

NO. 42057-1-II

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**COURT OF APPEALS, DIVISION II  
STATE OF WASHINGTON**

STATE OF WASHINGTON, RESPONDENT

v.

SANTORIO BONDS, APPELLANT

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Appeal from the Superior Court of Pierce County  
The Honorable Judge Susan K. Serko

No. 09-1-03585-9

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**BRIEF OF RESPONDENT**

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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Was there sufficient evidence to support the court's findings of fact II, III, IV, and V?
2. Was the motion to suppress properly denied where the stop was lawful?
3. Was the motion to suppress properly denied where the search incident to arrest was lawful?
4. Was there sufficient evidence to prove that the defendant committed the crime of domestic violence court order violation?

B. STATEMENT OF THE CASE.

1. Procedure

The Pierce County Prosecutor's Office ("State") charged Santorio Lorenzo Bonds ("Defendant") on August 3, 2009, with the crime of domestic violence court order violation. CP 1. The case proceeded to jury trial before the Honorable Susan K. Serko. 1RP 3. A 3.5 and 3.6 hearing were held. 1 RP. The court admitted the statements challenged in the 3.5 hearing and the court denied the 3.6 motions to suppress the evidence. 1 RP 70-71.

The jury found defendant guilty as charged. CP 83; 2 RP 294.  
Defendant's offender score was 9+. CP 117-131; 3 RP 3<sup>1</sup>. Defendant was  
sentenced to a standardized range of 60 months. CP 117-131; 3 RP 16.

Defendant filed a timely notice of appeal. CP 149.

2. Facts

a. Suppression Hearing

A 3.6 hearing was held to suppress the evidence.

The court entered the following reasons for admissibility of the  
evidence with regard to the suppression hearing. CP 132-138:

FINDINGS OF FACT

I.

That on July 31, 2009, Tacoma Police officers Frisbie and Caber were working in their official capacity. Officer Frisbie was driving and Officer Caber was in the passenger seat operating a laptop computer.

II.

That on July 31, 2009, in the early afternoon a vehicle passed by Officers Frisbie and Caber. Officer Caber ran the license plate and learned that the vehicle had been sold over a year ago and the title had not been transferred within 45 days as required. At the same time, Officer Frisbie observed the defendant in the passenger seat of the car.

III.

That Officer Frisbie was not 100 percent sure it was the defendant but reasonably believed it was the defendant in the vehicle. Officer Frisbie and Caber knew the defendant from previous contacts and knew he had a felony DOC warrant at the time.

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<sup>1</sup> 3 RP refers to record proceedings of April 26, 2011.

IV.

That Officers Frisbie and Caber turned there vehicle around and contacted the vehicle for the failure to transfer violation and because the defendant had a warrant for his arrest.

V.

That the vehicle stopped and Officer Frisbie contacted the driver and Officer Caber contacted the defendant. Officer Caber recognized the defendant on site [sic] because of the prior contacts and knew he was Santorio Bonds.

VI.

That Officer Caber asked the defendant for identification. The defendant said he did not have identification. At the time of this question and answer, the defendant was still seated in the vehicle and was not handcuffed.

VII.

That after the conversation about identification, Officer Caber detained the defendant in handcuffs. Officer Caber then confirmed that the defendant had a DOC warrant for his arrest. Officer Caber would also learn from a records check that the defendant was the respondent of a valid, served no contact order. The order prohibited contact with Surina Crumble.

VIII.

That at the same time Officer Caber was contacting the defendant; Officer Frisbie contacted the driver and identified her as Surina Crumble.

IX.

That a record check revealed that Surina Crumble's license to drive was suspended in the 3rd degree.

X.

That Officer Caber would later contact Surina Crumble and recognized her from prior contacts with her. Officer Caber has had subsequent contacts with Surina Crumble and it was the same person as the driver.

XI.

That Surina Crumble was the protected party of the no contact order with the defendant.

XII.

That Officer Caber would later confirm that the failure to transfer title issue was a computer error from DOC and the vehicle was properly titled.

XIII.

That Officer Caber did not cite Surina Crumble with driving with a suspended license because she was the victim of a domestic violence no contact order.

XIV.

That Officer Caber identified Santorio Bonds as the defendant.

XV.

That the Court found the testimony of Caber credible.

XVI.

That the defendant had a DOC violation hearing regarding this case and at that hearing he had witnesses provide an alibi for him.

XVII.

That the current defense counsel stated in three different court documents that he was pursuing the DOC records of the alibi witnesses through a freedom of information act request.

XVIII.

That the current defense counsel, in a later court document, indicated he was ready for trial and did not indicate that he was missing DOC records.

XIX.

That the current defense counsel never requested the State to obtain the DOC records regarding the defendant's potential alibi witness.

XX.

That after the court orders, discussed in findings of fact XVII and XVIII, were filed with this court the current defense attorney was not on this case for a period of time. During that period of time, the new defense attorney requested that the State obtain the DOC records regarding the potential alibi witnesses. These records were turned over to defense as soon as they were received.

XXI.

That defense filed its CrR 3.6 and prosecutorial misconduct motions day of trial and the Court permitted the State to respond orally to the motions.

XXII.

Defense did not file a witness list in this case.

## CONCLUSIONS OF LAW

### I.

That the Court finds the State has the burden of showing the statements are admissible by a preponderance of the evidence

### II.

That the Court finds in order for Miranda to apply that the defendant must both be “in custody” and “interrogated” by police.

### III.

That the Court finds that the statement made in Findings of Fact VI was made prior to the defendant being in custody for purposes of Miranda. Miranda was not needed at this time, nor was it given. The statement is admissible. *State v. Harris*, 106 Wn.2d 784 (1986); *State v. Huynh*, 49 Wn.App. 192 (201) (1987).

### IV.

The Court finds that the Officers had a reasonable, articulable basis to stop the vehicle. The officers had a reasonable belief the defendant was in the vehicle and he had a warrant for his arrest. The officers also had a reasonable belief that the title to the vehicle had not been transferred and that was a crime. Either of these reasons provided a basis for the officers to stop the vehicle.

### V.

The Court finds that the stop in this case was not a pretextual stop. The vehicle was stopped to deal with the title issue and the defendant’s warrant. The officers had no other reason for stopping the car. *Ladson* does not apply to the case. The stop was lawful.

### VI.

The Court finds there was no prosecutorial misconduct in regards to the DOC records dealing with a potential alibi witness. Defense knew of these potential witnesses. The defendant was at the DOC hearing and knew of these potential witnesses. It was reasonable for the State to rely on defense’s numerous assertions that defense was obtaining the records. When defense made a request that the State obtain the records, it did and immediately turned the records over.

VII.

The Court finds the State is not responsible for providing any record that may be held by a different State agency. The State's responsibility is to provide discovery that is in the prosecutor's control. In this case, the State complied with its discovery obligations.

VIII.

The Court finds the defense has not shown how it is prejudiced by the alleged misconduct. The defense knew of the witnesses and could have taken steps to secure their testimony.

b. Facts at trial

On July 31, 2009, Officer Frisbie and Officer Caber were on patrol. 2 RP 145; 2 RP 172. The officers were parked southbound on McKinley Avenue and Bond's vehicle was traveling north and eastbound on McKinley Avenue. 2 RP 146; 2 RP 173. Officer Caber ran the license plate and discovered that the title had not been properly transferred. 2 RP 174; 2 RP 148. Failure to transfer title is a crime. RCW 46.12.101(6). As Officer Caber was running the license plate, Officer Frisbie recognized Bonds and realized that he had a legal reason to stop Bonds and talk to him.<sup>2</sup> 2 RP 147; 2 RP 173. These two reasons gave the officers a legal basis to stop and talk to Bonds. 2 RP 147; 2 RP 174.

