

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GARY NATHANIEL GATEWOOD, SR.,

Petitioner.

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STATE OF WASHINGTON
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ON REVIEW FROM THE COURT OF APPEALS, DIVISION ONE

SUPPLEMENTAL BRIEF OF PETITIONER

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A. INTRODUCTION

In State v. Ladson,¹ this Court held that pretext stops violate article I, section 7 of the Washington Constitution because “our constitution requires we look beyond the formal justification for the stop to the actual one.” This Court articulated a clear rule for assessing whether a stop was pretextual, requiring lower courts to consider (1) the subjective intent of the officer and (2) the objective reasonableness of the officer’s behavior.

Officers here responded to petitioner Gatewood’s allegedly furtive movements at a bus shelter by immediately turning at the next intersection and then traveling the wrong way down a one-way street with the express intent to investigate the behavior. When they reached Gatewood, they seized on the pretext that Gatewood had jaywalked in order to stop him and further investigate the earlier activity. The record thus evinces both improper subjective intent to investigate and objectively unreasonable behavior by law enforcement.

Unlike in Ladson, however, the officers did not admit the alleged jaywalking was a pretext. The lower courts therefore avoided the pretext question by conflating the Ladson and Terry² standards, and thereby concluded the officers had reasonable suspicion to stop Gatewood for the

¹ State v. Ladson, 138 Wn.2d 343, 979 P.2d 833 (1999).

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

combination of suspicious activity and jaywalking.

Under the proper standard, the record amply establishes (1) improper subjective intent and (2) objectively unreasonable behavior on the part of the officers. The totality of the circumstances shows the officers used the jaywalking ordinance as a pretext of form to investigate other activity, which is forbidden under the Washington Constitution. The conviction must therefore be reversed.

B. STATEMENT OF THE CASE

1. CrR 3.6 testimony. Shortly after midnight on June 26, 2004, Seattle police officers Chan and Longley were patrolling Seattle's Rainier Valley neighborhood when they passed a bus shelter with three people seated inside, including petitioner Gatewood. 1RP 3-6. Both members of the Seattle Police Department's Anti-Crime Team (ACT), a street crimes unit with an emphasis on narcotics, Longley and Chan were on the lookout for "suspicious activity." 1RP 4-5, 18.

According to Longley, when Gatewood saw the police cruiser pass, his "eyes got big," and he made what Longley described as a "furtive movement," turning his body to the left "like he was hiding something." 1RP 6-7, 13. Although Longley did not see what, if anything, Gatewood was trying to hide, he believed Gatewood might have been sloughing drugs and told Chan to return to the bus shelter. 1RP 7-8, 13.

In their haste to contact Gatewood, the officers turned right at the next intersection, turned right again, and then drove the wrong way down a one-way street to the intersection near the bus shelter. 1RP 8, 19. As the officers approached, they realized Gatewood had left the bus shelter and had walked across Rainier Avenue, about 20 feet north of the intersection, traveling in the same direction as the police cruiser was traveling. 1RP 8-9, 50. It was not clear to the officers whether Gatewood saw the police cruiser returning. 1RP 57. At the time Gatewood crossed the street, there were no cars in the street other than the police cruiser. 1RP 56. When Gatewood reached the other side of the street, he walked toward the intersection where the police cruiser was located. 1RP 41, 50-51.

Chan rolled up slowly behind Gatewood, and then pulled the vehicle in front of Gatewood to block his path. 1RP 10-11, 20, 47. Longley jumped out and commanded Gatewood to "stop." 1RP 11, 21. Chan and Longley testified they stopped Gatewood because they believed he jaywalked. 1RP 10, 40-41, 55. Although there was no other traffic at that hour, Chan explained, "It was clear to me when he crossed the arterial that there not only was a danger to traffic but himself. That was the reason for the stop." 1RP 56. Chan later claimed the officers stopped Gatewood because of the combination of the jaywalking and Gatewood's behavior in

the bus shelter. 1RP 57-59.

Longley testified, however, that their reason for returning to the bus shelter was to investigate the allegedly suspicious behavior he saw earlier:

Q (by defense counsel): Your testimony is about [a] hundred to hundred and fifty feet south of the bus shelter, you see three or four people inside the bus shelter and noticed Mr. Gatewood in particular. And you believe that he was hiding something at that time?

A (by Longley): That's correct.

Q: You and Officer Chan did not stop the vehicle in front of the bus shelter?

A: Correct.

