

FILED

OCT 01, 2012

Court of Appeals
Division III
State of Washington

30762-0-III

COURT OF APPEALS
DIVISION III
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JUAN CARLOS RODRIGUEZ

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR GRANT COUNTY

The Honorable John M. Antosz, Juge
The Honorable Evan E. Sperline, Judge

RESPONDENT'S BRIEF

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TABLE OF AUTHORITIES

Washington Cases

State v. Adams, 144 Wn.App. 100, 181 P.3d 37 (2008) 5

State v. Gantt, 163 Wn. App. 133, 257 P.3d 682 (2011) 7

State v. Johnson, 128 Wn.2d 431, 909 P.2d 293 (1996)..... 5

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

State v. Lesnick, 84 Wn.2d 940, 530 P.2d 243(1975)..... 6

State v McCord, 19 Wn. App. 250, 576 P.2d 892(1978)..... 6

Supreme Court Cases

Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). 6

United States v. Hensley, 469 U.S. 221, 105 S. Ct. 675, 83 L. Ed. 2d 604
(1985)..... 6

I. IDENTITY OF RESPONDENT

The State of Washington, represented by the Grant County Prosecutor, is the Respondent herein.

II. RELIEF REQUESTED

The State asserts no error occurred in the pretrial suppression hearing and subsequent conviction of the Appellant.

III. ISSUES

A. Did law enforcement have a reasonable suspicion based on articulable facts to conduct a *Terry* stop of the defendant's vehicle to investigate a report of shots fired?

IV. STATEMENT OF THE CASE

This case comes before the Court on appeal from a jury trial and conviction of the Appellant, Juan Carlos Rodriguez, for unlawful possession in a firearm in the first degree. 2RP at 84.¹ Appellant argues that the Trial Court erred when it found that the initial seizure of the vehicle was justified. Specifically, Appellant contests that the Findings of

¹ The State follows the Appellant's convention and refers to the report of the proceedings from March 8, 2012 and April 3, 2012 as "1RCP" and to the report of the proceedings from March 21, 2012 as 2RP.

Fact and Conclusions of Law entered by the trial court fail to establish the articulable facts necessary for reasonable suspicion to stop the vehicle.

On the morning of January 1, 2012, just before 3:00 a.m., Officer Ouimette of the Moses Lake Police Department was dispatched to a report of a fight and shots fired on Fourth Avenue in Moses Lake. 1RP at 9. Dispatch advised that somebody had been shot and there was screaming. 1RP at 9. Ouimette was at the police station, approximately eight to ten blocks from the location of the reported fight when the call came in. 1RP at 11. Ouimette was given a possible direction of travel for the vehicle, which was eastbound toward the Hangout Tavern. 1RP at 10. As Ouimette drove toward the scene, the streets were empty of traffic. 1RP at 12. He saw a car at on Fourth Avenue approximately five to six blocks from the report of shots fired. 1RP at 16. It was the only car he observed, a Red Grand Am accelerating to approximately 35 mph in a 25 mph zone. 1RP at 12. At that location, the vehicle would have already passed the Hangout Tavern heading eastbound, and so it was consistent with the reported direction. 1RP at 13.

Ouimette saw the vehicle within approximately two minutes of the initial dispatch. 1RP at 16. Ouimette had his patrol vehicle headlights on as the car passed him. 1RP at 17. He could see that the car had four to five occupants inside and that the front two occupants were wearing blue, a

color he associates with the local Sureno gang. 1RP at 18. He turned to follow the vehicle and advised dispatch of the license plate. 1RP at 19. Dispatch did not provide him with a description of the vehicle leaving the scene. After following the vehicle for three to four blocks, Ouimette learned that another officer was in the area and he activated his emergency lights to stop the vehicle. 1RP at 20. The vehicle did not stop, and continued for almost one mile. 1RP at 21. During this time, it appeared that the driver and front passenger were reaching under the seat. 1RP at 23. One of the rear passengers also appeared to be reaching for something under a seat. 1RP at 24. When the vehicle stopped, the front passenger got out and ran. He was never located. 1RP at 25.

V. ARGUMENT

A. THE OFFICER HAD REASONABLE SUSPICION BASED ON ARTICULABLE FACTS TO STOP THE VEHICLE

Where the only question before the Appellate Court is whether the undisputed facts support the trial court's conclusion that the search of the passenger was justified, it is a question of law and the standard of review is de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996); *State v. Adams*, 144 Wn. App. 100, 103, 181 P.3d 37 (2008).

