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Supreme Court No. 99325-4
(COA No. 80308-5-I)

THE SUPREME COURT OF THE STATE OF
WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JEANNENE RAMOS,

Petitioner.

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

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Jeannene Ramos, petitioner here and appellant below, asks this Court to accept review of the Court of Appeals decision terminating review under RAP 13.3 and RAP 13.4.

B. COURT OF APPEALS DECISION

Ms. Ramos seeks review of the November 16, 2020 Court of Appeals decision, which is attached as an appendix.

C. ISSUES PRESENTED FOR REVIEW

Where the purpose of a traffic stop is to investigate the officer's hunch that the occupants of the car are engaged in drug-related crimes, must the fruits of a pretextual stop be suppressed as a violation of Article I, Section § 7?

D. STATEMENT OF THE CASE

Monroe police officer Scott Kornish works in a proactive patrol unit, looking for narcotics-related street crimes. 9/20/18 RP 4, CP 40.¹ He has hundreds of arrests for drug-related offenses. 11/15/18 RP 8. His focus is narcotics. 11/15/18 RP 31.

¹ The transcripts are not in sequential order. To reduce confusion, the date of the hearing has been included in references to the record.

He works “problem houses, parking lots, area of high theft, high crime areas.” *Id.* When he encountered Jeannene Ramos, he was on his regular patrol. 9/20/18 RP 4.

Officer Kornish worked his shift in an unmarked car. 11/15/18 RP 31. He first saw Ms. Ramos sitting in a parked Mustang in a Walmart parking lot. 9/20/18 RP 13, CP 40. The officer became suspicious of the car because Ms. Ramos was sitting in it while the driver was shopping. 11/5/18 RP 9-10. The officer believed that when a passenger is waiting in a car, it is likely to sign drug-related activity. *Id.*

Officer Kornish ran the car’s license on his computer. 11/15/18 RP 10. He learned the Mustang had recently been sold, but its title had not been transferred. 11/15/18 RP 10, CP 40. Rather than approach the vehicle to investigate why the license had not been transferred, Officer Kornish allowed the car to leave the parking lot. 11/15/18 RP 10, CP 40.

Steven Packer returned to his car and once out of the lot, drove over the speed limit. Officer Kornish’s car did not have any device that could track the speed other than a

speedometer. 11/15/18 RP 12. The officer estimated Mr. Packer was driving about 45 miles an hour in a 25 mile an hour zone. *Id.*, CP 40.

The officer pulled over Mr. Packer. 11/15/18 RP 13, CP 40. Mr. Packer stated he was driving without a license and that his girlfriend, Ms. Ramos, owned the car. 11/1/5/18 RP 14, CP 41. He said they were moving from Sultan to Tacoma. 11/15/18 RP 48, CP 42. The officer knew Mr. Packer and Ms. Ramos from a previous contact. CP 41. The officer went back to his car and called for assistance. 11/15/18 RP 15, CP 41.

As Officer Kornish spoke to Mr. Packer, he saw that the car was full of stuff, including a closed lockbox at Mr. Packer's feet. 11/15/18 RP 15, CP 41-2. The officer also saw a torch lighter. 11/15/18 RP 15, CP 42. He suspected the car contained narcotics. 11/15/18 RP 16, CP 42.

After Officer Kornish verified Mr. Packer did not have a valid license, the officer placed Mr. Packer into handcuffs. 11/15/18 RP 16, CP 40. Officer Kornish then put Mr. Packer between his car and the Mustang. 11/15/18 RP 17.

The officer then approached the passenger side to question Ms. Ramos about the failure to transfer the car's title. 11/15/18 RP 17, CP 42. The officer did not provide Ms. Ramos with *Miranda* warnings before he questioned her.² Nonetheless, the officer interrogated Ms. Ramos about why the car's title had not yet been transferred. 11/15/18 RP 17, CP 42. The Mustang door had been opened, and Ms. Ramos' legs were out of the vehicle. 11/15/18 RP 17, CP 42. Ms. Ramos never left the car before she was handcuffed.