Q: You drove past the bus shelter all the way up to Hudson Street, which is not on this map?

A: Correct.

Q: Eastbound?

A: That is correct.

Q: And then southbound the wrong way on 39th to come back to the bus shelter, to contact Mr. Gatewood?

A: Correct.

Q: Because you thought he might be hiding something?

A: That's correct.

Q: That it was suspicious, and you wanted to check it out?

A: That's correct.

1RP 18-19.

When Longley confronted Gatewood, Gatewood walked away and put something in the nearby bushes. 1RP 11-12. The officers suspected Gatewood had discarded a gun and took him into custody. 1RP 14. They later discovered a gun in the bushes and narcotics on his person and at the bus shelter. 1RP 43, 45.

2. Trial court decision and outcome. The Honorable Douglass North of the King County Superior Court denied Gatewood's CrR 3.6 motion to suppress evidence, reasoning,

After taking all the circumstances together the officers had reasonable articulable suspicion of criminal activity based upon driving past the bus shelter, seeing Mr. Gatewood's startled reaction to the police being there, his furtive movements in trying to conceal something in the bus shelter followed by his leaving the bus shelter and crossing the street in an apparently illegal manner.

Officer Chan indicated that he though[t] Mr. Gatewood may have seen him come back. That may have been what caused Mr. Gatewood to leave and jaywalk across the street at that time. All those circumstances together provide a sufficient justification, provide rather reasonable articulable suspicion of criminal activity which provided a basis for a Terry Stop.³

2RP 76. A jury subsequently convicted Gatewood of unlawful possession of a firearm and possession of marijuana based on drugs found on his

³ The trial court's written findings of fact and conclusions of law, which, like the court's oral ruling, did not address the question of pretext, were entered after the Brief of Appellant was filed in Division One.

person, and acquitted him of possessing the cocaine found in the bus shelter. CP 13-19, 20-22, 48.

3. Court of Appeals decision. On appeal, Gatewood argued his stop for jaywalking was a pretext to investigate his earlier, allegedly “suspicious” behavior, and thus was unconstitutional under article I, section 7 of the Washington Constitution. He alternatively argued the facts adduced at the suppression hearing failed to establish a reasonable articulable basis for an investigatory stop and detention under the Fourth Amendment.

Division One rejected both claims. Without citing to any additional authority, Division One agreed with the trial court’s reasoning. Slip Op. 4-5. Then, concluding the propriety of the stop turned on whether the officers had a reasonable suspicion of criminal activity, the court found the stop was not pretextual and affirmed. Slip Op. 3, 5.

E. ARGUMENT.

1. THIS COURT SHOULD HOLD THE LOWER COURTS MISAPPLIED *LADSON* BY FAILING TO EXAMINE (1) THE OFFICERS' SUBJECTIVE INTENT AND (2) THE OBJECTIVE REASONABLENESS OF THE STOP. UNDER THE PROPER INQUIRY, THE RECORD AMPLY ESTABLISHES THE STOP FOR JAYWALKING WAS A PRETEXT TO INVESTIGATE EARLIER ACTIVITY, REQUIRING REVERSAL.

The Washington Constitution abjures pretextual stops, because pretext – the use of a lawfully sufficient, but false, reason to detain, with the intent to conduct an unrelated criminal investigation – fails to supply the authority of law article I, section 7 demands. Ladson, 138 Wn.2d at 358. “Pretext is, by definition, a false reason used to disguise a real motive.” Id. at 359 n. 11 (quoting Patricia Leary & Stephanie Rae Williams, Toward a State Constitutional Check on Police Discretion to Patrol the Fourth Amendment’s Outer Frontier: A Subjective Test for Pretextual Seizures, 69 Temp. L. Rev. 1007, 1038 (1996)).

Thus, a warrantless traffic stop based on mere pretext violates article I, section 7 of the Washington Constitution because it does not fall within any exception to the warrant requirement and therefore lacks the authority of law required for an intrusion into a citizen’s privacy interest.

State v. Nichols, 161 Wn.2d 1, 9, 162 P.3d 1122 (2007).

In Ladson, recognizing the particular exigencies of evaluating improper motives, this Court departed from the purely objective standard

mandated for Terry stops under the Fourth Amendment⁴ and articulated a new test:

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.

Ladson, 138 Wn.2d at 358-59. This Court explained, "what is needed is a test that tests real motives. Motives are, by definition, subjective." Id. at 359 n. 11 (quoting Leary & Williams).

