

NO. 36061-6-II

COURT OF APPEALS
DIVISION II

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

FILED
BY: *JW*

ORIGINAL

STATE OF WASHINGTON,

Respondent,

v.

KWAKU TRAMMELL,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF
KITSAP COUNTY, STATE OF WASHINGTON
Superior Court No. 06-1-01599-0

BRIEF OF RESPONDENT

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I. COUNTERSTATEMENT OF THE ISSUES

1. Whether the trial court erred in finding that the arrest of the Defendant was supported by probable cause when the information relied upon by the officer was provided by a named citizen informant and named informant's are presumed reliable for probable cause purposes?

2. Whether, even if this court were to find that the arrest of the defendant was unlawful, suppression of evidence was warranted when: (1) the victim's testimony that the Defendant was present at her house was unrelated to the arrest; (2) the officer personally saw the Defendant present with the victim prior to the time of the arrest; and, (3) no evidence admitted at trial was gathered as a result of, or by exploitation of, the arrest?

II. STATEMENT OF THE CASE

A. PROCEDURAL HISTORY

Kwaku Trammell was charged by amended information filed in Kitsap County Superior Court with one count of violation of a court order (DV). CP 4. The charge was a felony as the Defendant had two prior convictions for violation of a court order. CP 1. Following a bench trial, the Defendant was found guilty, and the trial court imposed a standard rage sentence. CP 66, 70. This appeal followed.

B. FACTS

At the time of trial, the Defendant, Kwaku Trammel, had been

married to Ms. Astra Kostic for approximately seven years. RP (2/13) 10. In August of 2006, a no contact order was entered prohibiting the Defendant from contacting Ms. Kostic. RP (2/13) 11. This order was entered as part of a then pending criminal case. RP (2/13) 12. Ms Kostic lived at 3024 Hollywood Avenue in Bremerton, and had lived there for approximately two and a half years prior to the time of trial. RP (2/13) 10, 22.

On October 27, 2006, law enforcement received a call reporting that that the Defendant was at the 3024 Hollywood address in violation of a no contact order. RP (2/13) 22. Deputy Argyle was dispatched to the scene and was advised of the caller's name, telephone number, and the address he was calling from. RP (2/13) 22, 25, 28. Deputy Argyle was also aware that the caller had been keeping an eye on the residence and was aware that the Defendant had been violating the no contact order on a regular basis and wanted law enforcement to know about the violation. RP (2/13) 22-23.

Deputy Argyle responded to the address and saw a car parked in the driveway of the residence and ran the license plate of this vehicle. RP (2/13) 23. The car came back as registered to a rental agency, so Deputy Argyle called the rental agency and was informed that the car had been rented to the Defendant. RP (2/13) 23.

Deputy Argyle then had Cencom verify that there was a no contact

order involving the Defendant. RP (2/13) 24. Cencom confirmed that they were able to find one no contact order prohibiting the Defendant from contacting a person named Christina Ward. RP (2/13) 24.

Deputy Argyle then knocked on the front door of the residence and a female answered. RP (2/13) 23. Based on her reaction when she opened the door and how she answered his questions, Deputy Argyle assumed it was the person that Cencom had advised was the protected party. RP (2/13) 23. Deputy Argyle told the female that he wanted to talk to the Defendant. RP (2/13) 24. Deputy Argyle then described her response as follows,

She said that Trammell was not in the house. But by her – the way she acted, it was apparent to me that she knew who he was. I felt he was in there, and I told her that she needed to go get him now for me. She hesitated a moment. She goes, Just a minute. She closes the door. And about five minutes later, Trammel comes to the door.

RP (2/13) 24; See also, RP (2/13) 11.

Deputy Argyle then asked the Defendant to step outside, and when the Defendant did so he was placed under arrest. RP (2/13) 24.

On December 12, another deputy (Deputy Walthall) served a subpoena on Ms. Kostic, but the subpoena had someone else's name on it, so she told the officer that the name on the subpoena wasn't her. CP 56, RP (2/13) 12-13. She also told the officer that she was the one that was present

on October 27. RP (2/13) 13.