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<sup>2</sup> The fact that the officers correctly believed that Bonds had a warrant for his arrest was not elicited at trial, presumably to avoid tainting him before the jury with other bad acts evidence. *See also*, 2 RP 151; 176-177 where the officer indicated that they arrested bonds for an unrelated reason, but did not further specify the reason why.

Officer Frisbie approached the driver's side of the vehicle, while Officer Caber approached Bonds who was in the front passenger seat of the vehicle. 2 RP 148; 2 RP 175-176. The officers identified the driver of the vehicle as Surina Crumble when she gave her Washington State identification card. 2 RP 178-179; 2 RP 149-150; Exhibit 2. Officer Caber recognized Bonds in the front passenger seat. 2 RP 176. Officer Caber asked Bonds for identification and Bonds said that he did not have any. 2 RP 176.

Bonds was arrested and Officer Caber searched him. 2 RP 176-177. During a search of Bonds' person, the officer discovered a Washington State identification card in his left front pants pocket. 2 RP 177. [Thus, Bonds' claim that he did not have identification constituted the crime of false statement to a public servant (RCW 9A.76.175) or obstruction of a law enforcement officer (RCW 9A.76.020).]

Officer Caber then ran a records check on Bonds. 2 RP 177. Officer Caber discovered that Bonds had a no contact order that prohibited him from having contact with Surina Crumble. 2 RP 178-179. The no contact order was in effect for five years from April 14, 2006. 2 RP 180; Exhibit 1. Defendant had signed the no contact order. 2 RP 179. For purposes of trial, Bonds stipulated that he had two previous convictions for violating such court orders. 2 RP 191.

Officer Caber identified the defendant on July 31, 2009, as well as in court. 2 RP 173.

During the defense case, defendant testified that he and Surina Crumble had been in a dating relationship. 2 RP 220. He claimed that on July, 31, 2009, he got into the car with a Cozetta Booth and they were on their way to pick up Ms. Crumble's daughter. 2 RP 223. Bonds claimed it was Cozetta Booth who was in the vehicle when the officers pulled them over, and not Surina Crumble. 2 RP 224.

However, the officers stated that they verified that the person arrested as the driver was Surina Crumble. 2 RP 150-151; 164; 181-82. *See also* 2 RP 213ff. It is worth noting that Crumble and Booth do not look physically similar, as was demonstrated at trial by providing their Department of Licensing photos to the jury. 2 RP 150, p. 234, p. 273-74; Ex. 2, Ex 6.

Bonds also testified that he believed that he did not have identification on him at the time. 2 RP 226. Bonds claimed that he did not have knowledge that he was violating a no contact order. 2 RP 226. However, Bonds did admit to signing the no contact order. 2 RP 232.

C. ARGUMENT.

1. SUFFICIENT EVIDENCE SUPPORTED THE TRIAL COURT'S FINDINGS II, III, IV, AND V.

An appellate court reviews only those findings to which error has been assigned; unchallenged findings of fact are verities upon appeal. *State v. Hill*, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994). As to

challenged factual findings, the court reviews the record to see if there is substantial evidence to support the challenged facts; if there is, then those findings are also binding upon the appellate court. *Hill*, 123 Wn.2d at 644. Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person of the truth of the finding. *Hill*, at 644. Credibility determinations are for the trier of fact and are not subject to appellate review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

A finding of fact that is erroneously denominated as a conclusion of law will be treated as a finding of fact. *Rickert v. Pub. Disclosure Comm'n*, 161 Wn.2d 843, 847, 168 P.3d 826 (2007) (citing *State v. Luther*, 157 Wn.2d 63, 78, 134 P.3d 205 (2006)). See *Hoke v. Stevens-Norton, Inc.*, 60 Wn.2d 775, 778, 375 P.2d 743 (1962). See also *Neil F. Lampson Equip. Rental & Sales, Inc v. West Pasco Water Sys., Inc.*, 68 Wn.2d 172, 174, 412 P.2d 106 (1966) (stating that where conclusions of law are incorrectly denominated as findings of fact, the court still treats them as conclusions of law).

The court reviews conclusions of law *de novo*. *State v. Smith*, 154 Wn. App. 695, 699, 226 P.3d 195 (2010) (citing *State v. O'Neill*, 148 Wn.2d 564, 571, 62 p.3d 489 (2003); *State v. Eisfeldt*, 163 Wn.2d 628, 634, 185 P.3d 580 (2008)).

The defendant argues that there is not substantial evidence to support Findings of Fact II, III, IV, V. Brief of Appellant at 15.

a. Substantial evidence supports the Findings of Fact II.

The defense challenges the court's finding of fact II. Brief of Appellant 15. In finding II, the court found:

That on July 31, 2009, in the early afternoon a vehicle passed by Officers Frisbie and Caber. Officer Caber ran the license plate and learned that the vehicle had been sold over a year ago and the title had not been transferred within 45 days as required. At the same time, Officer Frisbie observed the defendant in the passenger seat of the car.

(Findings of Fact II); CP 133.

Substantial evidence supports the finding.

Officer Caber testified that on July 31, 2009, he and Officer Frisbie ran a routine check of a license plate which indicated that the vehicle sold tag on the registration was dated for almost a year prior. 1 RP 15-16. At the same time the officers ran the license plate, Officer Frisbie believed that he recognized the front seat passenger of the vehicle as Bonds. 1 RP 18. At the time, the officers believed that Bonds had a warrant for his arrest. 1 RP 18.

Therefore, the record establishes that Officer Caber ran the license plate, noticed that the title had not been transferred within 45 days to re-title the vehicle. Although Officer Caber testified that Officer Frisbie was not 100 percent sure, Officer Frisbie did believe it enough that Bonds was the passenger in the front seat of the vehicle that they would have stopped

the car. 1 RP 29. Moreover, Officer Frisbie was correct in his belief that Bonds was the passenger, as Bonds was indeed the passenger and was arrested and booked on the warrant. 1 RP 29-30.

Because all facts and inferences are drawn in favor of the court's finding, this substantial evidence supports the court's finding II.

b. Substantial evidence supports the Findings of Fact III.

The defense challenges the court's finding of fact III. Brief of Appellant 16. In finding III, the court found:

That Officer Frisbie was not 100 percent sure it was the defendant but reasonably believed it was the defendant in the vehicle. Officer Frisbie and Caber knew the defendant from previous contacts and knew he had a felony DOC warrant at the time.

(Findings of Fact III); CP 133.

Substantial evidence supports the finding.

The specific objection by the defense appears to be a claim that nothing in the record supports the portion of the finding that states that the officers knew Bonds from previous contacts. For the reasons explained in what follows the State's position is that the court could reasonably infer that as the reason why the officers were able to recognize Bonds.

However, even if the court were to hold the record insufficient to support that portion of the finding, it is irrelevant to the validity of the

remainder of the finding. More specifically, the record does support the finding that the officers recognized the defendant and believed he had a warrant. Insofar as it does, any insufficiency as to additional surplus facts is irrelevant because the portion of the finding that is supported by the facts is also sufficient to establish probable cause to stop Bonds.

Nonetheless, it is the State's position that the court could reasonably infer the officers' familiarity with and ability to recognize Bonds from their having had prior contacts with him.