Ms. Ramos told the officer she had recently purchased the car. 11/15/18 RP 17. She gave no other explanation. Ms. Ramos made these statements while she remained sitting in the car's front seat with the officer standing over her. *Id.* Ms. Ramos did not leave the front seat at any time before the officer placed her in handcuffs. *Id.*

When the second officer arrived, Officer Kornish returned to his car to obtain more information on Ms. Ramos. 11/15/18 RP 18, CP 44. The second officer kept Ms. Ramos

² *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

inside the vehicle. 11/15/18 RP 18, CP 43. Officer Kornish then heard the second officer yell that he had found a gun near Ms. Ramos. 11/15/18 RP 18, CP 43. The weapon was not stolen. 11/15/18 RP 46, CP 46. It was later determined it belonged to Mr. Packer's father. 11/15/18 RP 46.

Ms. Ramos was removed from the car, placed into handcuffs, and read her *Miranda* rights. 11/15/18 RP 19, CP 43. She said she did not know anything about the gun. 11/15/18 RP 19, CP 43. Mr. Packer stated the gun was his and that it came from his father, who had recently passed away. 9/20/15 RP 11, CP 45. Mr. Packer said there was another gun in the car. 11/15/18 RP 26.

Officer Kornish returned to the car where Ms. Ramos was being held. The officer read Ms. Ramos her *Miranda* rights. 11/15/18 RP 20. Ms. Ramos told the officer she had an old felony conviction. 11/15/18 RP 24, CP 164. Ms. Ramos' belief turned out to be incorrect, as her previous conviction had been for a misdemeanor. CP 46, 164. Ms. Ramos also told the officer she had no idea there was a gun in the car.

11/15/18 RP 25, CP 43. Post-*Miranda*, the officer then asked Ms. Ramos if there were drugs in the vehicle. 11/15/18 RP 25, CP 43. Ms. Ramos said no, but that she had a drug pipe in her purse. 11/6/18 RP 25-26, CP 45.

The officer had a hunch that there were other drugs in the car because he observed a lockbox and a torch lighter, and because of Ms. Ramos' previous conviction. 11/15/18 RP 25, CP 45. He believed if he searched the car, he was likely to find narcotics. *Id.* The vehicle was impounded. 11/15/18 RP 27, CP 45. Mr. Packer and Ms. Ramos were released. 11/15/18 RP 27, CP 45.

After obtaining a search warrant, a search of the car produced a scale, small amounts of methamphetamine, and a second firearm. 11/15/18 RP 30, CP 46.

The officer never cited Ms. Ramos for a failure to transfer title. 9/20/18 RP 19. Mr. Packer was not cited for speeding but was referred for prosecution on crimes the officer discovered after stopping him. 11/15/18 RP 40.

Ms. Ramos contested her seizure, the statements she made, and the search of the car. The court determined the officer's actions were constitutional. CP 47. After the completion of the suppression hearings, Ms. Ramos agreed to a stipulated bench trial. CP 56.

Ms. Ramos appealed. The Court of Appeals found no error, affirming the trial court's decisions. App 1. She asks this Court to grant review of whether her seizure violated Article I, Section 7 of the Washington state constitution.

E. ARGUMENT

This Court should grant review to limit when an officer may use the pretext of a traffic violation pretext to conduct a warrantless search of a vehicle.

When this Court limited the prohibition against pretextual stops by allowing mixed-purpose stops, it recognized that “where the true reason” for the stop was to relieve the government of its requirement to secure a warrant, pretextual stops are unlawful. *State v. Chacon Arreola*, 176 Wn.2d 284, 294, 290 P.3d 983 (2012). (quoting *State v. Ladson*, 138 Wn.2d 343, 358, 979 P.2d 833 (1999)); see

also State v. Boisselle, 194 Wn.2d 1, 4, 448 P.3d 19 (2019)

(limiting the scope of a pretextual search of a home.)

Ms. Ramos' case demonstrates that this Court's continuing prohibition against pretextual stops has been swallowed up in the *Chacon Arreola* exception. To limit the government's reach and to protect Washington's citizens, this Court should grant review and hold that where the true reason for a traffic stop is to avoid the requirement of a search warrant, the stop and subsequent seizure is unlawful.

Review is authorized because the Court of Appeals' decision conflicts with this Court's decisions, is a significant question of Washington state constitutional law, and involves an issue of substantial public interest. RAP 13.4(b).

