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No. 51488-5-II

IN THE COURT OF APPEALS - DIVISION TWO
OF THE STATE OF WASHINGTON

RAFAEL MARTINEZ-LEDESMA, Petitioner

v.

STATE OF WASHINGTON, Respondent

PETITION FOR DISCRETIONARY REVIEW

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TABLE OF AUTHORITIES

A. Identity of the Petitioner

The Petitioner is Rafael Martinez-Ledesma.

B. Decision Below

On July 23, 2019, the Court of Appeals, Division Two affirmed Rafael Martinez-Ledesma's jury convictions for possession of a controlled substance in an unpublished opinion, No. 51488-5-II (herein after referred to as "the opinion below"). The opinion is included in Appendix 1.

Appellant submits this timely petition for review to the honorable Supreme Court of the State of Washington.

C. Issues Presented for Review

1. Does an officer need a reasonable suspicion that the individual was actually engaging in criminal activity before detaining him in a *Terry* stop?

2. Under the Fellow Officer Rule, does an officer have an ongoing duty to complete his investigation and update the detaining officer?

D. Statement of the Case

On December 26, 2016, at approximately 10:30 PM, Deputies Tyson Brown and Skylar Eastman, both of the Lewis County Sheriff's Office, were dispatched to an address on Little Hanaford Road. CP 106; 1/3/2018 RP at 3. The initial call reported a dispute between people refusing to leave the caller's property. 1/3/2018 RP at 3. While enroute, Deputy Eastman was "slightly behind" Deputy Brown, close enough to see his emergency vehicle lights ahead. 2/7/2018 RP at 32.

Deputy Brown stated he received updates from dispatch that the

dispute had become physical and that subjects associated with a pickup or truck were causing damage to the reporting party's property. 1/3/2018 RP at 4. Deputy Eastman stated that "initial reports were that there was a group of people refusing to leave the property, that there had been drinking involved and possibly property damage," as well as "reports of an assault that occurred including a push." *Id.* at 13-14. Both deputies testified that they passed a pickup truck on the way to the Little Hanaford Road address. *Id.* at 4, 14.

Upon arriving at the address, Deputy Brown first inquired whether the truck he had passed was "involved with the dispute" and was told "yes." *Id.* at 4. Deputy Brown further testified, "At that point when I was told the subjects were involved, I requested Deputy Eastman to stop that vehicle while I inquired, investigated further." *Id.* At the point when Deputy Brown requested Deputy Eastman stop the car, it was "still yet to be known" and was "still to be investigated" if there was any evidence of a crime that the truck was involved with.

Deputy Eastman pulled the pickup over because Deputy Brown told him to—not because of muddy license plates or a white light emitted from the rear. *Id.* at 22-23. Deputy Eastman also testified that Deputy Brown did not report any property damage to him, nor did he report any assaultive behavior. *Id.* at 24. This was confirmed by Deputy Brown. *Id.* at 10-11. Deputy Eastman also did not receive any information from the reporting party directly. *Id.*

Deputy Brown reported that, after requesting Deputy Eastman

detain the pickup truck, it took a few minutes for him to learn that no crime had occurred. *Id.* at 5. Deputy Brown spoke with the reporting party, who did not report any assaultive or harassing behavior, nor that anyone was too impaired to drive. *Id.* at 12. The reporting party did not request anyone be trespassed, nor did she identify Mr. Martinez-Ledezma by name or report any behavior by him. *Id.*

After learning that no crime had occurred, Deputy Brown handed out paperwork and then joined Deputy Eastman with his detention of Mr. Martinez-Ledezma. *Id.* at 5. Deputy Brown did not appear to have informed Deputy Eastman that no crime took place. By the time Deputy Brown joined Deputy Eastman, Deputy Eastman was already placing Mr. Martinez-Ledezma in the back of his patrol car. *Id.*

Deputy Eastman reported that he stopped Mr. Martinez-Ledezma approximately two minutes after the request from Deputy Brown. *Id.* at 14. After contacting Mr. Martinez-Ledezma, Deputy Eastman investigated for Driving Under the Influence and ultimately arrested Mr. Martinez-Ledezma for Driving Under the Influence. *Id.* at 17-20. Approximately fourteen minuets passed from the time Deputy Brown requested the detention to Mr. Martinez-Ledezma's arrest. A search incident to arrest revealed two bindles of a white powdery substance, which later tested positive for a controlled substance. *Id.* at 20-21.

