

No. 291120

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

TRAVIS GARAAS, Appellant

APPEAL FROM THE SUPERIOR COURT OF
DOUGLAS COUNTY
THE HONORABLE JOHN HOTCHKISS

OPENING BRIEF OF APPELLANT

Marie J. Trombley
WSBA # 41410
Attorney for Appellant Garaas

P.O. Box 28459
Spokane, WA 99228
(509) 939-3038

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TABLE OF CONTENTS

Table of Authorities ii

A. Assignments of Error..... 1

B. Statement of Facts..... 2

C. Argument

 The Court Erred When It Failed To Properly Suppress
 Evidence Derived From An Unlawful Detainment
 Of Mr. Garaas 4

D. Conclusion 10

TABLE OF AUTHORITIES

Washington Cases

State v. Arcey, 148 Wn.2d 738, 64 P.2d 738 (2003) 8

State v. Cantrell, 70 Wn.App. 340, 853 P.2d 479 (1993), *aff'd on other grounds*, 124 Wn.2d 183, 875 P.2d 1208 (1994) 9

State v. Carter, 151 Wn.2d 118,125, 85 P.3d 887 (2004) 4

State v. Kennedy, 107 Wn.2d 1, 726P.2d 445 (1986) 5,6

State v. Ladson, 138 Wn.2d 343, 979 P.2d 833 (1999)..... 6

State v. Mendez, 137 Wn.2d 208, 970 P.2d 722 (1999)..... 4

State v. Penfield, 106 Wn.App. 157, 22 P.3d 293 (2001) 6,7

State v Williams, 102 Wn.2d 733, 689 P.2d 1065 (1984) 9

State v. Yeager, 67 Wn.App. 41, 834 P.2d 73 (1992) 5,6

United States Supreme Court Cases

Florida v. Royer, 460 U.S. 491,103 S.Ct.1319, 75 L.Ed.2d 229(1983)..... 5

Katz v. United States, 389 U.S. 347, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967)..... 5

Mapp v. Ohio, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961) 5

Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968) ... 5

Constitutional Provisions

Fourth Amendment to the United States Constitution 5
WA Const. art. 1 § 7 5

Statutes

RCW 46.20.349..... 6

A. ASSIGNMENTS OF ERROR

1. The trial court erred in denying defendant's motion to suppress evidence obtained as a result of exceeding the lawful scope of an investigative stop. (CP 38).

2. The trial court erred in entering Conclusion of Law (CL) 4.2

"The defendant's actions in failing to provide Deputy Baker with a driver's license upon request, but instead offering an old identification card, gave Deputy Baker articulable suspicion that the defendant did not have a driver's license. It was then reasonable for Deputy Baker to ask the follow-up question whether the defendant had a driver's license. When the defendant then stated that he believed his license was suspended, Deputy Baker was further justified in continuing the detention to investigate the status of the defendant's driver's license. The period of time between when the defendant denied he was Nicholas Malmberg and when Deputy Baker asked for a second time for his driver's license was extremely short." (CP 38).

3. The trial court erred in finding Mr. Garaas guilty based on evidence obtained in a search incident to an unlawful arrest. (CP 45).

ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

1. Could a deputy lawfully ask Mr. Garaas to produce a driver's license when the basis for the initial detention had been dispelled and further intrusion was unnecessary?

2. When a deputy temporarily detains an individual based on a reasonable suspicion of criminal activity, should the court grant

a motion to exclude any evidence that was obtained after the officer's suspicion had been alleviated?

B. STATEMENT OF FACTS

At 9:30 p.m. on February 1, 2010, Douglas County Sheriff's Deputy Michael Baker was on patrol. (RP 8-9). He ran the license plate of a vehicle in front of him and learned the registered owner, Nicholas Malmberg, had a license suspended in the third degree. (RP 9). Information as to Malmberg's height, weight, and other descriptors was available from the Department of Licensing on the mobile computer, but the deputy "wasn't focused on the actual physical description of the registered owner at the time." (RP 10). He followed the vehicle, pulled into a lot behind the parked car and activated his lights. (RP 9,10).

Deputy Baker asked the driver if he was Nicholas Malmberg and the driver said he was not. (RP 10). The deputy then asked for identification in the form of a driver's license to identify the driver to determine whether he was the registered owner of the vehicle. (RP 10, 11,13). The driver, Travis Garaas, identified himself by handing the deputy a Washington State photo identification card. The picture on the ID matched Garaas. (RP 12). At that point the

deputy knew the driver was Travis Garaas and not Nicholas Malmberg. (RP 12).

Deputy Baker again asked for a driver's license. Mr. Garaas told him he thought it was suspended. (RP 13). The deputy ran the ID through the dispatch center and learned the license was not suspended, but there were two warrants for Mr. Garaas's arrest. (RP 12-13, 14).

