

71196-2

71196-2

NO. 71196-2-I

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

STATE OF WASHINGTON,

Respondent.

v.

BRADLEY McALLISTER

Appellant.

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

The Honorable Deborra Garrett, Judge

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BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
A. <u>ASSIGNMENTS OF ERROR</u>	1
<u>Issues Pertainnig to Assignmets of Error</u>	1
B. <u>STATEMENT OF THE CASE</u>	2
1. <u>Procedural Facts</u>	2
2. <u>CrR 3.6 Hearing</u>	2
C. <u>ARGUMENTS</u>	6
1. THE UNLAWFUL SEIZURE REQUIRED THE COURT TO SUPPRESS ALL EVIDENCE OBTAINED AS A RESULT OF THE SEIZURE.....	6
2. THE TRIAL COURT FAILED TO FILE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 6.1(d).	10
D. <u>CONCLUSION</u>	12

TABLE OF AUTHORITIES

	Page
<u>WASHINGTON CASES</u>	
<u>State v. Austin</u> 65 Wn. App. 759, 831 P.2d 747 (1992).....	11
<u>State v. Cannon</u> 130 Wn.2d 313, 922 P.2d 1293 (1996).....	10
<u>State v. Day</u> 161 Wn.2d 889, 168 P.3d 1265 (2007).....	7, 8
<u>State v. Denison</u> 78 Wn. App. 566, 897 P.2d 437 <u>rev. denied</u> , 128 Wn.2d 1006 (1995).....	10
<u>State v. Doughty</u> 170 Wn.2d 57, 239 P.3d 573 (2010).....	8
<u>State v. Gaddy</u> 152 Wn.2d 64, 93 P.3d 872 (2004).....	7
<u>State v. Gantt</u> 163 Wn. App. 133, 57 P.3d 682 (2011) <u>rev. denied</u> , 173 Wn.2d 1011 (2012).....	10
<u>State v. Gatewood</u> 163 Wn.2d 534, 182 P.3d 426 (2008).....	7, 8
<u>State v. Harrington</u> 167 Wn.2d 656, 222 P.3d 92 (2009).....	10
<u>State v. Head</u> 136 Wn.2d 619, 964 P.2d 1187 (1998).....	10, 11
<u>State v. Hendrickson</u> 129 Wn.2d 61, 917 P.2d 563 (1996).....	7
<u>State v. Hescoek</u> 98 Wn. App. 600, 989 P.2d 1251 (1999).....	11

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>State v. Hill</u> 123 Wn.2d 641, 870 P.2d 313 (1994).....	6
<u>State v. Kennedy</u> 38 Wn. App. 41, 684 P.2d 1326 (1984).....	8
<u>State v. Ladson</u> 138 Wn.2d 343, 979 P.2d 833 (1999).....	8
<u>State v. Levy</u> 156 Wn.2d 709, 132 P.2d 1076 (2006).....	7
<u>State v. Penfield</u> 106 Wn. App. 157, 22 P.3d 293 (2001).....	8
<u>State v. Ross</u> 141 Wn.2d 304, 4 P.3d 130 (2000).....	7
<u>State v. Tarica</u> 59 Wn. App. 368, 798 P.2d 296 (1990).....	8
 <u>FEDERAL CASES</u>	
<u>Arkansas v. Sanders</u> 442 U.S. 753, 61 L. Ed. 2d 235, 99 S. Ct. 2586 (1979).....	7
<u>Brown v. Texas</u> 443 U.S. 47, 99 S.Ct. 2637, 61 L.Ed.2d 357 (1979).....	8
<u>Delaware v. Prouse</u> 440 U.S. 648, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).....	8
<u>Terry v. Ohio</u> 392 U.S. 1, 88 S.Ct. 1868, 20 L. Ed.2d 889 (1968).....	7

TABLE OF AUTHORITIES (CONT'D)

	Page
<u>RULES, STATUTES AND OTHER AUTHORITIES</u>	
CrR 6.1.....	1, 2, 10, 11, 12
U.S. Const. Amend. IV	7, 10
Wash. Const. Art. I, § 7	7, 10

A. ASSIGNMENTS OF ERROR

1. The court erred in denying the motion suppress the evidence discovered as the result of an unlawful seizure

2. The court erred in entering conclusions of law 1, 2, and 3. CP 22-23.

3. The court erred in failing to file written findings of fact and conclusions of law following a stipulated bench trial as required under CrR 6.1(d).