1. Pretextual stops violate the Article I, Section 7 prohibition against warrantless stops and seizures.

The Court of Appeals recognizes that pretextual stops are unconstitutional. App 6. It identifies Officer Kornish as part of a crime prevention unit that does "directed patrol," working parking lots, problem houses, and other high theft and high crime areas. *Id.* at 7. Even though Officer Kornish

was working in an unmarked police car circling a parking lot looking for suspicious activity when he flagged Ms. Ramos' car, the Court of Appeals nonetheless determined that the officer was not engaged in a pretextual stop when he followed Ms. Ramos' car out of the parking lot, stopped the vehicle, and arrested its occupants for crimes unrelated to the original traffic offenses. *Id.*

The Court of Appeals analysis demonstrates how this Court's exception to the warrant requirement for mixed purposes stops has swallowed the limitations on such stops. Officer Kornish is not a traffic officer. He does not work patrol but is part of a proactive patrol unit. 9/20/18 RP 4, CP 40. His job is to investigate drug crimes. *Id.*

In fact, Officer Kornish has no interest in investigating traffic violations, except to the extent they will lead to other crimes. Had Officer Kornish been interested in investigating the failure to transfer title, he did not need not to wait for the car to leave the Walmart parking lot. 9/20/18 RP 13. It is telling that the officer never issued an infraction against Ms.

Ramos for failure to transfer title. 9/20/18 RP 19. Likewise, he did not refer the driver for speeding, even though he referred him for other crimes unrelated to his driving. 11/15/18 RP 40.

A traffic stop is only constitutional when the traffic infraction or criminal investigation that was the purported reason for the stop is an “actual, conscious, and independent cause” of the stop. *Chacon Arreola*, 176 Wn.2d at 297. In *Chacon Arreola*, this Court held an officer enforcing the drunk driving laws could stop a car where the stop was reasonably necessary to address a traffic infraction. 176 Wn.2d at 288. The officer did not see signs of impaired driving but stopped the car he was following because of an altered exhaust pipe. *Id.* at 288-89. Unlike Officer Kornish, the traffic officer in *Chacon Arreola* commonly stopped cars for exhaust violations and “would have stopped the vehicle anyway for the exhaust infraction event without the previous [DUI] report.” *Id.*

Even in upholding the stop in *Chacon Arreola*, this Court recognized that the privacy interest within an automobile remains substantial. *Chacon Arreola*, 176 Wn.2d

at 293 (citing *City of Seattle v. Mesiani*, 110 Wn.2d 454, 456–57, 755 P.2d 775 (1988)). While allowing mixed purpose stops, this Court stated that 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 to protect the general welfare through the enforcement of traffic regulations and criminal laws.” *Id.*

Officer Kornish did not have a mixed-motive when he made the stop of Ms. Ramos’ car. *Chacon Arreola*, 176 Wn.2d at 288. Instead, the stop occurred so that Officer Kornish could investigate his hunch that the passengers in the vehicle were involved in drug-related activity. 11/15/18 RP 9-10, 31. Officer Kornish’s subjective intent and the objective facts make clear the officer was not interested in enforcing the traffic code but was, as he stated, engaged in the investigation of narcotics-related street crimes. 9/20/18 RP 4, CP 40.

The totality of the circumstances, including the officer’s subjective intent and the objective reasonableness of his actions, demonstrate that the stop was pretextual and not for

a mixed purpose. *Boisselle*, 194 Wn.2d at 4; *Chacon-Arreola*, 176 Wn.2d at 296; *Ladson*, 138 Wn.2d at 357. The decision of the Court of Appeals holding otherwise was in error. This Court should grant review to hold that the stop of Ms. Ramos' car violated Article I, Section 7.

2. *The Court of Appeals decision conflicts with this Court's decision in State v. Boisselle.*

Although analyzed in Ms. Ramos' brief to the Court of Appeals, the Court did not address this Court's decision in *Boisselle*, where this Court recognized that pretextual searches continue to violate Article I, Section 7 of the Washington constitution. *Boisselle*, 194 Wn.2d at 20. Like Ms. Ramos' case, the entry into Mr. Boisselle's home was motivated by a desire to conduct a criminal investigation. *Id.* at 9. And even though the entry could have been to provide emergency aid or for community caretaking, this Court found these reasons to be pretextual and therefore invalid. *Id.*

Like *Boisselle*, Officer Kornish attempted to use an exception to Article I, Section 7 to invade Ms. Ramos' right to be free from warrantless searches. In his unmarked car, the

officer drove around the Walmart parking lot looking for suspicious activity. 9/20/18 RP 13, CP 40. Officer Kornish was drawn to Ms. Ramos, not because of an infraction, but because she was sitting in a car in the parking lot, which he believed was a sign of drug-related activity. 11/5/18 RP 9-10.

