

32707-8-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

NATHAN TRACEY MITCHELL,

Appellant.

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

SUPPLEMENTAL BRIEF OF RESPONDENT

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I. ADDITIONAL ISSUE PRESENTED

By letter dated October 30, 2015, this Court requested the parties submit supplemental briefing regarding an issue contained in defendant's Statement of Additional Grounds: "Whether, in its findings of fact and conclusions of law on defendant's motion to suppress evidence (filed June 9, 2014), the trial court correctly concluded that based on the totality of all the circumstances known to the trooper at the time of the arrest, there was probable cause to arrest Nathan Mitchell for the traffic offense of Driving While Revoked."

II. ANSWER TO ISSUE PRESENTED

A. THE TRIAL COURT CORRECTLY CONCLUDED THAT BASED ON THE TOTALITY OF ALL THE CIRCUMSTANCES KNOWN TO THE TROOPER AT THE TIME OF THE ARREST, THERE WAS PROBABLE CAUSE TO ARREST NATHAN MITCHELL FOR THE TRAFFIC OFFENSE OF DRIVING WHILE REVOKED.

1. Standard of review

On review of the denial of a motion to suppress, this court must determine "whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law." *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Substantial evidence is "enough 'to persuade a fair-minded person of the truth of the stated premise.'" *Id.* (quoting *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999)). A trial court's conclusions of law following a suppression

hearing are reviewed de novo. *State v. Bailey*, 154 Wn. App. 295, 299, 224 P.3d 852, *review denied*, 169 Wn.2d 1004, 236 P.3d 205 (2010). Further, the question of whether an investigatory stop, or warrantless seizure, is constitutional is a question of law reviewed de novo. *Id.*; *see also, Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

2. Facts surrounding the stop of the defendant and subsequent arrest.

The defendant brought a suppression motion. CP 8-39. The trial court entered the following findings of facts after the hearing on defendant's motion to suppress.

1. On April 13, 2014, Trooper T. M. Corkins of the Washington State Patrol, while on duty on routine patrol, received a radio dispatched report of a single vehicle roll over on westbound I-90 at milepost 257. Trooper Mehaffey was also dispatched and was first to arrive at the scene.
2. The incident had been reported by a citizen's report which also advised that the driver of the vehicle was walking around the vehicle and appeared dazed and confused. He was described as wearing a black hooded sweatshirt and was hitchhiking away from the scene.
3. WSP radio provided information on the registered owner, who had a drivers' license which was revoked in the first degree. A photograph was electronically obtained by Trooper Corkins. The trooper also determined that the defendant had prior similar offenses.
4. Trooper Mehaffey reported that the vehicle had not rolled over but had 'spun out', remaining upright.

5. Trooper Corkins located the defendant approximately one mile west of where the vehicle was left, and identified him by his black hooded sweatshirt and the DOL photograph the trooper had viewed. His appearance was consistent with the description given by the witness.
6. The defendant told Trooper Corkins that the driver of his vehicle was a male black named Sean Martin who had left the vehicle in the other direction from that which the defendant was going.
7. When asked where the keys to the vehicle were, the defendant said he had them.
8. The defendant was arrested for Driving While Revoked in the First Degree.

CP 50-52.

From these undisputed facts¹ the trial court found that there was probable cause to arrest the defendant for driving while revoked. CP 51-52.

The factual situation surrounding the stop of the defendant starts with Trooper Corkins' receipt of a citizen's report that there was a car off the roadway in a rollover accident, with the black-hooded sweatshirt wearing driver appearing dazed and walking or hitchhiking away. Trooper Mehaffey was also dispatched and was first to arrive at the scene.

¹ As the findings of fact in this case were stipulated and uncontested, they are verities on appeal. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006) (citing *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003)). *State v. Fry*, 168 Wn.2d 1, 5, 228 P.3d 1, 4 (2010).

WSP radio provided information on the registered owner, who had a drivers' license that was revoked in the first degree. A photograph was electronically obtained by Trooper Corkins. Trooper Corkins located the defendant approximately one mile west of where the vehicle was abandoned, and identified him by his black-hooded sweatshirt and the DOL photograph the trooper had viewed. His appearance was consistent with the description given by the witness. The trooper also determined that the defendant had prior similar offenses. He talked with the defendant. After denying being the driver, the defendant said that the keys were in his pocket. The defendant was arrested for driving while license suspended.

