

FILED

Nov 09, 2015

Court of Appeals
Division III
State of Washington

No. 33048-6-III

COURT OF APPEALS DIVISION III
IN THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent

v.

JONATHAN HAAG, Appellant

APPEAL FROM THE SUPERIOR COURT
OF SPOKANE COUNTY

BRIEF OF APPELLANT

Marie J. Trombley, WSBA 41410
PO Box 829
Graham, WA
253-445-7920

TABLE OF CONTENTS

I. ASSIGNMENTS OF ERROR	1
II. STATEMENT OF FACTS	2
III. ARGUMENT	
A. The Stop Of Mr. Haag’s Car Was Not Justified At Its Inception As A <i>Terry</i> Stop Because There Was No Reasonable And Articulable Suspicion Of Criminal Conduct Or A Traffic Infraction.	6
B. The Court Erred When It Denied The Motion To Suppress Evidence And Held The Stop Was Justified.....	8
C. The Trial Court Erred When It Failed To Enter Written Findings of Fact and Conclusions of Law Pursuant To CrR 6.1(d).....	11
IV. CONCLUSION	13

TABLE OF AUTHORITIES

Washington Cases

<i>Mitchell v. Washington State Institute of Public Policy</i> , 153 Wn.App. 803, 225 P.3d 280 (2009)	8
<i>State v. Agee</i> , 89 Wn.2d 416, 573 P.2d 355 (1977)	11
<i>State v. Banks</i> , 149 Wn.2d 38, 65 P.3d 1198 (2003)	12
<i>State v. Chacon Arreola</i> , 176 Wn.2d 284, 290 P.3d 983 (2012)	9
<i>State v. DeArman</i> , 54 Wn.App. 621, 774 P.2d 1247 (1989).....	10
<i>State v. Doughty</i> , 170 Wn.2d 57, 239 P.3d 573 (2010)	9
<i>State v. Garvin</i> , 166 Wn.2d 242, 207 P.3d 1266 (2009).....	9
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994)	7
<i>State v. Jones</i> , 186 Wn.App. 786, 347 P.3d 483 (2015)	6
<i>State v. Mendez</i> , 137 Wn.2d 208, 970 P.2d 722 (1999).....	6
<i>State v. O’Cain</i> , 108 Wn.App. 542, 31 P.3d 733 (2001)	9
<i>State v. Williams</i> , 102 Wn.2d 733, 689 P.2d 1065 (1984)	11

Constitutional Provisions

Wash. Constitution Article 1§7	8
U.S. Constiution Fourth Amendment	8

Rules

CrR 6.1(d)	12
------------------	----

I. ASSIGNMENTS OF ERROR

A. The Trial Court Erred When It Entered Finding of Fact 4:

Officer Woodyard stopped the vehicle at Maple and Indiana for the traffic violations. (CP 104).

B. The Trial Court Erred When It Entered Conclusion of Law 2:

“An officer would be reasonably justified in stopping a vehicle based upon the fact that the vehicle was blocking the lane of travel, jerked back into the lane of travel, did not have a license plate and had an obviously tampered with trip permit.” (CP 104).

C. The Trial Court Erred When Entered Conclusion of Law 3:

“Officer Woodyard is allowed to stop a motor vehicle for suspected traffic infractions. Her knowledge of a reported stolen vehicle similar to the one in question does not invalidate the stop.” (CP 104).

D. The Trial Court Erred When It Failed To Enter Written Findings of Fact and Conclusions of Law Pursuant To CrR 6.1(d).

Issues Related to Assignments of Error

1. Does substantial evidence support the court's finding that Officer Woodyard stopped Mr. Haag's vehicle because of a traffic violation?
2. Did the trial court err when it concluded the stop was justified?
3. Did the trial court err when it did not suppress the evidence based on an unjustified stop?
4. Did the trial court err when it failed to enter written findings of fact and conclusions of law pursuant to CrR 6.1(d)?

II. STATEMENT OF FACTS

Jonathan Haag was charged by information with second-degree possession of stolen property, possession of a stolen motor vehicle, possession of a controlled substance, and violation of a no contact order, as a result of events that occurred on August 28, 2014. (CP 8-9).

On the day of trial, with the exception of possession of a controlled substance, all charges were dismissed. (11/25/14 RP 4). The charge of possession of a controlled substance proceeded to a stipulated facts bench trial. (CP 52-55; 11/25/14 RP 4). The court

found Mr. Haag guilty of possession of a controlled substance.
(11/25/14 RP 52).

Prior to trial, Mr. Haag filed a motion to suppress evidence pursuant to CrR 3.6, based on an unlawful seizure. (CP 35-44). The court denied the motion and entered written findings of fact and conclusions of law. (CP 103-105). Mr. Haag drove a gold Saturn on August 28, 2014, headed northbound on Maple and Maxwell Avenue. The vehicle stalled in the lane, rolled back a bit, touching a curb and ending diagonally across the lane. (CP 53; 11/25/14 RP 16). Officer Woodyard observed the brake lights were going off and on, and then the car started up, and “jerked” back into the lane of travel as the officer approached in her patrol car. (CP 53; 11/25/14 RP 17).