Mr. Martinez-Ledezma was ultimately charged with one count of Possession of a Controlled Substance and one count of Driving While

Under the Influence.[1] Mr. Martinez-Ledezma, through his attorney, filed a motion contesting the legality of the stop, which was argued and denied on January 3, 2018. 1/3/2018 RP at 31-32. Mr. Martinez-Ledezma proceeded to a bench trial on February 7, 2018. 2/7/2018 RP at 10-11. The trial court ultimately found Mr. Martinez-Ledezma guilty of Possession of a Controlled Substance, to wit, Cocaine. *Id.* at 85.

E. ARGUMENT

Citizens enjoy the right to be free from unreasonable seizures under the Fourth and Fourteenth Amendments of the U.S. Constitution, as well as a right to privacy under the Washington Constitution. U.S. Const. amend. IV, XIV; Const. art. I, § 7. Officers may briefly detain an individual in a *Terry* stop so long as the officer has a "reasonable suspicion that the person stopped is or is about to be engaged in criminal activity." *State v. Fuentes*, 183 Wn.2d 149, 158, 352 P.3d 152 (2015). The crux of a *Terry* stop is that the detained individual appears to be engaging in criminal activity, or is about to be. The detained individual must be the perpetrator of the criminal activity; officers do not have the ability to detain witnesses or victims under *Terry*. *See, e.g.*, *State v. Carney*, 142 Wn. App. 197, 174 P.3d 142 (2007). Here, the evidence in the record is that: 1) no crime was committed, and 2) Deputy Brown was informed that the green truck was "involved in the incident," without further clarification if the truck was involved as a witness, victim, or perpetrator.

[1] The State dismissed the DUI count without prejudice, 2/7/2018 RP at 77, and that charge is not at issue in this appeal.

Officers may rely upon information conveyed by other officers to provide a factual basis for an arrest or *Terry* detention, under the "fellow officer rule." *See, e.g.*, *State v. Gaddy*, 152 Wn.2d 64, 71, 93 P.3d 872 (2004). However, once the reporting officer lacks reasonable suspicion for a *Terry* detention, the detaining officer also lacks reasonable suspicion. *Id.* Left currently unanswered are fundamental issues about the application of the fellow officer rule, such as whether the reporting officer has a duty to inform the detaining officer as soon as the lack of reasonable suspicion becomes apparent. If no such duty exists, this framework creates an ambiguity that is easily exploited by law enforcement: the reporting officer may direct the detaining officer to conduct a *Terry* stop, and knowing that it will take several minutes for the detaining officer to effectuate the stop, may leisurely investigate the case, allowing the detaining officer time to stop the individual. This type of police practice may seem unlikely at first glance—however, this is precisely what happened here.

The determination that reasonable suspicion existed for the detention of Mr. Martinez-Ledesma is directly in conflict with the Washington Supreme Court's ruling in *Fuentes* that the individual must be engaged in criminal activity. *Fuentes*, 183 Wn.2d at 158. The Court of Appeals' application of the fellow officer rule in this case is in conflict with the language in *Gaddy*, which states that once the reporting officer no longer has reasonable suspicion for a *Terry* stop, the detaining officer ceases to have reasonable suspicion as well. *Gaddy*, 152 Wn.2d at 71. Both issues directly implicate both the United States Constitution's protection against

unreasonable seizures and the Washington Constitution's right to privacy. U.S. Const. amend. IV, XIV; Const. art. I, § 7. Finally, the public has a tremendous interest in ensuring the proper regulation of police officers—both that officers are not impermissibly detaining witnesses and victims, and that officers are not intentionally slowing or delaying their investigations in order to allow detentions under the fellow officer rule.