Relying on older cases, the Court of Appeals did not address how its decision conflicts with this Court's decision in *Boisselle*. App 7. Certainly, *Boisselle* involves a home instead of a car, but this difference should not allow an officer to violate Article I, Section 7 when stopping a vehicle. Instead, this Court should grant review to make clear that this distinction has no meaning. Instead, when an officer's actions violate the state constitution, the search results must be suppressed.

Boisselle, 194 Wn.2d at 9.

3. This Court should recognize the racial injustice that results from broadening the scope of pretextual stops.

Even after racial profiling became politically unacceptable in the 1990s, "every official condemnation of racial profiling by the leaders of professional policing was accompanied in its official text by a full-throated defense of

investigatory stops.” Charles R. Epp Et Al., *Pulled Over: How Police Stops Define Race And Citizenship* 49 (2014). As Officer Kornish’s testimony demonstrates, pretextual stops remain a ubiquitous part of investigatory policing. Like Officer Kornish, police “making investigatory stops commonly have decided to carry out a criminal investigation before they make the stop; they then identify, or create, a pretext to justify the stop.” *Id.* at 59. “Police officers particularly believe that investigatory stops are among their most effective tools for finding and arresting criminals and preventing crimes. In many departments, very large proportions of all arrests are made in ‘routine’ investigatory traffic stops.” *Id.* at 12.

“The distinction between traffic-safety and investigatory stops is the key to sorting out how and when race matters in police stops.” Epp at 59.

The investigatory stop is why blacks are stopped at much higher rates than whites and why police pursue intrusive lines of questioning and searches more commonly in stops of blacks than of whites. While whites mainly experience conventional traffic-safety stops, racial minorities--blacks especially-- commonly experience investigatory stops This racial difference in police practices and people’s lived experience and

shared knowledge of these practices is why black people commonly rate stops that they have experienced as unfair, while whites are generally more sanguine about stops that they have experienced.

Id. at 8.

Black people “are 270 percent more likely than whites to be subjected to an investigatory stop.” Epp at 155. The racial effects of who is stopped “is compounded in what happens during the investigatory stop.” *Id.* Police conducting pretext stops “are five times more likely to search African Americans than whites, but they are much less likely to find a gun or contraband in searches of African Americans.” *Id.*

Others have confirmed this research. In studying more than 60 million stops conducted between 2011 and 2015, Stanford University researchers found that Black drivers were stopped 80 percent more often than white drivers. Emma Pierson Et Al., *A Large-Scale Analysis of Racial Disparities in Police Stops across the United States* 1 (2017). After the stop, Black drivers were more likely to be searched and arrested than white drivers were. *Id.* at 6-7.

The United States Department of Justice reached similar conclusions. Lynn Langton & Matthew Durose, *U.S. Dep't Of Justice, Police Behavior During Traffic And Street Stops*, 2011 (2011).³ The study found that Black drivers were more likely to be stopped for records checks, vehicle checks, and without justification. *Id.* at 3-4. A separate study found that Black drivers were more likely to be personally searched during a traffic stop than were white drivers. Shelley Hyland, Lynn Langton, & Elizabeth Davis, *U.S. Dep't Of Justice, Police Use Of Nonfatal Force, 2002-11*, 8 (2015).⁴

These studies apply equally to policing in King County. Since 2012, Seattle police have been subject to a court monitor for excessive use of force. United States Department of Justice, Civil Rights Division, *Investigation of the Seattle Police Department 2* (2011).⁵ This year, Seattle withdrew its motion to terminate the monitor, recognizing the need for

³ <https://www.bjs.gov/content/pub/pdf/pbtss11.pdf>.

⁴ <https://www.bjs.gov/content/pub/pdf/punf0211.pdf>.

