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Division III
State of Washington

33048-6-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

JONATHAN HAAG, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

BRIEF OF RESPONDENT

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I. APPELLANT’S ASSIGNMENTS OF ERROR

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2. The Trial Court Erred When It Entered Conclusion of Law 2: “An officer would be reasonably justified in stopping a vehicle based upon the fact that the vehicle was blocking the lane of travel, jerked back into the lane of travel, did not have a license plate and had an obviously tampered with trip permit.” (CP 104)

3. The Trial Court Erred When Entered Conclusion of Law 3: “Officer Woodyard is allowed to stop a motor vehicle for suspected traffic infractions. Her knowledge of a reported stolen vehicle similar to the one in question does not invalidate the stop.” (CP 104)

4. The Trial Court Erred When It Failed To Enter Written Findings of Fact and Conclusions of Law Pursuant To CrR 6.1(d).

II. ISSUES PRESENTED

1. Is the trial court’s finding of fact number four, that the officer stopped the defendant’s vehicle for traffic violations, supported by substantial evidence?

2. Is the trial court's finding of fact number two that the officer observed a forged trip permit on the defendant's vehicle supported by substantial evidence?

3. If the officer suspected the vehicle driven by the defendant was stolen, was the stop of the defendant's vehicle permissible if the officer also observed a forged trip permit on the defendant's vehicle prior to the stop?

4. Is remand appropriate if the trial court did not enter written findings of fact and conclusions of law after a stipulated facts trial?

III. STATEMENT OF THE CASE

The defendant was charged by information in the Spokane County Superior Court with second degree possession of stolen property, possession of a stolen motor vehicle, possession of a controlled substance - methamphetamine, and violation of a no-contact order for events occurring on August 28, 2014. CP 8-9. Before trial commenced, the trial court granted the State's motion to dismiss the second degree possession of stolen property, possession of a stolen motor vehicle, and the violation of a no-contact order charges due to witness availability problems. RP 4, 43.

Prior to trial, the court conducted a CrR 3.6 suppression hearing. At the time of the hearing, the court took testimony from senior patrol officer Amy Woodyard of the Spokane Police Department.

Officer Woodyard testified she was on routine patrol on August 28, 2014. RP 15. During her shift that day, she checked the police computer for stolen vehicles. RP 19. The police computer listed a gold Saturn car as a stolen vehicle. RP 19.

While on patrol, Officer Woodyard observed a gold Saturn automobile directly in front of her patrol vehicle, blocking her lane of travel.¹ RP 16. The Saturn eventually proceeded in its lane of travel on the roadway. RP 17. While the vehicle was still directly in front her, the officer observed the following:

I noticed that the vehicle did not have license plates on the vehicle, so there's no way of of running the plate at that time to do just a simple, random check as I normally would. Then I noticed there was a trip permit in the rear window that was horribly forged or altered....

...

[I]n the course of my 15 years here at the police department, I've dealt with lots of forged and invalid trip permits. Additionally, I worked at the property and evidence facility for two years and have seen a lot of them come through there, as well.

¹ The vehicle was positioned diagonally in its lane of travel, backed-up to the curb on a hill, lurching forward at times. RP 16-17.

Typically they're either -- if they are valid, they're going to be either printed in a computer printout with the date on there or they're going to be written very legibly by either [a] dealership or by a Department of Licensing employee with a large black Sharpie, and this one was very almost like, you know, certain numbers had been turned to other numbers not very well. Like a five would be turned to an eight would be an example by making it more square rather than a circle, and it was not freely written.

It was almost like it had been like somebody had gone back over it and had deliberately tried to change the numbers from what they previously might have been.

RP 17-18.

The officer further stated during cross-examination that she knew the trip permit was obviously not valid. RP 26.² The officer exclaimed: "It was fairly obvious just from my vehicle that it was -- that it was invalid and forged." RP 29.

