

FILED  
NOV 23, 2015  
Court of Appeals  
Division III  
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 32964 – 0 – III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

SHANE HOLMAN,

Defendant/Appellant

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Respondent's Brief

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## **TABLE OF AUTHORITIES**

**Cases**

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. The court correctly entered Finding of Fact No 1.
- b. The court did not abuse its discretion in finding the officers acted on reasonable suspicion after seeing a car in a rural area in the middle of the night on private property.
- c. The court did not abuse its discretion in concluding the stop was lawful and not pretextual
- d. The court correctly denied Mr. Holman's request to suppress all evidence as "fruits" of the stop as it was a lawful stop.

B. ISSUES PRESENTED

- a. Does a passenger car being driven on private property in a rural area at 11:00 p.m. where law enforcement has responded to prior burglary calls raise suspicion of criminal activity to justify an investigative stop?
- b. When officers have reasonable suspicion but also find a violation of the traffic code, can they stop the car for the traffic violation and the suspected criminal activity without this being a pretextual stop?

C. STATEMENT OF THE CASE

On July 19, 2014, Deputy Zach Green and Deputy Grant Thompson while working routine patrol stopped a car driven by Shane Holman at approximately 11:00 p.m. (RP at 11 -12, 19).

The area is primarily agricultural and rural and very dark. (RP at 15). They saw the passenger car driving on private property; pulling out of a farming field. (RP at 13, 15). Initially, Deputy Green didn't know whether the car had permission to be on the private property or not, but thought a passenger car in this area was "not a normal thing." (RP at 14, 15). Deputy Green personally has dealt with prior thefts and burglaries in that area and was aware that other deputies had dealt with these thefts as well. (RP at 15). Deputy Green testified they had suspicions about the car regarding potential burglary or suspected burglary. (RP at 12). Deputy Green testified that at this exact location and on this property he had dealt with numerous thefts of the electrical line for the pivots, for the irrigation being stolen where suspects would go into the fields and cut electrical line to turn in for wire and money. (RP at 16). When Deputy Green told Deputy Thompson about his suspicion, Deputy Thompson made the decision to get behind the car to run the license plate to see who the car belonged to that was coming out of the private property, specifically whether it belonged to the known property owner, Mr. Eaton. (RP at 20). When the deputies turned their patrol car around to follow the car they saw driving on private property, they also noticed it did not have a license plate. (RP at 12-13).

Deputy Thompson testified that he stopped the car for not having a license plate. (RP at 20). Deputy Green testified that the purpose of the stop was two-fold, investigative as well as an actual traffic violation. (RP at 11).

D. ARGUMENT

- a. Does a passenger car being driven on private property in a rural area at 11:00 p.m. where law enforcement has responded to prior burglary calls raise suspicion of criminal activity to justify an investigative stop?

To justify a Terry or investigative stop under the Fourth Amendment and art. I, § 7 of the Washington State Constitution, a police officer must be able to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” Terry v. Ohio, 392 U.S. 1, 21 (1968); State v. Armenta, 134 Wn.2d 1, 20 (1997). Officers only need reasonable suspicion, not probable cause, to stop a vehicle in order to investigate whether the driver committed a traffic infraction or a traffic offense. See State v. Duncan, 146 Wn2d 166, 173-175 (2002).

A reasonable suspicion can arise from information that is less reliable than that required to establish probable cause, but reasonable suspicion, like probable cause, is

dependent upon both the content of the information possessed by the officer and the degree of reliability of the information. State v. Lee, 147 Wn.App. 912, reviewed denied, 166 Wn.2d 1016 (2009).

