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

NO. 40640-3-II

STATE OF WASHINGTON,

Respondent,

vs.

JONATHAN JONES

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR CLALLAM COUNTY
CAUSE NO. 09-1-00197-8

BRIEF OF RESPONDENT

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This brief was served via U.S. Mail or the recognized system of interoffice communications as follows: original + one copy to Court of Appeals, 950 Broadway, Suite 300, Tacoma, WA 98402, and one copy to counsel listed at left.
I CERTIFY (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.
DATED: September 21, 2010,
at Port Angeles, WA

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I. COUNTERSTATEMENT OF THE ISSUES

1. Did the trial court err when it ruled that the arresting officer lawfully contacted the defendant at the scene of a traffic stop after the officer observed three possible traffic infractions?
2. Does substantial evidence support the material findings of fact and conclusions of law?

II. STATEMENT OF THE CASE

FACTUAL HISTORY

On May 19, 2009, Corporal Jesse Winfield of the Port Angeles Police Department (PAPD) was on patrol and driving a marked police cruiser. RP (10/8/2009) at 6-7. Corporal Winfield's official patrol duties included the enforcement of the traffic code.¹ RP (10/8/2009) at 6.

¹ Contrary to Mr. Koch's baseless assertion, Corporal Winfield has never suffered the indignity of a demotion. The record does not support this negative inference. *See* RP (10/8/2009) at 5-6. It appears that Mr. Koch's false statement of facts is a desperate and inappropriate attempt to cast doubt on the circumstances surrounding the stop by attacking Corporal Winfield. *See* Brief of Appellant at 1.

While a history of Corporal Winfield's exemplary service is outside the record, the State provides the following clarifications to correct Mr. Koch's demeaning remarks:

Corporal Winfield has served the Port Angeles Police Department since 1992. He was first assigned to the "Patrol Unit" until 1999 when he was assigned to the "Detective/Investigations Unit." [In Clallam County, a detective assignment does not constitute a promotion.] In March of 2009, he was promoted to rank of Corporal. With this promotion, he was reassigned to the "Patrol Unit" as an assistant shift supervisor.

See also RP (10/8/2009) at 6 (Corporal Winfield is both a supervisor and a regular patrol enforcement officer). This State respectfully moves this Court to strike Mr. Koch's extraneous and false statement.

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At 8:35 a.m., Corporal Winfield observed a green Chevrolet Cavalier approach a stop sign at the intersection of “C” Street and Lauridsen Boulevard. RP (10/8/2009) at 7-8, 20, 23-24. Corporal Winfield noticed the driver did not activate a turn signal until the vehicle stopped at the intersection. RP (10/8/2009) at 8, 23-24.

When the vehicle turned eastbound onto Lauridsen, Corporal Winfield noticed the tint on the vehicle’s side windows was so dark that he could not determine the gender of the occupants, nor the number of people inside the vehicle. RP (10/8/2009) at 8-9, 25-29. Based on his training and experience, Corporal Winfield believed the degree of tinting exceeded the amount allowed by law. RP (10/8/2009) at 9-11, 45-46.

As Corporal Winfield drove eastbound on Lauridsen, attempting to close the gap between the Cavalier and himself, he observed the vehicle make a second turn onto Newell Road. RP (10/8/2009) at 8, 31. While the driver did signal prior to initiating the turn, Corporal Winfield noticed that the driver activated the turn signal significantly short of the 100 feet required by law. RP (10/8/2009) at 8, 31.

When Corporal Winfield turned onto Newell Road, he saw the vehicle had turned into the parking lot of an apartment building. RP (10/8/2009) at 11. Corporal Winfield decided to contact the driver to discuss the infractions that he had just observed. RP (10/8/2009) at 11-12,

32. Corporal Winfield did not activate his overhead emergency lights when he pulled into the parking lot, RP (10/8/2009) at 11, 33-34, 49-50, and he parked his police cruiser behind the driver's vehicle. RP (10/8/2009) at 34, 50.

As the driver exited the vehicle, Corporal Winfield asked to speak with him about the infractions, beginning with the vehicle's tinted windows. RP (10/8/2009) at 12, 34-35, 38-40. The driver, Mr. Jonathan Jones, stated the car belonged to his girlfriend and started to walk away toward one of the apartments. RP (10/8/2009) at 12, 35. Corporal Winfield asked Mr. Jones to stay and speak with him. RP (10/8/2009) at 12, 35. Mr. Jones complied. RP (10/8/2009) at 13, 35.