The officer followed the vehicle for approximately four to five blocks, and then stopped it. RP 19-20. As the officer approached the driver

² Contrary to the defendant's assertion that the only reason for stopping the vehicle was to determine whether it was stolen, the officer stated there were several concomitant reasons for stopping the vehicle. *See*, Def. Br. at 7; RP 27. The officer wanted "... to see if the driver needed some assistance if the vehicle was out of gas or what were the circumstances for it being stopped blocking the roadway, the trip permit, the validity of the registration. I mean, there were several factors." RP 27. The officer also remarked it is not possible to check with the Department of Licensing, via police radio, whether a temporary permit is valid. RP 29. The defendant was not cited for a forged or altered trip permit. RP 29-30. The officer remarked it was uncommon for her to issue traffic citations. RP 31.

of the vehicle, she did not have direct knowledge that the vehicle was stolen. RP 20. Approximately three minutes passed from the time the officer stopped the vehicle to the time that police radio confirmed the vehicle was stolen based upon the vehicle's identification number (VIN).³ RP 22. During that time period, the officer had requested the defendant's registration and driver's license. RP 23-24. The defendant provided a name which the officer ran through radio. RP 24. However, police radio advised it was not valid. RP 24. Ultimately, officers were able to confirm the defendant's identity. The defendant was the driver of the vehicle. RP 27.

Once backup arrived, approximately five to six minutes after the stop, the defendant was handcuffed and pat searched for weapons. RP 24. Officer Woodyard found a controlled substance, methamphetamine. CP 54-55.

After testimony and argument, the trial court denied the defendant's motion to suppress the controlled substance, and orally ruled:

The Court did read over the briefing that was provided. The Court's familiar with most of the cases cited, also. The Court does have to find that there's a reasonable suspicion based on an objective fact.

³ While speaking to the defendant, the officer leaned forward and observed the car's VIN, through the front windshield, on the dashboard. RP 31.

When the Court hears the testimony, reads the reports that are attached, the officer testified that there was a vehicle, a gold Saturn, blocking her lane of travel, that she had to slow almost stop to it. The vehicle began again, jerked back into the lane of travel.

She noticed there was no plate. Obviously had tampered and forged temporary license in the rear window. She did remember there was a report of a possible gold Saturn stolen. There was no way for her to verify, though, based on the fact it didn't have the plate on it, and she pulled the vehicle over.

So the Court, also, has to look at the totality of the circumstances in the stop. The fact that her attention was drawn to it because it was blocking her lane of travel. It jerked back into the lane of travel. It didn't have a plate and then the obviously tampered or forged temporary plate in the window, the trip permit.

Those all would lead an officer to reasonable suspicion to stop the vehicle. The case law talks about the Court has to figure the totality of the circumstances.

So based on that and the short time from the time she first observed it to the time she stopped it, those all would be under the totality of the circumstances reasonable suspicion based on objective facts.

So the Court would find that this is a valid stop based on the cases cited. A lot of the facts and the cases that were cited were more the officer was looking for other criminal activity. Based on the facts in this case, the Court would have to find there was reasonable suspicion and justify the stop. The Court is going to deny the motion at this time.

RP 39-40.

The trial court later entered written findings of fact and conclusions of law regarding the suppression motion. CP 104.

IV. ARGUMENT

A. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING NUMBER FOUR THAT THE OFFICER STOPPED THE DEFENDANT'S VEHICLE FOR TRAFFIC VIOLATIONS.

Standard of review.

An appellate court reviews a trial court's denial of a suppression motion to determine whether the findings of fact are supported by substantial evidence. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *overruled on other grounds*, *Brendlin v. California*, 551 U.S. 249 (2007). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Stated differently, substantial evidence is defined as "a quantum of evidence sufficient to persuade a rational fair-minded person the premise is true." *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003).

An appellate court reviews conclusions of law de novo pertaining to the suppression of evidence, as to whether the findings of fact support the trial court's conclusions of law. *State v. Cole*, 122 Wn. App. 319, 322-23, 93 P.3d 209 (2004).

With regard to suppression hearings, credibility determinations are for the trier of fact and are not subject to review. *In re Pers. Restraint of Davis*, 152 Wn.2d 647, 682–83, 101 P.3d 1 (2004); *In re Pers. Restraint of Bugai*, 35 Wn. App. 761, 765, 669 P.2d 903 (1983).

The defendant first argues substantial evidence does not support the trial court’s finding of fact number four. That finding states: “4. Officer Woodyard stopped the vehicle at Maple and Indiana for the traffic violations.” CP 104.

Substantial evidence in the record supports this finding of fact.

