Supreme Court No. 90832-0
(COA No. 70015-4-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

LOUIS M. TRENARY,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SNOHOMISH COUNTY

PETITION FOR REVIEW

WHITNEY RIVERA
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A. INTRODUCTION

Louis Trenary was stopped for an alleged signal infraction by officers of the Lynnwood Police Department's special operation unit, which focuses on investigating major felony offenses. Video from the vehicle's dashboard camera shows that Mr. Trenary's turn signal was activated several times as he approached his turn. The totality of circumstances establish that the traffic stop was not supported by reasonable suspicion of unlawful conduct and thus the seizure was unconstitutional.

The stop was not a lawful mixed motive stop because its purpose was to investigate more serious offenses for which there was not reasonable suspicion. The traffic stop violated Mr. Trenary's rights under the Fourth Amendment and article I, section 7 of the Washington Constitution and this Court should accept review.

B. IDENTITY OF PETITIONER AND DECISION BELOW

Louis M. Trenary, petitioner here and appellant below, asks this Court to accept review pursuant to RAP 13.4(b) of the Court of Appeals decision terminating review dated August 25, 2014, a copy of which is attached as Appendix A.

C. ISSUES PRESENTED FOR REVIEW

1. Mr. Trenary activated the turn signal of the car he was driving, which illuminated four times as he approached a stop sign to turn right. RCW 46.61.305(2) states that a "signal of intention to turn ... shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning." Should this Court grant review where the seizure effectuated on the vehicle violated Mr. Trenary's rights under the Fourth Amendment and article I, section 7 of the Washington Constitution because there was no reasonable suspicion he committed an infraction sufficient to justify the traffic stop?

2. Article I, section 7 of the Washington Constitution protects citizens from warrantless seizures under some pretext to avoid the warrant requirement. When determining if a law enforcement officer's stop of a vehicle for a traffic violation was a pretext to investigate for other criminal activity, the court must look at the totality of the circumstances to determine the officer's subjective intent and the objective reasonableness of his actions. Should this Court grant review where the totality of the circumstances demonstrate that the stop of the vehicle was a pretext to investigate for other suspected criminal activity for which the officers did not have reasonable suspicion?

D. STATEMENT OF THE CASE

Shortly before midnight on March 16, 2010, Detective Koonce and Officer Olesen observed a vehicle driven by Mr. Trenary approach an intersection and turn right. 1 RP 3-5, 21-23.[1] Both officers were part of the Lynnwood Police Department's special operations unit, which is a major crimes proactive unit that gathers intelligence, conducts interviews, and studies patterns of crime. 1 RP 4, 11-12, 22. The unit obtains reports on major crimes in the area and investigates these crimes, focusing particularly on felony offenses. 1 RP 12. The officers were dressed in civilian clothes, driving a semi-marked car, and "proactively looking to address criminal activity." 1 RP 12-14, 30; CP 186.[2]

When the officers effectuated the traffic stop, they speculated that Mr. Trenary could be impaired based on his "unusual driving behavior." 1 RP 5. However, Detective Koonce acknowledged that Mr. Trenary did not exhibit any signs of impairment. 1 RP 19. Mr.

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[1] The transcripts are contained in two volumes. Volume One contains the CrR 3.5 and 3.6 hearings and will be referred to as 1 RP. Volume Two contains the trial and sentencing hearing and will be referred to as 2 RP.

[2] The trial court's findings of fact and conclusions of law pertaining to the CrR 3.6 suppression motion are attached as Appendix B.

Trenary was arrested for providing a false name. 1 RP 16, 27, 32; CP 186. A subsequent search of the car produced evidence of identity theft and forgery. 2 RP 21, 34-49.

At the pretrial suppression hearing, Detective Koonce and Officer Olesen gave conflicting testimony regarding the reason for stopping the vehicle. 1 RP 5, 23. Detective Koonce testified that in addition to the irregular signal, he observed the driver's side tires cross the center line. 1 RP 5. Officer Olesen, however, had no recollection of a lane travel violation and instead testified that the vehicle did not make a complete stop as required. 1 RP 23.