Ms. Kostic testified at trial that the Defendant came to her house on October 27th and that she was aware that there was a no contact order in effect. RP (2/13) 11. The no contact order was also admitted at trial. RP (2/13) 6. In addition, a stipulation was entered and signed by the Defendant which stated that the Defendant had two prior convictions for violations of a domestic violence no contract order or a domestic violence protection order. CP 1.

On the day of trial, the Defendant raised an oral motion to dismiss, arguing that: (1) the Defendant was arrested for violating a no contact order prohibiting him from contacting Christina Ward (based on the deputy's mistaken belief that Ms. Kostic was Christina Ward); (2) the State would not have gone back to Ms. Kostic's house to serve the subpoena but for this mistaken arrest; and, (3) that because the original arrest was flawed, "everything that proceeds from it is fruit of the poisonous tree." RP (2/12) 10-12. As the State had been given no notice of the motion, the trial court did not address the motion until the following day. RP (2/12) 12.

The next day, the Defendant filed a written motion to suppress arguing that Deputy Argyle did not have probable cause to arrest the Defendant because the Aguillar/Spinelli requirement regarding the

informant's veracity had not been satisfied. CP 55-58. The written motion asked the court to suppress the contents of Deputy Walthall's conversation with Ms. Kostic when he went to her house to serve the subpoena. CP 58.¹

The trial court ultimately denied the Defendant's motion to suppress, stating,

This is in some ways similar to the police officer who believes he has probable cause to arrest for possession of heroin. Subsequently, later they do a test, and it turns out to be cocaine and an amendment is made, and they go forward with the trial with the proper substance.

I deny the defense motion. This was not a completely anonymous call. It was an identified individual from a specific address with a specific telephone number, an individual who was identified to law enforcement under the fellow officer rule that's imputed to Officer Argyle. Officer Argyle was aware that – of the individual's last name, phone number, and address.

RP (2/13) 40-41. The trial court also noted that when Deputy Argyle arrived at the scene he confirmed that the vehicle at the house was a rental car that had been rented by the Defendant. RP (2/13) 40.

The trial court later entered written findings of fact and conclusions of law regarding the defense motion. CP 63. The findings of fact were as follows:

¹ Deputy Walthall apparently was the deputy who went to Ms. Kostic's house in Decemeber to serve her with a subpoena for trial and learned that she (and not Christina Ward) was the female who was present on the date of the Defendant's arrest. See CP56.

I.

That on August 1, 2006, the Kitsap County District issued a domestic violence no-contact order in cause number 17732001. This order prohibited the Defendant from having any contact whatsoever with Astra Kostic, his wife, and from coming or remaining within 500 feet of her residence.

II.

That on October 27, 2006, a concerned citizen called 911 and reported that he had seen the Defendant at the Victim's residence, which is located at 3024 Hollywood Avenue in Bremerton, WA. The citizen eventually identified himself to the 911 operator, but he expressed his desire to remain anonymous.

III.

That the 911 operator dispatched this information through CenCom. Deputy Argyle of the Kitsap County Sheriff's Office received the dispatch and proceeded to 3024 Hollywood Avenue. At the time of the dispatch, Deputy Argyle knew the caller's name and phone number and of the details the caller provided to CenCom.

IV.

That upon arriving at the residence Deputy Argyle observed a white Chevy Impala parked out front. Deputy Argyle confirmed with a rental agency that the Defendant had rented this car.

V.

That Deputy Argyle had confirmed through CenCom that a valid no-contact order existed prohibiting the Defendant from contacting a person named Christina Ward.

VI.

That Deputy Argyle approached the residence and knocked on the door. A woman, later identified as Astra Kostic, answered the door. Deputy Argyle never asked the woman who answered the door what her name was.

VII.

That Deputy Argyle asked this woman where the Defendant was. She initially denied that he was present, but moments later came to the door. The Defendant was arrested. There was no protest from either the protected party or the Defendant.

VIII.

That after the Defendant was booked, Deputy Argyle called the named informant and informed him about the incident.

CP 63-65. The Defendant has not assigned error to any of the trial court's findings of fact.

The trial also concluded as a matter of law that the State had established both the basis of the informant's information and the credibility or reliability of the informant pursuant to *Aguillar-Spinelli*, and that, based on the totality of the circumstances within Deputy Argyle's knowledge at the time of arrest, that there was probable cause to arrest the Defendant. CP 64-65.