Officer Frisbie believed that he recognized Bonds sitting in the front seat passenger of the vehicle. 1 RP 18. Officer Caber had recognized defendant from previously looking at a photo. 1 RP 19. At the time that Bonds was identified, the officers believed that Bonds had a warrant for his arrest. 1 RP 18, In. 12-17; *see also* 2 RP 147, In. 17-23. Additionally, the officers understood that Bonds had a warrant for his arrest from a DOC officer that worked with them on a daily basis and that sometimes he would give them a warrant list. 1 RP 18.

This testimony further supports an inference that at least Officer Frisbee was familiar with Bonds from prior contacts. It can be inferred that the officers knew Bonds from previous contacts because the officers were familiar enough with him to both recognize him, and believe that there was a warrant for his arrest before contacting him. 1 RP 18-19.

Because all facts and inferences are drawn in favor of the court's finding, this substantial evidence supports the court's finding III. Even if the court were to hold that there was not sufficient evidence to support that portion of the finding that claims the officers knew the defendant from prior contacts, that language is in any case surplusage and is irrelevant as to the issue of whether the officers had a lawful basis to stop and contact Bonds. The court's finding should be upheld on that reason as well.

c. Substantial evidence supports the Findings of Fact IV.

The defense challenges the court's finding of fact IV. Brief of Appellant 17. In finding IV, the court found:

The Court finds that the Officers had a reasonable, articulable basis to stop the vehicle. The officers had a reasonable belief the defendant was in the vehicle and he had a warrant for his arrest. The officers also had a reasonable belief that the title to the vehicle had not been transferred and that was a crime. Either of these reasons provided a basis for the officers to stop the vehicle.

(Finding of Fact IV); CP 133.

Substantial evidence supports the finding.

The officers had a reasonable belief that Bonds was in the vehicle because at the time the vehicle's license plate was scanned, Officer Frisbie believed that he recognized Bonds sitting in the front seat passenger of the

vehicle. 1 RP 18. The officers also believed that Bonds had a warrant for his arrest. 1 RP 18.

Independently, the officers had a reasonable belief that the title to the vehicle had not been transferred, which was a crime, because when Officer Caber ran a license check, it returned that the vehicle sold tag on the registration was dated for almost a year prior. 1 RP 15-16.

Therefore, the record establishes that the officers had two separate and independent reasonable bases to stop the vehicle. Because all facts and inferences are drawn in favor of the court's finding, this substantial evidence supports the court's finding IV.

d. Substantial evidence supports the Findings of Fact V.

The defense challenges the court's finding of fact V. Brief of Appellant 18. As to its finding V, the court found:

That the vehicle stopped and Officer Frisbie contacted the driver and Officer Caber contacted the defendant. Officer Caber recognized the defendant on site [sic] because of the prior contacts and knew he was Santorio Bonds.

(Findings of Fact V); CP 133.

Substantial evidence supports the finding.

After the officers pulled over the vehicle, Officer Caber approached the passenger side of the vehicle and Officer Frisbie contacted that driver side. 1 RP 19. Officer Caber recognized Bonds from a photo

of Bonds that he had previously seen. 1 RP 19. Given the testimony that Officer Frisbie also recognized Bonds, the court could reasonably infer the officers recognized Bonds from prior contacts. 1 RP 18-19.

Therefore, the record establishes that there was sufficient evidence that Officer Frisbie contacted the driver and Officer Caber contacted Bonds, and that Officer Caber recognized Bonds. Because all facts and inferences are drawn in favor of the court's finding, this substantial evidence supports the court's finding V.

Even if the court were to hold that the record does not support the portion of the finding that, Officer Caber recognized the defendant on sight "because of prior contacts," that portion of the finding is surplusage. Regardless of how Officer Caber recognized Bonds, he did recognize him, and that portion of the finding is supported by substantial evidence. Whether he did so from prior contacts with Bonds, reviewing photos, or for some other reason is irrelevant to the issue of whether the officers had a valid basis to support in investigative stop of the vehicle. The fact is they recognized Bonds and believed he had a warrant, and that was sufficient to justify stopping the vehicle and further investigating.

When all facts and inferences are drawn in favor of the court's findings, there is substantial evidence to support the court's findings II to V.

2. THE TRIAL COURT PROPERLY DISMISSED  
THE MOTION TO SUPPRESS BECAUSE THE  
STOP OF THE VEHICLE WAS LAWFUL.

The defendant alleges that there was no factual basis or legal basis for the officers to stop the vehicle that defendant was a passenger in. Brief of Appellant 7-8. Specifically, defendant alleges that it was unlawful for the officers to stop the vehicle on the basis that they believed that the title had not been transferred within 45 days of the sale. Brief of Appellant 8. The defense also challenges the officers' belief that they observed Bonds and that they believed there was a warrant for his arrest as a basis to stop the car. Brief of Appellant 10. The defendant further alleges that the stop of the vehicle based on the apparent failure to transfer title was pretextual because its real purpose was to confirm the identity of Bonds. Brief of Appellant 10.

However, the officers had two valid independent bases to stop the vehicle: The apparent failure to transfer title, and the recognition of Bonds and the belief that there was a warrant for his arrest, which there in fact was. Nor was the stop of the vehicle pretextual, merely because the officers discovered both bases for the stop roughly contemporaneously.

It is a well established exception to the warrant requirement under both the Fourth Amendment and the Washington Constitution, Article I § 7, that an officer may conduct an investigative detention where there is a substantial possibility that criminal activity has occurred or is about to

occur. *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). *See also State v. Armenta*, 134 Wn.2d 1, 20, 948 p.2d 1280 (1997) (holding *Terry* stops permissible under the Washington Constitution); *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Probable cause is not required for a *Terry* stop because it is significantly less intrusive than an arrest. *Brown v. Texas*, 443 U.S. 47, 50, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979); *Kennedy*, 107 Wn.2d at 6. *See also State v. Mendez*, 137 Wn.2d 208, 223, 970 P.2d (1999) (overturned on other grounds by *Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007)).

It is also well established that an officer may conduct a *Terry* stop of a vehicle where the officer reasonably suspects, based upon specific objective facts, that the person stopped was engaged in a traffic violation. *State v. Day*, 161 Wn.2d 889, 896, 168 P.3d 1265 (2007) (citing *State v. Duncan*, 146 Wn.2d, 166, 172-74, 43 P.2d 513 (2002)). Under the Washington Constitution, the question of whether an officer had grounds for a *Terry* stop is tested against the totality of the circumstances, including the officer's subjective belief. *Day*, 161 Wn.2d at 896 (citing *State v. Ladson*, 138 Wn.2d 343, 358-59, 979 P.2d 833(1999)). *See also State v. O'Neill*, 148 Wn.2d 564, 577, 62 P.3d 489 (2003) (stating that an officer's reasonable suspicions are relevant once a seizure occurs, [emphasis in original] and going on to state in note 1 that *Ladson* did not establish a broad principle that the officer's subjective motivation must be

considered in determining the reasonableness of a police intrusion [amounting to less than a seizure]).

Unlike an investigative detention, or *Terry* stop, in order to arrest a person, or search areas in which a person has an expectation of privacy, officers are required to have probable cause to believe a crime has been committed. See *State v. Wright*, 155 Wn. App. 537, 554, 230 P.3d 1063 (2010) (citing *State v. Grande*, 164 Wn.2d 135, 142, 187 P.3d 248 (2008)).