1. The Court Should Grant the Petition for Review to Clearly Establish That a *Terry* Stop is Only Permissible for Individuals Suspected of Engaging in Criminal Activity, not Witnesses or Victims

The contours of the requirements for a *Terry* stop are well-established by this Court. In *Fuentes*, the Court was specific: "Under this exception, an officer may, without a warrant, briefly detain a person for questioning if the officer has a reasonable suspicion that the person stopped is or is about to be engaged in criminal activity." *Fuentes*, 183 Wn.2d at 158. This brief detention is only permitted for individuals engaging in criminal activity—it does not permit the detention of witnesses or victims. *See*, *e.g.*, *Carney*, 142 Wn. App. at 203-04. The consequences of allowing officers to detain witnesses was explicitly stated by the Court of Appeals, Division II: "There is no authority—either statutory or otherwise—permitting an officer to seize a witness without a warrant, absent exigent circumstances or officer safety…under an opposite holding to ours today, the police would be justified in seizing any person on the street who might have been a witness to the speeding offense and checking their record for "warrants." *Id.*

Despite these well-founded concerns, Division II found that a statement from a witness that Mr. Martinez-Ledesma's truck was "involved" in an incident was "sufficient for Eastman to suspect that the truck's occupant had engaged in assault…and malicious mischief." Opinion Below, Appendix 1, pg. 6. The mere statement that a truck was "involved" in an "incident" is not enough to establish reasonable suspicion that Mr. Martinez-Ledesma was engaging in criminal activity for two reasons.

First, being "involved in the incident" does not establish that the conduct in the "incident" was criminal in nature. Deputy Brown did not ask the witness if the occupant of the green truck had engaged in assaultive behavior or property destruction, and the word "incident" does not describe with sufficient particularity that the officer is referring to alleged criminal activity. While this may seem a purely semantical and irrelevant distinction, the facts here demonstrate otherwise: Deputy Brown ultimately discovered that no crime had been committed. As such, the green truck's "involvement" in an "incident" does not convey that the occupant of the green truck was engaged in any criminal activity. Deputy Brown could easily have been clear and specific in his initial questioning, but chose not to, and the State now seeks to benefit from Deputy Brown's vague questioning. By affirming the denial of Mr. Martinez-Ledesma's motion to suppress, the Court of Appeals is ratifying this type of investigatory behavior, and encouraging officers to engage in vague questioning so as to be able to cast a wide detention net.

Second, the statement that the green truck was "involved" does not

adequately convey to Deputy Brown the nature and extent of the green truck's involvement. An individual can be "involved" in an incident as a victim, a witness, or a perpetrator. It is axiomatic in our Article I, section 7 jurisprudence that officers lack authority to detain witnesses or victims absent a warrant, or some other exigent circumstance (which was not found here). *See, e.g.*, *Carney*, 142 Wn. App. at 203-04. Yet by affirming Deputy Brown's conduct, the Court of Appeals has instead provided officers with a convenient work-around. Rather than ascertain the status of the parties in a criminal incident, the officer can label all the parties as "involved" and proceed to detain all of them. This approach leads to illogical and strained results—however, the Court of Appeals' conclusion would allow officers to achieve these results.

By reaching these conclusions, the Court of Appeals' decision is in conflict with the requirements for a *Terry* stop as outlined in *Fuentes* and other Supreme Court cases. The Court of Appeals' decision below is a significant diminishment of the right to privacy under the Washington Constitution, and the right to be free from unreasonable seizure under the Fourth and Fourteenth Amendments. Finally, the public has a vested interest in ensuring officers are properly investigating reported criminal conduct, as opposed to investigating with vague phrases and terms in order to cast a *Terry* stop dragnet.

