged in criminal activity.

The unchallenged findings of fact are verities on appeal and support the trial court's conclusion that the *Terry* stop was lawful based on the totality of the circumstances. The trial court found that Officer Roberts is a credible witness with significant training and experience as a law enforcement officer who is familiar with vehicle prowls. CP 40-41; 1RP 4-6. Credibility determinations are not subject to review. *Thomas*, 150 Wn.2d at 874.

Based on his training and experience, Officer Roberts believed the conduct of York and Hanson was suspicious. *See State v. Mercer*, 45 Wn. App. 769, 776, 727 P.2d 676 (1986) ("officer's experience will be taken into account in assessing whether a suspicion of wrongdoing was justified under the circumstances"). The Cadillac was on the wrong side of the road, blocking the road with its headlights on and engine running, and an unobstructed path to accelerate if necessary. CP 41-42; 1RP 9, 11, 16, 19-20, 38. A Suzuki was parked approximately thirty feet away with its headlights on. CP 42; 1RP 11-13, 16, 19-20. The vehicles "were not flush hood to hood, or even left headlight to left headlight," and were not close enough for the use of jumper cables. CP 42-43; 1RP 13.

As Officer Roberts approached the vehicles, Hanson immediately turned off the Suzuki's headlights, "quickly" exited the car, and walked to the passenger side of the Cadillac and tried to get inside. CP 42; 1RP 11-14. Officer Roberts knew that vehicle prowls occurred in this area, particularly during hours of darkness. CP 41; 1RP 7-8, 11, 18, 23, 35-38. Further, it was not uncommon for two people to work vehicle prowls together or for prowled vehicles in this area to show no sign of forced entry because residents often left their cars unlocked. CP 41; 1RP 17-18. Based on his training and experience, Officer Roberts believed that Hanson was prowling the Suzuki and York was acting as the getaway driver. CP 42; 1RP 11-12, 17, 26, 37-38, 47-48.

The purpose of the stop was related to York's detention. Officer Roberts conducted a brief stop to investigate the situation, ascertain the identity of the individuals, and run a computer search for warrants. He seized Hanson and York when he illuminated the area of the Cadillac with the spotlight on his vehicle and asked York to place her hands in her lap and Hanson to place his hands on the hood. CP 43; 1RP 14-15, 18-19, 29. They complied, but neither Hanson nor York had any form of identification. 1RP 18, 20-21, 29. This was suspicious as both suspects were adults over the age of thirty and would be expected to have some form of identification. 1RP 20-21. Officer Roberts decided to wait for an additional backup unit to

respond to the scene before leaving the suspects unattended to conduct the investigatory stop. 1RP 21, 32-33. Once backup arrived at the scene, Officer Roberts ran a computer search of the suspects' names and dates of birth provided in order to check on driving status and warrants. 1RP 21-22, 32-33. He arrested York after discovering an active warrant for her arrest. CP 43; 1RP 21-22. The totality of circumstances support the officer's reasonable suspicion that York was engaged in criminal activity at the time of the stop. *See Acrey*, 148 Wn.2d at 747.

Although Hanson claimed he was just trying to help a friend start her car, the cars were unaligned and approximately thirty feet apart. CP 42-43. The unchallenged findings of fact indicate that the cars were not close enough to use jumper cables or conduct any mechanical repairs. *See* CP 42-43. Hanson's explanation was not sufficient to dispel the officer's suspicion without further investigation. *See Acrey*, 148 Wn.2d at 747 (if the initial investigation confirms or further arouses the officer's suspicion, the scope and duration of the stop may be extended). And although no burglar tools were observed, the unchallenged findings of fact indicate that it is not uncommon for prowled vehicles in that area to show no signs of forced entry because residents often left their vehicles unlocked. *See* CP 41-42.

Contrary to York's argument, the facts of her case are distinguishable from *State v. Larson*, 93 Wn.2d 638, 611 P.2d 771 (1980).

See Br. of App. at 8. In *Larson*, officers stopped the occupants of a car because it was in a high crime area and illegally parked. *Larson*, 93 Wn.2d at 639-40. The officer asked Larson, who was a *passenger* in the car, for identification and subsequently discovered she possessed drugs. *Id.* at 640. The Court explained that the stop, detention, and questioning of a driver who committed a traffic offense is a reasonable seizure, but that this does not provide reasonable grounds to require identification of *passengers*, “unless other circumstances give the police independent cause to question passengers.” *Id.* at 641-42. The Court noted that nothing in the record indicates that the passengers acted in a suspicious manner. *Id.* at 643.

