

64802-1

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NO. 64802-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANDREW ARCHULETA,

Appellant.

FILED
COURT OF APPEALS DIVISION I
STATE OF WASHINGTON
2010 OCT -1 PM 1:29

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CAROL SCHAPIRA

BRIEF OF RESPONDENT

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A. ISSUES PRESENTED

1. Did the trial court err by finding the officer was reasonable in making a Terry stop of Archuleta when Archuleta crossed over the fog line three times in a quarter mile span?

2. Was the trial court's admission of a certified copy of the non-existence of Archuleta's driving record harmless error when overwhelming evidence proved Archuleta was only fifteen years old at the time of the traffic stop?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Andrew Archuleta was charged via information with one count of driving while having No Valid Operator's License on January 26, 2009. Fact finding took place on December 18, 2009 and Archuleta was found guilty as charged. Archuleta filed a notice of appeal on January 15, 2010 and this appeal was timely filed.

2. SUBSTANTIVE FACTS

On September 11, 2008, Pacific police officer Dave Newton was on routine patrol driving northbound along the West Valley

Highway in the city of Algona, Washington. There was only one other car on the roadway at the time and that was an SUV, later found to be driven by Archuleta. While Officer Newton followed the car, he saw the SUV drive over the fog line to the right of the lane on three separate occasions in a quarter mile stretch of road.

After stopping the car, Officer Newton realized he recognized the driver as Archuleta, somebody he and other Pacific police officers have come into contact with numerous times before. Officer Newton knew Archuleta to be younger than 16 years old. Despite already knowing he had no license, Officer Newton checked Archuleta's driving status by getting his name and date of birth. Archuleta gave his true name and a birth date of August 7, 1993. Officer Newton checked via radio and learned Archuleta had no driver's license.

At trial, the State admitted a Certified Copy of Driving Record which also indicated Archuleta had no driver's license on September 11, 2008.

C. ARGUMENT

1. THE TRIAL COURT DID NOT ERR BY FINDING OFFICER NEWTON WAS REASONABLE IN MAKING A TERRY STOP OF ARCHULETA WHEN ARCHULETA DROVE OVER THE FOG LINE THREE TIMES IN A QUARTER MILE STRETCH OF ROAD.

A police officer may perform a warrantless seizure upon reasonable articulable suspicion that the person seized is presently involved in illegal activity. See Terry v. Ohio, 392 U.S. 1, 27, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). In the State of Washington, such illegal activity includes non-criminal moving violations; a vehicle may be pulled over on reasonable suspicion of having committed a traffic infraction. See State v. Duncan, 146 Wn.2d 166, 172-74, 43 P.3d 513 (2002) (holding that the reasoning in Terry could not be extended to non-traffic civil infractions, but acknowledging that it could be extended to traffic infractions); State v. Day, 161 Wn.2d 889, 896, 168 P.3d 1265 (2007) (holding that Terry could not be extended to non-moving vehicle infractions, but citing Duncan for the proposition that it can be extended to moving violations). See also Day, 161 Wn.2d at 900 (Bridge, J., dissenting) (the author of Duncan interpreting it to extend Terry to traffic infractions). It is a traffic infraction for a person to fail to drive “as

nearly as practicable entirely within a single lane.” RCW 46.61.140(1).

In State v. Prado, 145 Wn. App. 646, 186 P.3d 1186 (2008), the Court of Appeals was called upon to interpret the lane violation statute in the context of a traffic stop. The court held, “A vehicle crossing over a lane once for one second by two tire widths does not, *without more*, constitute a traffic violation justifying a stop by a police officer.” Id. at 647 (emphasis added). In Prado, the vehicle in question crossed over the fog line once while taking an exit, without any indication of other poor driving. The court reasoned that the legislature included the language “as nearly as practicable” to recognize that “brief incursions over the lane lines will happen.” Id. at 649. This is to say that the totality of the circumstances in that case did not provide the officer with reasonable articulable suspicion that the vehicle was failing to drive as nearly as practicable entirely within a single lane, because it only once briefly crossed the lane divider.

In this case, the officer clearly saw Archuleta drive over the right fog line three separate times within a quarter mile stretch of road. The facts of Prado are distinguishable from this case in that Archuleta clearly committed more than one single lane violation. Id.

Because Officer Newton was reasonable in stopping Archuleta, nothing that followed should be suppressed.