Both the trial court and the Court of Appeals in this case glossed over the first part of the standard and wrongly substituted a purely objective inquiry by instead evaluating whether the totality of the circumstances supported a reasonable articulable suspicion of criminal activity. 2 RP 76; Slip Op. at 4. This misapplication of Ladson permitted the courts to improperly presume the pretextual stop was justified. A correct application of Ladson demonstrates both that the officers' subjective intent was improper and their behavior objectively unreasonable.

a. The record establishes the officers' subjective intent was to investigate the allegedly suspicious activity observed by Longley, not to

⁴ The Terry objective standard requires the court to consider whether the officer's action (1) was justified at its inception and (2) reasonably related in scope to the circumstances which justified the interference in the first place. Terry, 392 U.S. at 20.

enforce the Seattle Municipal Code's anti-jaywalking ordinance. Ladson and the several cases that have considered Ladson's rule since that decision held that evidence of improper subjective intent will invalidate an otherwise-lawful stop. Nichols, 161 Wn.2d at 10-11; Ladson, 138 Wn.2d at 353; State v. Meckelson, 133 Wn. App. 431, 437, 135 P.3d 991 (2006); State v. DeSantiago, 97 Wn. App. 446, 451-52, 983 P.2d 1173 (1999). Indeed, this is the axiomatic principle that animates Ladson's holding: that the basis for the stop is itself lawfully sufficient is beside the point, as "our constitution requires we look beyond the formal justification for the stop to the actual one." Ladson, 138 Wn.2d at 353.

In Ladson, gang emphasis officers testified that while they did not make routine traffic stops on patrol, they utilized the traffic code to pull over people in order to initiate contact and questioning. Ladson, 138 Wn.2d at 346. The officers in Ladson were familiar with Ladson's co-defendant because of an unsubstantiated street rumor that he was involved in drugs, and accordingly stopped his vehicle on the grounds that his license plate tabs were expired. Id. They used this pretext to arrest Ladson's co-defendant and search Ladson. Id. This Court reversed the conviction, holding the pretextual stop violated the Washington Constitution. Id. at 352-53.

Similarly, in DeSantiago, an officer watching a narcotics hotspot

pulled over an automobile for an illegal left turn in order to investigate whether the driver was involved in the narcotics activity. DeSantiago, 97 Wn. App. at 448. Division Three reversed, finding the stop was pretextual. Id. at 452. In both DeSantiago and Ladson, presumably relying on the decision of the United States Supreme Court in Whren v. United States, 517 U.S. 806, 116 S.Ct. 135 L.Ed.2d 89 (1996), which found pretext stops did not offend the Fourth Amendment, the officers testified candidly about their improper subjective motives.

Since Ladson, divining improper motives from officers' testimony has required a more nuanced inquiry, as officers no longer admit to the use of pretext. In the analogous context of warrantless searches pursuant to the emergency exception, appellate courts have conducted a comparable examination of the record to ascertain whether a claimed emergency was a pretext for conducting an evidentiary search. See e.g. State v. Leffler, ___ Wn. App. ___, 173 P.3d 293 (2007) (emergency exception improperly applied where officers did not don protective gear before entering suspected methamphetamine lab and had no information suggestive of imminent harm to persons or property); State v. Lawson, 135 Wn. App. 430, 437, 144 P.3d 377 (2006) (deputies' claimed purpose of investigating "a potential danger to the community" fell short of an emergency and was more consistent with a warrantless evidentiary search); State v. Schlieker,

115 Wn. App. 264, 272, 62 P.3d 520 (2003) (officers' actions were more consistent with an evidentiary search for drug activity than an effort to help persons who were injured or in danger).

In Meckelson, Division Three of the Court of Appeals found a lawyer ineffective for failing to raise pretext where the officer in question admitted he dropped back to investigate a driver whom he believed displayed alarm upon seeing him. 133 Wn. App. at 434. By contrast, in Nichols, this Court declined to make a similar finding where there was no evidence the officer "followed the vehicle because he suspected the driver was trying to avoid him." Nichols, 161 Wn.2d at 11 (emphasis in original). Similar to Nichols, in State v. Hoang, 101 Wn. App. 732, 6 P.3d 602 (2000), cited by the State below, Division One upheld a stop where an unchallenged finding of fact established a police officer would have made the same decision to pull the defendant over even if he had not just observed the defendant engaged in suspicious activity.

