

**FILED**

**FEB 10 2012**

COURT OF APPEALS  
DIVISION III  
STATE OF WASHINGTON  
By \_\_\_\_\_

No. 300307

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

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STATE OF WASHINGTON,

Respondent,

v.

RICHARD ARTHUR GUIASOLA,

Appellant.

---

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

The Honorable Jack Burchard

---

APPELLANT'S OPENING BRIEF

---

Stephen T. Graham  
Attorney for Appellant

Law Office of Steve Graham  
655 S Clark Avenue  
PO Box 1077  
Republic, Washington 99166  
(509) 775-0515

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**TABLE OF CONTENTS**

A. SUMMARY OF ARGUMENT ..... 2

B. ASSIGNMENTS OF ERROR..... 2

C. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR..... 2

D. STATEMENT OF THE CASE ..... 3

E. ARGUMENT ..... 4

F. CONCLUSION ..... 7

**TABLE OF AUTHORITIES**

***Washington Supreme Court***

*State v. Mendez*, 137 Wn 2d 208 (1999)..... 5

***Washington Court of Appeals***

*Clement v. Dept. of Licensing*, 109 Wn App. 371 (2001).....5  
*Schlegel v. Dept. of Licensing*, 137 Wn App. 364 (2007) .....6  
*State v. Takesgun*, 89 Wn App. 608 (1998).....4

**A. SUMMARY OF ARGUMENT**

The game agent in this case lack reasonable suspicion to stop Richard Guisasola.

**B. ASSIGNMENT OF ERROR**

The trial court erred by not suppressing the illegal stop of Richard Guisasola .

**C. ISSUES PRESENTED**

Did reasonable suspicion exist for the game agent to stop Richard Guisasola's vehicle?

#### D. STATEMENT OF THE CASE

The State charged Richard Guisasola with Unlawful Possession of a Firearm in the First Degree on September 21<sup>st</sup>, 2010. CP 31-31. This charged was later amended to Unlawful Possession of a Firearm in the Second Degree on April 11<sup>th</sup>, 2011. CP 25-26. The charges stem from an incident where Mr. Guisasola was pulled over by a game agent on October 25<sup>th</sup>, 2009. RP1<sup>1</sup> 8-9. The game agent was looking for people engaged in deer hunting activity on a Forest Service road in Okanogan County. RP1 9. The agent described the road in question as a “proper road” and “fairly wide” in an area that is “treed” with a hilly or mountainous terrain. RP1 10. The agent observed Mr. Guisasola’s vehicle driving slowly, almost stopping at times, and the officer testified: “[It is] common for violators to drive slowly and looking for deer. They’ll often have loaded firearms in the vehicle and sometimes they will shoot from the vehicle, which is illegal.” RP1 11. The agent testified that he pulled up in front of the vehicle, and probably put up his hand to get Guisasola to stop. RP1 11-12. Mr. Guisasola and his companion produced hunting licenses, and their firearms

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<sup>1</sup> RP1 = 4/11/11 3.6 Hearing, RP2 = Stipulate fact Trial on 6/3/11.

were found to be unloaded. *Id.* Mr. Guisasola and his companion were not wearing hunting orange. RP1 13-14. The men were sent on their way by the game agent, but they were recontacted after dispatch advised the game agent that both men were convicted felons. RP1 15-16.

The defense filed a motion to suppress the evidence of the firearms on the grounds that the game agent lacked probable cause to stop the vehicle. CP 30. A hearing was held on April 11<sup>th</sup>, 2011, and the trial court denied the defendant's motion to suppress. RP1 33-37. A stipulate fact trial was held on June 3<sup>rd</sup>, 2011, and the court found Mr. Guisasola guilty, and a standard range sentence was handed down. RP2 1-23. A timely appeal was filed. CP 1.

