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Court of Appeals  
Division III  
State of Washington

32270-0-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JOSHUA EDWARDS, APPELLANT

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APPEAL FROM THE SUPERIOR COURT

OF STEVENS COUNTY

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APPELLANT'S BRIEF

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A. ASSIGNMENTS OF ERROR

1. The court erred in finding:

[P]atrolman, Wayne Walls was on routine patrol and traffic enforcement the evening of December 15, 2013, at approximately 10:00 a.m. [sic] was in the Colmac parking lot, observed a vehicle traveling eastbound on Lincoln, observed that the license plates -- license plate illumination light was not working;

(RP 141)

2. The court erred in finding:

Further, it does seem incredible to the court that -- either Daniel Edwards or the defendant actually -- And Mr. -- in the defendant's words, checked the license plate light several times that night. For what reason? That seems to be a response to the officer indicating that now that that was the reason for the stop, and does seem to be somewhat unusual behavior.

(RP 142)

3. The court erred in finding:

Daniel Edwards, he had spent some time with his son during the course of the day, said he was with him all day, was not present at the traffic stop but had been in the vehicle, evidently, from approximately 8:30 to 9:00 -- and that varied; he indicated 8:00 to 9:30, then later 8:30 to 9:00 -- indicated he always looks at license plate lights to be sure they're working. Again, that seems to be a response to the basis for the stop, rather

than a -- reasonable way of -- of looking at -  
- at a vehicle. Why would he be looking at  
lights that his son was driving?

(RP 142-43)

4. The court erred in finding:

In addition, it's clear Mr. McDaniel has some sort of dog in this fight, to use the parlance, in that there is some suggestion that he had spoken with the defendant about assuming responsibility for the firearm ultimately found, that he had spoken with the defendant from the jail about that particular issue, which again strike the court as curious, given the circumstances of the stop.

(RP 142)

5. The court erred in finding:

[T]he testimony of those witnesses, if -- if not incredible, still does not in my judgment -- make the officer's testimony any less credible.

(RP 143)

6. The court erred in finding:

[W]ithout any knowledge of the individual or the vehicle, the entire purpose of a pretext stop seems to me to be eviscerated. There has to be another reason that the officer's making the stop, and how can that be if he has no knowledge of the driver, occupant or vehicle?

(RP 143-44)

## B. ISSUES

1. A video recording shows that the license plate illumination lights on a truck were operable less than two hours before a traffic stop. The owner of the truck testifies that the lights were operable two days after the traffic stop and no work had been done on the lights in the interim. A police officer testifies that he initiated the traffic stop because the license plate lights were not working. Did the trial court err in denying a defense motion to dismiss the charges because they were based on evidence obtained pursuant to an unlawful traffic stop?

## C. STATEMENT OF THE CASE

Josh Edwards was driving his friend Travis McDaniel's truck when Officer Wayne Walls pulled him over. Mr. Edwards promptly admitted he did not have a driver's license. (RP 168) He told Officer Walls his name was Joshua Thompson. (RP 171) He had no identification, so Officer Walls arrested him. (RP 171) Searching Mr. Edwards's pockets, Officer Walls discovered a knife with metal knuckles and a .22 caliber Derringer. (RP 171-76) The State charged Mr. Edwards

with unlawful possession of a firearm, possession of an unlawful weapon, and lying to a police officer.

Two days later, Mr. McDaniel found his truck in Ronny D's parking lot, where it had been since Mr. Edwards's arrest. (RP 128-29; CP 65) A few days after that, Mr. Edwards telephoned Mr. McDaniel from jail. (RP 195-200) During the conversation, they discussed whether Mr. McDaniel could help Mr. Edwards make bail. (RP 199) Mr. Edwards told Mr. McDaniel he was being charged with possessing Mr. McDaniel's firearm, and Mr. McDaniel said he had forgotten it was in the truck. (RP 199)

The day after he arrested Mr. Edwards, Officer Walls prepared a report describing the initial traffic stop: "While on routine patrol in the city of Colville, in Stevens County I was [eastbound] on Lincoln Street at 5th Avenue and came up behind this truck and noticed the license plate lights were out making it difficult to read the license plate." (CP 64)