2. ANY ADMISSION OF A CERTIFIED COPY OF DRIVING RECORD WAS HARMLESS ERROR BECAUSE THE STATE PRESENTED OVERWHELMING EVIDENCE THAT ARCHULETA WAS ONLY 15 YEARS OLD AT THE TIME OF ARREST AND WAS THUS UNABLE TO POSSESS A DRIVER'S LICENSE.

Acknowledging the recent Court of Appeals decision in Jasper, the State distinguishes this case because of the type of document admitted. ___ Wn. App. ___, ___ P.3d ___, 2010 WL 3666997 (Wash.App. Div. 1), docket 63442-9-1 (decided Sept. 20, 2010). The Certified Copy of Driving Record in this case showed no record existed, whereas in Jasper the record gave affirmative information of a suspended license. The State intends to seek a ruling from the Supreme Court regarding the distinction between Jasper and the facts here where *no record* was found. However, admission of that record, in any event, is harmless.

There is no question that nobody under the age of sixteen years shall be issued a driver's license in Washington State. RCW 46.20.031. RCW 46.20.017 further requires drivers to keep their licenses in their immediate possession while driving as well as

displaying to law enforcement officers upon demand. RCW 46.20.005 makes it a misdemeanor to drive a motor vehicle on a public highway without a driver's license. RCW 46.20.025 contemplates driving without a license, but that statute requires the driver to be over sixteen *and* have in his immediate possession a valid driver's license issued from another state. (emphasis added). In this case, Archuleta had no license or any other form of identification to turn over when requested by Officer Newton. RP 24.

There is no rule of automatic reversal in Washington. A constitutional error is harmless if the appellate court is convinced beyond a reasonable doubt that the same result would be reached in the absence of the error. State v. Guloy, 104 Wn.2d 412, 425, 705 P.2d 1182 (1985). See, e.g., State v. Watt, 160 Wn.2d 626, 160 P.3d 640 (2007) (violation of the right to confrontation was harmless); State v. Brown, 147 Wn.2d 330, 58 P.3d 889 (2002) (omission or misstatement of element in jury instruction was harmless); State v. Moreno, 132 Wn. App. 663, 132 P.3d 1137 (2006) (comment on defendant's exercise of constitutional right to self-representation was harmless).

Washington appellate courts have adopted the “overwhelming untainted evidence” test as the proper standard for harmless error analysis. Guloy, 104 Wn.2d at 426. “Under the ‘overwhelming untainted evidence’ test, the appellate court looks only at the untainted evidence to determine if the untainted evidence is so overwhelming that it necessarily leads to a finding of guilt.” Id.

Here the untainted evidence includes the fact that Archuleta was driving a motor vehicle at a time he was fifteen years old and unable to provide any driver’s license or identification to the arresting officer. RP 24-26. In fact, Archuleta does not disagree with the facts presented by the State’s only witness at trial. RP 29. Officer Newton testified that he knew Archuleta was fifteen years old from prior contacts with Archuleta and his family. RP 25. Additionally, when asked for his name and date of birth, Archuleta answered the questions giving his true name and 8/7/93 as his date of birth. RP 16. Since the stop occurred on 9/11/08, Archuleta was clearly a month past his fifteenth birthday. RP 21.

Simply put, both sides agree that Archuleta was fifteen years old while he was driving a motor vehicle on the date in question and

possessed no license to drive. Thus, this Court can find beyond a reasonable doubt that any error was harmless.

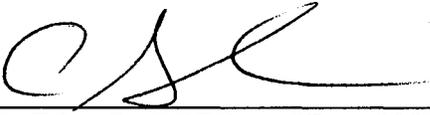
D. CONCLUSION

Accordingly, Officer Newton was reasonable when stopping Archuleta and admission of the Certified Copy of the Driving Record was harmless error beyond a reasonable doubt.

DATED this 30 day of September, 2010.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Thomas Kummerow, attorney for the Appellant, of the Washington Appellate Project, at the following address: 1511 Third Avenue, Suite 701, Seattle, WA 98101 containing a copy of Brief of Respondent to be sent to Court of Appeals, in State v. Andrew Archuleta, Cause No. 64802-1-I, in the Court of Appeals for the State of Washington, Division I.

I certify under penalty of perjury of the laws of the State of Washington that the foregoing is true and correct.

Janice Schwarz
Janice Schwarz
Done in Kent, Washington

9/30/10
Date