

NO. 70015-4-I

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

STATE OF WASHINGTON,

Respondent,

v.

LOUIS M. TRENARY,

Appellant.

BRIEF OF RESPONDENT

MARK K. ROE
Prosecuting Attorney

MARA J. ROZZANO
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FILED
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STATE OF WASHINGTON
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I. ISSUES

1. Did the officers have a reasonable suspicion the defendant had committed a traffic infraction?

2. Was the stop of the defendant pretextual and therefore not a valid mixed motive stop?

II. STATEMENT OF THE CASE

On March 16, 2013, at about 10:30 p.m., the defendant was stopped by Detective Koonce and Detective Olesen, members of the Lynnwood Police Department, special operations unit. The detectives were a two officer team in a semi-marked patrol vehicle and Det. Koonce was the driver. Although members of the special operations unit, the detectives were not working on a specific case or project at the time but were assisting patrol. They saw the defendant's vehicle and noted some unusual driving behavior, crossing the centerline, erratic signaling and failing to come to a complete stop at a stop line. Det. Koonce indicated based on his almost 12 years of experience as a police officer, the day of the week, time of night, and the driving, he was concerned the defendant was impaired. However, Det. Koonce testified that once

he contacted the defendant he did not detect any other signs of impairment. 1RP 3-5, 8-9, 19, 21-23.¹

The stop and the driving for 30 seconds before the emergency lights were activated were captured on the police dashboard video system. Both Det. Koonce and Det. Olesen testified at the CrR 3.6 hearing and the court was provided with a copy of the video recorded from the officers' dashboard video system. With the semi-marked patrol car behind him, the defendant activated his signal, then turned it off again; after a period of time, the defendant turned his signal on and off again, then slowed, but did not come to a complete stop at a 4-way stop; but turned right; during the turn he signaled once as he completed the turn. The detectives activated their emergency lights. The defendant then signaled to pull to the right. At this point, the defendant's turn signal remained on continuously as he pulled over, showing it was functioning properly. 1RP 5, 17-18, 23; CP 185-186.

¹ The state shall use the same designation of transcripts as appellant; 1RP for the first volume containing the transcripts of the CrR 3.5 and 3.6 hearing and 2RP for the transcripts of the trial and sentencing hearing.

When contacted by Det. Koonce, the defendant gave the name of Jonathan Michael Ribary with a date of birth that was 2 days off from the real Mr. Ribary's date of birth. During the stop, the defendant then corrected the date of birth, but guessed the wrong age for Mr. Ribary. The corrected date of birth revealed the existence of the real Mr. Ribary, so the officers asked the defendant for his Social Security number. The Social Security number the defendant provided had all the numbers of Mr. Ribary's Social Security number but two of the numbers were transposed. The officers determined the defendant was not being truthful about his identity and placed him under arrest for failure to cooperate and no valid operator's license with no identification. 1RP 8-9, 11, 26-27.

A search incident to arrest of the defendant's person revealed a piece of paper with the name, date of birth, phone number, Social Security number, business information and marital status of Mr. Ribary. 2RP 21. After further investigation the defendant was ultimately charged with count 1: second degree identity theft – victim Jonathan Ribary; count 2: second degree identity theft – victim Sean Rynders and count 3: forgery – victim Joshua Baker. CP 154, 183. The defendant was convicted by jury trial of all three counts. 2RP 92, CP 156-158.

III. ARGUMENT

A. THE OFFICERS HAD REASONABLE SUSPICION THE DEFENDANT HAD VIOLATED THE TRAFFIC LAWS AND THEREBY WERE JUSTIFIED IN STOPPING THE DEFENDANT.

Unchallenged findings of fact are verities on appeal. State v. Valdez, 167 Wn.2d 761, 767, 224 P.3d 751 (2009); State v. Lorenz, 152 Wn.2d 22, 36, 93 P.3d 133 (2004); State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). Challenged findings are verities if they are supported by evidence of a sufficient quantity to persuade a fair-minded, rational person of their truth. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994); Broadaway, 133 Wn.2d at 131. "Evidence is substantial when it is enough to persuade a fair-minded person of the truth of the stated premise." State v. Garvin, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). An appellate court may look to the trial court's oral ruling to interpret its written findings and conclusion. State v. Bynum, 76 Wn. App. 262, 266, 884 P.2d 10 (1994).

"Warrantless traffic stops are constitutional under article I, section 7 as investigative stops, but only if based upon at least a reasonable articulable suspicion of either criminal activity or a traffic infraction, and only if reasonably limited in scope." State v. Arreola,

176 Wn.2d 284, 292-93, 290 P.3d 983, 988-89 (2012), see State v. Snapp, 174 Wn.2d 177, 197-98, 275 P.3d 289 (2012).

In the case at bar, the trial court found there was “probable cause” to stop the vehicle for a valid traffic infraction under RCW 46.61.305. CP 186. The court also concluded the stop was not pretextual. Id. These findings are substantially supported by the evidence presented, particularly Pretrial Exhibit 1. It is clear the court’s written findings attempt to describe what can easily be seen in the video. Pretrial Exhibit 1 shows the irregular signaling; the first two activations of the signal happen at 00:09-00:10, the next two at 00:15. The final activation of the signal happens at 00:23, as the defendant is rounding the corner. The video shows the activation of the emergency lights on the patrol car at 00:29 and the defendant begins signaling to the pull to the right at 00:32. At this point, the signal activates approximately 14 times from 00:32 to 00:41, supporting the court’s finding that the signal was working properly; or in other words, that the prior erratic signaling was not the result of malfunctioning equipment. The officers had a reasonable suspicion the defendant had violated the traffic laws when he failed to continuously signal for 100 feet prior to turning, as required in RCW 46.61.305(2). “A signal of intention to turn or move

right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning.” RCW 46.61.305(2).