Issues Pertaining to Assignments of Error

1. An investigative seizure must be supported by articulable suspicion of criminal wrongdoing associated with the individual seized. Was appellant unlawfully seized when the officer stopped the car appellant was driving based only on information the officer received from the Department of Licensing database that the car was registered to a woman but there was a warrant for a man associated with the car's license plate number?

2. The court entered written conclusions of law 1, 2 and 3 following the suppression hearing. Where those conclusions of law supported by the evidence?

3. Did the court err in denying appellant's motion to the suppress evidence discovered as a result of the unlawful seizure?

4. Following a stipulated bench trial there were no written findings or conclusions filed as required under CrR 6.1(d). Should this case be remanded for entry of the required findings and conclusions?

B. STATEMENT OF THE CASE

1. Procedural Facts

The Whatcom County prosecutor charged appellant Bradley McAllister with unlawful possession of methamphetamine. CP 2-3. McAllister moved under CrR 3.6 to suppress the evidence discovered in a search of his pant pockets and the car he was driving. CP 2-22. The court denied the motion. CP 23.

Following the court's denial of his motion to suppress, McAllister waived his right to a jury trial and stipulated to a bench trial based on the police reports. 1RP 62-67¹; CP 19; Supp. CP __ (Stipulated Bench Trial, Sub. No. 43, 10/28/2013). The court found McAllister guilty and sentenced him to 10 days in jail, or in the alternative, 30 days in a drug treatment program. CP 28-35

2. CrR 3.6 Hearing

On July 6, 2012, at 5:20 p.m., deputy Jacob Hubby randomly ran the license plate number of a car driven by a man on his on board computer. 1RP 6-8, 10, 15, 19. About a minute later Hubby received

¹ 1RP refers to the verbatim report of proceedings for October 28, 2013; 2R October 30, 2013; 3RP November 18, 2013.

information back from the Department of Licensing (DOL) database showing the vehicle registration number, description of the car attached to the license plate number, a warrant for a "male", attached to the license number, and the name of the registered owner and the owner's license number. 1RP 8-10. The Lynden Municipal Court issued the warrant for a Bradley McAllister for driving with a suspended license in the third degree and failure to transfer title within 45 days. 1RP 33, 39. Shakinah McAllister, a woman, was listed as the car's registered owner. 1RP 9-10, 19.

About a minute later Hubby stopped the car the contacted the driver, Bradley McAllister. 1RP 10, 12, 20-21, 38. Hubby could not remember whether McAllister gave him a driver's license, identification card, or verbally provided identifying information but based on information he said he received from McAllister, Hubby confirmed McAllister was the person named in the warrant. 1RP 12. Hubby remembered the information he saw when he accessed the DOL database was a warrant naming a Bradley McAllister, a date of birth and the charges. He could not remember if there was additional information and he did not believe he saw a copy of the warrant. 1RP 33-34.

Hubby arrested and search McAllister after confirming McAllister was the person named in warrant. 1RP. 13. Hubby found two baggies in

McAllister's right front pocket. 1RP 13. McAllister told Hubby the substance in the baggies was methamphetamine, and he consented to a search of the car. In the car Hubby found needles containing a liquid substance (a "loaded rig"). 1RP 14.

Lynden Police Department records clerk, Holly Vega, testified the records department enters information on a warrant into the DOL database. Generally, the information, which is taken from the warrant, includes a name, date of birth, physical characteristics, social security and driver's license numbers, and vehicle license plate numbers associated with the warrant. 1RP 42-43. On the warrant for McAllister's arrest the associated license plate number was the same as the license plate number on the car he was driving. 1RP 43.

McAllister testified as he was leaving a bookstore he saw Hubby's patrol car across from the stop sign. 1RP 47. As soon as McAllister drove away, Hubby followed and stopped him. *Id.* Hubby asked McAllister for his driver's license and registration. When McAllister could not find his license, Hubby opened the car door and handcuffed him. RP 148. Hubby searched McAllister and found the baggies and McAllister's driver's license in McAllister's back pocket. 1RP 49. Hubby then took McAllister to his patrol car, read McAllister his rights, and asked to search the car. 1RP 49-50. McAllister consented to the search and told Hubby he would

find the “rig” under the driver’s seat. 1RP 50. McAllister also heard Hubby run his name and it was then that Hubby discovered the warrant. 1RP 51. McAllister said he never verbally gave Hubby his name because Hubby never asked for it. 1RP. 53.