⁵ https://www.justice.gov/sites/default/files/crt/legacy/2011/12/16/spd_findletter_12-16-11.pdf

continued monitoring. Seattle.gov, *City Attorney to Withdraw Consent Decree Motion* (June 03, 2020).⁶

“Policies favoring proactive investigatory stops, by directing officers to look not for violations of the law but suspicious individuals, activate departments’ and officers’ implicit stereotypes of which neighborhoods and which individuals are suspicious.” Epp at 50. These policy choices have consequences, some of which are extremely harmful. To confiscate a single illegal weapon, dozens of innocent motorists must be stopped, questioned, and sometimes have their vehicles searched while they are left standing on the side of the road to watch police rifle through their possessions. Epp at 1-3. The innocent persons most affected are Black men. David K. Shipler, *Living Under Suspicion*, *N.Y. Times*, at A33 (Feb. 7, 1997) (“[m]any blacks have come to see the police as just another gang.”).

⁶ <https://news.seattle.gov/2020/06/03/city-attorney-to-withdraw-consent-decree-motion/>

Pretext stops are “a direct, easily remedied source of racial disparities in the criminal justice system, and they are entirely within the power of law enforcement to correct.”

James Forman, Jr., *Locking Up Our Own: Crime And Punishment In Black America* 214 (2017). This Court should take review of Ms. Ramos’ case to limit pretextual stops to only those circumstances where the purpose of the stop is to investigate a traffic infraction. Because Officer Kornish’s purpose for stopping Ms. Ramos’ car was to investigate other potential drug-related crimes, the stop violated Article I, Section 7 of Washington’s constitution. This Court should take review to correct this error.

F. CONCLUSION

Based on the preceding, Ms. Ramos respectfully requests that review be granted pursuant to RAP 13.4 (b).

DATED this 16th day of December 2020.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'T. Stearns', with a long horizontal flourish extending to the right.

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APPENDIX

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Court of Appeals Opinion APP 1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

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| STATE OF WASHINGTON, |) | No. 80308-5-I |
| |) | |
| Respondent, |) | DIVISION ONE |
| |) | |
| v. |) | |
| |) | |
| RAMOS, JEANNENE LEE, |) | UNPUBLISHED OPINION |
| DOB: 10/03/1980, |) | |
| |) | |
| Appellant. |) | |

BOWMAN, J. — Jeannene Lee Ramos appeals her conviction for one count of possession of a controlled substance. Ramos argues that the court should have suppressed evidence supporting her conviction as fruit of a pretextual traffic stop and that her statements to police resulted from unlawful custodial interrogation. Because the totality of circumstances shows a valid warrantless traffic stop and timely advisement of Miranda¹ warnings, we affirm her conviction.

FACTS

On February 17, 2017, Monroe Police Department Officer Scott Kornish was assigned to the crime prevention unit. While patrolling the Walmart parking lot in his unmarked SUV,² Officer Kornish noticed a passenger sitting alone in a car. Officer Kornish was about 100 yards from the car so he used binoculars to

¹ Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

² Sport utility vehicle.

read its license plate. As a person with bags returned to the car, Officer Kornish looked up the license plate number and discovered a person named Mitchell Havens bought the car about four months earlier but did not transfer the car's title with the Department of Licensing. Because failure to transfer a title within 45 days of purchase is a misdemeanor crime, Officer Kornish decided to stop the car and investigate the failure to transfer title.

The car began driving out of the parking lot and onto the public road. Officer Kornish tried to catch up with the car. He testified that he had to drive up to 50 miles per hour in a 25-mile-per-hour zone to gain distance on the car. He estimated the car was travelling about 45 miles per hour while he pursued it. Once behind the car, Officer Kornish activated his emergency lights and the driver pulled over and stopped.

Officer Kornish contacted the driver, who identified himself as Steven Packer. Officer Kornish realized that he had previous contact with Packer in 2016. At that encounter, Packer's girlfriend was present and she had an active warrant for her arrest.

Officer Kornish told Packer that he did not transfer the title to the car within 45 days and that he was speeding. Packer said that the car was not his and that his girlfriend Ramos recently bought the car. Ramos was sitting in the passenger seat. Officer Kornish asked Packer for his driver's license. Packer told Officer Kornish that it was suspended.