Here, York was not a passenger in a car, but rather the driver of a car that was on the wrong side of the road and blocking the roadway. CP 41-42. As Officer Roberts testified, it is illegal to park in the roadway or stop on the wrong side of the road. 1RP 11. Under *Larson*, this fact in and of itself justified the stop, detention, and questioning of York. Further, York and Hanson gave an implausible explanation of their activities in light of the positioning of the vehicles. CP 42-44; 1RP 26-27, 37. Unlike the passenger in *Larson*, the circumstances in York’s case aroused suspicion of criminal activity justifying the brief detention. CP 40-44.

The *Fuentes* case relied on by York is also distinguishable. See Br. of App. at 9-10 (citing *Fuentes*, 183 Wn.2d 149).⁵ The only conduct the officer observed by Sandoz was him leaving the apartment of a person with a prior drug conviction who lived in a high crime area. *Fuentes*, 183 Wn.2d at 153-54. Sandoz's "eyes got big" and he was "visibly shaking" when he saw the officer, but nothing suggested he was engaged in any criminal activity. *Id.* at 154, 160-61. And the officer admitted he did not have sufficient facts to believe Sandoz was engaged in drug activity. *Id.* at 161. The trial court properly distinguished York's case from Sandoz. See CP 44. The unchallenged findings of fact indicate that Officer Roberts believed York was engaged in criminal activity and acting as the getaway driver for a vehicle prowl. CP 42-43.

Officer Roberts' seizure of York was based on the totality of his training and experience, his familiarity with both the neighborhood and vehicle prowls, his personal observations, and his reasonable and articulable suspicions arising from the suspects' conduct. The stop was lawful because the officer had a reasonable, articulable suspicion that York was engaged in criminal activity.

⁵*Fuentes* is a consolidated case involving defendants Fuentes and Sandoz who were stopped after entering a high-crime apartment complex. *Fuentes*, 183 Wn.2d at 152. York argues that her case is analogous to defendant Sandoz's case.

C. York's detention did not exceed the permissible scope and duration of the *Terry* stop.

The trial court properly denied York's motion to suppress because the *Terry* stop was properly limited in scope and duration. The scope of a permissible *Terry* stop will vary with the facts of each case. *Bray*, 143 Wn. App. at 154. An investigative detention must last no longer than is necessary to satisfy the purpose of the stop. *Williams*, 102 Wn.2d at 738; *Bray*, 143 Wn. App. at 154.

A lawful *Terry* stop is limited in scope and duration to fulfilling the investigative purpose of the stop. *Acrey*, 148 Wn.2d at 747. Courts ask whether the detention was "reasonably related *in scope* to the circumstances which justified the interference in the first place." *Williams*, 102 Wn.2d at 739 (emphasis in original). Courts look at the purpose of the stop, the amount of physical intrusion on the suspect's liberty, and the length of time the suspect is detained. *Id.* at 740; *Mercer*, 45 Wn. App. at 776.

The scope of an investigative stop, without probable cause to arrest, must be limited to the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time. *Mercer*, 45 Wn. App. at 775. If the initial investigation dispels the officer's suspicions, the stop must end. *Acrey*, 148 Wn.2d at 747. But the scope and duration of the stop may be extended if the investigation confirms or further arouses the officer's suspicions. *Id.*; *Bray*, 143 Wn. App. at 154. In such a case, the

officer may further detain the suspect and continue his investigation by doing what is reasonably necessary under the circumstances. *Mercer*, 45 Wn. App. at 775.

Courts have repeatedly encouraged law enforcement officers to investigate suspicious situations. *Id.* “Merely because a police officer lacks probable cause to arrest an individual, he need not shrug his shoulders and allow suspected criminal activity to continue or to escape his further scrutiny.” *Id.* Further, Washington courts have often held that officers may check for outstanding warrants during valid criminal investigatory stops. *State v. Alexander*, 5 Wn. App. 2d 154, 162, 425 P.3d 920 (2018). These checks are reasonable routine police procedures as long as they do not unreasonably extend the initial valid stop. *Id.* at 162-63.