As a general rule, warrantless searches and seizures are per se unreasonable. *State v. Ladson*, 138 Wn.2d 343, 350-51, 979 P.2d 833 (1999). The courts have, however, recognized a number of narrow exceptions that allow the police to conduct searches and seizures without a warrant. *See, Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). For example, a *Terry* stop may be made to investigate whether a person was involved in or is wanted in connection with a *completed* felony. *United States v. Hensley*, 469 U.S. 221, 105 S. Ct. 675, 83 L. Ed. 2d 604 (1985). Under *Hensley*, for the stop to be lawful, the officer making the *Terry* stop must have a reasonable suspicion, grounded in specific and articulable facts. *Id.* at 229. When considering whether a *Terry* stop is justified, the Court “must balance the interest of society in enforcing the laws against the individual's right to protection against unreasonable searches and seizures. A determination of the reasonableness of an officer's intrusion depends to some degree on the seriousness of the apprehended criminal conduct. An officer may do far more if the suspected misconduct endangers life or personal safety than if it does not. Each case must be judged on its own facts.” *State v. McCord*, 19 Wn. App. 250, 253, 576 P.2d 892(1978), *State v. Lesnick*, 84 Wn.2d 940, 941, 530 P.2d 243(1975).

It is undisputed that a vehicle is seized when an officer pulls behind the vehicle and activates his patrol car's emergency lights. *See, State v. Gantt*, 163 Wn. App. 133, 257 P.3d 682 (2011). Here, the question before the Court is, given the nature of the completed felony under investigation, did Ouimette have sufficient reasonable suspicion to seize the vehicle.

At the time of the traffic stop, Ouimette observed the following articulable facts: the vehicle was four to five blocks from the report of shots fired; he saw the vehicle within two minutes of the report; the vehicle was headed eastbound, consistent with information provided by dispatch; the vehicle was accelerating; the vehicle was traveling faster than the speed limit; it was the only vehicle he observed on the streets; and the driver and front passenger were wearing gang colors. Given both the spatial and temporal proximity to the report of shots fired, as well as the absence of other possible suspects, the evasive behavior of the vehicle accelerating, and the gang colors of the driver and passenger, Ouimette had a reasonable suspicion that the vehicle was involved in the reported fight and shots fired.

The State need not show that Ouimette suspicions rose to the level of probable cause. As the *McCord* case notes, an officer may do far more if the suspected misconduct endangers life or personal safety. 19 Wn. App. 250, at 253. Here, Ouimette was not only responding to a call of a fight

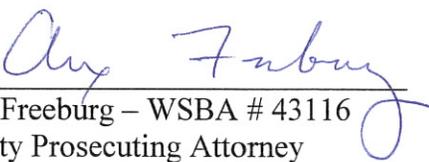
accompanied by gunshots, he was sufficiently concerned for his own safety that he waited for an officer to be nearby before he activated his lights to stop the vehicle. In light of the facts known to Ouimette at the time of the stop, this court should conclude as the Trial Court did that Ouimette had reasonable suspicion to stop the vehicle.

VI. CONCLUSION

Officer Ouimette had reasonable suspicion to stop the vehicle the Appellant was driving based on all the circumstances known to him. Therefore, the State respectfully requests this Court to uphold the Trial Court's decision and affirm the Appellant's conviction.

Dated this 27 day of September 2012.

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Deputy Prosecuting Attorney

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION III

STATE OF WASHINGTON,)	
)	
Respondent,)	No. 30762-0-III
)	
vs.)	
)	
JUAN CARLOS RODRIGUEZ,)	DECLARATION OF SERVICE
)	
Appellant.)	
_____)	

Under penalty of perjury of the laws of the State of Washington, the undersigned declares:

That on this day I served a copy of the Respondent's Brief in this matter by e-mail on the following party, receipt confirmed, pursuant to the parties' agreement:

David B. Koch
Nielsen, Broman & Koch, PLLC
sloanej@nwattorney.net

That on this day I deposited in the mails of the United States of America a properly stamped and addressed envelope directed to Appellant containing a copy of the Respondent's Brief in the above-entitled matter.

Juan Carlos Rodriguez - #357114
Washington Corrections Center
PO Box 900
Shelton WA 98584

Dated: September 28, 2012.



Kaye Burns