Deputy Baker removed Mr. Garaas from the vehicle, handcuffed him, and walked him back to the patrol car. (RP14). He performed a search incident to arrest and found brass knuckles, and a plastic baggie with a green leafy substance that smelled like marijuana. (RP14-15). After Mr. Garaas was placed in the patrol car, the deputy searched the vehicle, opening a camera case that was on the front passenger seat. Inside the camera case were numerous empty plastic baggies, syringes (used and unused), and a red vial with crystal residue. (CP 37). Mr. Garaas was not charged for the items found inside the vehicle. The deputy then searched the area around the vehicle and discovered a small plastic zip-lock baggie which the officer believed contained methamphetamine. (RP 15).

Before trial, defense counsel moved to suppress the evidence found on Mr. Garaas's person and alongside the vehicle. (CP 14-19). The court denied the motion. (CP 36-38). Following a stipulated facts bench trial, the court found Mr. Garaas guilty of possession of a controlled substance – methamphetamine, possession of a dangerous weapon- brass knuckles, and possession of marijuana, less than 40 grams. (CP 35). This appeal follows. (CP 56).

C. ARGUMENT

The Court Erred When It Failed To Properly Suppress Evidence Derived From An Unlawful Detainment Of Mr. Garaas.

a. Standard of Review

The court's conclusions of law following a suppression hearing are reviewed *de novo* and its findings of fact for substantial evidence. *State v. Mendez*, 137 Wn.2d 208,214, 970 P.2d 722 (1999); *State v. Carter*, 151 Wn.2d 118,125, 85 P.3d 887 (2004).

b. The Continued Detention Of Mr. Garaas Was Unlawful Where The Circumstances Which Justified The Initial Stop Had Been Alleviated And No Further Interference Was Justified.

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b. The Continued Detention Of Mr. Garaas Was Unlawful Where The Circumstances Which Justified The Initial Stop Had Been Alleviated And No Further Interference Was Justified.

The Fourth Amendment to the United States Constitution and Article 1 §7 of the Washington State Constitution guarantee the right of people to be secure in their persons, homes, papers and effects, against unreasonable searches and seizures. *Mapp v. Ohio*, 367 U.S. 643, 647, 81 S.Ct. 1684, 6 L.Ed.2d 1081 (1961); WA Const. art. 1 § 7. Generally, warrantless seizures and searches are considered per se unreasonable. *Katz v. United States*, 389 U.S. 347, 357, 88 S.Ct. 507, 19 L.Ed. 2d 576 (1967). Whenever an individual's freedom of movement is restrained by a law enforcement officer's show of authority, a seizure has occurred. *State v. Yeager*, 67 Wn.App. 41,47-48, 834 P.2d 73 (1992).

An investigative detention constitutes a seizure, and must therefore be reasonable under the Fourth Amendment. *State v. Kennedy*, 107 Wn.2d 1,4, 726P.2d 445 (1986) (citing *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). A seizure is reasonable so long as the state can point to specific and articulable facts giving rise to a reasonable suspicion that the person stopped is, or is about to be, engaged in criminal activity. *Terry*, 392 U.S. at 21-22. In such an instance, an officer may briefly detain an individual, but only long enough to confirm or dispel his suspicions. *Florida v. Royer*, 460 U.S. 491,498-99, 103 S.Ct. 1319, 75 L.Ed.2d

229 (1983). When an unconstitutional search or seizure occurs, the remedy demands that all subsequently uncovered evidence becomes fruit of the poisonous tree and must be suppressed. *State v. Ladson*, 138 Wn.2d 343, 359, 979 P.2d 833 (1999).

Under RCW 46.20.349 a deputy may stop a vehicle registered to a person whose driver's license has been suspended. A report of a suspended license from the Department of Licensing supports an articulable suspicion of criminal conduct sufficient to justify a brief investigatory stop. *Yeager*, 67 Wn.App. at 41. The officer may then dispel his suspicion by identifying the driver. *State v. Penfield*, 106 Wn.App. 157, 160-61, 22 P.3d 293 (2001).

Here, Deputy Baker validly stopped the vehicle driven by Travis Garaas. He had information from the patrol car computer indicating the registered owner of the car had a suspended driver's license. Without fully reviewing the descriptive data of the owner available on the screen, he initiated the stop and effected a Fourth Amendment seizure. *Kennedy*, 107 Wn.2d at 1.