III. ARGUMENT

- A. THE TRIAL COURT DID NOT ERR IN FINDING THAT THE ARREST OF THE DEFENDANT WAS SUPPORTED BY PROBABLE CAUSE BECAUSE THE INFORMATION RELIED UPON BY THE OFFICER WAS PROVIDED BY A NAMED CITIZEN INFORMANT AND NAMED INFORMANT'S ARE PRESUMED RELIABLE FOR PROBABLE CAUSE PURPOSES.**

Trammell argues that the trial court erred in concluding that there was probable cause for the Defendant's arrest and that the *Aguilar-Spinelli* test

was met. App.'s Br. at 6. This claim is without merit because the deputy had probable cause based upon the information supplied by a named citizen informant (which is presumed reliable) and because the deputy independently verified that the Defendant was at the residence.

Probable cause for an arrest exists when "the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in a belief that an offense has been ... committed." *State v. Herzog*, 73 Wn. App. 34, 53, 867 P.2d 648 (1994) (quoting *State v. Fricks*, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979)). In determining whether probable cause exists, the police may rely upon the totality of known suspicious circumstances. *State v. Parker*, 79 Wn.2d 326, 328-29, 485 P.2d 60 (1971); *State v. Smith*, 9 Wn. App. 309, 316, 511 P.2d 1390 (1973). "The question of probable cause should not be viewed in a hypertechnical manner." *State v. Remboldt*, 64 Wn. App. 505, 510, 827 P.2d 282 (1992). "A trial court's legal conclusion of whether evidence meets the probable cause standard is reviewed de novo." *In re Detention of Petersen*, 145 Wn.2d 789, 799, 42 P.3d 952 (2002).

Under what is typically referred to as the *Aguilar-Spinelli* test, an affidavit using an informant's tips to establish probable cause must establish both the basis of the information and the credibility or reliability of the

informant. *State v. Gaddy*, 152 Wn.2d 64, 71, 93 P.3d 872 (2004). Although the United States Supreme Court has rejected the *Aguilar-Spinelli* test for the 'totality-of-the-circumstances' test outlined in *Illinois v. Gates*, 462 U.S. 213, 230, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), Washington courts adhere to *Aguilar-Spinelli*. *State v. Gaddy*, 152 Wn.2d 64, 71 n. 2, 93 P.3d 872 (2004). The *Aguilar-Spinelli* strictures, however, are "aimed primarily at unnamed police informers." *State v. O'Connor*, 39 Wn. App. 113, 120, 692 P.2d 208 (1984) (emphasis in original).

On appeal, the Defendant first argues that the State did not establish the informant's basis of knowledge. App.'s Br at 9-10. The basis of knowledge prong can be satisfied by showing that the informant "personally has seen the facts asserted and is passing on firsthand information." *State v. Smith*, 110 Wn.2d 658, 663, 756 P.2d 722 (1988), citing *State v. Jackson*, 102 Wn.2d 432, 437, 688 P.2d 136 (1984).

In the present case, the informant's basis of knowledge was established by the fact that the informant had been "keeping an eye" on the residence because he was aware that the offender had been violating the protection order on a regular basis. RP (2/13) 23. In addition, the trial court's second finding of fact stated that the informant reported that he had seen the Defendant at the Victim's residence located at 3024 Hollywood Avenue in Bremerton, WA. CP 63-64. The Defendant has not assigned error to any of

the trial court's findings of fact, and thus, they are verities on appeal. *State v. Acrey*, 148 Wn.2d 738, 745, 64 P.3d 594 (2003)(In reviewing findings of fact on a motion to suppress, an appellate court will review only those facts to which error has been assigned and findings of fact are treated as verities on appeal if error is not assigned to them). The informant's report that he had been keeping an eye on the residence and saw that the Defendant was violating the court order was sufficient to establish the informant's basis of knowledge.

Furthermore, even if one or both prongs of the *Aguilar-Spinelli* test are not satisfied, independent police investigation that corroborates the tip and provides the missing elements can form the basis for probable cause. *State v. Jackson*, 102 Wn.2d 432, 445, 688 P.2d 136 (1984). In the present case, Deputy Argyle arrived at the scene and discovered a vehicle which had been rented to the Defendant and he the deputy also confirmed that the Defendant had a no contact order in place. These facts obviously corroborated the tip that the Defendant was present at the residence.