1. A Terry stop as an exception to the warrant requirement.

For purposes of a constitutional analysis, a traffic stop is a seizure. *State v. Doughty*, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). Generally, warrantless seizures are per se unreasonable. *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). However, a warrantless seizure is valid if it falls within the scope of one of the narrowly drawn exceptions to the warrant requirement. *Id.* at 349-50. The State bears the burden of proving that a warrantless seizure falls within an exception to the warrant requirement. *Id.* at 350.

One exception to the warrant requirement is a brief investigatory stop, called a *Terry*⁴ stop. *Doughty*, 170 Wn.2d at 61–62. A police officer

⁴ *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

may conduct a warrantless traffic stop if the officer has a reasonable and articulable suspicion that a traffic violation has occurred or is occurring. *State v. Arreola*, 176 Wn.2d 284, 292–93, 290 P.3d 983 (2012).⁵

“Articulable suspicion” is defined as a substantial possibility that criminal conduct has occurred or is about to occur. *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986); *State v. Jardinez*, 184 Wn. App. 518, 524, 338 P.3d 292, 295 (2014).⁶ Consequently, a *Terry* stop permits 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 Wn.2d 889, 896, 168 P.3d 1265 (2007); *State v. Duncan*, 146 Wn.2d 166, 173–74, 43 P.3d 513 (2002).

⁵ For example, in *State v. Snapp*, 174 Wn.2d 177, 275 P.3d 289 (2012), the Supreme Court held a police officer's *Terry* stop of a driver on a dark evening, who failed to turn on his headlights, was supported by a reasonable, articulable suspicion even though it was later demonstrated that the officer stopped the driver only 24 minutes after sunset, rather than 30 minutes after sunset, as required by RCW 46.37.020. “[T]he question of a valid stop does not depend upon [a defendant's] actually having violated the statute,” the court held, “[r]ather, if [the officer] had a reasonable suspicion that he was violating the statute, the stop was justified.” *Id.* at 198.

⁶ A traffic infraction, as distinguished from a misdemeanor or gross misdemeanor traffic violation, results in the issuance of a “notice of infraction.” *State v. Cole*, 73 Wn. App. 844, 848, 871 P.2d 656, 658 (1994).

The “objective basis,” or “reasonable suspicion,” must consist of “specific, articulable facts which, together with objective and reasonable inferences, form the basis for suspecting that the particular person detained is engaged in criminal activity.” *State v. Creed*, 179 Wn. App. 534, 540, 319 P.3d 80, *review denied*, 180 Wn. 2d 1023 (2014).

2. An altered or modified trip permit is a criminal violation which authorizes a *Terry* stop.

RCW 46.16A.030 and RCW 46.16A.320 provide respectively that a person may not operate a vehicle on the public highway without displaying either a current and proper vehicle license or a valid trip permit. A violation of RCW 46.16A.320 (trip permit) is a gross misdemeanor.

RCW 46.16A.320(3) and (6), in part, provide:

(3)(a)... Every trip permit must:

(i) Identify the vehicle for which it is issued;

(ii) Be completed in its entirety;

(iii) Be signed by the operator before operation of the vehicle on the public highways of this state;

(iv) *Not be altered or corrected. Altering or correcting data on the trip permit invalidates the trip permit;* and

(v) Be displayed on the vehicle for which it is issued as required by the department.

(b) Vehicles operating under the authority of trip permits are subject to all laws, rules, and regulations affecting the operation of similar vehicles in this state.

...

(6) Except as provided in subsection (2)(b)⁷ of this section, *a violation of or a failure to comply with this section is a gross misdemeanor.*

RCW 46.16A.320 (emphasis added).

Here, substantial evidence supports the trial court's finding of fact number four. The trial court found credible Officer Woodyard's testimony that she observed an altered or corrected temporary trip permit while following the defendant's vehicle. In addition, the officer also had in mind before the stop that the defendant's vehicle was possibly stolen, the officer wanted to offer assistance, if needed, to the driver of the car after it stalled out on a hill, and she wanted to check the validity of the registration.⁸ The officer actually and consciously made an appropriate decision to stop the vehicle, in part, based on the forged trip permit.

The fact that Officer Woodyard had a suspicion the defendant's vehicle could be stolen at the time of the traffic stop is of no consequence.