Following the hearing, the court entered written findings of fact and conclusions of law. CP 20-22. The court found when Hubby ran the license plate number on his computer he received information there was a warrant issued by the Lynden Municipal Court for a Bradley McAllister’s arrest on the charges of driving while license suspended and failure to transfer title. CP 22 (finding of fact 2). That Vega testified when warrants are entered in the database included is the information on the warrant, such as a physical description of the person named in the warrant and any license plate numbers associated in the case. *Id.* (finding of fact 3). Hubby confirmed there was an active warrant and stopped the car, which was driven by McAllister. *Id.* McAllister was arrested and searched. In his front pocket was two baggies containing a substance that field-tested positive for methamphetamine. McAllister told Hubby there was a “loaded rig” of methamphetamine under the driver’s seat and following a consensual search of the car the syringe was found where indicated by McAllister. CP 22 (finding of fact 4).

The court concluded that the information obtained from the database attaching an outstanding warrant to the license plate number “provided an articulable fact to Deputy Hubby sufficient to support a reasonable suspicion of criminal activity” by McAllister justifying a stop of the car to further investigate. CP 22 (conclusion of law 1). The court also concluded McAllister was validly searched incident to his arrest and methamphetamine was in his pant pocket. CP 23 (conclusion of law 2). The motion to suppress was denied. *Id.* (conclusion of law 3).

McAllister waived his right to a jury and stipulated to a bench trial based on the police reports. 1RP 62-67; CP 19; Supp. CP __ (Stipulated Bench Trial, Sub. No. 43, 10/28/2013). The court found McAllister guilty of the unlawful possession of methamphetamine. 1RP 69.

C. ARGUMENTS

1. THE UNLAWFUL SEIZURE REQUIRED THE COURT TO SUPPRESS ALL EVIDENCE OBTAINED AS A RESULT OF THE SEIZURE.

Challenged findings following a suppression hearing are reviewed for substantial evidence. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).² Unchallenged findings of fact following a suppression hearing are accepted as verities on appeal. *Id.* Whether the trial court's findings of

² Although not relevant to the issue on appeal, in finding of fact 4 it states the substance in the baggies found in McAllister's pocket field-tested positive for methamphetamine. CP 22. That finding is unsupported. There was no evidence of a field-test.

fact regarding an order denying suppression of evidence support its conclusions of law is a legal question this Court reviews de novo. State v. Levy, 156 Wn.2d 709, 733, 132 P.2d 1076 (2006); State v. Gaddy, 152 Wn.2d 64, 70, 93 P.3d 872 (2004).

Under the Fourth Amendment to the United States Constitution and article 1, § 7 of the Washington Constitution, warrantless searches and seizures are per se unreasonable unless the State proves they fall within one of the "jealously and carefully drawn exceptions" to the warrant requirement. State v. Hendrickson, 129 Wn.2d 61, 70, 917 P.2d 563 (1996) (quoting Arkansas v. Sanders, 442 U.S. 753, 759, 61 L. Ed. 2d 235, 99 S. Ct. 2586 (1979)); State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008); State v. Ross, 141 Wn.2d 304, 312, 4 P.3d 130 (2000).

One exception to the warrant requirement is where a police officer makes a brief investigatory stop, commonly referred to as a "Terry stop." Terry v. Ohio, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L. Ed.2d 889 (1968); State v. Day, 161 Wn.2d 889, 895, 168 P.3d 1265 (2007). A police officer may conduct a Terry stop if the officer has a reasonable suspicion there is a substantial possibility that criminal activity has occurred or is about to occur based on specific and articulable objective facts and the rational inferences from those facts. Brown v. Texas, 443 U.S. 47, 51, 99 S.Ct.

2637, 61 L.Ed.2d 357 (1979); State v. Doughty, 170 Wn.2d 57, 63, 239 P.3d 573 (2010); Gatewood, 163 Wn. 2d at 539; Day, 161 Wn.2d at 895.

The seizure must be based on more than an inarticulable hunch. Doughty, 170 Wn.2d at 63. State v. Tarica, 59 Wn. App. 368, 375, 798 P.2d 296 (1990). And, the officer must have an individualized suspicion that the particular defendant is engaging in the unlawful conduct. Day, 161 Wn.2d at 895; State v. Kennedy, 38 Wn. App. 41, 45-46, 684 P.2d 1326 (1984); *see* State v. Penfield, 106 Wn. App. 157, 162-63, 22 P.3d 293 (2001) (finding that officer who stopped vehicle without any articulable suspicion of criminal activity on the part of the male driver could not lawfully ask male driver to identify himself when basis for stop was license suspension of female who was the vehicle's registered owner).

In the context of automobiles, a traffic stop is a seizure and must be justified at its inception. State v. Ladson, 138 Wn.2d 343, 350, 979 P.2d 833 (1999). In a traffic stop the driver is seized. Delaware v. Prouse, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979).