Perhaps most importantly, the Deputy also went to the house and personally saw the Defendant when he finally came to the door. This fact unquestionably confirmed the informant's tip that the Defendant was present at the residence. While the fact that an informant had told law enforcement that the Defendant was present at the house set the officer's investigation in

motion, the actual arrest did not occur until the officer personally saw the Defendant.

As outlined above, probable cause for an arrest exists when “the facts and circumstances within the arresting officer's knowledge and of which he has reasonably trustworthy information are sufficient in themselves to warrant a man of reasonable caution in a belief that an offense has been ... committed.” *State v. Herzog*, 73 Wn. App. 34, 53, 867 P.2d 648 (1994) (quoting *State v. Fricks*, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979)).

Furthermore, an arresting officer does not need evidence proving each element of the crime beyond a reasonable doubt. *State v. Knighten*, 109 Wn.2d 896, 903, 748 P.2d 1118 (1988). In addition, “[i]t is only the probability of criminal activity and not a prima facie showing of it which governs the standard of probable cause.” *State v. Seagull*, 95 Wn.2d 898, 907, 632 P.2d 44 (1981); *Illinois v. Gates*, 462 U.S. 213, 231, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983).

As mentioned above, the *Aguilar-Spinelli* strictures are “aimed primarily at *unnamed* police informers.” *State v. O’Connor*, 39 Wn. App. 113, 120, 692 P.2d 208 (1984). For this reason, named citizen informants are generally presumed to be reliable. *State v. Wible*, 113 Wn. App. 18, 24, 51 P.3d 830 (2002); *State v. Gaddy*, 152 Wn.2d 64, 72-73, 93 P.3d 872 (2004);

State v. Franklin, 49 Wn. App. 106, 109, 741 P.2d 83, 85 (1987). Similarly, if the identity of an informant is known (as opposed to being anonymous or a professional informant), the necessary showing of reliability is relaxed because there is less risk of the information being a rumor or irresponsible conjecture which may accompany anonymous informants. *Gaddy*, 152 Wn.2d at 72-73; citing *State v. Huft*, 106 Wn.2d 206, 211, 720 P.2d 838 (1986), and *State v. Northness*, 20 Wn. App. 551, 557, 582 P.2d 546 (1978).

Although the Defendant cites authority in his brief for the propositions that when probable cause is based on information from anonymous informant the State must show that the informant's statement shows adequate indicia of reliability," and that anonymous informants are not presumed reliable, these concepts are inapplicable to the present case because the informant was not anonymous. See App.'s Br. at 7. The Defendant acknowledges that the informant in the present case provided "his name and address." App.'s Br. at 9.

In addition, the record shows that the informant was not anonymous, but was identified, and the trial court's unchallenged findings of fact stated that the informant identified himself to the 911 operator and that the Deputy Argyle knew the informant's name and phone number at the time he was dispatched. CP 64.

For all of these reasons, the named citizen informant in the present case was presumed to be reliable, and the second prong of the *Aguilar-Spinelli* test was satisfied. The arresting officer, therefore, was allowed to determine that there was probable cause to arrest the Defendant based on the informant's statement that the Defendant was violating a no contact order by being at the residence.

Furthermore, as mentioned above, even if one or both prongs of the *Aguilar-Spinelli* test are not satisfied, independent police investigation that corroborates the tip and provides the missing elements can form the basis for probable cause. *Jackson*, 102 Wn.2d at 445. In the present case the arresting officer found the Defendant at the residence as the informant had said, thereby corroborating the informant's information and providing further support for the informant's reliability and credibility.

In addition, Deputy Argyle's observations of the demeanor of the female who answered the door of the residence, as well as the fact that she initially denied that the Defendant was present, further corroborated the informant's tip that a violation was occurring. *See, State v. Goodman*, 42 Wn. App. 331, 711 P.2d 1057 (1985), *review denied*, 105 Wn.2d 1012 (1986) (improbable explanation and false answers may be considered in probable cause determination).