Officer Kornish returned to his SUV to confirm that Packer's license was suspended. He also called for another officer as backup. After confirming the

suspended license, Officer Kornish returned to the car and placed Packer under arrest. He handcuffed Packer and read him his Miranda warnings. After asking Packer a few questions, Officer Kornish contacted Ramos in the passenger seat.

As Officer Kornish approached the passenger side of the car, he saw that Ramos had opened the door and angled her legs toward him. He questioned Ramos about the car title. Ramos confirmed she had recently bought the car but could not produce a title, bill of sale, or the name of the person who sold it to her. Officer Kornish obtained Ramos' identification and returned to his SUV to "run" her information.

As Officer Kornish was inputting Ramos' name into his computer, the backup officer arrived and walked to the passenger side of the car where Ramos sat. Officer Kornish heard the backup officer yell and saw the officer grab a gun out of the passenger side of the car. The backup officer told Officer Kornish that Ramos was concealing the weapon underneath her leg, "between her leg and the [car's] seat." The gun had a fully loaded magazine but did not have a bullet in the chamber. Officer Kornish removed Ramos from the car, placed her in handcuffs, and read her Miranda warnings. Officer Kornish then questioned Ramos about the gun. Ramos claimed she did not know the gun was on the seat.

Officer Kornish returned to his SUV to finish checking Ramos' information in the police computer system and learned Ramos had a prior felony drug conviction and a current nonextraditable warrant. Officer Kornish told Ramos she had a felony conviction and could not possess a firearm. Ramos repeated

that she did not know the gun was in the car. Officer Kornish challenged her story and Packer claimed the gun was his. Officer Kornish arrested Ramos for unlawful possession of a firearm and again read her Miranda warnings.

Officer Kornish saw drug paraphernalia in the car and asked Ramos whether she uses drugs. Ramos admitted that she used methamphetamine and that she had a pipe with methamphetamine residue in her purse. Ramos said that Packer sometimes used methamphetamine as well.

Officer Kornish eventually released Packer and Ramos but impounded the car and applied for a search warrant. A search of the car pursuant to a warrant yielded methamphetamine paraphernalia with drug residue, a scale with drug residue, and “baggies and bindles” of suspected methamphetamine inside a sunglasses case under the driver’s seat. In a purse found inside the car near the front passenger seat, officers found a loaded gun, three baggies with suspected methamphetamine, a glass pipe, and a digital scale.

The State charged Ramos with one count of possession of a controlled substance. The trial court held CrR 3.5 and CrR 3.6 hearings to determine the admissibility of Ramos’ statements to police and the evidence found in the car. The trial court found the statements and evidence admissible and entered findings of fact and conclusions of law.

Ramos submitted her case to the court as a stipulated bench trial. The court convicted her as charged and entered findings of fact and conclusions of law. Ramos appeals.

ANALYSIS

Ramos argues that the trial court erred in admitting her statements to police and the evidence recovered after her unlawful seizure. We review a trial court's conclusions of law pertaining to suppression of evidence de novo. State v. Carneh, 153 Wn.2d 274, 281, 103 P.3d 743 (2004). We review a trial court's findings of fact for substantial evidence. State v. Levy, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). But because Ramos does not challenge the trial court's findings of fact, we treat them as verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

Pretextual Stop

Ramos argues the initial seizure of her car was pretextual because Officer Kornish initiated the traffic stop based on the belief that the people in the car were involved in drug-related activity. We disagree.

A traffic stop, no matter how brief, constitutes a seizure under constitutional analysis. State v. Ladson, 138 Wn.2d 343, 350, 979 P.2d 833 (1999). That seizure extends to everyone in the vehicle. State v. Marcum, 149 Wn. App. 894, 910, 205 P.3d 969 (2009). The Washington Constitution prohibits warrantless seizures unless they fall within narrowly drawn exceptions. Art. I, § 7; State v. Arreola, 176 Wn.2d 284, 292, 290 P.3d 983 (2012). But warrantless "investigative" traffic stops are constitutional if they are "based upon at least a reasonable articulable suspicion of either criminal activity or a traffic infraction" and only if they are "reasonably limited in scope." Arreola, 176 Wn.2d at 292-93 (citing Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). The

reasonable articulable suspicion of unlawful activity must be individualized. State v. Thompson, 93 Wn.2d 838, 841, 613 P.2d 525 (1980). A Terry stop is permissible “only because such stops are reasonably necessary to enforce the traffic regulations suspected of being violated, in order to further the governmental interest in traffic safety and the general welfare.” Arreola, 176 Wn.2d at 295.