In *Arreola, supra*, the Supreme Court found a "mixed-motive stop" does not violate article I, section 7 of the state constitution as long as the

⁷ RCW 46.16A.320(2)(b) encompasses trip permits involving commercial motor vehicles.

⁸ This case is distinguished from *State v. Byrd*, 110 Wn. App. 259, 262, 39 P.3d 1010, 1012 (2002), which held a traffic stop merely to determine the validity of a trip permit is not constitutionally permitted. Here, Officer Woodyard observed the defendant's trip permit was altered (a gross misdemeanor) before making the traffic stop.

police officer makes an independent and conscious determination that “a traffic stop to address a suspected traffic infraction is reasonably necessary in furtherance of traffic safety and the general welfare.” *Id.* at 298-99. As the court stated, “That remains true even if the legitimate reason for the stop is secondary and the officer is motivated primarily by a hunch or some other reason that is insufficient to justify a stop.” *Id.* at 299.

Even assuming the officer’s stop was partially motivated to determine whether the defendant’s vehicle was stolen, this does not nullify the other contemporaneous, permissible lawful purpose for the stop – the obvious altered trip permit. Finding of fact number four is supported by substantial evidence.

B. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT’S FINDING OF FACT NUMBER TWO, WHICH SUPPORTS CONCLUSION OF LAW NUMBER TWO.

The defendant next claims the trial court’s finding of fact number two is not supported by substantial evidence which, in turn, does not support the trial court’s conclusion of law number two. Finding of fact number two states:

5. Officer Woodyard was able to observe a temporary license, or trip permit, in the rear window of the vehicle that, to her, appeared to have been forged and tampered with.

CP 104

Conclusion of law number two states:

2. An officer would be reasonably justified in stopping a vehicle based upon the fact that the vehicle was blocking the lane of travel, jerked back into the lane of travel, did not have a license plate and had an obviously tampered with trip permit.

CP 104.

As referenced above, Officer Woodyard's uncontroverted testimony at the suppression hearing was that the temporary license permit in the rear window of the defendant's vehicle appeared obviously altered or forged from a distance to the officer, before she made the stop of the defendant's vehicle. From the record, it is obvious the trial court found this testimony credible and made this factual determination as set forth in finding of fact number two.

Nothing in the record rebuts finding of fact number two. Accordingly, substantial evidence supports finding of fact number two which support's conclusion of law number two that the stop of the defendant's vehicle was lawful.

C. THIS COURT SHOULD REMAND TO THE TRIAL COURT FOR ENTRY OF WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW WITH REGARD TO THE STIPULATED FACTS TRIAL.

The defendant argues remand to the trial court is appropriate for entry of findings of fact and conclusions of law following the stipulated facts trial.⁹ The state agrees.

CrR 6.1(d) requires entry of written findings of fact and conclusions of law following a bench trial. This rule states:

In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

CrR 6.1(d).

“The purpose of CrR 6.1(d)'s requirement of written findings of fact and conclusions of law is to enable an appellate court to review the questions raised on appeal.” *State v. Head*, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). In *Head*, our Supreme Court held that “failure to enter written findings of fact and conclusions of law as required by CrR 6.1(d) requires remand for entry of written findings and conclusions.” The court

⁹ In a stipulated facts trial, the defendant and state agree what witnesses would testify to if the matter proceeded to trial. *State v. Johnson*, 104 Wn. 2d 338, 342, 705 P.2d 773 (1985). With this procedure, the State must prove the defendant’s guilt beyond a reasonable doubt to either the court or to a jury. *Id.*

noted that “[a]n appellate court should not have to comb an oral ruling to determine whether appropriate ‘findings’ have been made, nor should a defendant be forced to interpret an oral ruling in order to appeal his or her conviction.” *Head*, 136 Wn.2d at 624.

An oral opinion “has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment.” *Id.* When a court fails to enter written findings and conclusions, “[r]emand for entry of written findings and conclusions is the proper course.” *Id.*

This Court should remand to the trial court for entry of written findings of fact and conclusions of law regarding the stipulated facts trial.

V. CONCLUSION

This Court should affirm the trial court’s denial of the defendant’s motion to suppress evidence. This Court should remand to the trial court entry of written findings of fact and conclusions of law following the stipulated facts trial.

Dated this 7 day of January, 2016.

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