In conclusion, the requirement of probable cause to justify an arrest is just that, a requirement a *probable* cause. The law requires only the probability of criminal activity and not a prima facie showing of it. *Seagull*, 95 Wn.2d at 907; *Illinois v. Gates*, 462 U.S. at 231, 103 S. Ct. 2317, 76 L. Ed. 2d 527. Although the officer was ultimately mistaken concerning the identity of the female present at the residence, the officer nonetheless had probable cause to believe that a violation of a no contact order was occurring based upon the tip from a named citizen informant. In addition, the officer had independently corroborated much of the informant's information, including the fact that the Defendant was located at the residence. Furthermore, the fact that the female who answered the door initially denied that the Defendant was present only further supported the officer's finding of probable cause. For all of these reasons, the trial court did not err.

B. EVEN IF THIS COURT WERE TO FIND THAT THE ARREST OF THE DEFENDANT WAS UNLAWFUL, SUPPRESSION OF EVIDENCE WAS NOT WARRANTED BECAUSE: (1) THE VICTIM'S TESTIMONY THAT THE DEFENDANT WAS PRESENT AT HER HOUSE WAS UNRELATED TO THE ARREST; (2) THE OFFICER PERSONALLY SAW THE DEFENDANT PRESENT WITH THE VICTIM PRIOR TO THE TIME OF THE ARREST; AND, (3) NO EVIDENCE ADMITTED AT TRIAL WAS GATHERED AS A RESULT OF, OR BY EXPLOITATION OF, THE ARREST.

Even if this court were to find that the officer somehow lacked probable cause to arrest the Defendant, reversal would still not be warranted because there was no evidence obtained as a result of the arrest and thus there was nothing for the trial court to suppress even if the court had concluded that the arrest was not supported by probable cause.

The Defendant briefly argues, without elaboration or citation to authority, that evidence obtained from a search must be suppressed and then concludes that,

Consequently the later questioning of Ms. Kostic that led to the discovery of the error should have been suppressed as argued by the defense counsel. CP 55; RP 11-12 (02/12/07; RP 37-40. Law enforcement would not have returned to the residence and later discovered the error if not for the unlawful arrest.

App.'s Br. at 12. The Defendant's arguments at trial also provide little insight into this line of reasoning. In the written motion to suppress, the Defendant

only briefly concluded, again without elaboration or citation to authority, that,

Deputy Walthall's presence at the house, and his conversation with Ms. Kostic were a direct result of the illegal arrest of Mr. Trammell. Therefore, the contents of the conversation should be suppressed as fruits of the poisonous tree.

CP 62. Similarly, the oral argument of defense counsel was merely that the arrest was flawed, thus "everything that proceeds from it is fruit of a poisonous tree." RP (2/12) 11-12.

The fact that another Deputy later went to the residence to serve a subpoena, however, was not fruit of a poisonous tree. In addition, the State never offered this evidence at trial. The only conceivable defense argument therefore, appears to be that but for the illegal arrest, the State would not have learned of the misidentification of Ms. Kostic which was discovered when a deputy later went to serve a subpoena on the victim. This argument, however, is without merit.

It is certainly true that evidence which is the product of an unlawful search or seizure is not admissible. *Mapp v. Ohio*, 367 U.S. 643, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961). "Evidence is only inadmissible as 'fruit of the poisonous tree,' however, if it has been gathered by exploitation of the original illegality." *See State v. Weller*, 76 Wn. App. 165, 168, 884 P.2d 610 (1994). Evidence obtained following the infringement of a constitutionally

protected freedom will be suppressed only if a causal connection exists between the constitutional violation and the uncovering of the evidence. *State v. Rothenberger*, 73 Wn.2d 596, 600-01, 440 P.2d 184 (1968) (citing *Nardone v. United States*, 308 U.S. 338, 341, 60 S. Ct. 266, 84 L. Ed. 307 (1939)). In determining whether there is a nexus between the evidence in question and the police conduct, the court essentially makes a common sense evaluation of the facts and circumstances of the particular case. *Aranguren*, 42 Wn. App. at 457, citing *United States v. Kapperman*, 764 F.2d 786 (11th Cir.1985).