This court held that under the Fourth Amendment an officer may not, without additional grounds for suspicion, proceed with a stop based on a registration check once it is manifestly clear that the driver of the vehicle is not the registered owner. *Penfield*, 106

Wn.App. at 162. In *Penfield*, the registered owner was a woman and the driver was a male. The officer asked the male (Penfield) for his driver's license, registration and proof of insurance. Penfield identified himself and told the officer his driver's license was suspended. The officer arrested him based on a recent warrant, removed Penfield from the car, handcuffed, and in a search incident to arrest, discovered marijuana on Penfield's person. The court concluded that once the officer determined the individual driving the vehicle was not a woman, there was no longer any articulable basis for suspecting criminal activity. The court held Penfield's right to be free of an unreasonable search and seizure was violated when the officer asked Penfield for his driver's license. The officer exceeded the permissible scope of the investigatory detention and any information he obtained after that point was the fruit of an unlawful seizure.

Like *Penfield*, here the deputy based his articulable suspicion on the information from the Department of Licensing. Similar to *Penfield*, the question is not whether the officer's initial decision to stop the car was valid, but rather whether the officer's decision to continue the investigation and ask the driver to produce

a driver's license violated Mr. Garaas's right to be free of an unreasonable search and seizure.

Courts consider the totality of the circumstances when evaluating the reasonableness of an investigatory stop. *State v. Arcey*, 148 Wn.2d 738,747, 64 P.2d 738 (2003). At the time he was initially seized, Mr. Garaas was not doing anything illegal; the sole reason for the stop was to investigate whether the registered owner, Nicholas Malmberg, was driving the vehicle. Deputy Baker had a description of the registered owner readily available to him on the computer. It was incumbent on him to avail himself of that information before he made contact and required Mr. Garaas to produce identification. Under the totality of the circumstances, the deputy's actions were not reasonable. It was quite possible that once Deputy Baker observed Mr. Garaas he would have known he was not Nicholas Malmberg and like Penfield, the seizure would have been appropriately terminated.

Nevertheless, once Deputy Baker was assured that Garaas was not Malmberg, based on the identification card, the validity of the stop ceased. A lawful "Terry" stop is limited in scope and duration to fulfilling the investigative purpose of the stop. If the results of the initial stop dispel the officer's suspicions, the

investigation should cease. *State v Williams*, 102 Wn.2d 733, 739-40, 689 P.2d 1065 (1984). Any information he obtained beyond the permissible scope of the investigatory detention was the fruit of an unlawful seizure.

In an analogous case, a state trooper stopped a defendant for speeding. *State v. Cantrell*, 70 Wn.App. 340, 853 P.2d 479 (1993), *aff'd on other grounds*, 124 Wn.2d 183, 875 P.2d 1208 (1994). After issuing a speeding citation, the trooper asked the driver and passenger if there was any contraband or open alcohol containers in their vehicle. The occupants consented to a search. The trooper found marijuana and methamphetamine in the car, the driver was charged and eventually convicted after the trial court denied his motions to suppress. The Court of Appeals reversed, concluding that “[o]nce the purpose of the stop was fulfilled by issuance of a speeding ticket, ...the trooper had no right to detain the car’s occupants [absent further] articulable facts giving rise to a reasonable suspicion of criminal activity.” *Cantrell*, 70 Wn.App. at 344. Likewise, once Deputy Baker’s suspicion was alleviated, he no longer had a reasonable suspicion for an investigate detention of Garaas.

c. This Case Should Be Reversed And Dismissed For Lack Of Sufficient Evidence.

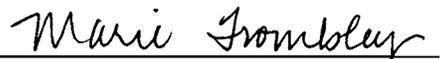
For the reasons stated above, the order denying defendant's motion to dismiss should be reversed. Further, because evidence found on Mr. Garaas was fruit of the poisonous tree, and the trial court concluded the baggie with methamphetamine found on the ground outside the vehicle was there as a result of Garaas getting out of the car, the case should be dismissed for insufficient evidence. (CP 34).

D. CONCLUSION

Based on the foregoing facts and authorities, Appellant Garaas respectfully urges this court to reverse the denial of the motion to suppress and dismiss all charges.

Dated this 30th day of August, 2010.

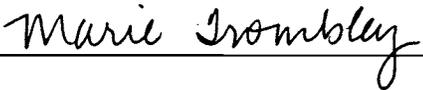
Respectfully submitted,



Marie Trombley, WSBA # 41410
Attorney for Appellant Garaas
PO Box 28459
Spokane, WA 99228
509-939-3038

CERTIFICATE OF SERVICE

I, Marie Trombley, attorney for Appellant Garaas, do hereby certify under penalty of perjury under the laws of the United States and the state of Washington, that a true and correct copy of the Brief of Appellant was sent by first class mail, postage prepaid on August 30, 2010, to Travis V. Garaas, DOC # 876836, PO Box 900, Shelton, WA 98584; and Eric C. Biggar, Douglas County Prosecutor's Office, PO Box 360, Waterville, WA 98858.

A handwritten signature in cursive script that reads "Marie Trombley". The signature is written in black ink and is positioned above a horizontal line.

Marie Trombley