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I. STATEMENT OF FACTS

While on patrol on February 1, 2010, Deputy Michael Baker of the Douglas County Sheriff's Office ran a DOL check through his mobile computer of the license number of a vehicle. (RP 8-9). DOL advised that the registered owner, Nicholas Malmberg, had a suspended license. (RP 8-9). The vehicle pulled into a parking lot at the corner of Ninth and Baker in East Wenatchee. (RP 9). Deputy Baker pulled his patrol vehicle in behind the vehicle and activated his emergency lights. (RP 9).

Deputy Baker contacted the driver, Travis Garaas, who was the sole occupant of the vehicle. (RP 10). Upon contact Deputy Baker asked Mr. Garaas if he was Nicholas Malmberg. (RP 10). Mr. Garaas responded that he was not, and Deputy Baker requested his driver's license "so I could identify who the driver was and if in fact he was or was not the registered owner of the vehicle." (RP 10). At that point in time Deputy Baker did not have any information which established that Mr. Garaas was not Nicholas Malmberg. (RP 11). Mr. Garaas's verbal statement that he was not Nicholas Malmberg did not convince Deputy Baker that he was not the registered owner. (RP 11). In response to Deputy Baker's request for a driver's license Mr. Garaas provided him with a very old tattered Washington

identification card. (RP 11-12). The card was partially broken. (RP 12). The card identified the driver as Travis Garaas, and Deputy Baker visually confirmed that the picture on the card matched that of the driver of the vehicle. (RP 12). At this point Deputy Baker became concerned that Mr. Garaas did not have a valid driver's license. (RP 12). This concern was based upon the fact that Mr. Garaas provided an identification card when he was specifically asked for a driver's license. (RP 12). Deputy Baker asked Mr. Garaas again for his driver's license. (RP 12). In response to the second request for a driver's license Mr. Garaas stated that he thought his license was suspended. (RP 12-13).

Deputy Baker took Mr. Garaas's identification card to his patrol vehicle and ran his name through dispatch. (RP 13). Dispatch subsequently advised Deputy Baker that Mr. Garaas had multiple warrants out his arrest and that he had no license. (RP 13-14). Deputy Baker recontacted Mr. Garaas and arrested him on the outstanding warrants. (RP 14). Deputy Baker located brass knuckles and a baggie of marijuana in Mr. Garaas's right jacket pocket during a search incident to his arrest. (RP 14-15). Methamphetamine was discovered on the ground just outside the driver's door of Mr. Garaas's vehicle. (RP 15). After Miranda warnings were given Mr.

Garaas acknowledged ownership and possession of the brass knuckles and marijuana, but claimed no knowledge of the methamphetamine. (RP 17-18).

Defense counsel moved to suppress the evidence found on Mr. Garaas's person and outside the vehicle he was operating. (RP 14-19). The trial court denied the motion and entered a written order. (CP 36-39). Mr. Garaas was found guilty Possession of Methamphetamine, Possession of a Dangerous Weapon, and Possession of Marijuana Less Than 40 Grams following a stipulated facts trial. (CP 33-35). Mr. Garaas appeals the trial court's decision denying the motion to suppress physical evidence.

II. ISSUES

2.1 Did the trial court error when it failed to suppress evidence from the traffic stop?

III. ARGUMENT

3.1 Legal Standard

The guidelines for restricting intrusions into the personal affairs of persons is set forth in both the U.S. Const., Amend. IV; and State Constitution Art. I, Section 7

The Fourth Amendment states:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable

searches and seizures shall not be violated, and no warrant shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

The Washington State Constitution, Art. I, Section 7, states: No person shall be disturbed in his private affairs, or his home invaded without authority of law.

Const. Art. 1, Section 7 prohibits unreasonable intrusions into those privacy interests which citizens of this state have held, and should be entitled to hold, free from governmental trespass without valid legal process. State v. Butterworth, 48 Wn. App. 152, 737 P. 2d 1297 (1987).

Under the Fourth Amendment a seizure is a mixed objective/subjective test. A seizure occurs “when the officer, by means of physical force or a show of authority, has in some way restrained the liberty of the citizen.” California v. Hodari D., 499 U.S. 621, 626, 111 S. Ct. 1547, 113 L. Ed 2d 690 (1991).

A person is ‘seized’ within the meaning of the Fourth Amendment of the United States Constitution only when restrained by means of physical force or a show of authority. A police officer does not necessarily seize a person by striking up a conversation or asking questions. . . . The relevant inquiry for the court in deciding whether a person has been seized is whether a reasonable person would have felt free to leave or otherwise decline the officer’s request and terminate the encounter. The court must look to the totality of the

circumstances to determine whether a seizure has occurred.

State v. Thorn, 129 Wn. 2d 347, 352, 917 P. 2d 108 (1996).