This case is like Ladson, DeSantiago, and Meckelson, and unlike Nichols and Hoang. Both Chan and Longley were ACT officers, specially trained in narcotics investigation and prevention of "street crime." 1RP 4-5, 35-36. The purpose of their patrol was to look for "crime" and they were "on alert" for any kind of "suspicious activity." In this context, Longley's interest was piqued by Gatewood's widened eyes and allegedly

furtive movement, he believed Gatewood may have sloughed drugs in the bus stop, and for this reason alone Longley and Chan decided to conduct a further investigation. Longley first noticed Gatewood because of his allegedly suspicious behavior, then decided to return to the bus shelter to investigate further, and only after doubling back did the officers seize upon the alleged jaywalking as a justification for the stop. By contrast, in Nichols, the officer saw the defendant illegally cross a double yellow line at nearly the same time that he saw the defendant apparently respond to him in a negative way. Nichols, 161 Wn.2d 11. The officer stopped Nichols for this infraction, not because his suspicions were aroused. Id.

Unlike Nichols, the officers here returned to the bus shelter because of the suspicious behavior Longley observed earlier. Unlike Hoang, the officers did not testify they would have stopped Gatewood for jaywalking even if their suspicions had not been aroused by his earlier behavior. As the officers admitted, their subjective intent was to investigate Gatewood's allegedly suspicious movements and, as discussed below, their behavior was objectively unreasonable.

b. The officers' behavior was objectively unreasonable.

The officers were so excited by Gatewood's widened eyes and allegedly "furtive" movement that they committed the dangerous infraction of driving the wrong way down a one-way street in order to investigate

further. 1RP 8, 19. For this effort, the officers were rewarded when Gatewood subsequently crossed Rainier Avenue twenty feet past a marked intersection.⁵

The officers claimed Gatewood had violated SMC 11.40.140, Seattle's anti-jaywalking ordinance, but at the subsequent suppression hearing could not even recite the provisions of this ordinance accurately.⁶ 1RP 54-57. Chan claimed they stopped Gatewood because he "not only was a danger to traffic but himself," 1RP 56, but the record established the street was deserted but for Chan and Longley's police cruiser. 1RP 56. Following the stop, the officers returned to the bus shelter to search for evidence, further demonstrating their improper subjective intent and objectively unreasonable behavior. 1RP 31.

The record in this case thus shows (1) the officers had a hunch of criminal activity that did not engender a constitutional basis to detain; (2) they subjectively intended to investigate the activity further; and (3) they in fact used a pretext of form as a justification for the criminal investigation. Stated differently, because they lacked adequate justification to stop Gatewood when they made the decision to turn their vehicle around, the officers found a rationale to stop him – the alleged

⁵ The officers were not certain whether Gatewood crossed Rainier Avenue because he saw them returning to the bus shelter. 1RP 57.

⁶ At the CrR 3.6 hearing, Gatewood presented evidence that he may have crossed at an unmarked crosswalk, which is not a traffic infraction. 2RP 8.

violation of the jaywalking ordinance – that was “at once lawfully sufficient, but not the real reason.” Ladson, 138 Wn.2d at 351.

c. The rulings of the lower courts were based on a misapplication of *Ladson's* test. In evaluating the propriety of the stop, the trial court wholly failed to inquire into the officers’ subjective intent or the objective reasonableness of their behavior. 1RP 76. Instead, the court conflated all of the evidence and decided this evidence, considered in its totality, supported a Terry stop. Id.; see also CP 96-96. This analysis was plainly incorrect. See Ladson, 138 Wn.2d at 358-59; Nichols, 161 Wn.2d at 9.

Although it recited the proper standard, Division One committed the identical error as the trial court, finding, “all the circumstances combined ... gave rise to a reasonable suspicion of criminal activity.” Slip Op. at 4. Again, by collapsing the two-part standard into a single inquiry and avoiding the question of whether the officers’ subjective intent was improper, Division One ducked the true question under Ladson: whether the stop for jaywalking was pretextual. This Court should conclude it was and reverse the conviction.

2. EVEN ASSUMING THE LOWER COURTS' ANALYSIS WAS CORRECT, ALTHOUGH IT WAS NOT, THIS COURT SHOULD HOLD THE "TOTALITY OF THE CIRCUMSTANCES" FAILED TO ESTABLISH A REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

Assuming for the sake of argument a purely objective inquiry is the proper test, this Court should hold the facts do not establish a reasonable suspicion of criminal activity. Terry, 392 U.S. 20; U.S. Const. amend. 4; Wash. Const. art. I, § 7.