In *Bray*, officers detained the defendant in handcuffs for thirty to thirty-five minutes while they investigated a burglary and checked his criminal record. *Bray*, 143 Wn. App. at 150-51. Because the defendant’s explanation of what he was doing did not dispel the officers’ suspicions that he was involved in a burglary, their continued investigation to check his criminal history and investigate the burglary was justified. *Id.* at 154. The Court held that the thirty-minute detention was reasonable and did not exceed the scope of the *Terry* stop. *See id.*

In *Mercer*, the Court held that the investigative stop was reasonable where all questioning was directly linked to dispelling or confirming the officer's suspicion of criminal activity. *Mercer*, 45 Wn. App. at 776. The questioning took place in an open area where the suspects were only required to stand in front of the headlights of the patrol vehicle while the officer waited for assistance. *Id.* The officer testified he was merely attempting to keep the suspects in sight, and he refrained from questioning them during the twenty-minute wait. *Id.* Further, the suspects were not separated or placed inside the patrol vehicles until the officers determined there was probable cause for arrest. *Id.* The Court concluded that the twenty-minute detention was not excessive and that the suspects were held no longer than reasonably necessary. *Id.* The Court held that the physical intrusion was minimal and entirely reasonable under the circumstances. *Id.* at 776-77.

Similar to *Mercer*, the investigative stop in York's case was reasonable, and the physical intrusion was minimal. York was not placed in handcuffs or physically restrained in any way. IRP 14, 18, 21, 30, 38-39. She was not placed in a patrol car or held at gunpoint. Rather, she was allowed to remain in her car with her hands in her lap while the officer waited for assistance. IRP 14, 18, 31-32. York's claim, without any citation to the record, that the officer was "training his flashlight" on York and

Hanson while waiting for assistance is not supported by the record. *See* Br. of App. at 12. Rather, the officer used the spotlight of his vehicle to illuminate the general area of the Cadillac and did not stand right next to the Cadillac while waiting for assistance. 1RP 14, 39. York was detained in the least intrusive way reasonably possible.

Similar to the officer in *Mercer*, Officer Roberts testified that he was merely trying to keep the suspects in sight, and he did not question them while waiting for assistance. *See* 1RP 30-31, 39. The record does not support York's assertion that Officer Roberts "told them to remain silent until other officers arrived." *See* Br. of App. at 12.⁶ Rather, Officer Roberts explained his general practice when suspects try to explain away their conduct. 1RP 31. Nothing in this explanation was specific to his encounter with York and Hanson. *See id.*

Moreover, the duration of the stop was brief and reasonable, and York was detained no longer than reasonably necessary. The duration of the detention was brief and lasted less than nine minutes, which included the time it took to run York's name through the computer system and confirm the active warrant. 1RP 32-33, 42-46. An additional unit arrived within three minutes of Officer Roberts' arrival at the scene. 1RP 41-42, 45. And

⁶ Again, York fails to cite to any part of the record for this claim.

Officer Roberts started the computer search of Hanson and York within six minutes of his initial contact with them. 1RP 41-46. Just as a twenty-minute detention was not excessive in *Mercer*, York's nine-minute detention was also not excessive. And York cites no authority to suggest that such a brief detention is unreasonable. The nine-minute detention was reasonable because Officer Roberts was alone and wanted assistance before leaving the suspects unattended in order to conduct an investigative stop where neither suspect possessed any identification.

Officer Roberts discovered the active warrant for York's arrest within nine minutes of his initial stop. 1RP 21-22, 44-45. He arrested York on the warrant. CP 43; 1RP 22. And York conceded below that there was probable cause to arrest her on the active warrant. CP 43. A nine-minute wait without any physical restraint or interrogation while a single officer waits for assistance in an investigation is an entirely reasonable scope for a *Terry* stop. The unchallenged findings of fact support the trial court's conclusion that the scope of the stop was not excessive. *See* CP 41-44.

D. The existence of a valid arrest warrant attenuates the search and is an independent source that renders the drugs discovered during the lawful search incident to arrest admissible.

Even if the investigatory stop was unlawful, because York was arrested on a pre-existing, valid arrest warrant all evidence discovered in the subsequent search incident to arrest is admissible and not "fruit of the

poisonous tree.” See *Utah v. Strieff*, 579 U.S. ---, 136 S. Ct. 2056, 2059, 195 L.Ed.2d 400 (2016); see also *State v. Mayfield*, 192 Wn.2d 871, 889-90, 898, 434 P.3d 58 (2019). This Court may affirm a trial court’s ruling on any grounds supported in the record. *Costich*, 152 Wn.2d at 477. York conceded below that there was probable cause to arrest her on the warrant. CP 43, 45. Thus, the subsequent search incident to arrest was lawful, and all evidence discovered during the search was admissible.