Probable cause requires “sufficient facts to lead a reasonable person to conclude that there is a probability that the defendant is involved in criminal activity.” *State v. Gentry*, 125 Wn.2d 570, 607, 888 P.2d 1105, cert. denied, 516 U.S. 843 (1995). See also *State v. Bellows*, 72 Wn.2d 264, 266, 432 P.2d 654 (1967) citing *State v. Green*, 70 Wn.2d 955, 958, 425 P.2d 913 (1967). “An officer need not have knowledge of evidence sufficient to establish guilt beyond a reasonable doubt, but only reasonable grounds for suspicion coupled with evidence of circumstances to convince a cautious or disinterested person that the accused is guilty.” *State v. Massey*, 68 Wn.2d 88, 89, 411 P.2d 422 (1966). Facts that, standing alone, would not support probable cause can do so when viewed together with other facts. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Additionally, when evaluating the determination of probable cause, “[t]he experience and expertise of an officer may be taken into account ... In fact, what constitutes probable cause is viewed from the

vantage point of a reasonably prudent and cautious police officer.” *State v. Remboldt*, 64 Wn. App. 505, 510, 827 P.2d 505, *review denied*, 119 Wn.2d 1005 (1992).

- a. The Stop Of The Vehicle Was Proper Where The Officers Had A Reasonable Basis To Believe That The Vehicle Title May Not Have Been Properly Transferred Notwithstanding *State v. Walker*, which was wrongly decided.

Under a published opinion issued by a panel of Division III of the court of appeals, the majority held that the officers in that case did not have authority to stop the vehicle for the crime of failure to transfer title. *State v. Walker*, 129 Wn. App. 572, 119 P.3d 399 (2005), *review denied*, 156 Wn.2d 1036, 134 P.3d 1170 (2006). The majority in *Walker* held that this is because the misdemeanor crime of failure to transfer title is not a crime committed in the officer’s presence and therefore not one for which the officer can arrest. *Walker*, 129 Wn. App. at 575-78. Without citing any authority for that proposition, the majority in *Walker* went on to reason that if the officer could not arrest for the offense, the officer also could not conduct an investigative detention to investigate the crime. *Walker*, 129 Wn. App. at 577. The court did attempt to rely on RCW 46.64.015 which states that “[a]n officer may not serve or issue any traffic citation or notice for any offense or violation except either when the offense or violation is committed in his or her presence or when a person

may be arrested pursuant to RCW 10.31.100.” However, that provision does not preclude an officer from stopping a vehicle to investigate a possible crime and then filing a report with the prosecutor’s officer for later charging by way of a summons. Although the officer may not have authority to arrest anyone for a violation, an investigation may be warranted to determine whether a crime has in fact been committed and a case can be referred for charging without an arrest of the suspect. *See, e.g., Walker*, 129 Wn. App. at 578ff (Brown dissenting). Thus, contrary to the implicit holding of the majority in *Walker*, a *Terry* stop is not justified solely by an officer’s need to issue a citation in a traffic case, an investigative detention may do so as well.

A *Terry* stop to investigate a misdemeanor not committed in the officer’s presence is warranted because an officer may still issue a complaint for a misdemeanor even if the officer did not personally witness the crime. *See State v. Crouch*, 12 Wn. App. 472, 530 P.2d 344 (1975) (holding that RCW 46.64.015 does not limit an officer’s authority to file a complaint); see also CrRLJ 2.1(c) (authorizing any person to initiate a criminal action).

Here, the officers ran a routine check of the license plate. I RP 16. It showed that a vehicle sold tag on the car was dated for almost a year prior. I RP 16. When a person transfers the title of a vehicle, the new owner is required to re-title the vehicle in the new owner’s name. I RP 17. Failure to do so is a misdemeanor. I RP 17; RCW 46.12.650. The officer

indicated that when the records check revealed that a vehicle was sold, it is not in and of itself dispositive that a crime was committed because there can be circumstances where the title was properly transferred and the records fail to accurately reflect that. I RP 17-18. At the time that Officer Caber ran the record check it caused him to believe that title may not have been transferred as required by law. I RP 18.

Based on the records check, the officers had a reasonable suspicion that a crime may have been committed. However, it was necessary to stop the vehicle to verify whether or not such a crime actually had occurred. Accordingly, the *Terry* stop of the vehicle was lawful.

The defendant also seeks to rely upon *State v. Green*. Brief of Appellant 8-9 (citing *State v. Green*, 150 Wn.2d 740, 742, 82 P.3d 239 (2004)). However this case is distinguishable from *Green*. In *Green*, the defendant was arrested for a misdemeanor, which was an unlawful arrest because Green did not commit the misdemeanor in the presence of the officers. *Green*, 150 Wn.2d at 742. The drug evidence for which Green was ultimately charged and convicted was obtained as the result of a search of Green's person incident to her unlawful arrest. *Green*, 150 Wn.2d 740. As a result, the evidence obtained in *Green* was the fruit of the poisonous tree insofar as it was a direct result of the unlawful arrest. See *Green*, 150 Wn.2d 741 n. 1, 744.

In contrast, here the driver was not unlawfully arrested. Rather, the vehicle was stopped because the officers had a reasonable basis to

further investigate the crime of failure to transfer title. Upon contacting the vehicle, Bonds was lawfully arrested on an outstanding warrant, and the driver was lawfully arrested for driving on a suspended license. The officers then determined that Bonds was the subject of a no contact order with regard to the driver. Because there was no unlawful arrest here, there was also no evidence that was obtained because of an unlawful arrest. Accordingly, this case does not fall under *Green*.

Here, the officers had a reasonable suspicion that the crime of failure to transfer title had been committed and were entitled to stop the vehicle and further investigate that crime. Because *Walker* was wrongly decided, this court should not follow it. Officers are entitled to investigate a crime and file a complaint or make a report to the prosecutor's office so that they can do so. Therefore, this court should affirm the validity of the stop to investigate the crime of failure to transfer title.

Even if the court were to hold that the failure to transfer title did not justify the stop, the stop was nonetheless justified by the need to contact Bonds regarding the warrant the officers believed existed for his arrest.

b. The Stop Of The Vehicle Was Proper Where The Officers Believed They Recognized Bonds And Believed That He Had A Warrant For His Arrest.

Where an officer has reason to believe that the occupant of a vehicle has warrants for their arrest, it creates a reasonable basis to stop the vehicle and further investigate. See *State v. Bliss*, 153 Wn. App. 197, 204, 222 P.3d 107 (2009).

Similarly, an officer may stop a vehicle where an officer recognizes the driver and has reason to believe the driver's license is suspended. See *State v. Harlow*, 85 Wn. App. 557, 933 P.2d 1076 (1997).

Further, even when an officer does not recognize the driver, but the is able to determine via a records check that the registered owner of a vehicle has a suspended license, the officer has a reasonable basis to conduct a *Terry* stop of the vehicle to determine whether the driver is the registered owner and suspended. *State v. Phillips*, 126 Wn. App. 584, 588, 109 P.3d 470 (2005); see also *State v. Penfield*, 106 Wn. App. 157, 22 P.3d 293 (2001). The officer need not first verify that the driver matches the physical description of the owner. *Phillips*, 126 Wn. App. at 588. However, the officer must immediately terminate such a stop once the officer has an affirmative reason to believe that the driver is not the registered owner, e.g. officer sees that the driver is a male, but the registered owner is a female, etc. *Phillips*, 126 Wn. App. at 588 (citing *Penfield*, 106 Wn. App. at 162).