The video from the patrol car did not support either officer's testimony and these alternate justifications were rejected by the trial court as the basis for the stop. CP 185-86. The trial court relied on the dashboard camera video that showed Mr. Trenary's turn signal activate about 10 seconds before he is stopped. Pretrial Ex. 1; CP 185 (Findings of Fact 5, 6, and 7). The turn signal appeared to turn on, then off, then on and off again. *See* Pretrial Ex. 1 at 10 sec. A few seconds later, the turn signal illuminates, then goes off, then on and off again as Mr. Trenary approaches the stop sign. *See id.* The trial court determined that the officers had reasonable suspicion that a turn signal infraction

had been committed, but they were also proactively looking to address criminal activity. CP 186. The trial court concluded that the stop was a lawful mixed motive stop and denied Mr. Trenary's suppression motion. CP 186.

E. ARGUMENT

1. **There was no reasonable suspicion to justify the traffic stop because Mr. Trenary met his statutory obligations where his turn signal illuminated at least four separate times as he approached his turn.**

Traffic stops are constitutional as investigative detentions under article I, section 7 of the Washington Constitution and the Fourth Amendment only if based on a reasonable suspicion of criminal activity or a traffic infraction. *State v. Snapp*, 174 Wn.2d 177, 197-98, 275 P.3d 289 (2012); *State v. Day*, 161 Wn.2d 889, 896, 168 P.3d 1265 (2007).

"The use of traffic stops must remain limited and must not encroach upon the right to privacy except as is reasonably necessary to promote traffic safety and protect the general welfare through the enforcement of traffic regulations and criminal laws." *State v. Arreola*, 176 Wn.2d 284, 293, 290 P.3d 983 (2012). Officers must "point to specific and articulable facts which, taken together with

rational inferences from those facts, reasonably warrants the intrusion." *Snapp*, 174 Wn.2d at 197 (quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)).

A reasonable, articulable suspicion means there "is substantial possibility that criminal conduct has occurred or is about to occur." *Id.* at 198 (citing *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986)). The propriety of the traffic stop is evaluated based on the totality of circumstances. *State v. Doughty*, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). Full enforcement of the traffic laws is "both impossible and undesirable." *Arreola*, 176 Wn.2d at 294. Police officers must exercise discretion in deciding which traffic rules to enforce and when. *Id.* at 295. As discussed below, the totality of the circumstances surrounding Mr. Trenary's stop establish his substantial compliance with RCW 46.61.305(2).

The trial court concluded there was articulable suspicion to support the stop of Mr. Trenary's vehicle based on a violation of RCW 46.61.305. CP 186. The relevant part of the statute provides:

> (1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.

> (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(1)-(2). Giving an "appropriate signal" of the intention to turn is for the obvious purpose of notifying other motorists of that intention so they can govern themselves accordingly. *Nystuen v. Spokane County*, 194 Wn. 312, 319, 77 P.2d 1002 (1938). Mr. Trenary provided notice of his intent to turn and therefore the traffic stop was unreasonable.

The trial court found that the "vehicle signal came on, then went off, came on again, then went off again[.]" CP 185; Ex. 1. The intermittent illumination of the signal lamp is seen clearly on the dashboard camera video. Ex. 1 (beginning at approximately 10 seconds, then again at 14 seconds, and finally again as Mr. Trenary pulled around the corner at 20 seconds). Contrary to the video evidence, Officer Olesen testified that Mr. Trenary completely failed to signal and did not come to a full stop before turning. 1 RP 23, 29. The dashboard camera video contradicted both assertions and the trial court did not include either contention in its findings. *See* CP 185-86.

The phrase "given continuously" is not defined in RCW 46.61.305. "Continuous" is most commonly understood to mean "continuing without stopping: happening or existing without a break or interruption."[3] RCW 46.61.305 does not regulate the interval or frequency during which the light is required to flash or indicate the required interval between illuminations. Where Mr. Trenary signaled his turn, making his intent clear to the officers, any technical violation of the equipment provisions failed to justify the seizure.

2. The traffic stop violated Mr. Trenary's rights under article I, section 7 because it was used as a pretext to search for criminal activity rather than an actual, conscious, and independent effort to address an infraction.

A warrantless seizure is per se unreasonable. *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004). Washington residents have a constitutionally protected interest against warrantless seizures being used as a pretext to dispense with the warrant requirement. *State v. Ladson*, 138 Wn.2d 343, 358, 979 P.2d 833 (1999); *Arreola*, 176 Wn.2d at 294. A warrantless traffic stop based on mere pretext violates article I, section 7 because it does not fall

[3] *See* http://www.merriam-webster.com/dictionary/continuous (last accessed Sept. 23, 2014).

within an exception to the warrant requirement and 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); *Ladson*, 138 Wn.2d at 358-59.

