

No. 93377-4

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Court of Appeals
Division III
State of Washington

NO. 31868-1-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

WESLEY JAMES WEYAND, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 13-1-00035-4

SUPPLEMENTAL BRIEF OF RESPONDENT
RE APPLICABILITY OF *STATE V. FUENTES*

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I. ISSUE PRESENTED

- A. **In light of *State v. Fuentes*, did the officer have individualized suspicion to conduct a *Terry* stop?**

II. STATEMENT OF FACTS

On December 22, 2012, Officer Henry was in patrol of the area around 95 Cullum Avenue in Richland, Washington. Report of Proceedings 07/25/2013 (“RP”) at 5-7. He had driven by the house several times that night. RP at 6.

It is undisputed that Officer Henry had personalized knowledge that 95 Cullum was a known drug house. CP 69-71. Aside from documented history spanning back to June 2011, a week prior to Mr. Weyand’s arrest, officers had served a search warrant at 95 Cullum and arrested several people for drug possession. CP 71; RP at 10-21.

Due to all the drug activity at 95 Cullum, the City of Richland police officers did extra patrols in the area of 95 Cullum. RP at 5. Officer Henry had familiarized himself with the vehicles in this area. RP at 7.

On the night in question, he came through the area around 2:00 a.m. and did not see any unfamiliar vehicles. RP at 6. When he came back about 20 minutes later, a new unfamiliar vehicle was present – a tan Buick parked just north of 95 Cullum. RP at 6-7. He drove by this new vehicle, ran the license plate, and there was nothing of consequence. RP at 7. By driving by the vehicle, he drove directly in front of 95 Cullum. RP at 7. He

then drove past the vehicle again and parked on Adams Street in a driveway just east of the intersection of Cullum and Adams. RP at 7-8; *see* “Drawn map of street and residence”¹. From this vantage, Officer Henry had a clear view of front door of 95 Cullum. RP at 8.

Based on Officer Henry’s personal experiences with 95 Cullum, when an officer drives by the house and comes back, the unfamiliar vehicles will no longer be present. RP at 9. Officer Henry waited in the driveway on Adams and about two minutes later, observed the defendant and another male exit the front door of 95 Cullum. RP at 8. They both walked quickly to the tan Buick, and both men were looking around as if checking the area. RP at 8. The tan Buick was not parked across the street; the car was parked on the same side of the street as 95 Cullum. *See* “Drawn map.” Just before entering the vehicle, the male getting into the driver’s side looked around one more time down Cullum both ways, and then after a few seconds, he got into his car. RP at 9. Officer Henry conducted a *Terry* stop of both males for suspicion of drug possession.

III. ARGUMENT

- A. **Did the officer have reasonable suspicion of criminal activity individualized to Mr. Weyand to justify his *Terry* stop?**

¹ Designated via Designation of Exhibits, filed in this Court on December 4, 2015.

A valid *Terry* stop requires that the officer have reasonable suspicion of criminal activity based on specific and articulable facts known to the officer at the inception of the stop. *State v. Gatewood*, 163 Wn.2d 534, 539-40, 182 P.3d 426 (2008). That suspicion of criminal activity must be individualized. *State v. Thompson*, 93 Wn.2d 838, 841, 613 P.2d 525 (1980).

In light of the recent decision by the Supreme Court in *State v. Fuentes*, this matter was remanded for supplemental briefing. *State v. Fuentes*, 183 Wn.2d 149, 352 P.3d 152 (2015). In *Fuentes*, the Court evaluated the totality of the circumstances to determine whether a reasonable suspicion of criminal activity existed by examining each fact identified by the officers as contributing to their suspicion. *Fuentes*, 183 Wn.2d at 158.

In the present matter, Officer Henry articulated the following circumstances during the incident: (1) a “short stay” at a known drug house; (2) a short stay at a known drug house with recent drug history: just a week prior, several people were arrested at the house for possessing drugs; (3) occurred at 2:30 in the morning; (4) involved a vehicle that was unfamiliar to the area; (5) the individuals left 95 Cullum soon after the officer drove by; and (6) the individuals were looking up and down the

street, even though the car was parked on the same side of the street as 95 Cullum, presumably to see if the police were still around. RP at 5-22.

The State will concede that this is a close case. But the State does not agree that Mr. Weyand was stopped simply because he was leaving a known drug house and looked around. The officer pointed to several factors that gave him reasonable suspicion. As in *Fuentes*, 95 Cullum had recent drug activity. *Fuentes*, 183 Wn.2d at 163; RP at 10-21. As in *Fuentes*, the officer saw the defendant acting in a manner that was consistent with having current possession of drugs: a short stay at 2:30 in the morning from a current documented drug house and looking around as if to avoid contact with law enforcement. *Fuentes*, 183 Wn.2d at 162-63; RP at 5-22. This behavior is suspicious. In looking at the totality of the circumstances, it was reasonable for Officer Henry to contact Mr. Weyand for suspicion of drug possession.

IV. CONCLUSION

In looking at the totality of the circumstances, Officer Henry had reasonable suspicion to contact Mr. Weyand for possession of a controlled substance.

RESPECTFULLY SUBMITTED this 9th day of December,

2015.

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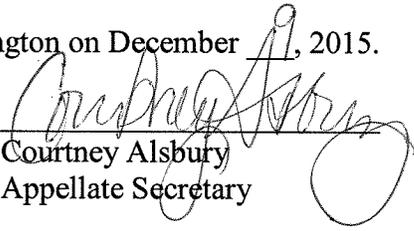
CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

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E-mail service by agreement
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Signed at Kennewick, Washington on December 11, 2015.


Courtney Alsbury
Appellate Secretary