Investigative detentions constitute seizures, and must be reasonable under the Fourth Amendment. State v. Kennedy, 107 Wn. 2d 1, 4, 726 P. 2d 445 (1986) (citing Terry v Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L.Ed. 2d 889 (1968)). To justify an intrusion, the police officer must be able to point to "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." Terry v. Ohio at 21. In evaluating investigative stops, a court must make several inquiries. First, was the initial interference with the suspect's freedom of movement justified at its inception? Second, was it reasonably related *in scope* to the circumstances which justified the interference in the first place? Terry v. Ohio at 19-20. As to this second inquiry, the United States Supreme Court has suggested at least three relevant factors in determining whether an intrusion on the suspect's liberty is so substantial that its reasonableness is dependent upon probable cause: the purpose of the stop, the amount of physical intrusion upon the suspect's liberty, and the length of time the suspect is detained. Terry, *Supra*.

In evaluating an investigative detention the officer's experience will be taken into account in assessing whether a suspicion of wrongdoing was justified under the circumstances. State v. Samsel, 39 Wn. App 564, 694 P. 2d 670 (1985); State v. Selvidge, 30 Wn. App 406, 409-10, 635 P. 2d 736 (1981), review denied, 97 Wn. 2d 1002 (1982). When reviewing the merits of a an investigatory stop, a court must evaluate the totality of the circumstances present to the investigating officer. State v. Glover, 116 Wn. 2d 509, 514, 806 P. 2d 760 (1991). Although the circumstances must be more consistent with criminal than innocent conduct, "reasonableness is measured not by exactitudes, but by probabilities." State v. Samsel at 571. A Terry stop is not rendered unreasonable solely because the officer did not rule out all possibilities of innocent behavior before initiating the stop. State v. Anderson, 51 Wn. App 775, 780, 755 P. 2d 191 (1988).

"It is well established that, "[i]n allowing such detentions, Terry accepts the risk that officers may stop innocent people." Illinois v. Wardlow, 528 U.S. 119, 126, 120 S.Ct. 673 (2000).. However, despite this risk, "[t]he courts have repeatedly encouraged law enforcement officers to investigate suspicious

situations.” State v. Mercer, 45 Wash.App. 769, 775, 727 P.2d 676 (1986).”

3.2 Initial Contact By Deputy Baker

The State concedes that the initial contact by Deputy Baker was a seizure under the Fourth Amendment. Although Deputy Baker did not technically “stop” Mr. Garass’s vehicle, he did pull behind the parked vehicle and activate his emergency lights. This action is a sufficient show of authority such that a reasonable person would believe they were not free to leave the scene. Having stated that, the Defendant herein concedes that the initial contact by Deputy Baker was reasonable. See page 6 of appellant’s brief. This concession is supported by statute and case law.

RCW 46.20.349 provides:

Any police officer who has received notice of the suspension or revocation of a driver's license from the department of licensing may, during the reported period of such suspension or revocation, stop any motor vehicle identified by its vehicle license number as being registered to the person whose driver's license has been suspended or revoked. The driver of such vehicle shall display his or her driver's license upon request of the police officer.

Accordingly, Deputy Baker’s actions in detaining Defendant for suspicion of driving on a suspended license were authorized by

statute. Furthermore, under State v. Penfield, 106 Wn. App 157, 22 P. 3d 293 (2001); State v. McKinney, 148 Wn. 2d 20, 60 P. 3d 46 (2002); State v. Gaddy, 152 Wn. 2d 64, 93 P. 3d 872 (2004); State v. Lyons, 85 Wn. App 268, 932 P. 2d 188 (1997) and a progeny of similar cases a vehicle may be stopped based upon DOL records which indicate that the driver's license of the registered owner of the vehicle is suspended.

Thus, under the statute, case law, and under both the U.S. Const., Amend. IV; and State Constitution Art. I, Section 7, Deputy Baker was justified in activating his emergency lights and contacting the defendant as he was parked in the vehicle.

3.3 Continuing Investigation by Deputy Baker

The Defendant's sole complaint in this appeal is that the continued detention and investigation by Deputy Baker after the Defendant produced the identification card was unreasonable.

Defendant cites the court to State v. Penfield, supra, in support of his position that Deputy Baker exceeded the scope of the investigative seizure in the present case. Penfield is distinguishable. In Penfield the officer conducted a traffic stop on a vehicle where the registered owner (woman) had a suspended license. Upon contact with the vehicle the officer found that

driver was a male subject. Although the officer had knowledge that the driver (Penfield) could not be the registered owner, the officer nevertheless asked for Penfield's driver's license, registration and proof of insurance. Penfield advised the officer his license was suspended. Penfield was ultimately arrested and the officer found methamphetamine in a subsequent search of his vehicle. The court held that once the officer determined that the driver (Penfield) was not the registered owner of the vehicle he had no other articulable suspicion of criminal activity justifying the request for Penfield's driver's license. Of significance, the court acknowledged that continued detention by an officer for investigation may be appropriate if: "Other facts may exist to create a suspicion that the driver may not have the owner's permission to use the automobile or that the driver is engaged in some other criminal activity." Penfield at 162. Noting that no other facts existed in that case, the court reversed the conviction under a Fourth Amendment violation.