Corporal Winfield asked to see Mr. Jones's license. RP (10/8/2009) at 13, 35. Mr. Jones answered that he did not have one, but gave the officer his name. RP (10/8/2009) at 13-14. Corporal Winfield then requested that dispatch run a driver's and warrants check. RP (10/8/2009) at 14, 16, 35. Dispatch subsequently advised the officer that Mr. Jones's driving status was suspended. RP (10/8/2009) at 16. Corporal Winfield then arrested the defendant for driving without a license. RP (10/8/2009) at 16-17.

After Corporal Winfield secured Mr. Jones in handcuffs, he searched him incident to arrest before placing him into the police cruiser.

RP (10/8/2009) at 17-18. Mr. Jones asked if he could give the coat that he was wearing to his girlfriend. RP (10/8/2009) at 17. Corporal Winfield denied this request. RP (10/8/2009) at 17.

As Corporal Winfield patted down Mr. Jones, he felt a hard object in Mr. Jones's coat. RP (10/8/2009) at 19. Corporal Winfield removed the item, which was a snoose container. RP (10/8/2009) at 19. Mr. Jones volunteered that the container was "full of drugs." RP (2/23/2010) at 16, 19, 45. Corporal Winfield opened the container and discovered a bag, which contained a substance that was later verified to be methamphetamine. RP (10/8/2009) at 19.

PROCEDURAL HISTORY

The State charged Mr. Jones with possession of a controlled substance (Count I) and driving while license suspended in the third degree (Count II).² CP 83.

At a 3.6 hearing, Mr. Jones moved to suppress the evidence against him. RP (10/8/2009) at 52-55. Mr. Jones argued the seizure was unlawful because the alleged traffic stop was used as pretext to search him for other evidence unrelated to any traffic infraction. RP (10/8/2009) at 51, 54-55. The State responded that the traffic stop and subsequent detention and

² The State dismissed the charge of driving while license suspended prior to trial. RP (2/22/2010) at 4.

search were lawful, arguing that “[t]here is nothing to show [Corporal Winfield] was using the stop as a fishing opportunity[.]” RP (10/8/2009) at 52

The trial court indicated some reluctance to strictly apply the “turn signal” statute³ to Mr. Jones’s first turn onto Lauridsen Boulevard, even though it was a literal violation of the law. RP (10/8/2009) at 56-58 However, with respect to the turn onto Newell Road, the trial court concluded that it was a “sufficient infraction to investigate[] ... although I think the law can be interpreted in this case to include both situations.” RP (10/8/2009) at 58-59.

With respect to the vehicle’s tinted windows, the trial court recognized there was reasonable suspicion to believe that an infraction had been committed. RP (10/8/2009) at 59. The trial court noted that a photo offered by the defense showed that the vehicle’s side windows were “considerably dark” and allowed the officer to contact the driver. RP (10/8/2009) at 59-60.

The trial court recognized that Corporal Winfield did not investigate the alleged traffic infractions further because the contact had escalated into a more serious offense. RP (10/8/2009) at 60. The trial court went on to conclude that (1) “Corporal Winfield did have the right to

³ RCW 46.61.305: When signals required – Improper use prohibited.

contact the driver and ask for his identification”, (2) the subsequent driver’s check was “reasonable”, and (3) the arrest and subsequent search “was proper”. RP (10/8/2009) at 60. Thus, the trial court denied the motion to suppress the methamphetamine seized from Mr. Jones’s person. RP (10/8/2009) at 60. Two weeks later, the trial court entered its findings of fact and conclusions of law. CP 50-54.

A jury found Mr. Jones guilty of possessing a controlled substance. RP (2/23/2010) at 89; CP 24. The trial court sentenced Mr. Jones to 45 days in detention (credit for one day served), converted 30 days into 240 hours of community service, and ordered certain mandatory fines. RP (4/21/2010) at 10-13; CP 11. Mr. Jones appeals.