#### E. ARGUMENT

1. THE STATE LACKED PROBABLE CAUSE TO STOP MR. GUIASOLA'S VEHICLE.

The Fourth Amendment to the United States Constitution and Article 1, Section 7 of the Washington State Constitution guarantee a right to privacy to be free from unreasonable search and seizure. A "seizure" occurs when an officer stops a vehicle.

State v. Takesgun, 89 Wn. App. 608, 610-611 (Div. 3 1998) (Driver seized when police stopped his vehicle for failure to dim lights).

Washington's Constitution gives greater protection to the privacy of individuals in automobiles than does the United States Constitution.

State v. Mendez, 137 Wn.2d 208, 220 (1999) (Police had probable cause to stop a vehicle for failing to obey a stop sign but lacked reasonable suspicion to further detain the passenger). "A traffic stop is constitutional if the officer has probable cause to believe a

person has violated the traffic code." Clement v. Dept. of

Licensing, 109 Wn. App. 371, 375 (2001), review denied, 146

Wn.2d 1017 (2002) (Probable cause to stop a vehicle existed when

Trooper made visual observations of defendant's speed coupled

with information from another officer that radar showed defendant

was speeding). "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." *Id.*

In the case at bar, the officer indicates that he pulled over

Richard Guisasola for driving too slowly, and that that was

indicative of a person who is hunting. However, there is no

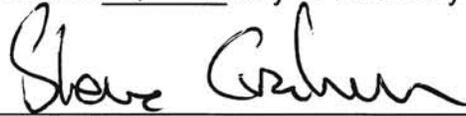
authority to support the notion that this amounts to reasonable

suspicion. For a wildlife officer's stop to be valid, the officer must have "articulable facts" that a person is engaged in hunting activities. RCW 77.15.080(1). A game agent may pull someone over for driving a hunting style vehicle and if they have hunting type clothing when they are in a hunting area. See, e.g. Schlegel v. Dep't of Licensing, 137 Wn. App. 364, 370 (2007). But such facts are missing in the case at bar. There are many ways to distinguish the case at bar from Schlegel. In Schlegel, the road in question was a "one lane, dirt road" and it was "hunting road" that was "not well maintained." Id. At 367. Mr. Guisasola was traveling on a road that was a "fairly wide road for the Forest service" and it was "easily a two lane road". RP 10. The road Mr. Guisasola was on "was graveled and for a Forest Service road... it's pretty well maintained," (RP 20) and has a speed limit of 35 mph. RP 24. The agent characterized the road as a "main road through there." RP 20. It is in an area where people sometimes camp, and is open for hikers, and bird watchers, and in an area where they range cattle. RP 19-20. Affirming the conviction of Guisasola would essentially set a rule that game agents can pull people over in rural areas for almost any reason during hunting season, and we feel that Constitution does not allow that.

F. CONCLUSION

We respectfully request that Mr. Guisasola's conviction for Unlawful Possession of a Firearm in the Second Degree be overturned.

Respectfully submitted this 9<sup>th</sup> day of February 2012

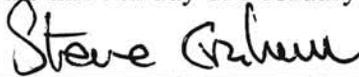
A handwritten signature in black ink, appearing to read "Steve Graham", written over a horizontal line.

STEPHEN T. GRAHAM, WSBA #25403  
Attorney for Appellant

**Affidavit of Certification**

I certify under penalty of perjury under the laws of the State of Washington, that on February 9th, 2012, I mailed a true and correct copy of the foregoing Appellant's Brief to the Court of Appeals, Division III, 500 North Cedar Street, Spokane, WA 99210, and to Okanogan County Prosecuting Attorney, PO Box 1130, Okanogan, WA 98840, and to Richard Guisasola, 35408 25<sup>th</sup> Ave SW, Federal Way, WA 98003.

Date this 9th day of February 2012.



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Stephen T. Graham, WSBA #25403  
Attorney for Appellant/Petitioner  
PO Box 1077  
Republic, WA 99166  
(509) 775-0515