2. The Court Should Grant the Petition for Review to Establish an Ongoing Duty under the Fellow Officer Rule to Complete an Investigation and Update Officers on the Status of the Investigation

The Fellow Officer Rule allows a detaining officer to rely upon information conveyed by other officers to form the reasonable suspicion necessary for a *Terry* stop. *See, e.g.*, *State v. Mance*, 82 Wn. App. 539, 918 P.2d 527 (1996). While the Court of Appeals has endorsed and applied this rule for decades, this Court has "never expressly adopted it" and has declined to apply it so far. *State v. Ortega*, 177 Wn.2d 116, 126, 297 P.3d 57 (2013); *see also Gaddy*, 152 Wn.2d at 70-71. Because the Supreme Court has never addressed the validity and requirements of the fellow officer rule in light of the right to privacy under Article I, section 7, lower courts have little guidance in whether the fellow officer rule is sound, and what the requirements of the officers are under the rule.

The fellow officer rule is a helpful tool for law enforcement by allowing law enforcement to work in concert; under the rule, officers are not constrained to making decisions based on personal knowledge, but instead can rely on the personal knowledge of other officers that has been conveyed. However, this rule cannot be a one-way rule: if the detaining officer may rely upon the information conveyed by the reporting officer, then the officer should be similarly constrained by information known by the reporting officer. The Court of Appeals in the opinion below has created a negative incentive for officers: by affirming the conduct of Deputies Eastman and Brown, the Court of Appeals is allowing officers to gain an

advantage via the fellow officer rule without being held accountable under the same rule.

In order for the fellow officer rule to have constitutional validity, it must require an ongoing duty of reporting officers to update other officers of the investigation. This does not mean the reporting officer must disclose every fact and detail as they discover them; rather, it places a duty on the reporting officer to complete the investigation and update the officers who are relying upon the reporting officer's statements.

The effects of such a duty are evident here. Deputy Brown never informed Deputy Eastman that no crime had occurred, and the trial court made no finding that Deputy Eastman had stopped the truck prior to Deputy Brown's determination that no crime had occurred. Deputy Brown was able to determine no crime had occurred within "a couple minutes" after requesting Deputy Eastman detain the green truck, 1/3/2018 RP at 5, and Deputy Eastman believed it was "about two minutes" after Deputy Brown's request that he stopped the truck. If we take the officers at their word, the detention began at approximately the same time Deputy Brown discovered no crime had occurred. The officers were able to create some degree of ambiguity regarding the timeline, and the Court of Appeals allowed the officers to exploit this ambiguity to their advantage. Accordingly, it is necessary that this Court address the fellow officer rule and, should the court adopt the rule, apply an ongoing duty to the reporting officer to complete their investigation and update other officers with material facts—*such as a lack of reasonable suspicion to justify a* Terry *stop*. As it stands, the ruling

from the Court of Appeals encourages officers to create ambiguity in their timelines, which they can exploit to secure convictions, which is certainly not the goal of Article I, section 7.

F. CONCLUSION

Mr. Martinez-Ledesma was illegally seized and detained by Deputy Eastman, both because the detention was not justified by a reasonable suspicion that he was engaging in criminal activity, and also because there was no finding that Deputy Eastman's detention of Mr. Martinez-Ledesma occurred before Deputy Brown had determined no crime had occurred, contrary to the Fourth and Fourteenth Amendments of the U.S. Constitution, and article I, section 7 of the Washington Constitution, as well as established cases of this Court. In addition, Mr. Martinez-Ledesma's case presents an issue of public interest that necessitates clearer guidance from this Court to address the applicability and requirements of the fellow officer rule and the ability of officers to detain victims and witnesses. For these reasons, Mr. Martinez-Ledesma requests this Court grant review of these issues.

Respectfully submitted this 22ND day of August, 2019.

