

FILED

MAY 11 2012

COURT OF APPEALS
DIVISION II
STATE OF WASHINGTON
By _____

NO. 300307

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

RICHARD ARTHUR GUIASOLA,

Appellant

RESPONDENT'S BRIEF

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Statement of the Case

On October 25, 2009, the Appellant, Richard Guisasola and a companion were stopped by Washington fish and Wildlife Officer Troy McCormick on U.S. Forest Service Road 30, near Crawfish Lake in Okanogan County. RP1 9. Officer McCormick was on patrol on the last day of hunting season, and notice the vehicle in which the defendant was travelling moving toward him at a very slow rate of speed, well under the posted speed limit of thirty-five miles per hour. RP1 10-11. This indicated to Officer McCormick that the occupants were actively searching for deer, and perhaps were actively engaged in road hunting. RP1 11. According to the officer, people doing so will “often have loaded firearms in the vehicle and sometimes they will shoot from the vehicle, which is illegal.” RP1 11. Officer McCormick testified that he pulled up to the vehicle, exited his vehicle and waved them down to conduct an inspection RP1 11-12. The occupants confirmed that they were looking for deer. RP1 12. He checked their firearms and licenses. He noted that the firearms were unloaded and in compliance, and that they appeared to have the correct licenses and tags for the season. RP1 12-13. He wrote down information regarding the two individuals to document his contacts and that there were no obvious violations at the time he inspected them. RP1 13.

He made the determination that they were not out hunting illegally based upon his brief interaction with them, and allowed them to continue on their way. RP1 13. He noted that he observed hunter orange clothing inside the vehicle, and a game cart in the back of the vehicle that he was unable to observe prior to waving them to stop. RP1 13-14.

As was his habit, Officer McCormick contacted dispatch to confirm that their hunting licenses were valid, and not suspended subsequent to purchase due to a suspension for child support enforcement or other reasons. RP1 15. He was advised that both the Appellant and other individual had felony criminal histories. RP1 15. He turned around and pursued them, catching them approximately five minutes later. RP1 16. He conducted a stop, made contact with them and arrested them, placing them in handcuffs. RP1 17. He and another officer, Sergeant Brown, who had arrived to assist, conducted an investigation. They choose to refer the matter to Okanogan County Prosecuting Attorney's Office for charging. The Appellant and other individual were then released.

The State charged Mr. Guisasola initially with Unlawful Possession of a Firearm in the first degree on September 21, 2010. CP31-31. On April 11, 2011, the charge was amended by the State to

Unlawful Possession of a Firearm in the second degree. On that same date, a suppression motion hearing on Appellant's motion was conducted before Judge Jack Burchard. CP 30. Judge Burchard denied the suppression motion, PR1 22-37, and a stipulated facts trial was held on June 3, 2011. The court found the Appellant guilty and imposed a standard range sentence. RP2 1-23. Appellant timely appealed. CP 1.

Summary of Argument

The Department of Fish and Wildlife Officer in this case had "articulable facts" for conducting the initial stop of Appellant's vehicle which led to these charges. He clearly articulated those facts to the trial court, and the trial court properly suppressed Appellant's suppression motion. Appellant's arguments fail to recognize the Court's prior determination of the standards to apply in cases such as these. Thus, Appellant's appeal should be denied.

Issue Presented

Did the trial court err in denying Appellant's suppression motion?

Argument

1. Standard of Review

When reviewing the trial court's denial of a motion to suppress, an appellate court determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law. State v. Garvin, 166 Wash.2d 242, 249-50, 207 P.3d 1266 (2009). Conclusions of law from an order pertaining to the suppression of evidence are reviewed de novo. *Id.*

2. Articulate facts are required by statute to justify a stop by a wildlife officer

RCW 77.15.080(1) states in relevant part that “[b]ased upon articulable facts that a person is engaged in fishing, harvesting, or hunting activities, fish and wildlife officers have the authority to temporarily stop the person and check for valid license, tags, permits, stamps or catch records cards and to inspect all fish, shellfish, seaweed, and wildlife in possession as well as the equipment being used to ensure compliance with the requirements of this title”

The word “articulable” in the context of this statute means “a substantial possibility”. Schlegel v. Washington Department of

Licensing, 137 Wn.App. 364, 369, 153 P.3d 244 (2007), citing State v. Kennedy, 107 Wash.2d 1, 5, 526 P.2d 445 (1986

Here Officer McCormick was able to articulate facts which lead to his stop of Appellant's vehicle. He noted that it was deer hunting season, and that the vehicle was travelling substantially below the posted speed limit. Based on his training and experience, he noted that it appeared to him that the occupants were searching for deer, and may have been engaged in illegal "road hunting" as well.

Further, nowhere in Appellant's brief does he challenge any or all of the Findings of Fact that the trial court found. Unchallenged finds of fact are verities on appeal. State v. Hill, 123 Wash.2d 641, 870 P.2d 313 (1994). The Court only has to look to determine if the facts meet the "substantial possibility" standard of the statute to determine if the statute was complied with. The Appellee argues that the standard in the statute. Based on facts herein, Officer McCormick conducted a stop to determine if unlawful activity had or was occurring, in conformance with the statute and case law.

Counsel attempts to couch the issue in terms of a constitutional issue. Appellant's Opening Brief, p. 4 *et. seq.* However, this Court has recognized that, where an issue may be resolved on statutory grounds, a decision based on constitutional grounds will be avoided. Schelgel, 137 Wash.App. at 369. And this Court in Schlegel

decided just that issue. It defined and interpreted the statute in a way that allows it to be consistently applied in this case. Nothing new has been presented by the Appellant which points to the overturning of this Court's decision in Schlegel. Rather, Counsel alarmingly raises the specter of the government agents stopping people on rural roads "for almost any reason during hunting season" without noting the standards which the Court will apply to the actions of agents under this statute. Appellant's Opening Brief at 6.

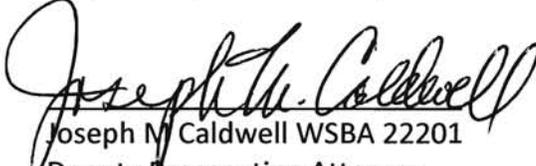
Conclusion

Officer McCormick had articulable facts to support his stopping of the vehicle in which the Appellant was riding on October 25, 2009. Based on his training and experience, he was suspicious that illegal hunting activity could be occurring and conducted a temporary stop to check for valid documentation and unloaded firearms in the vehicle. Once he had determined that no violations were occurring at least on the surface, he allowed the Appellant to go. Further investigation, however, indicated that the Appellant was a convicted felon not allowed to own or possess a firearm, and Officer McCormick conducted a stop and arrest of Appellant based on the information he had. He had the facts to justify the initial stop, and

certainly had information to justify the arrest. He complied with the statute, and with this Court's interpretation of the same. Appellant's appeal must be denied.

Dated this 10th day of May, 2012

Respectfully Submitted by:


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COA NO. 300307

NAME OF CASE: State of Washington v. RICHARD ARTHUR GUIASOLA
Okanogan County Cause No. 08-1-00314-9

I hereby certify under penalty and perjury of the laws of the State of Washington that on the 10th day of May, 2012, I personally mailed a copy of **Respondents Brief and Certificate of Mailing** to the following interested parties.

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