On the first day of trial, the court heard defendant's motion to suppress evidence and dismiss the charges. (RP 103-146; CP 53-60) Officer Walls told the court that he was in a parking lot doing some paperwork when he saw a truck drive past him. (RP 106) He testified that he noticed the license plate illumination light was not working, so he pulled out behind the vehicle and made a traffic stop. (RP 108) He said

he did not recognize the truck or Mr. Edwards before he made the stop. (RP 108)

Defense counsel introduced a video recording of the Walmart parking lot on the evening of Mr. Edwards's arrest. (RP 115) The recording shows Mr. McDaniel's truck arriving in the parking lot shortly after 8:00 p.m. and leaving at 8:38 p.m. (RP 116-17) The recording shows that the license plate illumination lights came on when the truck's headlights were activated. (RP 142) Officer Walls stopped the truck at 10:08 p.m. (CP 63)

Mr. McDaniel testified that the license plate illumination lights were working a few days before he lent the truck to Mr. Edwards. (RP 127-28) He checked them a day or so after he recovered his truck and they were still working. (RP 129) He also testified that in, the phone conversation on March 21, he told Mr. Edwards that he had forgotten the gun was in the truck and would be willing to testify that it was his gun and Mr. Edwards didn't know it was in the truck. (RP 131)

Mr. Edwards's father, Daniel Edwards, told the court he was in the truck until a few hours before the traffic stop and he had noticed the license plate lights were working then. (RP 122, 124) An investigator, Ronald Goodbrake, testified that he examined the truck a few days before trial and the license plate light was still working. (RP 120-21)

The court found that Officer Walls stopped Mr. Edwards because the license plate on the truck was not illuminated; the video recording established that the license plate illumination light came on; Mr. McDaniel had “some sort of dog in this fight,” and there was some suggestion Mr. McDaniel had spoken with Mr. Edwards about assuming responsibility for the firearm, which the court found “curious, given the circumstances of the stop.”<sup>1</sup> (RP 141-42) The court questioned why Mr. Edwards’s father would have been looking at the lights on the truck. (RP 143). The court found that, as there was no evidence the truck was in the same condition as it had been at the time of the traffic stop, recent evidence that the license plate lights were working was not relevant. (RP 143) The court found that testimony presented by the defense did not make the officer’s testimony any less credible and as there was no evidence the officer knew either the defendant or the suspect vehicle the license plate violation could not have been a pretext for the traffic stop. (RP 143-44) The court denied the motion to dismiss. (RP 144)

#### D. ARGUMENT

In reviewing a trial court’s denial of a CrR 3.6 motion to suppress, the court determines whether substantial evidence supports the trial court’s

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<sup>1</sup> The court entered written findings as to a CrR 3.5 hearing, but the record does not include any written findings as to the CrR 3.6 hearing. (CP 143-45)

findings of fact to which error has been assigned. *State v. Kinzy*, 141 Wn.2d 373, 382, 5 P.3d 668 (2000) (quoting *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)). Conclusions of law in an order pertaining to suppression of evidence are reviewed de novo. *State v. Acrey*, 148 Wn.2d 738, 745, 64 P.3d 594 (2003).

1. THE COURT'S FINDINGS ARE NOT SUPPORTED BY THE EVIDENCE.

The court found that Mr. Edwards's father, Daniel Edwards, was not credible because he could not remember at what precise time he last saw his son on the evening of the traffic stop and the court found it odd that the witness had noticed that the truck lights were on and it was more probable that the witness was merely trying to refute the officer's testimony. None of the reasons supplied by the court provides any basis for finding that the witness was lying.

The court found, in effect, that the owner of the truck was not credible because he had acknowledged his ownership of the firearm found in the defendant's possession during a telephone conversation with the defendant. No evidence suggests that the firearm was not in fact owned by Mr. McDaniel. Mr. McDaniel's ownership of neither the firearm nor the truck establishes a reasonable basis for concluding that he

misrepresented the condition of the lights when he examined them two days after the traffic stop.

Mr. Daniel Edwards and Mr. McDaniel testified that they saw the license plate illumination lights working shortly before and after 10:00 p.m. on December 15, and their testimony was corroborated by a video recording provided by a third party. The officer testified that at 10:08 p.m. on December 15 the lights were not working. This evidence does not support the court's finding that even though the defense witnesses were credible, their testimony did not render the officer's testimony less credible.

