NO. 36061-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

KWAKU OJA TRAMMELL,

Appellant.

FILED
COURT OF APPEALS
DIVISION II
08 JAN 28 AM 9:00
STATE OF WASHINGTON
BY
DEPUTY

APPELLANT'S REPLY BRIEF

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I. STATEMENT OF THE ISSUES

1. Whether the evidence obtained after the illegal arrest of Mr. Trammel should be suppressed under the doctrines of inevitable discovery or the "attenuation doctrine" when evidence of the identity of the assumed victim of a no contact order was discovered when law enforcement served a subpoena to appear at trial.

II. STATEMENT OF FACTS

The facts of this case are set forth in the Brief of the Appellant and will not be repeated here.

III. ARGUMENT

1. The arrest of Mr. Trammell was made without probable cause and the evidence gathered following his arrest must be suppressed.

As argued in the Brief of the Appellant, the arrest of Mr. Trammell was unlawful, as law enforcement lacked probable cause to arrest Mr. Trammell. Following the arrest, Deputy Walthall attempted to serve a subpoena upon Ms. Kostic. RP (2/13) 12-13. The subpoena was in Christina Ward's name. RP (2/13) 10-13. At that time, law enforcement discovered that the female at the

residence whom he assumed was Ms. Ward, was actually Ms. Kostic. *Id.* The subpoena was issued for this case. *Id.*

The State has argued in the Brief of the Respondent that no evidence was obtained as a result of the arrest. The appellant disagrees with that claim. But for the illegal arrest of Mr. Trammell, Ms. Kostic's identity would not have been discovered. The defense counsel argued, and the trial court denied, a motion to suppress the evidence gathered following the arrest, specifically Ms. Kostic's identity under the "fruit of the poisonous tree doctrine". CP 55-58. In this case the evidence Mr. Trammell sought to suppress was discovered as a result of the illegal arrest. In this case a causal connection between the illegal arrest and the evidence later obtained exists. But for the illegal arrest, the case would not have been prosecuted, no subpoenas would have been generated, and Ms. Kostic's true identity would not have been discovered.

In this case, law enforcement appeared at Ms. Kostic's residence to serve a subpoena. RP (2/13) 12-13. The record does not indicate that law enforcement was present at the residence at the time the subpoena was served to also conduct further investigation. In the case of State v. Early, 36 Wn.App. 215, 220-

222, law enforcement conducted an independent investigation and found that the testimony of a witness should not be suppressed under the "fruit of the poisonous tree" doctrine. *Id.* In that case, the testimony of the witness, which the defendant sought to suppress under the "fruit of the poisonous tree" doctrine, was the result of an investigation independent of the unlawful arrest. No such independent investigation occurred in the present case.

The case at hand differs from the case of State v. Aranguren, 42 Wn.App. 452, 711 P.2d 1096 (1985). In that case, law enforcement conducted an investigatory stop of the defendants. During that stop the officer noticed the defendants had bicycles with them and noted the description of the bicycles. State v. Aranguren, 42 Wn.App. At 457-458. During the course of the stop, the officer received information regarding stolen bicycles. *Id.* The Court held that the encounter between law enforcement and the defendants was lawful and the information regarding the bicycles was lawfully acquired. State v. Aranguren, 42 Wn.App. at 458. Based on those factors, the Court found that the motion to suppress was properly denied. In this case, one of those factors is missing; specifically, the lawfulness of the stop. Law enforcement

did not properly establish a basis for probable cause to either conduct an investigation or arrest Mr. Trammell. The choice made by law enforcement to not take steps to identify the female at the residence where Mr. Trammell was found rendered the continued contact unlawful. An investigative stop must be temporary and last no longer than necessary to carry out the purpose of the stop. The investigative methods used must be the least intrusive means reasonably available to verify or dispel the police officer's suspicion in a short period of time. Florida v. Royer, 460 U.S. 491, 500, 75 L.Ed 2d 229, 103 S.Ct. 1319 (1983). The initial stop must be justified and its scope reasonably related to the initial justification State v. Williams, 102 Wn.2d 733, 739-40, 689 P.2d (1984). The initial stop must be justified and its scope reasonably related to the initial justification. State v. Williams, 102 Wn.2d 733, 739-40, 689 P.2d (1984). In this case law enforcement made an assumption that Mr. Trammell committed a crime without adequate investigation.