"[I]t is not enough for the State to show there was a traffic violation. The question is whether the traffic violation was the real reason for the stop." *State v. Montes-Malindas*, 144 Wn. App. 254, 261, 182 P.3d 999 (2008) (quoting *State v. Meckelson*, 133 Wn. App. 431, 437, 135 P.3d 991 (2006)).

An investigative stop for a traffic infraction is limited in scope. RCW 46.61.021(2); *State v. Glossbrener*, 146 Wn.2d 670, 676-77, 49 P.3d 128 (2002). Therefore, the State continues to have the burden of proving the warrantless search was constitutional and the scope was not excessive. In the case of a mixed-motive traffic stop, enforcement of the traffic laws must be an "actual, conscious, and independent cause of the traffic stop." *Arreola*, 176 Wn.2d at 297.

> In other words, despite other motivations or reasons for the stop, a traffic stop should not be considered pretextual so long as the officer actually and consciously makes an appropriate and independent determination that addressing the suspected traffic infraction (or multiple suspected infractions) is reasonably necessary in furtherance of traffic safety and the general welfare.

Id. at 297-98.

"The trial court should consider the presence of an illegitimate reason or motivation when determining whether the officer really stopped the vehicle for a legitimate and independent reason" and thus would have conducted the traffic stop regardless. *Id.* at 299. While an officer should not be expected to ignore "an appropriate and necessary traffic stop," the record in Mr. Trenary's case demonstrated that this traffic stop what neither appropriate nor necessary. *See id.*

The totality of the circumstances establish that Detective Koonce and Officer Olesen detained Mr. Trenary to search for evidence of other crimes. They were in plain clothes and were part of the special operations unit, which is responsible for gathering intelligence and investigating major felony offenses. They were not assigned to general patrol, where effectuating traffic stops is part of the regular duties. Their suspicion of Mr. Trenary based on "unusual driving" without any other indicia of impairment also illustrates that their conscious purpose in stopping the vehicle was to not cite Mr. Trenary for a traffic infraction.

The fact that these officers are mainly investigating major felonies, studying patterns of crime, and gathering intelligence contradicts any notion that their purpose in stopping the vehicle was the enforcement of traffic laws. The trial court's rejection of two of the three bases provided by Detective Koonce and Office Olesen also demonstrates that traffic safety was neither their "actual" nor "conscious" basis for the stop. While community safety may be an overarching concern for law enforcement, the fundamentally inconsistent reasons offered by the officers for the stop and the speed at which they came upon Mr. Trenary belies the notion that such concerns were a "conscious" and "independent" basis for the stop.

Arreola directs the courts to determine the sincerity of the officer's commitment to traffic safety. 176 Wn.2d at 299. When those bases were rejected by the trial court at the suppression hearing, all that was left was a wholly inadequate fig leaf of a potential equipment violation to cover the otherwise suspicionless search for criminal activity.

Because the stop of the car for a traffic infraction was a pretext to search for evidence of other criminal activity, as opposed to an actual, conscious, and independent reason to stop the vehicle, the

evidence obtained in the subsequent the vehicle should have been suppressed. The violation of Mr. Trenary's constitutional right to privacy is a significant question of law under both the Washington and United States Constitutions. This privacy violation is also an issue of substantial public interest that should be determined by this Court.

3. Evidence flowing from the unlawful detention should be suppressed.

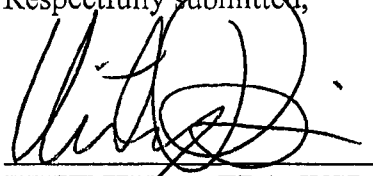
When a traffic stop occurs outside authority of law as it has been circumscribed by the constitutional protections of privacy, it requires suppression of evidence obtained. *Ladson*, 138 Wn.2d at 352-53. Evidence obtained as a result of Mr. Trenary's unlawful detention must be suppressed and the resulting convictions reversed.

F. CONCLUSION

Based on the foregoing, Petitioner Louis Trenary respectfully requests that review be granted pursuant to RAP 13.4(b).

DATED this 24th day of September, 2014.