Appellant argues that the infraction is de minimus in nature and therefore an abuse of discretion on the part of the officers to enforce this traffic violation. (Brief of Appellant pg. 10). This is in conflict with the holding in Arreola where the stop was for an equipment violation. Arreola at 289. In the case at bar, the stop was for a moving violation and involved other driving irregularities and infractions noted by both officers that caused concern for the defendant’s level of impairment. The totality of the officers’ observations made this a mixed motive traffic stop.

B. THE STOP WAS A LAWFUL MIXED MOTIVE TRAFFIC STOP AND NOT A PRETEXT STOP.

“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.” Arreola, 176 Wn.2d 284, 288, 290 P.3d 983, 986 (2012).

In Arreola, the officer had received a tip that the driver may be DUI. The apparent concern in the case at bar is that the defendant was driving a car registered to a known drug user and the officers in question were assigned to the Lynnwood Police Department Special Operations section. The focus of the Special Operations section is a proactive unit that focuses on major crimes or crime trends in the City of Lynnwood. Det. Olesen explained, "Our focus of our unit is whatever problems are happening within the City of Lynnwood. It could be graffiti, misdemeanor crimes." 1RP 4, 30. However, both officers explained, when they are not working on a specific project, they respond to all kinds of police business, "When we're not doing certain functions, looking for certain targets, we kind of act as plain clothes patrol officers. So whatever patrol functions, we'll do. We go to patrol calls. We do traffic stops. Whatever needs help, we help with." 1RP 24. Both officers indicated they frequently do traffic stops. 1RP 5, 24,

The officers were not working on any project at the time of this contact. They had not seen the car pull away from a known drug house or had any reason to target the car or the defendant. They were not aware of the registered owner of the vehicle until

after the decision to stop had been made and they ran the plate.
1RP 6-7, 24-25.

Det. Koonce testified that he was concerned the defendant was under the influence of intoxicants based on the driving he had observed. He noted this concern was based on his experience, the time of night, that it was a weekend. The trial court was aware this took place on March 16th, the day before St. Patrick's Day. The stop was a valid mixed motive stop for a traffic infraction but also to further investigate the possibility the defendant was driving while under the influence.

Appellant is correct, an investigation for traffic infraction is limited in scope. An officer may detain a person stopped for a traffic infraction for a reasonable period of time necessary to identify the person. RCW 46.61.021(2). The officers in this case did not exceed that scope. The defendant refused to truthfully identify himself within seconds of contact and continued to lie about his identity throughout the stop and even after he was arrested. According to the testimony of the officers, from the moment of contact they were attempting to obtain the defendant's true identity. They questioned and cajoled him in an attempt to get him to tell

them the truth. He did not do so during the entire traffic stop. They finally arrested him for obstructing.

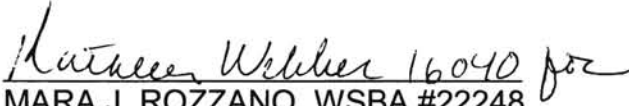
Simply because the officers determined the defendant was not DUI when they contacted him, does not render the stop an invalid mixed motive stop. Furthermore, the defendant committing a new offense during the stop, does not make the stop invalid.

IV. CONCLUSION

For the above stated reasons, the defendant's appeal should be denied.

Respectfully submitted on January 17, 2014.

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January 17, 2014

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**Re: STATE v. LOUIS M. TRENARY
COURT OF APPEALS NO. 70015-4-1**

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

MARA J. ROZZANO, #22248
Deputy Prosecuting Attorney

*Filed
COPA
1-21-14
KR*

cc: Washington Appellate Project
Appellant's attorney

*17th Jan 14
D. Roe*

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THE STATE OF WASHINGTON,

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AFFIDAVIT OF MAILING

AFFIDAVIT BY CERTIFICATION:

The undersigned certifies that on the 17th day of January, 2014, affiant deposited in the mail of the United States of America a properly stamped and addressed envelope directed to:

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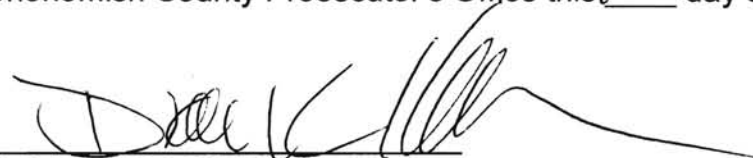
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containing an original and one copy to the Court of Appeals, and one copy to the attorney for the appellant of the following documents in the above-referenced cause:

BRIEF OF RESPONDENT

I certify under penalty of perjury under the laws of the State of Washington that this is true.

Signed at the Snohomish County Prosecutor's Office this 17th day of January, 2014.



DIANE K. KREMENICH
Legal Assistant/Appeals Unit