III. ARGUMENT⁴

A. CORPORAL WINFIELD’S CONTACT WITH MR. JONES WAS A LAWFUL INVESTIGATIVE DETENTION.

Mr. Jones argues that he was unlawfully seized. *See* Brief of Appellant at 8-21. This claim is totally without merit. The record clearly shows Corporal Winfield detained Mr. Jones in order to investigate three

⁴ As a preliminary matter, the State notes that Mr. Jones fails to provide any formal assignment of error. In his table of contents, Mr. Jones asserts that the “Assignments of Error and Issues” is included at page (iv) of the opening brief. However, Mr. Jones does not provide these formal assignments or issue statements. *See* Brief of Appellant at iv. This Court need not consider the arguments presented appeal. *See* RAP 10.3(a)(4); RAP 10.3(g).

possible traffic violations. This Court should hold Corporal Winfield lawfully seized Mr. Jones pursuant to the *Terry* exception to the warrant requirement.

In general, a warrantless seizure violates both the state and federal constitution. *State v. Ladson*, 138 Wn.2d 343, 349-50, 979 P.2d 833 (1999). An investigatory detention under *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) is an exception. *State v. Rife*, 133 Wn.2d 140, 150-51, 943 P.2d 266 (1997). To justify an investigative stop pursuant to *Terry v. Ohio*, a police officer must have a reasonable suspicion based on specific and articulable objective facts that the person detained has been or is about to be involved in a crime. *Terry*, 392 U.S. at 21-22. The reasonable suspicion standard is a lower standard than the probable cause threshold. *Terry*, 392 U.S. at 25-26; *State v. Dorey*, 145 Wn. App. 423, 429, 186 P.3d 363 (2008). In evaluating the reasonableness of an investigative detention, courts must look to the totality of the circumstances known to the officer at the time of the stop. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991).

Washington's courts have applied the *Terry* exception under the Fourth Amendment and Article I, section 7 of the Washington State Constitution to traffic stops. *State v. Duncan*, 146 Wn.2d 166, 174-75, 43 P.3d 513 (2002). To be lawful, a traffic stop must be justified at its

inception. *State v. Tijerina*, 61 Wn. App. 626, 628-29, 811 P.2d 241, review denied, 118 Wn.2d 1007, 822 P.2d 289 (1991). The officer must have a reasonable suspicion that the driver has committed a traffic infraction in order to stop the vehicle and detain its driver. See *Duncan*, 146 Wn.2d at 173-75.

It is a traffic infraction to initiate a turn without continuously signaling one's intent 100 feet prior to the turn. RCW 46.61.305 provides:

- (1) No person shall turn a vehicle or move right or left upon a roadway unless and until such movement can be made with reasonable safety nor without giving an appropriate signal in the manner hereinafter provided.
- (2) *A signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning. ...*

(Emphasis added). The undisputed facts establish that Mr. Jones made two turns without signaling 100 feet in advance his turn. RP (10/8/2009) at 8, 23-24, 31. Thus, Corporal Winfield, who observed Mr. Jones failure to use his signal in accordance with the statute, had a reasonable suspicion that Mr. Jones had violated the traffic code.

Additionally, it is a traffic infraction for a vehicle to have window tinting that exceeds the "reflectance" and "light transmission" allowed by law. RCW 46.37.430(5) provides:

No film sunscreening or coloring material that reduces light transmittance to any degree may be applied to the surface of the safety glazing material in a motor vehicle unless it meets the following standards for such material: (a) The maximum level of net film sunscreening to be applied to any window, except the windshield, shall have a total reflectance of thirty-five percent or less, and a light transmission of twenty-four percent or more, where the vehicle is equipped with outside rearview mirrors on both the right and left. Installation of more than a single sheet of film sunscreening material to any window is prohibited.

Here, the undisputed facts show Mr. Jones was driving a vehicle with window tinting that was “considerably dark.” RP (10/8/2009) at 8-9, 25-29. *See also* RP (10/8/2009) at 59-60. The windows were so dark that Corporal Winfield could not ascertain the gender of the vehicle’s driver. RP (10/8/2009) at 8-9, 25-29. In light of Corporal Winfield considerable training and experience, he had a reasonable suspicion to contact Mr. Jones regarding the vehicle’s window tinting.⁵

The question is not whether Mr. Jones committed a traffic violation beyond a reasonable doubt,⁶ but whether the facts and circumstances warranted the stop. Again, the reasonableness of a stop under *Terry* requires Corporal Winfield have had a “reasonable suspicion”

⁵ Mr. Jones concedes that Corporal Winfield had a lawful basis to detain him to discuss the vehicle’s tinted windows. *See* Brief of Appellant at 11 (“Arguably, Winfield had articulable grounds to detain Jones to measure the suspect window tinting and issue a citation or warning for that.”).