MAZZONE LAW FIRM, PLLC

S/JAMES HERR
By James Herr, WSBA #49811
Attorney for Petitioner

CERTIFICATE OF SERVICE/PROOF OF FILING

I, Tammy Weisser, hereby certify that the following information is true and correct: That the original pleading of the foregoing document entitled "Petition for Discretionary Review" was filed Electronically, with the Court of Appeals, Division II, 950 Broadway #300, Tacoma, WA 98402 on This 22nd Day of August, 2019. And further, that a true and correct copy of the foregoing pleading was served by U.S. Mail, correct postage paid, on the following parties on this 22nd Day of August, 2019.

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Dated: This 22nd Day of August, 2019

s/Tammy Weisser
Tammy Weisser, Legal Secretary

APPENDIX 1

UNPUBLISHED OPINION. NO 51488-5-II

Filed
Washington State
Court of Appeals
Division Two

July 23, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. RAFAEL MARTINEZ-LEDESMA, Appellant.	No. 51488-5-II UNPUBLISHED OPINION

MAXA, C.J. – Rafael Martinez-Ledesma appeals his conviction of possession of a controlled substance – cocaine and the imposition of certain legal financial obligations (LFOs). The cocaine was discovered after an officer conducted an investigative stop of Martinez-Ledesma's truck based on a report that Martinez-Ledesma had been involved in a physical dispute where property was damaged.

We hold that (1) the trial court did not err in denying Martinez-Ledesma's motion to suppress the cocaine because the officer had a reasonable suspicion that Martinez-Ledesma had been involved in criminal activity; (2) as the State concedes, the trial court erred in imposing jury costs as a sanction for failing to timely waive a jury trial; and (3) as the State concedes, the trial court erred in imposing a discretionary LFO – a crime lab fee – without conducting an adequate individualized inquiry into Martinez-Ledesma's ability to pay.

Accordingly, we affirm Martinez-Ledesma's conviction, but we remand for the trial court to strike the jury costs and to conduct an inquiry into Martinez-Ledesma's ability to pay the crime lab fee.

FACTS

In December 2016, Deputy Tyson Brown and Deputy Skylar Eastman of the Lewis County Sheriff's Office responded separately to a call regarding an incident taking place. Dispatch advised that there was a physical dispute, property was being damaged, and the people involved had been drinking alcohol. While driving to the property, Brown passed a green truck heading in the opposite direction.

After arriving at the property, Brown immediately asked the complainant if the pickup truck he had just passed was involved in the dispute. The complainant said that the truck was involved. Brown requested that Eastman, who still was on his way to the property, stop the truck based on its reported involvement in the incident. Brown continued to question the complainant about the dispute and eventually determined that no crime had taken place.

Eastman stopped the truck and identified the driver as Martinez-Ledesma. Eastman smelled a strong odor of intoxicants coming from the vehicle and observed that Martinez-Ledesma's eyes appeared to be bloodshot and watery. Eastman performed a horizontal gaze nystagmus test, which indicated intoxication. Eastman placed Martinez-Ledesma under arrest for driving under the influence of alcohol.

Eastman conducted a search of Martinez-Ledesma incident to arrest and found two bags containing a white powdery substance. Eastman conducted a field test on the powder, which indicated a presumptive positive for cocaine. The State charged Martinez-Ledesma with possession of a controlled substance – cocaine.

Martinez-Ledesma filed a motion to suppress any evidence arising from the stop of his truck. The trial court held a CrR 3.6 hearing on the suppression motion. Brown and Eastman both testified to the facts surrounding the stop and search of Martinez-Ledesma.

The trial court denied the suppression motion. The court entered written findings of fact consistent with the facts stated above. The court concluded that Brown and Eastman had a reasonable suspicion that the occupants of the truck were involved in criminal activity based on the information relayed to dispatch by the complainant. The court also concluded that once Eastman made the stop, he developed an independent basis for detaining Martinez-Ledesma based on his observations of Martinez-Ledesma driving a vehicle and showing signs of having consumed alcohol.