Here, the officers believed the passenger was Bonds and that he had a warrant for his arrest. This recognition occurred almost contemporaneously with the records check that revealed that the title may not have been transferred within 45 days. The officers recognition of Bonds and their belief that he had a warrant for his arrest served as a valid independent basis to stop the vehicle. Accordingly, the court should affirm the trial court's determination that the stop of the vehicle was lawful and its denial of the motion to suppress the evidence.

c. The Stop Of The Vehicle Was Not Pretextual Where It Was Supported By Two Independent Bases That The Officers Became Aware Of At About The Same Time

The Washington Constitution does not tolerate pretextual stops, unlike the United States Constitution. *Day*, 161 Wn.2d at 896-97 (contrasting *Whren v. United States*, 517 U.S. 806, 813-16, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996), with *State v. Ladson*, 138 Wn.2d 343, 358-59, 979 P.2d 833 (1999). *See also Ladson*, 138 Wn.2d at 350. A stop is pretextual if the officer stops a vehicle to conduct a speculative criminal investigation that is unrelated to the driving and not for the purpose of enforcing the traffic code. *State v. Montes-Malindas*, 144 Wn. App. 254, 256, 182 P.3d 999 (2008) (citing *Ladson*, 138 Wn.2d at 349).

Here, the stop was not pretextual in order to contact Bonds. Rather, the officers' recognition of Bonds and belief that he had a warrant

provided a separate and independent basis to stop the vehicle and contact Bonds.

In *State v. Wright*, an officer stopped Wright for driving his vehicle without headlights after sunset. *State v. Wright*, 155 Wn. App. 537, 542, 230 P.3d 1063 (2010). On appeal, Wright argued that the court erred in denying his motion to suppress because the stop of his vehicle was unlawful and alternatively, that the stop was a pretext. *Wright*, 155 Wn. App. at 543. The court held that the stop was lawful because the facts and circumstances warranted the stop where Wright was driving without his headlights in the dark. *Wright*, 155 Wn. App. at 558. In addition, Wright argued that the stop was pretextual, claiming that the real reason for the stop was to investigate suspicious criminal activity and not to enforce a traffic code. *Wright*, 155 Wn. App. at 558. The court held that an officer may stop a vehicle to enforce a traffic infraction even if the officer has suspicion of criminal activity. *Wright*, 155 Wn. App. at 559.

Here similar to *Wright*, based on the facts and circumstances, the officers had a reasonable basis to stop the vehicle that Bonds was in. The officers were running routine record checks on vehicles when they ran a check on the vehicle that Bonds was in and discovered that the title had not been properly transferred over, which was a crime. 1 RP 25; RCW 46.12.101(6). In addition, Officer Frisbie recognized Bonds and believed he had a warrant for his arrest. 1 RP 18. Based on these two reasons, the officers decided to stop the vehicle. 1 RP 25-26. Therefore, based on the

facts and circumstances of the case, it was reasonable for the officers to stop the vehicle.

3. THE COURT PROPERLY DENIED THE MOTION TO SUPPRESS BECAUSE THE SEARCH INCIDENT TO ARREST WAS LAWFUL.

The court should be aware that the Washington Supreme Court is currently considering whether the “evidence of the crime of arrest” exception for warrantless searches of a vehicle incident to arrest applies in Washington. *State v. Snapp*, No. 84223-0. *Snapp* is a consolidated case that was argued on May 19, 2011. Additionally, on November 21, 2011 the Supreme Court accepted review of *State v. Byrd*, No. 86399-7. In *State v. Byrd*, a panel of Division III of the court of appeals held that officers could not search a purse incident to the arrest of a suspect even though in a prior opinion Div. III had held to the contrary. *State v. Byrd*, 162 Wn. App. 612, 258 P.3d 686 (2011) (rejecting *State v. Johnson*, 155 Wn. App. 270, 281, 229 P.3d 824, review denied, 170 Wn.2d 1006, 245 P.3d 227 (2010)).

The Supreme Court’s opinions on at least *Snapp*, and possibly *Byrd* as well are likely to control the outcome on this issue.

Bonds claims the search resulting in the finding of the driver’s license exceeded the scope of the search incident to arrest. Brief of

Appellant 12. Bonds goes on to claim that a search incident to arrest is “permissible only to remove any weapons the arrestee might seek to use in order to resist arrest or effect and escape and to avoid destruction of evidence for which he is arrested.” Brief of Appellant 19. (quoting *State v. Ringer*, 100 Wn.2d 686, 701, 674 P.2d 1240 (1983)).

a. It Is Well Established That Incident To A Suspect’s Lawful Arrest Officers May Search Items With The Suspect.

That an officer may search a suspect incident to a lawful arrest has long been the established law in Washington. See *State v. Britton*, 137 Wash. 360, 361-65, 242 P. 377 (1926); *State v. Gramps*, 146 Wash. 509, 263 P. 951 (1928). Indeed, it was so well established in even these earliest cases that refer to it as “search incident to arrest,” that the court in *Gramps* took the doctrine for granted, merely noting that the search incident to arrest was entirely justified under the repeated holdings of the court, without citing to any prior authority. See *State v. Gramps*, 146 Wash. 509, 512, 263 P. 951 (1928).

This rule continues to be applied by the courts of Washington. See *State v. Olson*, 164 Wn. App. 187, 262 P.3d 828 (2011); *State v. Ortega*, 159 Wn. App. 889, 894, 248 P.3d 1062 (2011).

However, those cases were limited to searches of vehicles incident to arrest. While that area of the law under both the state and federal constitutions has undergone substantial changes, differences appear to persist at least as to the search of a vehicle incident to arrest, although those differences may not be the same as what was identified by earlier caselaw. See, e.g., *Arizona v. Gant* and its Washington progeny. *Arizona v. Gant* 556 U.S. 332, 129 S. Ct. 1710, 173 L. Ed. 2d 485 (2009); *State v. Patton*, 167 Wn.2d 379, 219 P.3d 651 (2009); *State v. Buelna Valdez*, 167 Wn.2d 761, 224 P.3d 751 (2009); *State v. Afana*, 169 Wn.2d 169, 233 P.3d 879 (2010). This case does not involve the search of a vehicle incident to arrest, however the possible changes wrought by *Gant* are discussed in what follows.

It is well established under Washington case law that incident to a lawful arrest officers may search those items that are “immediately associated with the person.” *State v. Johnson*, 155 Wn. App. 270, 229 P.3d 824 (2010). Nonetheless, in a published split opinion, at least one panel of the court of appeals has disagreed with this standard and has claimed to have abrogated it. *State v. Byrd*, 162 Wn. App. 612, 616, 258 P.3d 686 (2011) (holding that an officer may not without a warrant, search an object that the arrestee cannot reach at the time of the search). However, the court of appeals has no authority to overrule *State v. Smith*

which was issued by the Supreme Court and remains the controlling law on this issue. *Smith*, 165 Wn.2d 511.

b. The Changes Wrought By *Arizona v. Gant* Do Not Support A Change In The Existing Washington Case Law.

The defense argument is premised upon the changes wrought by *Arizona v. Gant*, following which, the Washington Supreme Court has adopted language that could be construed to limit any search incident to arrest (and not just the search of a vehicle) only to those areas a defendant can readily access to pose a threat to officer safety, or to destroy evidence. *See State v. Patton*, 167 Wn.2d 379, 219 P.3d 651 (2009). The defense argument is that by extension, once a defendant has been handcuffed and secured in a patrol car, officers may no longer conduct a search of items that were immediately associated with the person because “a search incident to arrest is solely for the purpose of gaining ‘control over a weapon or destroyable evidence of the offense prompting the arrest when those risks are present.’” Brief of Appellant, p. 12. (Quoting *Buelna Valdez*, 167 Wn.2d at 769).