Furthermore, evidence need not be suppressed under the fruit of the poisonous tree doctrine if obtained from an independent source. *See, e.g., State v. Early*, 36 Wn. App. 215, 221-22, 674 P.2d 179 (1983). Similarly, under the “attenuation doctrine,” an appellate court must ask whether the evidence would have been discovered even without the Fourth Amendment violation. *State v. Chapin*, 75 Wn. App. 460, 463, 879 P.2d 300 (1994), *review denied*, 125 Wn.2d 1024, 890 P.2d 465 (1995); *State v. Aranguren*, 42 Wn. App. 452, 457, 711 P.2d 1096 (1985). This question is dispositive when answered yes,² but non-dispositive when answered no. *State v.*

² When answered yes, this question is the same as, or at least similar to, the inevitable discovery rule. *See Nix v. Williams*, 467 U.S. 431, 104 S.Ct. 2501, 81 L.Ed.2d 377 (1984), *cert. denied*, 471 U.S. 1138, 105 S.Ct. 2681, 86 L.Ed.2d 699 (1985); *State v. Warner*, 125 Wash.2d 876, 889, 889 P.2d 479 (1995).

Rodriguez, 32 Wn. App. 758, 762, 650 P.2d 225, review denied, 98 Wn.2d 1005 (1982). If it is answered no, the court also must ask whether the evidence was discovered “by means sufficiently distinguishable to be purged of the primary taint,” and not by exploitation of the Fourth Amendment violation. *Wong Sun v. United States*, 371 U.S. 471, 488, 83 S. Ct. 407, 417-18, 9 L. Ed. 2d 441 (1963); see also, *Taylor v. Alabama*, 457 U.S. 687, 690, 102 S. Ct. 2664, 2667, 73 L. Ed. 2d 314 (1982); *Dunaway v. New York*, 442 U.S. 200, 217, 99 S. Ct. 2248, 2259, 60 L. Ed. 2d 824 (1979); *Brown v. Illinois*, 422 U.S. 590, 602, 95 S. Ct. 2254, 2261, 45 L. Ed. 2d 416 (1975); *State v. Byers*, 88 Wn.2d 1, 8, 559 P.2d 1334 (1977); *State v. Gonzales*, 46 Wn. App. 388, 397-98, 731 P.2d 1101 (1986); *State v. Jensen*, 44 Wn. App. 485, 489-90, 723 P.2d 443, review denied, 107 Wn.2d 1012 (1986).

Washington courts have held that suppression of evidence is not warranted when the evidence at issue was obtained before the unlawful arrest. *State v. Aranguren*, 42 Wn. App. 452, 457, 711 P.2d 1096 (1985); *State v. Gonzales*, 46 Wn. App. 388, 397-98, 731 P.2d 1101 (1986). In *Aranguren*, for example, an officer responded to a report of vandalism and saw two people riding bicycles near the reported scene. *Aranguren*, 42 Wn. App. at 453-54. The officer pulled in behind them and asked to talk to them for a minute. *Aranguren*, 42 Wn. App. at 454. At this point the officer had

already observed the bicycles and noticed what they looked like. *Aranguren*, 42 Wn. App. at 457. The court of appeals held that the officer's initial stop of the defendants was proper. *Aranguren*, 42 Wn. App. at 456.

The officer, however, went further and asked the defendants for their identification, which they provided, and the officer then took the identification cards back to his car to run a warrants check. *Aranguren*, 42 Wn. App. at 454. While in his patrol car, the officer was advised by his dispatch that there had just been a report of two stolen bicycles matching the description of the bicycles ridden by the defendants. *Aranguren*, 42 Wn. App. at 454. The officer then arrested the defendants and seized the bicycles. *Aranguren*, 42 Wn. App. at 454.

The defendants moved to suppress, arguing that their detention was unlawful. *Aranguren*, 42 Wn. App. at 454-55. The court of appeals held that when the officer took the identification cards back to his patrol car the encounter matured into an investigatory stop, but held that this did not resolve the issue relating to the seizure of the bicycles. *Aranguren*, 42 Wn. App. at 457. Rather, the court held,

In the present case, Officer Gill had already observed the bicycles before he proceeded to take the appellants' identification. Although the officer did not yet know that the bicycles were stolen, it is clear from the officer's testimony that he noticed what the bicycles looked like. Upon later hearing the description of the stolen bicycles, the officer

immediately recognized that those were the bicycles in the possession of appellants. Therefore, the officer's knowledge about the evidence was gained when he initially stopped the appellants, before the encounter matured into an investigatory stop.