The court found that because the officer did not recognize either the vehicle or the driver there could be no reason for making the traffic stop other than an observation that the license plate lights were not working. The absence of evidence of two possible motives does not support the inference that no other motives could exist.

## 2. THE TRAFFIC STOP LACKED FACTUAL JUSTIFICATION AND WAS UNLAWFUL.

The Fourth Amendment, made applicable to the states by the Fourteenth Amendment, guarantees the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures. *Mapp v. Ohio*, 367 U.S. 643, 647, 81 S. Ct. 1684, 6 L. Ed.

2d 1081, 86 Ohio Law Abs. 513 (1961). Searches and seizures must be supported by probable cause whether or not a formal arrest or search pursuant to a warrant occurs. *Dunaway v. New York*, 442 U.S. 200, 208, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979). Under article I, § 7 of the Washington Constitution, warrantless seizures are per se unreasonable and the State bears the burden of demonstrating by clear and convincing evidence that the warrantless stop falls within one of the narrow exceptions to the general rule. *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984). *State v. Doughty*, 170 Wn.2d 57, 62, 239 P.3d 573 (2010); *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

Exceptions authorizing seizure on less than probable cause are narrowly drawn and carefully circumscribed. *State v. White*, 97 Wn.2d 92, 640 P.2d 1061 (1982). Investigatory detentions, including warrantless stops for traffic infractions, are a recognized exception. *State v. Rife*, 133 Wn.2d 140, 150–51, 943 P.2d 266 (1997); *State v. Duncan*, 146 Wn.2d 166, 174–75, 43 P.3d 513 (2002). Law enforcement officers may conduct a warrantless traffic stop if they have a reasonable and articulable suspicion that a traffic violation has occurred or is occurring. *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999).

Concerns that some police officers may misrepresent their reason and motives for conducting traffic stops “heightens the need for judicial

review of traffic stops.” *State v. Arreola*, 176 Wn.2d 284, 297, 290 P.3d 983, 990-91 (2012), citing Samuel Walker, *Taming the System* 45–46 (1993) (exclusionary rule led to increase in “number of officers claiming that the defendant had dropped the narcotics on the ground”). Such review should be meaningful and should not rest on a presumption that law enforcement officers are credible and that citizens who testify on behalf of a suspect are not.

The evidence purporting to justify a warrantless seizure in this case is far from clear and convincing. While the trier of fact makes determinations as to the credibility of witnesses, where testimony of numerous witnesses is corroborated by a video recording provided by a disinterested third party, the uncorroborated testimony of a single witness to the contrary does not satisfy the requirement of clear and convincing evidence.

The record does not support the conclusion that Officer Walls had a reasonable and articulable suspicion that Mr. Edwards was committing a traffic infraction. The traffic stop violated the protections of U.S. Const. Art. 1, sec. 7 and the Fourth Amendment.

“When an unconstitutional search or seizure occurs, all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed.” *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833

(1999); *See State v. Gaines*, 154 Wn.2d 711, 716-17, 116 P.3d 993 (2005).

The trial court should have suppressed the fruits of the warrantless seizure, including Mr. Edwards's statements to Officer Walls, and the Derringer and the metal knuckles found in the search incident to arrest.

E. CONCLUSION

The convictions should be reversed and the charges dismissed.

Dated this 12th day of August, 2014.

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON,

DIVISION III

STATE OF WASHINGTON,	)	
	)	
Respondent,	)	No. 32270-0-III
	)	
vs.	)	CERTIFICATE
	)	OF MAILING
JOSHUA EDWARDS,	)	
	)	
Appellant.	)	

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I certify under penalty of perjury under the laws of the State of Washington that on August 12, 2014, I served a copy of the Appellant's Brief in this matter by email on the following party, receipt confirmed, pursuant to the parties' agreement:

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I certify under penalty of perjury under the laws of the State of Washington that on August 12, 2014, I mailed a copy of the Appellant's Brief in this matter to:

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Signed at Spokane, Washington on August 12, 2014.

  
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