⁶ Mr. Jones argues that he did not actually commit a traffic violation. *See* Brief of Appellant at 11-15.

to believe Mr. Jones violated the traffic code. *Terry*, 392 U.S. at 21-22. Here, the undisputed evidence established that Mr. Jones initiated two turns without first signaling his intention to turn 100 feet in advance of said turn, and that the vehicle's side windows were considerably dark. Under these circumstances, the three possible traffic violations observed by Corporal Winfield, provided the legal justification to contact Mr. Jones. This was the sole reason for the stop, thus, the subsequent arrest and search were lawful. *See State v. Nichols*, 161 Wn.2d 1, 11, 162 P.3d 1122 (2007) (quoting *State v. Hoang*, 101 Wn. App. 732, 742, 6 P.3d 602 (2000) (“Under *Ladson*, even patrol officers whose suspicions have been aroused may still enforce the traffic code, so long as enforcement of the traffic code is the actual reason for the stop.”))

B. THERE WAS NO UNLAWFUL PRETEXT.

Mr. Jones contends the traffic stop was mere pretext to conduct an unlawful search. *See* Brief of Appellant at 16-19. This Court should reject this claim because Corporal Winfield testified that the sole reason he made contact with the defendant was to discuss the three possible infractions he observed.

A stop is pretextual only “when an officer stops a vehicle in order to conduct a speculative criminal investigation unrelated to the driving, and not for the purpose of enforcing the traffic code.” *State v. Nichols*, 161

Wn.2d 1, 8, 162 P.3d 1122 (2007). A warrantless traffic stop based on pretext violates Article I, section 7 of the Washington State Constitution because it does not fall within any exception to the warrant requirement and therefore lacks the authority of law necessary to intrude upon a citizen's privacy interest. *Ladson*, 138 Wn.2d at 358.

There is nothing in the record to show the stop was pretextual. As argued above, the undisputed facts established that Corporal Winfield initiated the traffic stop solely to discuss the three possible traffic infractions he observed. RP (10/8/2009) at 7-9, 23-29, 31. Furthermore, the facts show Corporal Winfield had virtually no opportunity to form an ulterior motive for stopping the car: he could not see the driver; he did not recognize the vehicle; and he did not recognize the Mr. Jones when he finally detained him at the scene. RP (10/8/2009) at 11, 13.

Mr. Jones argues that the stop was pretextual because Corporal Winfield never issued a citation/warning for an improper turn or unlawful window tinting. *See* Brief of Appellant at 11, 17. According to Mr. Jones, “[t]his suggests that Winfield knew the only remotely articulable grounds for a traffic stop would not hold water.” *See* Brief of Appellant at 17. However, Mr. Jones ignores the reality that traffic stops can escalate, and officers have a duty to respond accordingly. Additionally, the police are not required “to issue every conceivable citation as a hedge against an

eventual challenge to the constitutionality of a traffic stop allegedly based on pretext.” *State v. Hoang*, 101 Wn. App. 732, 742, 6 P.3d 602 (2000).

Corporal Winfield did not issue a citation/warning because, in the course of contacting the defendant regarding the alleged traffic infractions, he learned Mr. Jones had committed two other crimes: (1) Driving While License Suspended, and (2) Possession of a Controlled Substance. RP (10/8/2009) at 16-17, 19. This Court should hold the absence of any traffic citation or a warning did not render the detention unlawful. *See Hoang*, 101 Wn. App. at 742.

Mr. Jones also claims that the stop was pretextual due to his personal belief that the suspected infractions were relatively petty. *See* Brief of Appellant at 17. According to Mr. Jones, “the stop clearly was pretextual because Winfield arbitrarily enforced the absolute letter of the law and ignored the spirit of the law.” *See* Brief of Appellant at 17. While Mr. Jones safely completed his turns, and the rear window did not have any tint, the fact remains Mr. Jones (as the vehicle’s driver) possibly violated both RCW 46.37.430 and RCW 46.61.305. *See above*. Pursuant to RCW 46.61.021(1), Corporal Winfield had the authority and the responsibility (albeit discretionary) to stop Mr. Jones and issue a citation or warning.