Warrantless seizures are presumptively unreasonable. Terry, 392 U.S. at 20; Ladson, 138 Wn.2d at 350. An investigative detention based on a reasonable articulable suspicion of criminal activity is one of the "jealously and carefully drawn" exceptions to the warrant requirement, and is constitutionally authorized only if (1) "the officer's action was justified at its inception," and (2) "it was reasonably related in scope to the circumstances which justified the interference in the first place." Terry, 392 U.S. at 20. An officer must be able to point to specific, articulable facts that criminal activity is afoot. State v. White, 97 Wn.2d 92, 105, 800 P.2d 1061 (1982).

The trial court found sufficient justification for a Terry stop based on (1) Gatewood's apparently startled reaction to seeing police; (2) his allegedly furtive movement; and (3) the suspected jaywalking, which the

officers speculated may have resulted from Gatewood's observing that the officers had returned. 2RP 76. Without citation to any authority, the Court of Appeals agreed. Slip Op. at 3-5.

a. The lower courts' speculation that Gatewood's jaywalking was evidence of flight was not supported by the evidence.

Flight from the police is a circumstance that courts may consider, among other factors, in evaluating whether an investigatory stop is justified. State v. Swaite, 33 Wn. App. 477, 481, 656 P.2d 520 (1982) (suspect fled upon seeing officers by jumping into nearby bushes); see also, State v. Sweet, 44 Wn. App. 226, 230, 721 P.2d 560 (1986) (defendant was hidden against a wall next to a pile of manure and fled when he saw police by jumping over a fence into some bushes).

Here, neither the evidence nor the trial court's findings support the conclusion that Gatewood crossed Rainier Avenue in order to flee from Chan and Longley. "In the absence of a finding on a factual issue [courts] must indulge the presumption that the party with the burden of proof failed to sustain their burden on this issue." State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997).

Suspects do not flee from police unless they know the police are there. There is no evidence Gatewood actually saw the officers return to the bus shelter. 1RP 57. Chan admitted he did not know if Gatewood saw

them. Id. In fact, the officers approached from behind with the intention of surprising Gatewood. 1RP 8-9, 50.

Furthermore, flight usually involves running away from the police. Cf., Sweet and Swaite with State v. Larson, 93 Wn.2d 638, 645, 611 P.2d 771 (1980) (leaving upon arrival of police does not give rise to reasonable suspicion) and State v. Thompson, 93 Wn.2d 838, 842, 613 P.2d 525 (1980) (rapid walking away from officers nothing more than inarticulate hunch and was constitutionally insufficient to support detention).

Gatewood did not run. He did not jump over any fences or duck behind a bush. He walked at a normal pace, perpendicularly across a street with no cars in it. 1RP 9, 56. More importantly, when he reached the other side of the intersection, he walked toward the officers' patrol car. 1RP 41, 50-51. When they rolled up behind him and stopped, he still did not run away from them. Id. The State did not prove flight, so the lower courts erred when they speculated that the jaywalking was evidence of flight in finding the officers had a reasonable suspicion to stop Gatewood.

b. Gatewood's widened eyes and alleged furtive movement did not support a reasonable articulable suspicion of criminal activity. The lower courts' erroneous assumption that the jaywalking was indicative of

flight was not harmless because the remaining evidence⁷ was insufficient to establish reasonable suspicion.

It is settled that furtive movements, without more, do not give rise to a reasonable suspicion. State v. Glossbrener, 146 Wn.2d 670, 680-81, 49 P.3d 128 (2002). Moreover, “[i]nnocuous facts do not justify a stop.” State v. Martinez, 135 Wn. App. 174, 180, 143 P.3d 855 (2005); Armenta, 134 Wn.2d at 13. In the Court of Appeals, the State contended there was a sufficient predicate for a Terry stop, but the three cases it cited do not support its argument. See Br. Resp. at 19-20.

In State v. Pressley, 64 Wn. App. 591, 825 P.2d 749 (1992), an officer startled the defendant huddled in an apparent drug transaction. Pressley, 64 Wn. App. at 594. When the defendant saw the officer, she said, “Oh shit!” and immediately closed her hand and walked away. Id. While affirming the denial of the motion to suppress evidence, Division One found the officer’s initial observation “was susceptible to a number of innocent observations and insufficient to justify the stop,” and further warned, “Had [Pressley and her companion’s] behavior after they saw Officer Korner but before he stopped Pressley not been entirely consistent with an incipient drug deal, there would not have been a sufficient basis for a valid Terry stop.” Id. at 597.