Pretextual traffic stops are unconstitutional under article I, section 7. See Ladson, 138 Wn.2d at 358. An investigative Terry stop is pretextual when used as “a mere pretext to dispense with [a] warrant when the true reason for the seizure is not exempt from the warrant requirement.” Ladson, 138 Wn.2d at 358. Pretextual stops are seizures without the authority of law, and any resulting evidence is inadmissible. Ladson, 138 Wn.2d at 358, 360. When considering whether a stop is pretextual, courts must examine the totality of the circumstances, including the subjective intent of the officer and the objective reasonableness of the officer’s behavior. Ladson, 138 Wn.2d at 358-59. We recognize that officers may have mixed motives in initiating traffic stops. But even a mixed-motive stop does not violate article I, section 7, “so long as the police officer making the stop exercises discretion appropriately.” Arreola, 176 Wn.2d at 298. If the 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.” Arreola, 176 Wn.2d at 298-99.

Ramos claims that Officer Kornish's seizure of her car was pretextual because his role in the crime prevention unit was solely to investigate drug-related crimes. She argues that Officer Kornish "was not a traffic enforcement officer" and that "[h]is interest in the car was not because he was concerned about a traffic violation, but because he believed the occupants of the vehicle were involved in drug related criminal activity." The record does not support her argument.

Officer Kornish testified that his "[p]roactive patrol unit" does "directed patrol," including working parking lots, "problem houses," and other areas of high theft and high crime. He explained that most "street crimes" such as vehicle prowls, burglaries, shoplifting, and organized retail theft "revolve around illegal drug use." As a result, much of the crime prevention unit's work eventually circles back to illegal drugs. However, this does not mean that every contact made by members of the unit is solely to investigate drug-related crimes.

Here, Officer Kornish was on routine patrol, watching parking lots for evidence of organized retail theft. While in the Walmart parking lot, he noticed the car with a lone occupant. He testified that "[g]enerally[,] people go shopping together," so "[i]t's usually peculiar when people are left in a car." He ran the license plate on the car and discovered that it had been sold but the title had not been transferred. Although the car drew Officer Kornish's attention as part of his proactive unit duties, the unchallenged findings of fact show that Officer Kornish decided to stop the car to investigate the crime of failing to transfer the title within 45 days. Once on the public roadway, Officer Kornish also had reasonable

grounds to stop the car for excessive speed. Ramos fails to show that Officer Kornish subjectively intended to stop her car for any reason other than to investigate those potential law violations or that his actions were objectively unreasonable. The trial court did not err in denying Ramos' motion to suppress evidence under CrR 3.6.

Custodial Interrogation

Ramos contends Officer Kornish should have read her Miranda warnings before questioning her about the status of the car's title "[b]ecause her seizure within the car was custodial" at that point. She argues the questions put to her "before the officer warned her against self-incrimination must be suppressed." She also argues that the court should have suppressed the statements she made after Officer Kornish read her Miranda warnings as the product of an unconstitutional "two-step" interrogation. We disagree.

The federal and Washington State constitutions guarantee the right against self-incrimination. U.S. CONST. amends V, VI, XIV; WASH. CONST. art. I, § 9. Miranda warnings were developed to protect the right against self-incrimination "while in the coercive environment of police custody." State v. Heritage, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). To serve this purpose, Miranda warnings must be given before custodial interrogation of a criminal suspect by an agent of the state. Heritage, 152 Wn.2d at 214. We presume statements obtained in violation of Miranda requirements are involuntary. Heritage, 152 Wn.2d at 214.

For purposes of Miranda, “custodial” refers to “whether a defendant’s movement was restricted at the time of questioning.” State v. Lorenz, 152 Wn.2d 22, 36, 93 P.3d 133 (2004). The objective measure of custody is whether a reasonable person would believe they are in custody “to a degree associated with formal arrest.” Lorenz, 152 Wn.2d 36-37.

