

FILED  
**Jul 18, 2016**  
Court of Appeals  
Division III  
State of Washington

NO. 339475

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION THREE

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STATE OF WASHINGTON,

Respondent,

v.

VICTORIA KNEZEVICH

Appellant.

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ON APPEAL FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR KITTITAS COUNTY  
The Honorable Scott Sparks

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RESPONDENT'S BRIEF

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**TABLE OF CONTENTS**

A. RESPONSE TO ASSIGNMENTS OF ERROR.....5

B. ISSUES PRESENTED.....5

C. STATEMENT OF THE CASE.....5

D. ARGUMENT .....8

E. CONCLUSION.....10

## TABLE OF AUTHORITIES

### Cases

<u>State v. Angelos</u> , 86 Wn. App. 253 (1997) .....	9
<u>State v. Chacon Arreola</u> , 176 Wn.2d (2012).....	4
<u>State v. Gaddy</u> , 152 Wn.2d 64 (2004) .....	8
<u>State v. Larson</u> , 93 Wn.2d 638 (1980).....	10
<u>State v. Lyons</u> , 85 Wn. App. (1997) .....	9
<u>State v. McKinney</u> , 148 Wn. 2d 20 (2002).....	8
<u>State v. Penfield</u> , 106 Wn. App. 157 (2001).....	9
<u>State v. Phillips</u> , 126 Wn. App. 584 (2005) .....	9
<u>State v. Rankin</u> , 151 Wn.2d 689 (2004).....	10
<u>Terry v. Ohio</u> , 392 U.S. 1 (1968).....	8

### Statutes

RCW 7.80.050(2).....	8
RCW 7.80.060 .....	8
RCW 7.84.030(2) (A) .....	8
RCW 46.61.021 .....	8
RCW 46.64.015 .....	8
RCW 46.63.030(1) (a) .....	8

#### A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. Deputy Foster made lawful contact with a car pointed out to him by a citizen for suspicious reasons that had expired registration, the title to the car had not been transferred within fifteen days of the sale and had the wrong color sticker for the year the tabs expired displayed.
- b. The trial court properly denied the defendant's motion to suppress because the stop and subsequent contact with the defendant was lawful.

#### B. ISSUES PRESENTED

- a. Can an officer make lawful contact with a car pointed out to him by a citizen for suspicious reasons when a check of the license plate reveals that registration is expired, the title to the car had not been transferred within fifteen days of the sale and has the wrong color sticker for the year the tabs expired displayed?
- b. When the officer makes a lawful stop, can he detain a passenger when he sees drug paraphernalia in the car where the defendant, a passenger in the car, is sitting?

#### C. STATEMENT OF THE CASE

On May 10, 2015 Deputy Nate Foster was contacted at the sheriff's substation in Cle Elum by a private party, (CP at 155). Mr. Riley who indicated he had seen a car driving "over 100 mph."(CP at 155). Mr. Riley gave Deputy Foster a slip of paper with the license plate of the car on it and described the car as a "white Acura." (CP at 155). He also told Deputy Foster he saw the car at the gas station and confronted them about driving so fast and the person driving the car admitted to Mr. Riley they were driving fast. (CP at 155).

Deputy Foster used his "MDC" device to check the license plate number given to him by Mr. Riley. (CP at 155). The records indicated the registration was expired and that the title to the car had not been transferred after a sale within fifteen days of the sale. (CP at 155).

Deputy Foster drove to the area where Mr. Riley described he had seen the car. (CP at 156). Deputy Foster eventually got behind a white Acura that had the license plate number given to him by Mr. Riley. (CP at 156). In addition to the expired registration and the failure to transfer title, the car also had the wrong color sticker for the expiration year. (CP at 156). Per the

DOL records, the registration was expired in 2013, but it had a 2015 sticker on the plate. (CP at 156).

The driver was arrested for DWLS, 3<sup>rd</sup> and placed into custody. (CP at 156). When he was removed from the car, Deputy Foster saw a melted pen tube between the driver's seat and the door frame. (CP at 156). In his training and experience, melted pen tubes can be used to smoke controlled substances. (CP at 156). The defendant was in the back seat, directly behind the driver. (CP at 156)

When Deputy Foster re-contacted the occupants of the car after the driver's arrest, he noticed a box of tin foil at the defendant's feet and a second tan melted pen tube on the back seat next to the defendant. (CP at 156). In his training and experience, foil is used in conjunction with the pen tubes to smoke controlled substances. (CP at 156)

At this point, he began an investigation on the occupants of the car regarding use of drug paraphernalia. (CP at 156). He asked the defendant her name and she told him her name was "Sara N. Taylor" and gave a date of birth of 06/22/1987 (CP at 112). The defendant and another passenger admitted to Deputy Foster that the pen tube was used for smoking heroin (CP at 112).

#### D. ARGUMENT

- a. Can an officer make lawful contact with a car pointed out to him by a citizen for suspicious reasons when a check of the license plate reveals that registration is expired, the title to the car had not been transferred within fifteen days of the sale and has the wrong color sticker for the year the tabs expired displayed?

An officer, who has probable cause to believe that a traffic or non-traffic infraction was committed in his presence, may detain the person receiving the infraction for a reasonable period of time necessary to identify the person and to complete the notice of infraction. See generally RCW 7.80.050(2); RCW 7.80.060; RCW 7.84.030(2) (a); RCW 46.61.021; RCW 46.64.015; RCW 46.63.030(1) (a). The propriety of a Terry<sup>1</sup> stop is met entirely independently of any informant information based upon the investigation of Deputy Foster, who is entitled to rely upon the records of the Department of Licensing in establishing a reasonable suspicion of criminal activity or traffic infraction. See State v. McKinney, 148 Wn. 2d 20

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<sup>1</sup> 392 U.S. 1 (1968)

(2002); State v. Gaddy, 152 Wn.2d 64 (2004); State v. Lyons, 85 Wn. App. (1997); State v. Phillips, 126 Wn.App. 584 (2005), review denied 156 Wn.2d 1012 (2006); State v. Penfield, 106 Wn. App. 157 (2001). When determining whether a given stop is pretextual, the court should consider the totality of the circumstances, including both the subjective intent of the officer as well as the objective reasonableness of the officer's behavior. State v. Angelos, 86 Wn. App. 253 (1997). In a mixed-motive stop, the court's inquiry should be limited to whether investigation of criminal activity or a traffic infraction (or multiple infractions), for which the officer had a reasonable articulable suspicion, was an actual, conscious, and independent cause of the traffic stop. State v. Chacon Arreola, 176 Wn.2d (2012).

Here the officer's attention was brought to the car based on concerns of an identified citizen informant. In making an effort to corroborate and investigate the information supplied to him by the citizen. When he found the car, there were actual violations of the law that he could

lawfully investigate: expired registration, failure to transfer title, and an incorrect date sticker.

- b. When the officer makes a lawful stop, can he detain a passenger when he sees drug paraphernalia in the car where the defendant, a passenger in the car, is sitting?

Police may constitutionally detain a passenger and request identification when circumstances give the police an independent cause to question the passengers. State v. Rankin, 151 Wn.2d 689 (2004); State v. Larson, 93 Wn.2d 638 (1980).

Here the officer saw drug paraphernalia in the car where the defendant was sitting; his actions in detaining her were lawful.

#### E. CONCLUSION

For the reasons stated, the Superior Court correctly denied the defendant's motion to suppress as the stop was legal and the investigation of the defendant was also lawful.

Respectfully submitted June 30, 2016,

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/s/  
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