Respectfully submitted,



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APPENDIX A

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent/ Cross Appellant, v. LOUIS MONROE TRENARY, Appellant/ Cross Respondent.	)	No. 70015-4-I DIVISION ONE UNPUBLISHED FILED: August 25, 2014

Cox, J. — Louis Trenary appeals his conviction for identity theft and forgery. Because the traffic stop of the car driven by Trenary was based on probable cause and not pretextual, the trial court properly denied his motion to suppress the evidence seized from the car. We affirm.

Around 10:30 p.m. on March 16, 2012, Detective William Koonce and Detective Zachariah Olesen were on patrol when they observed a car driven by Trenary make a turn without signaling properly. Both Detective Koonce and Detective Olesen are members of the Lynnwood Police Department's Special Operations unit. It is tasked primarily with intelligence gathering and other crime prevention activities, but also conducts routine patrol activities like traffic stops.

Detective Koonce activated his lights to signal Trenary to stop. After Detective Koonce made the decision to stop the car but before the car came to a

complete stop, he learned the car was registered to Crystal Nelson, whom he had investigated on prior occasions for drug activity.

When Detective Koonce approached Trenary and requested identification, Trenary claimed he did not have his identification with him and gave a false name. After being instructed to give his true identity, he gave another false name. The officer arrested Trenary for failing to cooperate. A subsequent search of the car revealed evidence on which the State based charges against Trenary for two counts of identity theft and one count of forgery.

Trenary moved to suppress the evidence pursuant to CrR 3.6, claiming the lack of probable cause to stop the car and that the stop was merely a pretext to investigate suspected criminal activity. In addition to the testimony of Detective Koonce and Detective Olesen, the court reviewed a video recorded by the patrol car's dashboard video system. The video showed Trenary approaching a four-way stop. Trenary's right turn signal flashed for approximately one second, then went off. Approximately five seconds later, the right turn signal again flashed for approximately one second, then went off. Trenary slowed but did not come to a complete stop at the intersection. Approximately seven seconds later, as Trenary completed a right turn, the right turn signal again flashed briefly. The officers activated their emergency lights. As Trenary pulled onto the shoulder, his turn signal flashed continuously, showing it was functioning properly.

The court denied the motion and made the following findings of fact:

1. On 3/16/2012, Detective's [sic] Koonce and Olesen of the Lynnwood PD special ops were driving in their semi marked patrol car.
2. There was no logo on the vehicle, but there is a spotlight.
3. Both detectives were wearing plain clothes and were not in uniform.
4. Around 10:30 p.m., the Detectives were driving behind the defendant's car.
5. The defendant's vehicle signal came on, then went off, came on again, then went off again.
6. After it had been turned off, the defendant made a right turn.
7. The signal may have come on as the turn was being made indicating that the signal was working properly.
8. Though there was testimony that the defendant's vehicle also crossed over the centerline [sic], this is not shown on the dash-cam video.
9. Before the car is pulled over, Detective Olesen became aware that the car was registered to Crystal Nelson.
10. Though Crystal Nelson has prior police contacts for narcotics, she was not being investigated at that time.
11. There was no reason to believe that the vehicle or its occupants were involved in any kind of drug activity prior to the stop.
12. The car was pulled over for a traffic infraction.[1]

The court also made the following conclusions of law:

1. There was probable cause to stop the vehicle for a valid traffic infraction under RCW 46.61.305.
2. The officers were proactively looking to address criminal activity.
3. Given the information, it was a mixed-motive stop under State v. Arreola.[2]
4. Here, because the testimony is that Detective Koonce already made up his mind to stop the vehicle prior to finding out it belonged to Crystal Nelson, the decision to stop the vehicle for the traffic infraction was independent from any

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[1] Clerk's Papers at 185-86.
[2] 176 Wn.2d 284, 288, 290 P.3d 983 (2012).

knowledge that the vehicle belonged to a known narcotics individual.

5. A traffic stop was necessary in order to address the driving that was witnessed by the officers.
6. The stop was not pre-textual.[3]

A jury found Trenary guilty as charged. Trenary appeals.

PROBABLE CAUSE

Trenary challenges the court's denial of his motion to suppress. He argues that "the totality of the circumstances demonstrated his substantial compliance" with RCW 46.61.305 and therefore the officers lacked reasonable suspicion that a traffic violation occurred. We disagree.

