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NOV 10 2014

COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

NO. 32270-0-III

IN THE COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON

Respondent

v.

JOSHUA EDWARDS

Petitioner/Appellant

BRIEF OF RESPONDENT

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EVIDENCE RULES

ER 4014

STATUTES

RCW 46.37.0507
RCW 46.61.0306

I. ASSIGNMENTS OF ERROR

1. The court's findings which were made at the time of the CrR 3.6 hearing are not supported by the evidence.
2. The traffic stop lacked factual justification and was unlawful.

II. STATEMENT OF CASE

The State accepts the Appellant's Statement of the Case.

III. ISSUES PRESENTED

1. Were court's findings which were made at the time of the CrR 3.6 hearing supported by the evidence?
2. Did the traffic stop lack factual justification, and therefore was unlawful?

IV. ISSUES PRESENTED

1. Were court's findings which were made at the time of the CrR 3.6 hearing supported by the evidence?

The court's findings which were made at the CrR 3.6 hearing were supported by substantial evidence. The court properly rejected the testimony which was presented by the defense witnesses as it was

incredible and irrelevant. An appellate court reviews a trial court's findings of fact entered pursuant to a CrR 3.6 motion to suppress for substantial evidence, and for whether the findings of fact support the conclusions of law. *State v. Cole*, 122 Wn.App. 319, 322–23, 93 P.3d 209 (2004). Substantial evidence is evidence sufficient to convince a fair-minded person that a finding is true. *State v. Hardgrove*, 154 Wn.App. 182, 185, 225 P.3d 357 (2010). The appellate court must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence. *State v. Cord*, 103 Wash.2d 361, 367, 693 P.2d 81 (1985). An appellate court cannot second-guess a trier of facts credibility determination as those determinations are for the trier of fact and cannot be reviewed on appeal. *State v. Casbeer*, 48 Wash.App. 539, 542, 740 P.2d 335, *review denied*, 109 Wash.2d 1008 (1987). Furthermore, the appellate court should defer to the trier of fact on issues of “conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.” *State v. Thomas*, 150 Wn.2d 821, 874-875, 83 P.3d 970 (2004).

Officer Walls testified that he had initiated a traffic stop and attempted to stop a vehicle that Joshua Edwards, the Petitioner, was driving due to the fact that he observed the license plate light was not working. CP at 107. Officer Walls testified that Mr. Edwards did not pull

over immediately and he had to follow the vehicle for several blocks. CP at 108. He indicated that the license plate light was not working the entire time he was following the vehicle. CP at 108.

At the CrR 3.6 hearing the defendant presented testimony first from a defense investigator who testified that he had inspected the vehicle on January 30, 2014. CP at 119. The court properly found that this testimony was not particularly relevant as there was no indication that the vehicle was in the same condition as it had been on December 15, 2013 when the traffic stop occurred. CP at 143. The relevant inquiry for the court during the CrR 3.6 hearing was the condition of the lights at the time the stop was initiated; not the condition the vehicle was approximately 45 days later.

Daniel Edwards, the defendant's father, also testified at the CrR 3.6 hearing CP at 124. He testified that he made sure that all of the lights were working on the vehicle on the evening in question prior to getting into the car. *Id.*

Travis McDaniel, the owner of the vehicle, testified that he too had checked the condition of the vehicle's lights both prior and after the defendant had been arrested. CP at 127 - 129. On cross-examination Mr. McDaniel admitted that he has spoken with the defendant the night before the suppression hearing and had discussed the issue with him. CP at 130.

Mr. McDaniel also admitted that during a different phone call he had agreed to provide favorable testimony regarding the firearm which was recovered from the defendant. CP at 131.

Joshua Edwards, the petitioner, also testified on his own behalf at the CrR 3.6 hearing. CP at 132. Mr. Edwards testified that he had checked all of the lights and found them to be in proper working order. CP at 132.

A video was played during the CrR 3.6 hearing which purportedly showed the vehicle had functioning lights. CP at 118. The video depicted the vehicle approximately one and a half hours before the stop in question. CP at 142.

The trial court properly found that the testimony of the defense investigator and the video of the vehicle at Wal-Mart were not probative. ER 401 states that, "Relevant evidence" means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." The trial court properly disregarded this evidence. The condition of the vehicle both before and after the traffic stop was not relevant with respect to determining if the light was functioning at the time of the stop.