One term after the U.S. Supreme Court issued its opinion in *Terry v. Ohio*, it issued its opinion in *Chimel v. California*, 395 U.S. 752, 89 S. Ct. 2034, 23 L. Ed. 2d 685 (1969). In *Chimel*, the court held that incident

to the arrest of a suspect, the Fourth Amendment permitted police officers to conduct a warrantless search of the area under a suspect's immediate control into which a suspect might reach to either grab a weapon or to conceal or destroy evidence. *Chimel*, 395 U.S. at 763-766.

The court in *Chimel* noted that its holding was:  
Entirely consistent with the recognized principle that, assuming the existence of probable cause, automobiles and other vehicles may be searched without warrants "where it is not practicable to secure a warrant because the vehicle can be quickly moved out of the locality or jurisdiction in which the warrant must be sought.

*Chimel*, 395 U.S. at 764, n. 9 (quoting *Carroll v. United States*, 267 U.S. 132, 153, 45 S. Ct. 280, 69 L. Ed. 543 (1925) and citing *Brinegar v. United States*, 338 U.S. 160, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949)).

In *New York v. Belton*, the court held that where a police officer has made a lawful custodial arrest of the occupant of a vehicle, the officer may undertake a search of the passenger compartment without violating the Fourth Amendment as a contemporaneous incident of arrest. *See Thornton v. United States*, 541 U.S. 651, 617, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004) (citing *New York v. Belton*, 453 U.S. 454, 101 S. Ct. 2860, 69 L. Ed. 2d 768 (1981)).

In *Thornton v. United States*, the court interpreted *Belton* broadly and held that where an arrestee is a recent occupant of a vehicle, officers may search the vehicle incident to the arrest. *Thornton*, 541 U.S. at 623-

24. The court based this standard in part on “[t]he need for a clear rule, readily understood by police officers and not depending upon differing estimates of what items were or were not within reach of an arrestee at any particular moment...” *Thornton*, 541 U.S. at 622-23.

However, significantly in *Thornton*, Justice Scalia issued a concurring opinion in which he argued that the court’s opinion in *Thornton* stretched the doctrine of search incident to arrest beyond the breaking point. *Thornton*, 541 U.S. at 625 (Scalia concurring). In his concurrence, Justice Scalia argued that where in practice the vehicles are not searched until after arrestees are detained in handcuffs and placed in the back of a patrol car, there is no meaningful risk of the arrestee accessing the passenger compartment of the vehicle to obtain a weapon (or destroy evidence). *Thornton*, 541 U.S. at 625-28 (Scalia concurring). Justice Scalia instead argued that the search incident to arrest should be more correctly justified based upon a general interest in gathering evidence relevant to the crime for which the suspect had been arrested. *Thornton*, 541 U.S. at 629 (Scalia concurring).

Further, in *Robinson*, the United States Supreme Court’s held that in evaluating the propriety of a search incident to arrest, it is not necessary to litigate in each case whether one of the reasons supporting authority for a search incident to arrest was present. *United States v. Robinson*, 414

U.S. 218, 235, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973) (holding that the courts do not look to whether the search supported one of the underlying reasons of officer safety or preservation of evidence).

The authority to search the person incident to a lawful custodial arrest, while based upon the need to disarm and discover evidence, does not depend on what a court may later decide was the probability in a particular arrest situation that weapons or evidence would in fact be found upon the person of the suspect. A custodial arrest of a suspect based upon probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.

*Robinson*, 414 U.S. at 235.

Further, in *Knowles v. Iowa*, the court emphasized that, “[T]he danger to the police officer flows from the fact of the arrest, and its attendant proximity, stress, and uncertainty, and not from the grounds for arrest.” *Knowles v. Iowa*, 525 U.S. 113, 116, 119 S. Ct. 484, 142 L. Ed. 2d 492 (1998) (quoting *United States v. Robinson*, 414 U.S. 218, 234, n. 5, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973)).

Where Bonds here argues the court should evaluate the bases of threats to officer safety or the destruction of evidence, his argument is directly contrary to this authority. Moreover, no Washington case has rejected the standard in *Robinson*, or held that the search of a person

incident to arrest must be evaluated by whether a threat to officer safety or the destruction of evidence actually existed.

Ultimately, in *Thornton*, the United States Supreme Court held that where a person was a recent occupant in immediate control of the car at the time of arrest, the officer is entitled to conduct a search incident to arrest. *Thornton*, 541 U.S. 651, 617, 124 S. Ct. 2127, 158 L. Ed. 2d 905 (2004).

In 2009 the United States Supreme Court issued its opinion in *Arizona v. Gant*, 556 U.S. 332, 29 S. Ct. 1710, 173 L. Ed. 2d 485 (2009) which significantly limited what had widely been considered to be the established law with regard to the ability of officers to conduct a warrantless search of a vehicle incident to the arrest of an occupant. The *Gant* opinion did two things relevant here. First it reversed the expansion to vehicles of the warrantless search incident to arrest whenever a defendant is handcuffed and detained in the back of a patrol car at the time of the search. Second, *Gant* added what it referred to as a new exception to the warrant requirement that permitted officers to search the vehicle for evidence of the crime of arrest. The standard adopted by the Supreme Court in *Gant* was more restrictive of vehicle searches than the Washington Supreme Court had been under Article I § 7 prior to the issuance of *Gant*.

The Washington Supreme Court first considered the affect of *Gant* on Washington law in *State v. Patton*, 167 Wn.2d 379, 219 P.3d 651 (2009). Rather than following *stare decisis* and accepting that the Fourth Amendment provided greater protection than article I § 7, the Washington Supreme court undertook an independent analysis of the search of a vehicle incident to the arrest of an occupant under Article I § 7 in light of *Gant*. The court in *Patton* then abandoned what had been the established precedent in Washington and returned to the standard set forth in an earlier Washington case, *State v. Ringer*, 100 Wn.2d 686, 674 P.2d 1240 (1984).

In *Ringer*, the court stated the following:

Based on our understanding of Const. art. 1, § 7, we conclude that, when a lawful arrest is made, the arresting officer may search the person arrested and the area within his immediate control. See *State v. Michaels*, *supra*. A warrantless search in this situation is permissible only to remove any weapons the arrestee might seek to use in order to resist arrest or effect an escape and to avoid destruction of evidence by the arrestee of the crime for which he or she is arrested.

*Ringer*, 100 Wn.2d at 699.

This language was picked up in *Patton* and its progeny.

Today we hold that the search of a vehicle incident to the arrest of a recent occupant is unlawful absent a reasonable basis to believe that the arrestee poses a safety risk or that the vehicle contains evidence of the crime of arrest that could be concealed or destroyed, and that these concerns exist at the time of the search.

*Patton*, 167 Wn.2d at 395. See also *State v. Buelna Valdez*, 167 Wn.2d 761, 779, 224 P.3d 751 (2009) (“There was no showing that a delay to obtain a warrant would have endangered officers or resulted in evidence related to the crime of arrest being concealed or destroyed.”); *State v. Afana*, 169 Wn.2d 169, 177, 233 P.3d 879 (2010).