As a general rule, warrantless searches and seizures are per se unreasonable.[4] But a warrantless seizure is valid if it falls within the scope of one of the narrowly drawn exceptions to the warrant requirement.[5] The State bears the burden of proving that a warrantless seizure falls within an exception to the warrant requirement.[6]

Law enforcement officers may conduct a warrantless traffic stop if they have a reasonable and articulable suspicion that a traffic violation has occurred or is occurring.[7] But officers may not use the traffic stop as a pretext to conduct a criminal investigation unrelated to driving for which reasonable suspicion is

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[3] Clerk's Papers at 186.
[4] State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999).
[5] Id. at 349-50.
[6] Id. at 350.
[7] Id. at 349.

lacking.[8] Pretextual traffic stops violate article I, section 7, of the Washington constitution "because they are seizures absent the 'authority of law' which a warrant would bring."[9] When determining whether a stop is pretextual, courts 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."[10]

The trial court's findings of fact are reviewed for substantial evidence.[11] Unchallenged findings of fact are verities on appeal.[12] We review de novo conclusions of law, such as whether a stop is pretextual.[13]

RCW 46.61.305 provides:

> (1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.
>
> (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.

Trenary contends that his method of signaling did not violate RCW 46.61.305(2). He argues that the statute does not define "continuously" and does not "regulate the interval or frequency during which the light is required to flash, nor does it

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[8] Id.
[9] Id. at 358.
[10] Id. at 358-59.
[11] State v. Martinez, 135 Wn. App. 174, 179, 143 P.3d 855 (2006) (citing State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994)).
[12] State v. Luther, 157 Wn.2d 63, 78, 134 P.3d 205 (2006).
[13] Arreola, 176 Wn.2d at 291.

specifically regulate the interval between illuminations." Without evidence of a traffic violation, Trenary argues that the stop was illegal.

The question is whether the officers had probable cause to make the stop. Trenary admits that when making a turn drivers must use "electric turn signals which shall indicate an intention to turn by flashing lights . . . ."[14] It is clear from the language of the statute that it is the "flashing" that must occur "continuously" to notify other drivers of the intention to turn. A nontechnical term left undefined in a statute is given its plain and ordinary meaning, as defined in a standard dictionary.[15] "Continuous" is defined as "stretching on without break or interruption."[16] When Trenary repeatedly turned his turn signal on and off before initiating a turn, this did not constitute signaling "continuously" within the plain meaning of the word. The officers had probable cause to stop Trenary for violating RCW 46.61.305(2).

PRETEXT

Trenary next contends that the stop was pretextual. But Trenary's claim is not supported by the record. Though Trenary does not articulate why he believes the stop was pretextual, we presume it was because the officers were members of a special unit that proactively investigates crime and who had discovered that Trenary was driving a car belonging to an individual with

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[14] RCW 46.37.200(2).
[15] State v. Sullivan, 143 Wn.2d 162, 174-75, 19 P.3d 1012 (2001).
[16] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 493-94 (1993).

connections to drug activity. But the officers testified that in addition to their investigative duties they were also responsible for routine law enforcement activities, including traffic stops. Furthermore, the officers made the decision to stop Trenary as soon as they witnessed the traffic violation. The decision to stop Trenary occurred before the officers learned that Trenary was driving Nelson's car.

Even if the detectives were motivated by a desire to investigate suspected drug involvement, the stop was not pretextual. As the court concluded, the stop was a "mixed-motive" stop; in other words, one that is "based on both legitimate and illegitimate grounds."[17] A mixed-motive stop does not violate article I, section 7 "so long as the police officer making the stop exercises discretion appropriately."[18]

> Thus, if a 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, the stop is not pretextual. 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. In such a case, the legitimate ground is an independent cause of the stop, and privacy is justifiably disturbed due to the need to enforce traffic regulations, as determined by an appropriate exercise of police discretion. Any additional reason or motivation of the officer does not affect privacy In such a case, nor does it interfere with the underlying exercise of

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[17] Arreola, 176 Wn.2d at 297.
[18] Id. at 298.

> police discretion because the officer would have stopped the vehicle regardless.[19]

Here, the officers had reason to believe that Trenary had violated RCW 46.61.305(2) and that a traffic stop was reasonably necessary to address the suspected traffic infraction and to promote traffic safety and the general welfare. The fact that the officers may also have been interested in Trenary's connections to Nelson does not render the stop pretextual in light of the independent legitimate basis for the stop.

Because the stop was lawful, the evidence obtained from the stop was admissible. Therefore, the trial court properly denied Trenary's CrR 3.6 motion to suppress.

We affirm the judgment and sentence.