⁷ In the Court of Appeals, the State conceded the stop occurred when Longley exited the patrol car and ordered Gatewood to stop. Br. Resp. at 20.

In State v. Graham, 130 Wn.2d 711, 927 P.2d 227 (1996), the question presented was not whether officers had a reasonable articulable suspicion for a Terry stop but whether (1) off-duty police officers are public servants for purposes of the resisting arrest statute and (2) the officers had probable cause to arrest the defendant based on their observations that he had a large amount of cash and apparent rock cocaine in his hand. Graham, 130 Wn.2d at 716. Thus Graham fails to provide the authority the State seeks.

Finally, in State v. Glover, 116 Wn.2d 509, 806 P.2d 760 (1991), officers patrolling an apartment complex known for gang and drug activity knew the defendant was not a resident and observed he was holding a plastic baggie in his hand. These facts, coupled with the defendant's nervous demeanor when he saw the officers, gave rise to a reasonable suspicion that he had committed the crime of criminal trespass. Glover, 116 Wn.2d at 514.

The facts in this case are easily distinguished from the cases cited by the State. Gatewood's "wide-eyed" expression was both ambiguous and innocuous, as contrasted to Pressley's reaction to seeing the police. Gatewood's behavior was not consistent with a drug deal, as in Pressley, because he was not interacting with any other people, and there was no

evidence the area was a high crime area.⁸ The officers did not observe Gatewood holding anything in his hands that might contain drugs, as in Graham and Glover. Instead, Longley observed merely a startled reaction and a twisting movement to the left.

The State argues that the officers' extensive experience in narcotics-related law enforcement justified their aroused suspicions in response to Gatewood's otherwise-innocuous behavior. Br. Resp. at 18, 20. It is true that "circumstances which appear innocuous to the average person may appear incriminating to a police officer in light of past experience." State v. Samsel, 39 Wn. App. 564, 570-71, 694 P.2d 670 (1985). However, the talisman of "officer experience" should not be misused to permit officers to stop citizens based on evidence so insubstantial as a wide-eyed expression, turning to the left, and then crossing the street. Approving this stop would allow detentions based on an inarticulable hunch, which Terry forbids, and would threaten citizens' constitutional right to be free of unreasonable searches and seizures. This Court should hold that under Terry's objective standard, the State did not present sufficient evidence to support a reasonable, articulable suspicion of criminal activity.

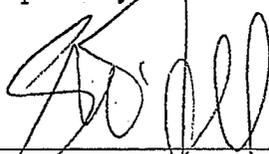
⁸ In the Court of Appeals, the State conceded there was no testimony the area in question was a high crime area but urged the court to draw this inference from the testimony that Chan and Longley typically patrol high crime areas. Br. Resp. at 21. This Court should decline the State's invitation.

F. CONCLUSION

This Court should hold that both the officers' subjective intent and the objective unreasonableness of their behavior establish Gatewood's stop was pretextual, in violation of article I, section 7 of the Washington Constitution. This Court should also hold the evidence, even when viewed under the "totality of the circumstances" analysis employed by the trial court and Court of Appeals, does not support a reasonable suspicion of criminal activity. The convictions should be reversed and dismissed.

DATED this 19th day of February, 2008.

Respectfully submitted:



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Washington Appellate Project (91052)
Attorneys for Petitioner



MINDY M. ATER (9099745)
APR 9 Intern

**FILED AS ATTACHMENT
TO E-MAIL**

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,
v.
GARY GATEWOOD,
Petitioner.

NO. 79992-0-I

CERTIFICATE OF SERVICE

I, MARIA ARRANZA RILEY, CERTIFY THAT ON THE 19TH DAY OF FEBRUARY 2008, I CAUSED TO BE SERVED A TRUE AND CORRECT COPY OF THE **SUPPLEMENTAL BRIEF OF PETITIONER** ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

CHRISTINE KEATING
KING COUNTY PROSECUTING ATTORNEY
APPELLATE UNIT
KING COUNTY COURTHOUSE
516 THIRD AVENUE, W-554
SEATTLE, WA 98104

U.S. MAIL
 HAND DELIVERY

SIGNED IN SEATTLE, WASHINGTON THIS 19TH DAY OF FEBRUARY, 2008.

X *gril*

**FILED AS ATTACHMENT
TO ENCL.**

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