In the present case both the registered owner of the vehicle and the driver (Garaas) are male. Upon approaching the vehicle Deputy Baker did not have the type of obvious notice that the officer did in Penfield that the driver could not possibly

be the registered owner. Under these circumstances it was reasonable for Deputy Baker to ask for Garaas's driver's license. When Garaas failed to produce a license, but rather provided an old tattered Washington identification card it caused Deputy Baker to suspect that Garaas did not have a valid driver's license. The failure of Garaas to provide the license upon request is precisely the type of "other facts" which create suspicion of other criminal activity discussed in Penfield. Under the Fourth Amendment it was reasonable for the officer to then detain Garaas long enough to verify whether he had a valid driver's license. Once Garaas indicated that he believed his license was suspended the officer was justified in further detaining him to run his name through dispatch to determine his driver's status and whether he had any warrants pursuant to RCW 46.61.021. Although the record does not clearly reflect it, it is important to note that the length of detention between Deputy Baker's first and second request for the Defendant's drivers license was apparently quite short in duration. This factor weighs in favor of the reasonableness of Deputy Baker's further detention to verify whether the Defendant had a valid driver's license.

Defendant postures that because the officer did not compare the DOL physicals of the registered owner with the driver prior to requesting a driver's license, the contact was an unreasonable detention. That position is contrary to State v. Phillips, 126 Wn. App 584, 109 P. 3d 470 (2005). In Phillips the officer conducted a random DOL records check of a vehicle Phillips was driving. DOL reported that the registered owner had a suspended license. The officer stopped the car and arrested Phillips (registered owner) for driving with a suspended license. The trial court ruled that the stop was unlawful because the officer failed to document that the physicals of the registered owner matched the driver. Phillips argued that the trial court's ruling was consistent with State v. Penfield, supra. The Court of Appeals reversed the trial court's ruling citing RCW 46.20.349, and stating clearly that Penfield is an exception to the general rule that an officer may stop a vehicle and request to see a driver's license when DOL reports that the registered owner has a suspended license. The court set forth the general rule:

A law enforcement officer may conduct a limited seizure to investigate an articulable suspicion of wrongdoing. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). An officer who has notice from the DOL that a person's driver's license is

suspended may stop any vehicle registered to that person and ask to see the driver's license. RCW 46.20.349. Evidence that the driver's license of the registered owner of a vehicle is revoked or suspended is individualized suspicion sufficient to establish cause for a Terry stop. RCW 46.20.349; State v. Lyons, 85 Wash.App. 267, 270, 932 P.2d 188 (1997). It is, then, appropriate and permissible for the officer to dispel his or her suspicion by identifying the driver. Lyons, 85 Wash.App. at 271, 932 P.2d 188; Yeager, 67 Wash.App. at 47, 834 P.2d 73.

State v. Phillips at 588. Of import is the court's statement that the ruling in Penfield was based upon the fact that it was "manifestly clear" to the officer that the driver was not the registered owner. State v. Phillips at 588. Under this analysis Deputy Baker was not required to compare the physical description of the registered owner, Nicholas Malmberg, to the Defendant prior to the contact or further requesting his driver's license (as opposed to an ID card).

The Defendant also argues that once he verbally advised Deputy Baker that he was not Nicholas Malmberg, his response should have been taken at "face value" and the contact terminated. This position is contrary to RCW 46.20.349, and the law governing investigative detentions. RCW 46.20.349 provides:

Any police officer who has received notice of the suspension or revocation of a driver's license from the department of licensing may, during the reported period of such suspension or revocation, stop any motor vehicle identified by its vehicle license number as being registered to the person whose driver's license has been suspended or revoked. *The driver of such vehicle shall display his or her driver's license upon request of the police officer.*

(Emphasis added). The statute affirmatively requires the driver to display his or her license when they are a driver of a vehicle stopped because the registered owner's license is suspended. The statute does not require the officer take at "face value" statements regarding identification, rather the officer is obliged to determine the identify of the driver by viewing a driver's license. The statute is clear on its face. The failure of a driver to provide a license upon request would justify an officer in further investigation and detention to determine the identify of the driver.

Furthermore, the premise behind investigative detentions which are based upon articulable suspicion of criminal activity is to "investigate". To require an officer conducting an investigation to simply take statements of suspects at "face value" defies common sense and would gut one of the principle roles of law enforcement.

In the context of this case Deputy Baker was reasonable and justified in requesting to see defendant's license so that he could dispel his concerns whether defendant was driving on a suspended license. His actions went no further than the authority afforded him by RCW 46.20.349, and can hardly be characterized as "unreasonable."

IV. CONCLUSION

The trial court's order denying Defendant's motion to suppress should be affirmed.

Dated: 12/10/10

Respectfully Submitted by:



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A handwritten signature in cursive script, reading "Gabrielle Sanchez", written over a horizontal line.

SUBSCRIBED AND SWORN to before me this 10th day of
December, 2010.

A handwritten signature in cursive script, reading "Jenny Seck", written over a horizontal line.

NOTARY PUBLIC in and for the State
of Washington, residing at East
Wenatchee; my commission expires
02/27/2011.