The day before trial, Martinez-Ledesma's defense counsel sent an email to the prosecutor waiving his right to a jury trial. However, the trial court stated at the start of trial that Martinez-Ledesma had not properly submitted a written waiver and therefore was liable for the cost of impaneling a jury. The court stated that Martinez-Ledesma could either go to trial with a jury or accept the costs of impaneling the jury. Martinez-Ledesma chose to proceed to a bench trial and incur the costs of impaneling the jury.

The trial court found Martinez-Ledesma guilty. At sentencing, the court briefly inquired into Martinez-Ledesma's ability to pay LFOs. The court asked Martinez-Ledesma if he was working, how much money he earned each month, how many people he was supporting on his wages, and whether he received government assistance. The court also asked if Martinez-Ledesma had retained his own defense counsel. The court found that Martinez-Ledesma had the ability to pay and imposed LFOs, including a $100 crime lab fee and $1,534.28 in jury costs.

Martinez-Ledesma appeals his conviction and the imposition of certain LFOs.

ANALYSIS

A. VALIDITY OF INVESTIGATIVE STOP

Martinez-Ledesma argues that the trial court erred by denying his suppression motion, claiming that the officers did not have a reasonable suspicion to conduct an investigative stop. We disagree.

1. Legal Principles

Under the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution, a law enforcement officer generally cannot seize a person without a warrant. *State v. Fuentes*, 183 Wn.2d 149, 157-58, 352 P.3d 152 (2015). If a seizure occurs without a warrant, the State has the burden of showing that it falls within one of the carefully drawn exceptions to the warrant requirement. *State v. Z.U.E.*, 183 Wn.2d 610, 617, 352 P.3d 796 (2015). One established exception is a brief investigative detention of a person, known as a *Terry*[1] stop. *Id.*

For an investigative stop to be permissible, a police officer must have had a reasonable suspicion based on specific and articulable facts that the detained person was or was about to be involved in a crime. *Id.* A "generalized suspicion that the person detained is 'up to no good' " is not enough; "the facts must connect the particular person to the particular crime that the officer seeks to investigate." *Id.* at 618 (italics omitted). If an officer did not have a reasonable suspicion of criminal activity, a detention is unlawful and evidence discovered during the detention must be suppressed. *Fuentes,* 183 Wn.2d at 158.

We determine the propriety of an investigative stop – the reasonableness of the officer's suspicion – based on the "totality of the circumstances." *Id.* "The totality of circumstances

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

includes the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, and the amount of physical intrusion on the suspect's liberty." *Id.* The focus is on what the officer knew at the inception of the stop. *Id.*

Under the "fellow officer" rule, an individual officer may rely upon information from another officer in forming a reasonable suspicion or initiating an investigative stop. *State v. Butler*, 2 Wn. App. 2d 549, 570, 411 P.3d 393 (2018). An officer has a reasonable suspicion if he acts upon the direction of another officer and law enforcement as a whole have sufficient information to justify an investigative stop. *Id.*

Where an officer's reasonable suspicion is based on an informant's tip, the State must show that the tip had some indicia of reliability. *Z.U.E.*, 183 Wn.2d at 618. "We require that there be either (1) circumstances establishing the informant's reliability or (2) some corroborative observation, usually by the officers, that shows either (a) the presence of criminal activity or (b) that the informer's information was obtained in a reliable fashion." *Id.*

In evaluating a denial of a motion to suppress evidence, we review the trial court's findings of fact for substantial evidence and review de novo the trial court's conclusions of law based on those findings. *Fuentes*, 183 Wn.2d at 157. Evidence is substantial if it is enough to persuade a fair-minded person of the truth of the stated premise. *State v. Froehlich*, 197 Wn. App. 831, 837, 391 P.3d 559 (2017). Unchallenged findings are treated as verities on appeal. *State v. Betancourth*, 190 Wn.2d 357, 363, 413 P.3d 566 (2018).