Conversely, no information was acquired from the appellants once the officer retained their identification. Appellants made no incriminating statements. No contraband was discovered. Nothing about the appellants' identification revealed any evidence relating to the stolen bicycles. In sum, the unlawful police conduct did not produce any evidence and did not taint the evidence that previously had been lawfully acquired.³

The evidence here was not the product of an unlawful seizure; it was the product of a lawful police encounter with two individuals. Any other interpretation of the causal connection between the evidence and the police conduct here would strain the common sense determination we make in these situations. Therefore, as long as the initial stop of the appellants was lawful, the knowledge of the bicycles was lawfully acquired, and the motion to suppress was correctly denied. Our disposition makes it unnecessary to address the State's argument that the officer had the authority to conduct an investigatory stop.

Aranguren, 42 Wn. App. at 457-58.

Similarly, in *Gonzales*, the court held that although the eventual arrest

³ The court also noted in a footnote that,

“Because we find that the evidence here was not the product of unlawful police conduct, we do not address whether other doctrines, such as the independent source or inevitable discovery doctrines, may apply. We note, however, that even if the officer had returned the appellants' identification before walking back to his car, it is difficult to see how the result would have been any different. The radio information describing the stolen bicycles was available to all police officers. The officer here lawfully knew what these bicycles looked like and lawfully knew that they were in appellants' possession. Upon hearing the report of the stolen bicycles, he would still have had probable cause to arrest appellants.”

of the defendant was unlawful, the officer's earlier observations of incriminating evidence was not tainted by the *subsequent* illegality. *Gonzales*, 46 Wn. App. at 397(emphasis in original).

In the present case, the evidence admitted at trial was that Deputy Argyle observed the Defendant at the home with Ms. Kostic and Ms. Kostic herself testified that she and the Defendant were present on the date in question. This evidence was discovered by Deputy Argyle before he ever arrested the Defendant. Although Deputy Argyle was not aware of Ms. Kostic's true name at the time, his personal knowledge in this regard was not relevant at trial in any regard. As in *Aranguren* and *Gonzales*, even if this court were to determine that that the subsequent of the Defendant was not supported by probable cause, the unlawful police conduct did not produce any evidence and did not taint the evidence that previously had been lawfully acquired. No suppression, therefore, was required.

As for the potential argument that the State only learned of Ms. Kostic's true name after the arrest, this information did not come as a result of the arrest itself. If this matter had involved a situation where drugs were found on the Defendant after the arrest or where the Defendant made a full confession after the arrest then the case would be different. Those situations,

Aranguren, 42 Wash.App. at 458, n.1.

however, are a far cry from the present case where law enforcement went to serve a subpoena on the victim long after the arrest and learned the victim's true name at that time. In short, there is simply no causal connection between the actual arrest and the subsequent, lawful, law enforcement contact with the victim.

In short, the actual evidence presented at trial on the relevant issue of whether the Defendant contacted Ms. Kostic was unrelated to the arrest. Namely, Ms. Kostic testified that the Defendant was present at her home on October 27, and Deputy Argyle testified that he saw the Defendant there as well. Ms. Kostic's testimony was clearly unrelated to the later arrest and the Deputy's observations were made prior to the arrest. The fact that the State only later learned of the victim's true name was simply not related to the arrest. Furthermore, under the "attenuation doctrine," the record shows that Ms. Kostic's true name would have been discovered even without the Fourth Amendment violation. In addition, even if her name would not have been discovered without the arrest, her name was discovered "by means sufficiently distinguishable to be purged of the primary taint," and not by exploitation of the Fourth Amendment violation. Any claim regarding the legality of the arrest bears no connection to law enforcement's later contacts with the victim, and suppression would be inappropriate even if there had been an unlawful arrest as the act of knocking on the victim's door to serve a

subpoena had nothing to do with the Defendant's Fourth Amendment rights.

For all of these reasons, the Defendant's arguments must fail.

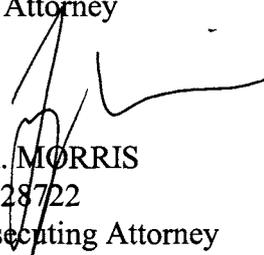
IV. CONCLUSION

For the foregoing reasons, the Defendant's conviction and sentence should be affirmed.

DATED December 28, 2007.

Respectfully submitted,

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