Cox, J.

WE CONCUR:

Ann, J.

Becker, J.

[19] Id. at 298-99.

APPENDIX B

Filed in Open Court
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CL16084136

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON, **Plaintiff,** **vs.** **Louis M. Trenary** **Defendant.**	**Case No.: 12-1-00624-0** **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

A hearing pursuant to CrR 3.6 and 3.5 was conducted before the Honorable Ellen Fair on February 7, 2013. The State was represented by Deputy Prosecuting Attorney Bob Langbehn, and the defendant was represented by Attorney Jennifer Rancourt. Testifying on behalf of the State was Detective William Koonce and Detective Zach Olesen of the Lynnwood Police Department. The defendant did not testify.

FINDINGS OF THE FACTS

1) On 3/16/2012, Detective's Koonce and Olesen of the Lynnwood PD special ops were driving in their semi marked patrol car
2) There was no logo on the vehicle, but there is a spotlight
3) Both detectives were wearing plain clothes and were not in uniform.
4) Around 10:30 p.m., the Detectives were driving behind the defendant's car
5) The defendant's vehicle signal came on, then went off, came on again, then went off again
6) After it had been turned off, the defendant made a right turn

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7) The signal may have come on as the turn was being made indicating that the signal was working properly
8) Though there was testimony that the defendant's vehicle also crossed over the centerline, this is not shown on the dash-cam video
9) Before the car is pulled over, Detective Olesen became aware that the car was registered to Crystal Nelson
10) Though Crystal Nelson has prior police contacts for narcotics, she was not being investigated at that time
11) There was no reason to believe that the vehicle or its occupants were involved in any kind of drug activity prior to the stop
12) The car was pulled over for a traffic infraction
13) Upon contact, the defendant's identification was requested
14) The defendant indicated that he did not have any and gave the name "Jonathan Ribary"
15) This name was run via SNOCOM and did not match any known persons
16) Detective Koonce became suspicious that the defendant was not being truthful about his identity and attempted to identify him
17) The defendant was instructed to get out of the vehicle and was handcuffed
18) 10-15 minutes passed before Miranda was read

CONCLUSIONS OF LAW

1) There was probable cause to stop the vehicle for a valid traffic infraction under RCW 46.61.305
2) The officers were proactively looking to address criminal activity
3) Given the information, it was a mixed-motive traffic stop under State v. Arreola
4) Here, because the testimony is that Detective Koonce already made up his mind to stop the vehicle prior to finding out it belonged to Crystal Nelson, the decision to stop the vehicle for the traffic infraction was independent from any knowledge that the vehicle belonged to a known narcotics individual
5) A traffic stop was necessary in order to address the driving that was witnessed by the officers
6) The stop was not pre-textual
7) The defendant freely answered questions while inside of his vehicle and was not under arrest, nor were Miranda warnings necessary
8) The defendant, after being removed from the car and placed into handcuffs, had his freedom of movement restricted such that any reasonable person would have felt they were under arrest
9) Miranda Warnings should have been read once the defendant was placed into handcuffs.
10) Any statements the defendant made after being placed into handcuffs but prior to Miranda warnings being read are suppressed
11) Any statements the defendant made to Officer Koonce or Olesen while inside of his vehicle or after Miranda warnings were read are admissible.

DONE IN OPEN COURT this 25 day of Feb, 2013

JUDGE ELLEN J. FAIR

Presented By:

Bob Langbehn, #37508
Deputy Prosecuting Attorney

Copy Received and Agreed To By:

Jennifer Rancourt, # 30474
Attorney for the Defendant

SNOHOMISH COUNTY PROSECUTING ATTORNEY
3000 ROCKEFELLER AVE. M/S #504
EVERETT, WA 98201

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 70015-4**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Mara Rozzano
Snohomish County Prosecuting Attorney

☒ appellant

☐ Attorney for other party

NINA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: September 24, 2014

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original document **Petition for Review to the Supreme Court** to which this declaration is affixed/attached, was filed in the **Court of Appeals** under **Case No. 70015-4-I**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent Mara Rozzano
Snohomish County Prosecuting Attorney

☒ petitioner

☐ Attorney for other party

NINA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: September 24, 2014

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Court of Appeals Case Number: 70015-4

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- ○ Reply to Response to Personal Restraint Petition
- ◉ Petition for Review (PRV)
- ○ Other: _____

Comments:

No Comments were entered.

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