Ramos cites State v. Rankin, 151 Wn.2d 689, 92 P.3d 202 (2004), and State v. Young, 167 Wn. App. 922, 275 P.3d 1150 (2012), in support of her argument that she was seized while in the car and should have been read Miranda warnings before she was questioned about the car’s title. Rankin addressed whether a request for a passenger’s driver’s license is a seizure that must be supported by a “reasonable basis” for the inquiry. See Rankin, 151 Wn.2d at 699, 697. Similarly, Young considered whether the actions of officers rose to the level of an investigative detention requiring reasonable articulable suspicion. Young, 167 Wn. App. at 931.

In relying on Rankin and Young, Ramos conflates seizure for the purpose of an investigatory detention with custody for the purpose of Miranda warnings. While a Terry stop constitutes a seizure under constitutional analysis, it is “ ‘substantially less “police dominated” ’ ” than police interrogations contemplated by Miranda. Heritage, 152 Wn.2d at 218 (quoting Berkemer v. McCarty, 468 U.S. 420, 439, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984)). An investigatory detention does not convert into a custodial arrest requiring a Miranda warning just because the suspect is not free to leave. Marcum, 149 Wn. App. at 910.

[A] detaining officer may ask a moderate number of questions during a Terry stop to determine the identity of the suspect and to

confirm or dispel the officer's suspicions without rendering the suspect "in custody" for the purposes of Miranda.

Heritage, 152 Wn.2d at 218.


Here, after seizing the car, Officer Kornish told Packer that he did not timely transfer the title for the car. Packer told Officer Kornish that Ramos owned the car. Thus, Officer Kornish had individualized, reasonable, articulable suspicion to detain Ramos to investigate the crime of failure to transfer title. Officer Kornish questioned Ramos only about whether she owned the car and the status of the car's title. Ramos remained in the car during the conversation. Officer Kornish did not handcuff her or place her under arrest. Officer Kornish's questions to Ramos about the purchase of the car and the status of its title fell under a Terry investigation and did not amount to custodial interrogation. A Miranda warning was unnecessary. See Heritage, 152 Wn.2d at 219.

Ramos cites State v. Rhoden, 189 Wn. App. 193, 356 P.3d 242 (2015), to contend she was subject to an unconstitutional "two-step interrogation." In Rhoden, the police interrogated and handcuffed a group of suspects without reading them Miranda warnings. Rhoden, 189 Wn. App. at 196. Based on the defendant's answers, police removed only him to a different room, read him Miranda warnings, and asked the same questions again. Rhoden, 189 Wn. App. at 196. The court held that both the pre- and post-Miranda statements were inadmissible because of the deliberate procedure used by the police to undermine the effectiveness of the Miranda warnings. Rhoden, 189 Wn. App. at 200-02.

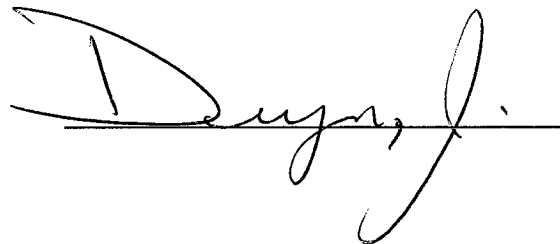
Ramos' reliance on Rhoden is misplaced. Officer Kornish lawfully questioned Ramos about her car title as part of a noncustodial Terry investigation. The discovery of the gun hidden underneath Ramos' leg and her subsequent removal from the car and restraint in handcuffs elevated the seizure to one associated with custodial arrest. Officer Kornish then immediately read Ramos her Miranda warnings. Ramos said that she understood the warnings and freely answered questions.

Officer Kornish's questions post-Miranda focused on a different topic—the gun and eventually the drug paraphernalia in her car. Officer Kornish did not deliberately subject Ramos to a two-step procedure to undermine the effectiveness of her Miranda warnings. The trial court did not err in concluding that Ramos' statements both pre- and post-Miranda were admissible.

We affirm Ramos' conviction for possession of a controlled substance.

A handwritten signature in cursive script, appearing to read "Brennan, J.", written over a horizontal line.

WE CONCUR:

A handwritten signature in cursive script, appearing to read "Smith, J.", written over a horizontal line.A handwritten signature in cursive script, appearing to read "Dwyer, J.", written over a horizontal line.

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. 80308-5-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:

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