Mr. Jones also implies that Corporal Winfield only detained him at the scene because he exhibited nervousness. *See* Brief of Appellant at 20. According to Mr. Jones, “Winfield testified that people who appear nervous in the presence of the police should be investigated for warrants, suspended license, [and] possession of drugs[.]” *See* Brief of Appellant at 20. This is a gross distortion of Corporal Winfield’s testimony. While Corporal Winfield did testify that Mr. Jones was nervous at the scene, the officer only provided this testimony to explain the concern he had for his own personal safety. *See* RP (10/8/2009) at 16-17. Mr. Jones exhibited his nervous behavior after Corporal Winfield (1) asked to speak with him about the infractions, and (2) asked dispatch to perform a driver’s check. RP (10/8/2009) at 12, 14. It would have been irresponsible of Corporal Winfield not to monitor the defendant’s behavior while conducting a traffic stop.

However, Corporal Winfield did not detain and subsequently search Mr. Jones because of his behavior. He arrested the defendant because he had been driving without a license. RP (10/8/2009) at 16-17. He then searched the defendant pursuant to a lawful exception to the warrant requirement – search incident to arrest. RP (10/8/2009) at 19. *See also State v. O’Neil*, 148 Wn.2d 564, 585, 62 P.3d 489 (2003).

Finally, Mr. Jones attempts to cast doubt on Corporal Winfield's motivations by alleging that Corporal Winfield did not know what basis he was taking him into custody at the time of the search. *See* Brief of Appellant at 4. This is false. When dispatch informed Corporal Winfield that the defendant's license was suspended, he promptly arrested him for DWLS. RP (10/8/2009) at 16-17. To the extent that Mr. Jones disagrees, this is a matter of conflicting testimony and witness credibility that this court does not review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

This Court should hold that the totality of the circumstances establishes that Corporal Winfield had a lawful basis to contact Mr. Jones – to discuss the three possible infractions. Therefore, the subsequent arrest and search of the defendant's person was lawful.

C. THE EVIDENCE SUPPORTS THE TRIAL COURT'S MATERIAL FINDINGS AND CONCLUSIONS.

Mr. Jones challenges a number of the trial court's findings and conclusions, and argues this Court should reverse his conviction and remand for a new trial. *See* Brief of Appellant at 5-8. However, the findings and conclusions that Mr. Jones contests are immaterial to the relevant analysis. Substantial evidence still supports the trial court's material findings and conclusions. This Court should so hold.

Appellate courts review challenged findings of fact for substantial evidence and then determine if the findings support the conclusions of law. *State v. B.J.S.*, 140 Wn. App. 91, 97, 169 P.3d 34 (2007). Substantial evidence is evidence sufficient to persuade a rational, fair-minded person that the fact is true. *Sunnyside Valley Irrigation Dist. v. Dickie*, 149 Wn.2d 873, 879, 73 P.3d 369 (2003). Review of conclusions of law entered by the trial court at a suppression hearing is de novo. *State v. Carter*, 151 Wn.2d 118, 125, 85 P.3d 887 (2004). This Court defers to the trial court's determinations of credibility. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

First, Mr. Jones claims that “there is no evidence that [he] did not give his true name.” See Brief of Appellant at 6. The State does not dispute this point, but notes that the trial court never found that Mr. Jones actually gave a false name. Corporal Winfield testified he asked to see Mr. Jones's license, and that Mr. Jones gave him his name (“John Jones”) after he admitted he did not have a license. RP (10/8/2009) at 13-14.

For some reason, Mr. Jones appears to focus on Corporal Winfield's testimony that reads:

He repeatedly put his hands in his pocket even though I repeatedly asked to keep them out. He did not have an identification on him and gave a very generic name. I was not sure who I was talking to at that point.

RP (10/8/2009) at 16.⁷ However, this testimony was not material to the trial court's analysis, and the trial court never relied on the "generic name" in any of its findings and conclusions. *See* CP 50-54.

Second, Mr. Jones claims that there is no evidence that Corporal Winfield asked the defendant for his middle name and date of birth. *See* Brief of Appellant at 7. The State agrees. There was no testimony at the 3.6 hearing that Corporal Winfield ever made this inquiry. However, the mistaken finding is immaterial to the present analysis.