An officer’s discovery of a valid, pre-existing arrest warrant attenuates the connection between an unlawful investigatory stop and drug-related evidence seized from the defendant during a search incident to arrest. *Strieff*, 136 S. Ct. at 2059. The United States Supreme Court adopted three factors to guide its analysis into whether the attenuation doctrine applies to allow admission of evidence: (1) the “temporal proximity” between the unlawful conduct and the discovery of evidence; (2) the presence of intervening circumstances; and (3) the purpose and flagrancy of the official misconduct. *Strieff*, 136 S. Ct. at 2061-62. Applying this test, the Court held that evidence discovered during the search was admissible because the officer’s discovery of the arrest warrant attenuated the connection between the unlawful stop and the evidence seized incident to arrest. *Id.* at 2059, 2062-64.

The Washington Supreme Court has recognized a narrower, Washington-specific attenuation doctrine that applies “only where the State proves that unforeseeable intervening circumstances truly severed the causal connection between official misconduct and the discovery of evidence.” *Mayfield*, 192 Wn.2d at 895-98. If such a superseding cause is present, the evidence is not properly viewed as “fruit of the poisonous tree.” *Id.* at 898. In *Mayfield*, the officer’s illegal seizure of the defendant and subsequent consent to search his vehicle was not an unforeseeable intervening circumstance that severed the causal connection between the unlawful seizure and discovery of drugs. *Id.* at 899-901.

The Washington Supreme Court has also recognized the independent source doctrine as a further exception to the exclusionary rule, which provides that “evidence tainted by unlawful governmental action is not subject to suppression under the exclusionary rule, provided that it ultimately is obtained pursuant to a valid warrant or other lawful means independent of the unlawful action.” *Id.* at 889. This exception applies where the challenged evidence was discovered through a source independent from the initial unlawful act. *Id.*

An active arrest warrant is an “independent source” and any evidence discovered after such an arrest is admissible and not “fruit of the poisonous tree” but, instead, the result of a lawful arrest pursuant to a valid

warrant. *Id.* at 890. A valid, pre-existing arrest warrant also breaks the causal chain. *Strieff*, 136 S. Ct. at 2062. Once an officer discovers such a warrant, he has an obligation to arrest the person and any evidence obtained as part of the search incident to arrest is admissible. *Id.* at 2062-63. “A warrant is a judicial mandate to an officer to conduct a search or make an arrest, and the officer has a sworn duty to carry out its provisions.” *Id.* at 2062.

Here, York had a valid, pre-existing arrest warrant that satisfies both Washington’s narrow attenuation doctrine and the independent source doctrine. York was arrested on a valid warrant, searched incident to arrest, and methamphetamine was discovered in her bra. This evidence was admissible, and the trial court properly denied York’s motion to suppress.

Officer Roberts stopped York to investigate a vehicle prowl. But York was also illegally parked on the roadway on the wrong side of the road without any identification. CP 41-42; 1RP 11, 20-21. This provided an independent basis for the stop. The officer ran York’s name through his database and discovered that she had an active warrant for her arrest. CP 43. She was arrested on the warrant, and a search incident to arrest discovered that she possessed methamphetamine. CP 43; 1RP 100-08, 115, 135-36; 2RP 9-10. The arrest warrant not only breaks the causal chain, but also provides an independent source justifying the admissibility of the evidence

seized in the subsequent search incident to arrest. The arrest warrant provides an unforeseeable intervening circumstance that severs the causal connection between any alleged officer misconduct and the discovery of drugs. *See Mayfield*, 192 Wn.2d at 895-98. And York concedes the validity of the warrant and arrest. CP 43, 45. Because this Court may affirm a trial court's ruling on any grounds supported in the record, this provides yet another basis to affirm the trial court's denial of York's motion to suppress. *See Costich*, 152 Wn.2d at 477.

V. CONCLUSION

For the foregoing reasons, this Court should affirm the trial court's denial of York's motion to suppress evidence and affirm York's conviction for possession of a controlled substance.

RESPECTFULLY SUBMITTED this 27th day of January, 2020.

MARY E. ROBNETT
Pierce County Prosecuting Attorney



KRISTIE BARHAM WSB# 32764
Deputy Prosecuting Attorney

ANDREW KALM, Legal Intern

Certificate of Service:

The undersigned certifies that on this day she delivered by E-file or U.S. mail to the attorney of record for the appellant / petitioner and appellant / petitioner c/o his/her attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington on the date below.

1-27-20 Therese
Date Signature

PIERCE COUNTY PROSECUTING ATTORNEY

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