Unfortunately, much of the analysis in *Ringer* is flawed where its use of many of the earlier cases is not accurate. Rather than review all those problems here, it is sufficient to refer to Justice Durham’s concurring split opinion in *State v. Stroud*, which gives an accurate review of how the court in *Ringer* misapplied many of the cases it relied upon and thereby adopted a flawed legal analysis. See *State v. Stroud*, 106 Wn.2d 144, 155-59, 720 P.2d 436 (1986) (Durham, J. concurring in the result). Not discussed by Justice Durham, (because the issue was not properly before the court) but particularly relevant in this case is the fact that court in *Ringer* conflates the exception permitting a warrantless search incident to arrest for evidence of the crime of arrest with the exigent circumstance exceptions to the warrant requirement to protect officer safety and prevent the destruction of evidence.

The issue in this case is the direct result of that erroneous conflation of the two exceptions in *Ringer*. The result of that conflation is

that the language from *Ringer* improperly imposes a higher and improper standard on the State than exists under either exception alone.

It is the State's position that the "evidence of the crime of arrest" exception is a separate exception that independently authorizes the search of the backpack.

A thorough analysis of the jurisprudential origins and underpinnings of the search incident to arrest rule are reviewed in detail in LaFave, Wayne, R, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT, 4th ed., c. 1994, 2011 § 5.2(b)ff, §5.5(a)ff. For the sake of expedience, that discussion is not repeated here.

The central issue of the analysis of LaFave as cited above, at least as it pertains to this case is that it was possible to infer from the ruling in *Chimel* that once a suspect is handcuffed and access to a container has been removed the search incident to arrest is no longer justified because the container is no longer within the arrestee's immediate control. See LaFave, § 5.5(a) (citing *Chimel* 395 U.S. 752. Notwithstanding this possible inference from the opinion in *Chimel*, the pre-*Chadwick* cases routinely allowed the search of a container after the defendant was safely detained. LaFave, § 5.5(a), p. 211-213 (citing *United States v. Chadwick*, 433 U.S. 1, 97 S. Ct. 2476, 53 L. Ed. 2d 538 (1977), *overturned by*, *California v. Acevedo*, 500 U.S. 565, 579, 111 S. Ct. 1982, 114 L. Ed. 2d

619 (1991)). Indeed, as cited in section a. above, early Washington cases also did not prohibit such searches after the defendant was under arrest.

The courts have always recognized that a search incident to arrest extends to those things in an arrestee's possession, those things "immediately associated with the person." They have allowed searches of such items because a search is the only reasonable thing that can be done with them before any further action is taken.

c. Exigent Circumstances Is A Separate Exception To The Warrant Requirement From Search of A Vehicle Incident To Arrest.

It has long been established that a warrantless search may be conducted where there are exigent circumstances. *Smith*, 165 Wn.2d at 517; *State v. Cardenas*, 146 Wn.2d 400, 405, 47 P.3d 127, 57 P.3d 1156 (2002); *State v. Wolfe*, 5 Wn. App. 153, 156, 486 P.2d 1143 (1971). See also *State v. Young*, 76 Wn.2d 212, 214, 455 P.2d 595 (1969) (holding that officers who had a warrant, but failed to comply with service requirement were justified by exigent circumstances). Some such circumstances include when the officers have a good faith belief that they or someone else is at risk of bodily harm, when the person to be arrested is fleeing, or attempting to destroy evidence. *Ker v. State of Cal.*, 347 U.S. 23, 39-40, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963); *Miller v. U.S.*, 357

U.S. 301, 307, 78 S. Ct. 1190, 2 L. Ed. 2d 1332 (1958). In Washington, the court allowed a warrantless search incident to arrest based on exigent circumstances in *State v. Baker*, 4 Wn. App. 121, 125, 480 P.2d 778 (1971) (relying on *Chimel* for the position that a warrantless search incident to arrest was valid based on the exigent circumstances of risk of flight or destruction of evidence). Noteworthy is that the concern for destruction of evidence was not expressly limited to the crime of arrest, much like the language of the current version of the rule under *Gant*. See, e.g., *State v. Campbell*, 15 Wn. App. 98, 547 P.2d 295 (1976) (where no one had been arrested, the court held that search of apartment to investigate recent burglary, which search led to the discovery of marijuana plants, was valid given the exigent circumstances of the burglary).

Thus, the purpose behind exigent circumstances exception applies to the reasonable risk of destruction of evidence of any crime, and is not limited to evidence of the crime of arrest, as is shown by the several cases referenced where there was no arrest at all at the time of the search. Moreover, the reasoning behind exigent circumstances applies equally to the destruction of evidence by third parties who are not under arrest. See e.g., *Young*, 76 Wn.2d at 214ff (officers serving search warrant failed to comply with service requirements where once they announced the heard screaming, yelling, and the sound of occupants scurrying and running

throughout house so that officers entered within seconds, resulting in a race for the bathroom with everyone ending up there). *See also* H. Matthew Munson, *State v. Parker: Searching The Belongings Of Nonarrested Vehicle Passengers During A Search Incident To Arrest*. 75 Wash. L. Rev. 1299 (2000).

For example, if the officer has arrested the driver of a vehicle for driving on a suspended license and locked that driver in the back of a patrol car, but upon return to the vehicle observes an unarrested passenger attempting to destroy evidence that the driver possessed narcotics, exigent circumstances would entitle the officer to seize the narcotics evidence to prevent its destruction even though the passenger was not at that point under arrest.

Compare this example to the facts in *State v. Huckaby*, 15 Wn. App. 280, 549 P.2d 35 (1976). In *Huckaby*, officers entered the residence with permission in order to conduct a marijuana transaction and to arrest the defendant for an earlier transaction. *Huckaby*, 15 Wn. App. at 282. After the defendant was under arrest the defendant's wife stood next to an open pantry in the kitchen and appeared to have her hand in a sack. *Huckaby*, 15 Wn. App. at 282. Officers told her to keep her hands out of the sack, and one got up and looked into the pantry for weapons and observed what appeared to be bag of marijuana stems and a bag of

However, the essential point is that exigent circumstances do not depend on arrest. This is also why exigent circumstances are often equated with the emergency exception, and not search incident to arrest. See *State v. Smith*, 165 Wn.2d 511, 519, 199 P.3d 386 (2009) (discussing *State v. Smith*, 137 Wn. App. 262, 269, 153 P.3d 199 (2007)); *Hocker v. Woody*, 95 Wn.2d 822, 631 P.2d 372 (1981) (discussing “hot pursuit” as an emergency exception). See also *State v. Steinbrunn*, 54 Wn. App. 506, 509, 774 P.2d 55 (1989) (discussing the progressive diminution of blood alcohol level over time as an “emergency”); *State v. Patterson*, 112 Wn.2d 731, 736, 774 P.2d 10 (1989) (quoting *State v. Smith*, 88 Wn.2d 127, 135, 559 P.2d 970 (1977)).

Understanding that the jurisprudential bases of exigent circumstances operate independently of search incident to arrest makes it possible to understand the State’s second point. That is that the traditional exception for a search incident to arrest for evidence of the crime of arrest is a separate and distinct exception from the exigent circumstance of preventing the destruction of evidence.

d. The Search of a Vehicle Incident To Arrest Is Its Own Exception To The Warrant Requirement.