The practice of requesting a driver's name and license is customary when conducting a traffic stop. *See* RCW 46.61.021(2). Here, Corporal Winfield requested Mr. Jones's identification after he observed him commit three possible traffic violations. RP (10/8/2009) at 13-14. Thus, the contact/detention was lawful, *Terry*, 392 U.S. at 21-22, and Corporal Winfield properly arrested Mr. Jones after he learned that his driving privileges had been suspended. *See* RCW 46.20.342(1)(c). The trial court's mistaken finding does not alter this conclusion.

Third, Mr. Jones contends there was no evidence offered at the 3.6 hearing to support a finding that he told Corporal Winfield that his snoose container was "full of drugs." *See* Brief of Appellant at 7. The State agrees. However, the mistaken finding is not material. The 3.6 hearing

⁷ Mr. Jones incorrectly cites the record at RP (10/8/2009) at 17 for this language. *See* Brief of Appellant at 7.

addressed whether the evidence against Mr. Jones should be suppressed, not whether his statements were admissible. The trial court did not rely on this statement, which did occur, *see* RP (2/23/2010) at 16, 19, 45, when it denied the suppression motion. *See* RP (10/8/2009) at 56-60.

Fourth, Mr. Jones faults the trial court's findings because it reads Corporal Winfield discovered a "large bag" filled with methamphetamine. *See* Brief of Appellant at 7. Corporal Winfield testified:

Uh, like I stated, he had many items in his possession, one of which was a snooze (sic) container that had a baggie of suspected methamphetamine in it. I believe he had another container with suspected methamphetamine that was in it as well in his possession among other things.

RP (10/8/2009) at 19. Again, the error is immaterial. The presence of methamphetamine, in any quantity, is only relevant to whether Mr. Jones actually committed the crime. *See* RCW 69.50.4013(1). The size of the bag, or the quantity of methamphetamine, is not important to the analysis of whether the initial traffic stop and investigative detention were lawful. *See* RP (10/8/2009) at 56-60.

Fifth, Mr. Jones asserts that the trial court concluded "the window tint constituted a violation of the traffic laws." *See* Brief of Appellant at 7. Here, Mr. Jones misconstrues the record. The trial court never concluded the window tinting violated the relevant statute. *See* CP 53. Instead, the trial court's conclusion reads:

In addition, the window tinting is an infraction which the Court sees quite often and finds concerning. In making a turn or walking in front of a car, it is helpful to look at the other drivers' eyes in order to ensure they are aware of you. Tinting makes that difficult to do, especially in situations where there is an unmarked intersection and you cannot see the driver's eyes in the oncoming vehicle. There appears to be a valid safety reason behind this rule.

In this case, the officer saw the vehicle and had reasonable suspicion that an infraction had occurred and by law was permitted to investigate the infractions.

See CP 53. The trial court only explained why the law is concerned with excessive window tint. Here, the trial court concluded that the facts and circumstances allowed Corporal Winfield's "reasonable suspicion" to believe the traffic code had been violated because the windows were considerably dark. *See* RP (10/8/2009) at 8-9, 25-29, 59-60. The facts support the trial court's conclusion that the contact/detention was lawful.

Finally, Mr. Jones challenges the trial court's conclusion that "[h]ad the officer been using the stop for pretextual purposes, he probably would have used his lights to investigate." *See* Brief of Appellant at 8. The State agrees that this is not a conclusion of law. However, this is not a conclusion the trial court relied on when it denied the motion to suppress. Again, the material facts are those pertaining to Mr. Jones's improper turns and "considerably dark" windows. RP (10/8/2009) at 8-9, 23-29, 31. These facts substantially support the conclusion that "the officer saw the

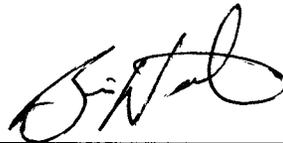
vehicle and had a reasonable suspicion that an infraction had occurred and by law was permitted to investigate the infractions.” CP 53.

While the trial court may not have used optimal language with respect to some of its findings and conclusions, substantial evidence still supports the material findings of fact and conclusions of law. This Court should affirm.

IV. CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm Mr. Jones’s conviction for unlawful possession of methamphetamine.

DATED this September 21, 2010.



Brian Patrick Wendt, WSBA #40537
Deputy Prosecuting Attorney