The scope of an investigatory stop is determined by considering (1) the purpose of the stop, (2) the amount of physical intrusion on the suspect's liberty, and (3) the length of time of the seizure. See State v. Laskowski, 88 Wn.App. 858, 950, review denied, 135 Wn.2d 1002 (1998). A Terry stop, investigative detention, must last no longer than is necessary to verify or dispel the officer's suspicion, and the investigative methods employed must be the least intrusive means reasonably available to effectuate the purpose of the detention. State v. Williams, 102 W.2d 733, 738-40 (1984). In evaluating the validity of the detention, the court must consider "the totality of the circumstances – the whole picture." United States v. Cortez, 449 U.S. 411 (1981); United States v. Sokolow, 490 U.S. 1 (1989); State v. Dorsey, 40 Wn.App. 459 (1984), review denied 104 W.2s 1010 (1985). This includes information given to the officer, observations the officer makes, and inferences and deductions drawn from

his or her training and experience. Cortez, 101 S. Ct. at 694-96.

In this case, the facts support a stop of the defendant's vehicle based on reasonable suspicion. The police were in a very rural area. It was dark and nearing the middle of the night. In an area where one of the Deputies had personally responded to thefts, he saw a passenger car driving on private agricultural property. This raised his suspicions because it was not normal activity. It was not a tractor or a truck or some agricultural piece of equipment, but a passenger car. It was the middle of the night. It was private property.

The owner of the private property was known to be Mr. Eaton, and so Deputy Thompson wanted to verify whether the car coming out of the property in fact belonged to Mr. Eaton. The car did not have a license plate, thus giving the deputies an actual reason to stop the car, as well as continue their initial investigation.

- b. When officers have reasonable suspicion but also find a violation of the traffic code, can they stop the car for the traffic violation and the suspected criminal activity without this being a pretextual stop?

A mixed-motive traffic stop is not pretextual so long as the desire to address a suspected traffic infraction (or criminal activity) for which the officer has a reasonable articulable suspicion is an actual, conscious, and independent cause of the traffic stop. State v. Chacon Arreola, 176 Wn.2d 284, 288, 290 P.3d 983, 986 (2012). So long as a police officer actually, consciously, and independently determines that a traffic stop is reasonably necessary in order to address a suspected traffic infraction, the stop is not pretextual in violation of article I, section 7, despite other motivations for the stop. Id.

This case is not a case of pretext stop. The officers were not out looking for a reason to stop this car. Their attention was drawn to the car and they became suspicious given the facts and circumstances known to them at the time: it was the middle of the night, the car was a passenger car, it was on private property, and the area had been burglarized before. Given that information, the deputies made the decision to investigate further. It was at that point that they observed the car had no license plate. Based on this actual infraction, legally, they had reason to stop the car. They were going to investigate the original suspicions: get more information about why the

car was on the private property, AND contact the driver about the missing license plate.

Pretext cases presume officers are just coming up with a reason to make a stop. Those are not the facts here, officers were investigating and in the course of that investigation based on reasonable suspicion, they observed an actual violation of the traffic code. They acted within the law and stopped the vehicle which the defendant was driving.

E. CONCLUSION

For the reasons stated, the judgment and sentence should be affirmed; appellant's requests must be denied.

Respectfully submitted November 25, 2015,

\_\_\_\_\_  
/s/  
/s/ Jodi M. Hammond  
Attorney for Respondent  
WSBA #043885



COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

State of Washington,	)	Court of Appeals No. 32964-0-III
Respondent.	)	
	)	
SHANE HOLMAN,	)	AFFIDAVIT OF SERVICE
Appellant.	)	
_____	)	

STATE OF WASHINGTON )  
 ) ss.  
 County of Kittitas )

The undersigned being first duly sworn on oath, deposes and states:

That on the 23<sup>rd</sup> day of November, 2015, affiant an electronic copy directed to:

Renee Townsley	Janet Gemberling
Court of Appeals	jan@gemberlaw.com
Division III	
500 N. Cedar Street	
Spokane, WA 99210	

containing copies of the following documents:

- (1) Affidavit of Service
- (2) Respondent's Brief

Theresa Burroughs

SIGNED AND SWORN to (or affirmed) before me on this 23<sup>rd</sup> day of November, 2015, by THERESA BURROUGHS.



Lorraine A. Hill

NOTARY PUBLIC in and for the  
 State of Washington.  
 My Appointment Expires: 09-10-17