In *United States v. Robinson*, the court recognized that the general exception for search incident to arrest has historically been formulated into two distinct propositions. *United States v. Robinson*, 414 U.S. 218, 224, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973). First, the search of a person by virtue of lawful arrest. *Robinson*, 414 U.S. at 224. Second, search of the area within control of the arrestee. *Robinson*, 414 U.S. at 224. The first is a search incident to arrest for evidence of the crime of arrest. The second is a search based upon exigent circumstances. Moreover, the dissent in *Robinson* also distinguishes between a warrantless search of the person incident to arrest and a warrantless search based upon exigent circumstances. See also *United States v. Robinson*, 414 U.S. 218, 242-43, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973) (Marshall dissenting).

One of the early cases from this state gives a particularly clear explanation of why a search incident to arrest for evidence of the crime of arrest differs from a search based upon exigent circumstances.

It has always been held that a peace officer, when he makes a lawful arrest, may lawfully, without a search warrant, search the person arrested and take from him any evidence tending to prove the crime with which he is charged. If a search may be made of the person or clothing of a person lawfully arrested, then it would follow that a search may also be properly made of his grip or suit case, which he may

be carrying. From this it seems to us to follow logically that a similar search, under the same circumstances, may be made of the automobile of which he has possession and control at the time of his arrest. This is true because the person arrested has the immediate physical possession, not only of the grips or suitcases which he is carrying, but also of the automobile which he is driving and of which he has control.

*State v. Hughlett*, 124 Wash. 366, 214 P. 841 (1923), *overruled by*, *Ringer*, 100 Wn.2d at 669. While *Hughlett* was overruled by *Ringer*, it was on a different ground. The holding of the court in *Ringer* was that officers may search the area within the arrestee's immediate control. *Ringer*, 100 Wn.2d at 699. However, as indicated above, the analysis in *Ringer* mistakenly conflates search incident to arrest with exigent circumstances.

The basis articulated in *Hughlett* has a very long history in the common law. See *Thornton*, 541 U.S. at 629-30 (Justice Scalia concurring) (citing to *United States v. Wilson*, 163 F. 338, 340, 343 (C.C.S.D.N.Y. 1908); *Smith v. Jerome*, 47 Misc. 22, 23-24, 93 N.Y.S. 202, 202-03 (Sup.Ct.1905); *Thornton v. State*, 117 Wis. 338, 346-47, 93 N.W. 1107, 1110 (1903); *Ex Parte Hurn*, 92 Ala. 102, 112, 9 So. 515, 519-20 (1891); *Thatcher v. Weeks*, 79 Me. 547, 548-49, 11 A. 599, 599-600 (1887); 1 F. Wharton *Criminal Procedure* § 97, pp. 136-137 (J. Kerr 10th ed.1918); 1 J. Bishop, *Criminal Procedure* § 211, p. 127 (2d ed.

1872)); cf. *Spalding v. Preston*, 21 Vt. 9, 15, 1848 WL 1924 (1848);  
*Queen v. Frost*, 9 Car. & P. 129, 131-134 (1839); *King v. Kinsey*, 7 Car.  
& P. 447 (1836); *King v. O'Donnell*, 7 Car. & P. 138 (1835); *King v.*  
*Barnett*, 3 Car. & P. 600, 601 (1829).

As Justice Scalia noted in his concurrence,

The articulation in Bishop in 1872 is typical:

“The officer who arrests a man on a criminal charge should consider the nature of the charge; and if he finds about the prisoner’s person, or otherwise in his possession, either goods or moneys which there is reason to believe are connected with the supposed crime as its fruits, or as the instruments with which it was committed, or as directly furnishing evidence relating to the transaction, he may take the same, and hold them to be disposed of as the court may direct.”

*Thornton*, 541 U.S. at 630 (Justice Scalia concurring) (quoting Bishop, §211 at 127).

4. SUFFICIENT EVIDENCE SUPPORTED THE  
CONVICTION.

Due process requires that the State bear the burden of proving each and every element of the crime charged beyond a reasonable doubt. *State v. Thomas*, 166 Wn.2d 380, 390, 208 P.3d 1107 (2009). The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational fact finder could have found the elements of the crime beyond a reasonable doubt. *State v. Marohl*, 170

Wn.2d 691, 698, 246 P.3d 177 (2010). Challenging the sufficiency of the evidence admits the truth of the State's evidence and all reasonable inferences from the evidence. *State v. Gerber*, 28 Wn. App. 214, 217, 622 P.2d 888 (1981), *State v. Theroff*, 25 Wn. App. 590, 593, 608 P.2d 1254 (1980). All reasonable inferences from the evidence must favor the State and must be interpreted most strongly against the defendant. *State v. Salinas*, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992).

Both circumstantial and direct evidence are equally reliable. *State v. Lubers*, 81 Wn. App. 614, 619, 915 P.2d 1157 (1996). In the case of conflicting evidence or evidence where reasonable minds might differ, the jury is the one to weigh the evidence, determine credibility of witnesses and decide disputed questions of fact. *Theroff*, supra, at 593. Credibility determinations are for the trier of fact and not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

To convict defendant of violation of a domestic violence court order violation, the State had to prove:

A person commits the crime of violation of a court order when he or she knows of the existence of the no-contact order and knowingly violates a provision of the order, and the person has twice been convicted for violating the provisions of a court order.

CP 59-74 Instruction 4; see also RCW 26.50.110 and 26.50.110(5). See also *State v. Bunker*, 144 Wn. App. 407, 183 P.3d 1086 (2010).

Bonds challenges the sufficiency of the evidence to convict him of violation of a no contact order. Specifically, Bonds argues that because the stop of the vehicle in which he was a passenger was an unlawful stop, the evidence must be suppressed. Brief of Appellant 19.

However, as argued in sections 1 and 2 above, sufficient evidence supported the trial court's findings, and the stop was lawful, so the evidence was properly admitted. The state had more than sufficient evidence to convict Bonds of violation of the no contact order. Officer Frisbie testified that Bonds was seated in the front passenger seat of the vehicle with Ms. Crumble in the driver's seat. 2 RP 155. The no contact order specifically stated that Bonds was not to have any contact with Surina Crumble for five years from April 14, 2006. 2 RP 154; 2 RP 180. Bonds, himself, testified that his signature was on the no contact order. Exhibit 1 (designate); 2 RP 232; 2 RP 153; 2 RP 179. In addition, Officer Frisbie testified that the driver of the vehicle gave him Surina Crumble's Washington State identification card and he identified the driver of the vehicle as Ms. Crumble. 2 RP 149-151; CP (Exhibit 2). *See also* CP (Exhibit 6).

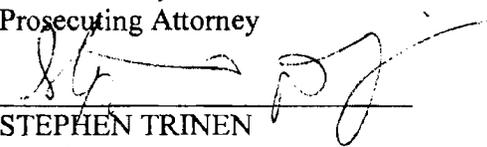
From these facts, the jury could find that Bonds was the passenger in the vehicle, that the driver was in fact Surina Crumble, not Cozetta Booth as Bonds claimed, and that Bonds knowingly violated the no contact order. Therefore, the State had more than sufficient evidence to prove that Bonds violated the no contact order.

D. CONCLUSION.

For the reasons argued above, the State respectfully requests that the Court affirm defendant's convictions.

DATED: March 8, 2012

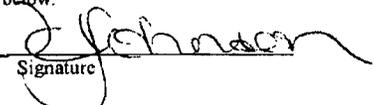
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Certificate of Service:

The undersigned certifies that on this day she delivered by <sup>efile</sup> U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

3/9/12   
Date Signature

# PIERCE COUNTY PROSECUTOR

**March 09, 2012 - 10:08 AM**

## Transmittal Letter

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