This case is not analogous to the facts in the Aranguren case. In that case law enforcement discovered facts during the course of a police contact that established probable cause at the

time of arrest. In this case law enforcement without probable cause arrested Mr. Trammell and additional evidence was discovered well after the arrest while law enforcement was engaged in the procedural process of serving a subpoena. The evidence of Ms. Kostic's identity was not discovered independent of the unlawful arrest.

The Brief of the Respondent also cites to State v. Gonzales, 46 Wn.App. 388 (1986). That case is factually distinguishable from the case at hand as well. In the Gonzales case, law enforcement observed, in plain view, contraband during the course of the stop. A search warrant was obtained based on the observation of the contraband in the vehicle. In that case an independent investigation, namely the search warrant was conducted. No such independent investigation occurred in this case. This is not a "plain view" case. It was not apparent that Mr. Trammell was involved in criminal activity based on the incomplete investigation conducted by law enforcement at the time of arrest. In the present case, Ms. Kostic's identity was only discovered after the unlawful arrest, not before as in the cases cited by the Respondent.

There is a connection between the unlawful arrest and the discovery of Ms. Kostic's identity. As argued previously, but for the unlawful arrest, Ms. Kostic's identity would not have been discovered. Ms. Kostic's identity was discovered only when law enforcement attempted to serve a subpoena for the trial which was scheduled pursuant to the arrest. The information was obtained as a result of the arrest, and the "attenuation doctrine" does not apply to this case. The arrest set in motion a chain of events that eventually led law enforcement to discover their error in assuming Ms. Kostic was another person named Ms. Ward. The arrest was based upon that assumption.

IV. CONCLUSION

Mr. Trammell respectfully requests the Court to reverse the conviction entered in this matter.

Respectfully submitted this 25th day of January, 2008.

MICHELLE BACON ADAMS
WSBA No. 25200
Attorney for Appellant

FILED
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DIVISION II

08 JAN 28 AM 9:01

STATE OF WASHINGTON
BY
DEPUTY

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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

STATE OF WASHINGTON, Respondent, v. KWAKU OJA TRAMMELL, Appellant.	CERTIFICATE OF MAILING APPELLANT'S REPLY BRIEF

I, JEANNE L. HOSKINSON, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and based on my personal knowledge, and that I am competent to testify to the same.

That on this day I had the Appellant's Reply Brief in the above-captioned case hand-delivered or mailed as follows:

<u>Original Mailed To:</u>

Clerk of Court
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402

<u>Copy Hand-Delivered To:</u>

Mr. Randall Sutton
Kitsap County Prosecuting Attorney's Office
614 Division Street, MS-35
Port Orchard, WA 98366

Copy Mailed To:

Kwaku Oja Trammell
3024 Hollywood Avenue
Bremerton, WA 98310

DATED this 25th day of January, 2008, at Port Orchard, Washington.

Jeanne L. Hoskinson
JEANNE L. HOSKINSON
Legal Assistant

NO. 36061-6-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON, DIVISION II

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STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. KWAKU OJA TRAMMELL, Appellant.	CERTIFICATE OF MAILING APPELLANT'S REPLY BRIEF

I, JEANNE L. HOSKINSON, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and based on my personal knowledge, and that I am competent to testify to the same.

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3024 Hollywood Avenue
Bremerton, WA 98310

DATED this 25th day of January, 2008, at Port Orchard, Washington.

Jeanne L. Hoskinson
JEANNE L. HOSKINSON
Legal Assistant