3. The seizure proceeded from a valid *Terry* stop to a valid arrest.

Although we presume that warrantless seizures are unreasonable under the Fourth Amendment and article 1, section 7 of the Washington Constitution, one exception to this presumption is a brief investigatory stop, called a *Terry* stop. *State v. Doughty*, 170 Wn.2d 57, 61–62, 239 P.3d 573 (2010). An officer may conduct a *Terry* stop when he or she has reasonable, articulable suspicion of a substantial possibility that criminal conduct has occurred or is about to occur based upon a totality of the circumstances. *State v. Snapp*, 174 Wn.2d 177, 197–98, 275 P.3d 289

(2012). To justify a *Terry* stop, the officer must have “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Snapp*, 174 Wn.2d at 197 (quoting *Terry*, 392 U.S. at 21).

Here the officer received information from the citizen informant that a car was driven by an individual wearing a black-hooded sweatshirt, that the car had crashed on I-90, and the driver was walking or hitchhiking away from the scene. The officer was justified in believing that the information was correct. The appropriate constitutional analysis for a stop precipitated by an informant is a review of the reasonableness of the suspicion under the totality of the circumstances. *State v. Z.U.E.*, 183 Wn.2d 610, 620-21, 352 P.3d 796, 801 (2015). In *Z.U.E.*, *supra*, the Court approved the analysis set forth in *Navarette v. California*, — U.S. —, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014). In that case, the caller's report that the defendant's pickup truck ran her off the road was sufficient to support a stop of the suspected drunk truck driver. The United States Supreme Court decided that several factors supported the caller's reliability: the caller was an eyewitness; she made the report contemporaneously to the incident; and she called the emergency 911 line, making her accountable for the provided information since police can trace those calls. *Z.U.E.*, 183 Wn.2d at 621, citing *Navarette*, 134 S.Ct. at

1689. Those facts are indistinguishable from the initial facts provided by the witness informant. Trooper Corkins also received a Department of Licensing photograph of the registered owner of the vehicle, as well as a Department of Licensing report that the registered owner's license was revoked. Trooper Corkins then confirmed the hooded person walking on the shoulder of the freeway was the person depicted in the D.O.L. photograph.

These circumstances viewed in their totality support a reasonable suspicion that the person walking down I-90 or hitchhiking was the driver of the vehicle and was driving while his license was suspended.² *See State v. Phillips*, 126 Wn. App. 584, 588, 109 P.3d 470 (2005) (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. It is, then, appropriate and permissible for the officer to dispel his or her suspicion by identifying the driver). This information was more than enough to establish probable cause for arrest. The icing on the cake

² A person can be arrested for this gross misdemeanor driving while suspended that occurred outside the officer's presence. *See* RCW 10.31.100(3)(f).

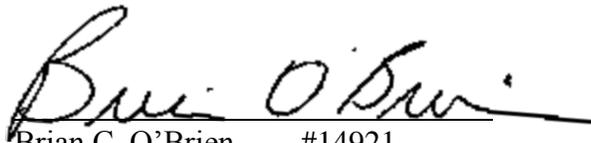
was the defendant's statement that he had the keys to the car.³ The trial court did not err by finding that there was probable cause to arrest the defendant for driving while license suspended.

III. CONCLUSION

For the reasons stated above the trial court properly held that there was sufficient evidence supporting probable cause to arrest the defendant for driving while license suspended.

Dated this 6th day of November, 2015.

LAWRENCE H. HASKELL
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

Brian C. O'Brien #14921
Deputy Prosecuting Attorney
Attorney for Respondent

³ There was no indication that the defendant was in custody at the time of this statement. *See generally, State v. Radka*, 120 Wn. App. 43, 83 P.3d 1038, 1041 (2004).

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CERTIFICATE OF MAILING

I certify under penalty of perjury under the laws of the State of Washington, that on November 6, 2015, I e-mailed a copy of the Supplemental Brief of Respondent in this matter, pursuant to the parties' agreement, to:

Susan Gasch
gaschlaw@msn.com

11/6/2015

(Date)

Spokane, WA

(Place)

Kim Cornelius

(Signature)