McAllister was seized when Hubby stopped the car. The seizure was not based on specific and articulable facts that McAllister was engaging in unlawful conduct or the person named in the warrant. The court's written conclusion of law 1, 2 and 3 are factually unsupported.

The evidence discovered in McAllister's pocket and in the car should have been suppressed.

When Hubby randomly ran a check on the car's license plate he received information the car was registered to Shakinah McAllister and there was a warrant issued by the Lynden Municipal Court for man, Bradley McAllister, "associated" with the car. Vega testified that when the Lynden Police Department enters a warrant in the DOL database the information in the warrant describing the person is generally included. Hubby, however, did not see the warrant and he could not remember if the information he received regarding the warrant had any information other than McAllister's name, date of birth, and charges. Even if the physical description of the man named in the warrant was entered into the DOL database, and Hubby did receive that information when he ran the license plate, there was no evidence Hubby stopped the car because he had a reasonable belief the driver was the man named in the warrant based on any physical description. Hubby stopped the car based on the information that there was a warrant for a Bradley McAllister associated with the car. At best, Hubby may have had a hunch the man named in the warrant was the man driving the car, but, without more, like the driver having the same or similar physical characteristics as described in the warrant, Hubby did not have an articulable reasonable suspicion the driver was the man named

in the warrant. Based on the facts, the seizure was illegal and the court's conclusion of law 1 and 2 are unsupported.

When a person is unlawfully seized in violation of either the Fourth Amendment or Article I, Section 7 or both, the evidence obtained as a result of that seizure must be excluded. State v. Gantt, 163 Wn. App. 133, 144, 57 P.3d 682 (2011) rev. denied, 173 Wn.2d 1011 (2012) (citing State v. Harrington, 167 Wn.2d 656, 664, 222 P.3d 92 (2009)). The evidence found on McAllister and in the car should have been suppressed.

2. THE TRIAL COURT FAILED TO FILE WRITTEN FINDINGS OF FACT AND CONCLUSIONS OF LAW AS REQUIRED BY CrR 6.1(d).

"CrR 6.1(d) requires entry of written findings of fact and conclusions of law at the conclusion of a bench trial." State v. Head, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). The written factual findings should address the elements of the crimes separately and state the factual basis for the legal conclusions as to each element. State v. Denison, 78 Wn. App. 566, 570, 897 P.2d 437, rev. denied, 128 Wn.2d 1006 (1995). The purpose of written findings and conclusions is to ensure efficient and accurate appellate review. State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996); *see* Head, 136 Wn.2d at 622 ("A prosecuting attorney required to prepare findings and conclusions will necessarily need to focus attention on the evidence supporting each element of the charged crime, as

will the trial court. That focus will simplify and expedite appellate review.").

The court's oral findings are not a suitable substitute for the written findings required by CrR 6.1(d). "A court's oral opinion is not a finding of fact." State v. Hescocock, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). Rather, a trial court's oral opinion is merely an expression of the court's informal opinion when rendered. Head, 136 Wn.2d at 622. An oral opinion is not binding unless it is formally incorporated in the written findings, conclusions and judgment. *Id.* at 622.

In its oral ruling, the court merely stated it found McAllister guilty. 1RP 69. The court's oral ruling fails to address the elements of the crime or the factual basis for the legal conclusions as to the elements. That ruling is insufficient to engage in meaningful or effective appellate review. Remand for entry of written findings and conclusions as required by CrR 6.1(d) is the appropriate remedy. Head, 136 Wn.2d at 622-23; State v. Austin, 65 Wn. App. 759, 761, 831 P.2d 747 (1992).

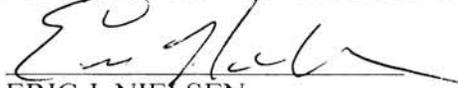
D. CONCLUSION

The evidence obtained from McAllister's illegal seizure should be suppressed, and McAllister's conviction reversed. Alternatively, remand with direction to the trial court to enter CrR 6.1(d) findings of fact and conclusions of law are required.

DATED THIS 31 day of March 2014.

Respectfully submitted,

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

STATE OF WASHINGTON)	
)	
Respondent,)	
)	
vs.)	COA NO. 71196-2-I
)	
BRADLEY McALLISTER,)	
)	
Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 31ST DAY OF MARCH 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY EMAIL AND/OR DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] BRADLEY McALLISTER
5672 ORCHARD DR.
FERNDALE, WA 98248

SIGNED IN SEATTLE WASHINGTON, THIS 31ST DAY OF MARCH 2014.

X *Patrick Mayovsky*