2. Analysis

Here, the trial court found that dispatch told Brown and Eastman that "there was a group of people at the location of the call refusing to leave, there was a physical dispute, property was being damaged, and the people involved had been drinking alcohol." Clerk's Papers (CP) at 106.

The court also found that when he arrived at the property, Brown "asked if the green truck was involved in the incident, which the complainant indicated it was." CP at 107. Finally, the court found that Brown requested that Eastman stop the truck "based on the reported involvement in the incident." CP at 107.[2] Because Martinez-Ledesma does not challenge these findings they are verities on appeal. *Betancourth*, 190 Wn.2d at 363.

These unchallenged findings support the trial court's conclusion that Eastman had a reasonable suspicion that the occupant of the truck had been involved in criminal activity. Eastman had been told that there was a physical altercation including property damage and that the truck had been involved. The description of the incident was sufficient for Eastman to suspect that the truck's occupant had engaged in an assault in violation of RCW 9A.36.041 and malicious mischief in violation of RCW 9A.48.070, .080, or .090.

Martinez-Ledesma asserts that the investigative stop was invalid for several reasons. First, he argues that the deputies had reason to suspect only that he was a witness to the incident and not a participant. Martinez-Ledesma claims that this case is similar to *State v. Carney*, 142 Wn. App. 197, 174 P.3d 142 (2007). In that case, an officer observed a reckless driving suspect on a motorcycle talking to the occupants of a parked vehicle. *Id.* at 200. After the motorcycle evaded the officer and raced off, the officer detained the vehicle's occupants. *Id.* This court held that the officer's belief that the vehicle's occupants had information about the identity of the suspect or the reckless driving did not justify the detention. *Id.* at 203. The court stated that there was no authority allowing the detention of a possible witness to a crime. *Id.*

[2] The trial court also found that, in addition to Brown requesting Eastman to stop the truck, Eastman observed that the truck "had a white light emitting from the back, which is a moving violation he has stopped vehicles for in the past." CP at 107. However, the court did not base its conclusion that the stop was valid on this finding.

But the facts here are different. In *Carney*, the officer was investigating a complaint about a motorcycle driving recklessly, and the officer had no basis for believing the vehicle's occupants were involved in the potential crime he was investigating – a motorcyclist's reckless driving. *Id.* at 200, 203. Here, Eastman had information that the truck's occupant was involved in the potential crime he was investigating.

Second, Martinez-Ledesma argues that Brown and Eastman had no indication that the complainant's tip was reliable and that they made no corroborative observations that would support reliability. Martinez-Ledesma did not make this argument in his suppression motion, and therefore the trial court did not make any specific finds regarding reliability of the complainant. However, the record shows that the complainant was a named informant who was an eyewitness to the incident. Information based on witnessing a crime as it occurs is "obtained in a reliable fashion." *Z.U.E.*, 183 Wn.2d at 618.

Third, Martinez-Ledesma argues that even if Eastman had a reasonable suspicion to stop the truck, he unlawfully extended the scope of the investigation. He claims that once Brown determined that no crime had taken place, Eastman no longer had a reasonable suspicion to investigate the truck. Martinez-Ledesma cites *Butler*, 2 Wn. App. 2d at 571-72, for the proposition that under the fellow officer rule, new information for one officer can eliminate another officer's reasonable suspicion for an investigative stop.

A lawful investigative stop is limited to fulfilling the investigative purpose of the stop. *State v. Alexander*, 5 Wn. App. 2d 154, 160, 425 P.3d 920 (2018), *review denied* 192 Wn.2d 1026 (2019). But if the investigation affirms or increases the officer's suspicions, the officer may extend the scope of the stop. *Id.* Here, the trial court made no finding that Brown determined that no crime had occurred *before* Eastman stopped the truck. Once Eastman

stopped the truck and observed Martinez-Ledesma, he noticed immediately that the truck smelled of alcohol and that Martinez-Ledesma's eyes were bloodshot and watery. Therefore, Eastman could lawfully extend the scope of the investigative stop even if Brown determined that no crime occurred at some time after the stop occurred.