The defendant presented testimony from two witnesses, and he also testified that the lights on the vehicle had been checked just prior to exiting Wal-Mart. The trial court found this testimony highly suspect. Mr. McDaniel testified that he had discussed the importance of the condition the license plate light with Mr. Edwards the day prior to the suppression hearing. The trial court doubted the credibility of the witnesses, noting that their testimony appeared to be tailored for purposes of the CrR 3.6 hearing. CP at 143. It is both convenient and incredible that the defendant was able to produce two witnesses, in addition to himself, who were able to testify that they had inspected the light in question on or near the date the traffic stop was made. The trial court noted this irregularity as well. CP at 142 – 143.

The court ultimately found that the testimony of the defense witnesses did not diminish the credibility of the officer's testimony. CP at 143. Officer Walls was able to articulate a justification for stopping Mr. Edwards on the date in question. This court should not second-guess the credibility determinations which were made by the trial court during the CrR 3.6 hearing.

2. Did the traffic stop lack factual justification and therefore was unlawful?

The traffic stop which was conducted by Officer Walls was lawful and all of the evidence obtained subsequently was properly discovered and seized. A traffic stop is a “seizure” for the purpose of constitutional analysis, no matter how brief. *State v. Ladson*, 138 Wash.2d 343, 350, 979 P.2d 833 (1999). An ordinary traffic stop has been analogized to investigative detention subject to the criteria of reasonableness set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). *Id.* A law enforcement officer is entitled to stop a vehicle without a warrant when the officer has probable cause to believe that a traffic infraction has been committed in his presence. RCW 46.64.030; *Ladson*, 138 Wash.2d at 361, 979 P.2d 833.

The probable cause required before an officer stops a vehicle to enforce the traffic code is a reasonable articulable suspicion that a traffic infraction has occurred. *Id.* at 349, 979 P.2d 833. A *Terry* investigative stop only authorizes police officers to briefly detain a person for questioning without grounds for arrest if they reasonably suspect, based on specific, objective facts, that the person detained is engaged in criminal activity or a traffic violation. *State v. Day*, 161 Wash.2d 889, 896, 168

P.3d 1265 (2007) (citing *State v. Duncan*, 146 Wash.2d 166, 172–74, 43 P.3d 513 (2002) for its citation of *Terry*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889).

The reasonableness of a traffic stop does not turn on whether a driver is proved to have committed an infraction, but instead on whether facts and circumstances warranted the stop; innocent or negligent mistakes of fact will not invalidate a stop. The federal guaranty under the Fourth Amendment, for example, does not proscribe “inaccurate” searches, only “unreasonable” ones. *See State v. Seagull*, 95 Wash.2d 898, 908, 632 P.2d 44 (1981). The facts as observed by the officer must give rise to reasonable suspicion that the driver actually violated the traffic code. *See State v. Nichols*, 161 Wash.2d 1, 13, 162 P.3d 1122 (2007).

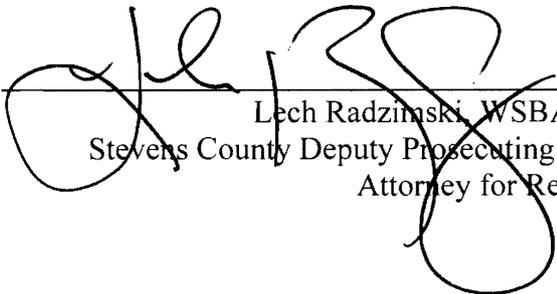
Officer Walls was able to articulate a reasonable basis for stopping Mr. Edwards. Officer Walls testified that he observed Mr. Edwards operating a motor vehicle without a functioning license plate light. CP at 107. The operation of a vehicle without such a light is contrary to law. *See RCW 46.37.050*. Officer Walls testified that he followed the vehicle for several blocks and the light never functioned. CP at 108. This formed a valid basis to stop Mr. Edwards. The events which transpired and the evidence which was seized after the stop are admissible.

V. CONCLUSION

The State respectfully requests that this court find that the trial court's ruling regarding the CrR 3.6 motion was proper and that the traffic stop was justified. The State further requests that this court deny the relief requested by Mr. Edwards.

Respectfully submitted this 6th day of November, 2014.

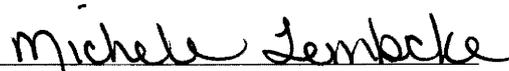
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Affidavit of Certification

I certify under penalty of perjury under the laws of the State of Washington, that I mailed a true and correct copy of the foregoing Brief of Respondent to the Court of Appeals, Division III, 500 N. Cedar Street, Spokane, WA 99201, and to Janet Gemberling Attorney for Appellant, P.O. Box 9166, Spokane, WA 99209, and to Joshua Edwards, #860244, Washington State Penitentiary, 1313 N. 13th Ave., Walla Walla, WA 99362 on November 6, 2014.



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