We hold that Eastman's investigative stop of Martinez-Ledesma's truck was valid. Accordingly, we hold that the trial court did not err in denying Martinez-Ledesma's suppression motion.

B. IMPOSITION OF JURY COSTS

Martinez-Ledesma argues, and the State concedes, that the trial court erred by imposing jury costs of $1,534.28. We agree.

Under former RCW 10.46.190 (2005), a person convicted of a crime is liable for a jury fee "when tried by a jury." Former RCW 36.18.016(3)(b) (2016) states that this fee shall be $125 for a jury of six and $250 for a jury of twelve. However, as Martinez-Ledesma points out, RCW 10.46.190 is inapplicable because he was not "tried by a jury" as required in that statute.

In fact, it does not appear that the trial court imposed a jury fee under RCW 10.46.190. On the judgment and sentence, the line for "[j]ury demand fee" is blank. CP at 75. Instead, the court imposed "jury costs" on the line for "other" LFOs. CP at 75. The State notes that the court imposed these jury costs as a sanction for not notifying the court in a timely fashion that a jury panel would not be required. The State concedes that a sanction was not appropriate here because Martinez-Ledesma's attorney was not present at the trial confirmation hearing, and therefore he did not have the opportunity to waive a jury until the day of trial.

We accept the State's concession. There is no basis in the record for imposing jury costs as a sanction against Martinez-Ledesma. Therefore, the trial court must strike the $1,534.28 in jury costs.

C. IMPOSITION OF DISCRETIONARY LFOS

Martinez-Ledesma argues, and the State concedes, that the trial court erred by failing to adequately inquire into Martinez-Ledesma's ability to pay discretionary LFOs. We agree.

Under former RCW 10.01.160(3) (2015), a trial court could not impose costs unless the defendant was or would be able to pay them. In *State v. Blazina*, the Supreme Court held that a trial court must make "an individualized inquiry into the defendant's current and future ability to pay" before imposing discretionary LFOs. 182 Wn.2d 827, 838, 344 P.3d 680 (2015). In *State v. Ramirez*, the court emphasized that employment history, income, assets and other financial resources, monthly living expenses, and other debts are relevant to determining a defendant's ability to pay discretionary LFOs. 191 Wn.2d 732, 744, 426 P.3d 714 (2018). The court stated that "the record must reflect that the trial court inquired into all five of these categories before deciding to impose discretionary costs." *Id.*

Here, the trial court asked Martinez-Ledesma if he was working, how much money he made each month, how many people in his extended family he was supporting on his wages, whether he was receiving any kind of government assistance, and whether he had retained a private attorney. However, the court did not inquire into the amount of the support Martinez-Ledesma was providing to his extended family, the amount of his wife's income or other sources of income, or the family's other debts or assets.

Under *Blazina* and *Ramirez*, the trial court failed to conduct an adequate inquiry into Martinez-Ledesma's ability to pay discretionary LFOs. The only discretionary LFO the court

imposed was the $100 crime lab fee. Therefore, we remand for the trial court to conduct an inquiry into Martinez-Ledesma's ability to pay that fee.

CONCLUSION

We affirm Martinez-Ledesma's conviction, but we remand for the trial court to strike the jury costs and to conduct an inquiry into Martinez-Ledesma's ability to pay the crime lab fee.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

MAXA, C.J.

We concur:

LEE, J.

CRUSER, J.

MAZZONE LAW FIRM

August 22, 2019 - 4:00 PM

Transmittal Information

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Appellate Court Case Title:	State of Washington, Respondent v. Rafael Martinez-Ledesma, Appellant
Superior Court Case Number:	16-1-00772-9

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