As she approached, Officer Woodyard testified she remembered a gold Saturn listed on the stolen vehicle list. (11/25/14 RP 25). However, because the car did not have a license plate, she could not verify if it was a stolen vehicle. (Id.) She also observed what she believed was an invalid or forged trip permit in the rear window. (11/25/14 RP 26).

Defense counsel later pointed out to the court that Woodyard’s police report contained one sentence out of a 33-page

report that indicated the trip permit was “obviously tampered and forged.” The report did not contain any details or facts to substantiate her conclusion. (11/25/14 RP 9). She later testified that it looked to her like someone had changed the numbers, but only gave the following explanation, “...like a five would be turned to an eight would be an example by making it more square rather than a circle, and it was not freely written.” (11/25/14 RP 18). Officer Woodyard testified she did not charge Mr. Haag or issue a citation to him for a forged trip permit. (11/25/14 RP 26;29). She said it was uncommon for her to write tickets for traffic infractions. (11/25/14 RP 31).

According to Officer Woodyard’s testimony, she had no way to determine if the trip permit was valid because, “...our dispatch will not check trip permits and cannot check trip permits.” (11/25/14 RP 30). She believed the only way to determine whether a vehicle is stolen is to check the VIN number. (11/25/14 RP 30).

The first four minutes of the CAD report pertained solely to the possibility of a stolen motor vehicle, without any reference to temporary permit violation or traffic infractions. (11/25/14 RP 9). The CAD report indicated that dispatch read the last 5 VIN numbers

from the listed stolen vehicle to Officer Woodyard. (11/25/14 RP 30).

Officer Woodyard activated her lights and stopped Mr. Haag's car at Indiana and Maple Streets. (11/25/14 RP 19). She went to the driver's door and verified the VIN off the windshield dash. (11/25/14 RP 31).

At the suppression hearing, Officer Woodyard testified she did not stop the car "with the sole purpose of confirming whether or not it was the stolen Saturn from the hot sheet," but "in theory" pulled the car over to verify if it was stolen and to see if the driver needed assistance, if the vehicle was out of gas, or what the circumstances were for it having been stalled, as well as checking the trip permit, and the validity of the registration." (11/25/14 RP 25-27; 31). However, the police report stated, "I knew that there was a gold Saturn vehicle on the stolen vehicle list, and this vehicle appears to be about the same year as the stolen model. I initiated a stop on the vehicle." (11/25/14 RP 6-7).

When a backup patrol car arrived, Haag was removed from the car, handcuffed, and patted down. (CP 54). Officer Woodyard felt a dime-sized item in his front coin pocket and asked permission to remove it. Mr. Haag consented. The item turned out to be a

plastic baggy containing a pea-sized white substance, which tested positive for methamphetamine. (CP 54-55).

The court imposed a residential DOSA. (12/11/14 RP 79). Mr. Haag reported for treatment on January 20, 2015, and left against medical advice on January 22, 2015. (CP 21). He was taken into custody in January 26, 2015. (CP 25). He makes this timely appeal. (CP 77-78).

III. ARGUMENT

Standard of Review

An appellate court reviews the denial of a motion to suppress by determining if substantial evidence supports the trial court's findings of fact and if those findings support the court's conclusions of law. *State v. Jones*, 186 Wn.App. 786, 788, 347 P.3d 483 (2015). Evidence is substantial if it is sufficient to persuade a fair-minded rational person that the finding is true. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). Conclusions of law are reviewed *de novo*. *Id.*

- A. The Stop Of Mr. Haag's Car Was Not Justified At Its Inception As A *Terry* Stop Because There Was No Reasonable And Articulate Suspicion Of Criminal Conduct Or A Traffic Infraction.

1. The Trial Court's Finding Of Fact 4 Is Not Supported By Substantial Evidence In The Record.

Findings of fact are viewed as verities, provided there is substantial evidence to support them. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). A trial court's erroneous determination of facts, unsupported by substantial evidence is not binding on appeal. *Id.* at 647.

In his motion to suppress, Mr. Haag argued that the stop was a warrantless detention that was unjustified and pretextual because it was not made based on traffic safety or the general welfare. (CP 35; (11/25/14 RP 32). Mr. Haag challenges the court's finding of fact number 4: "Officer Woodyard stopped the vehicle at Maple and Indiana **for the traffic violations.**" (CP 104)(Emphasis added). This finding is not supported by substantial evidence.

Officer Woodyard testified she made no notations in her police report about any alleged traffic violation, such as failure to use the turn signal or improper lane usage. (11/25/14 RP 25). Rather, she testified that "in theory" she pulled the car over because it to verify it was or was not stolen. (11/25/14 RP 25).

She added that she also wanted to see if the driver needed assistance, if the vehicle was out of gas, or what the circumstances were for it having been stalled, as well as checking the trip permit, and the validity of the registration. (11/25/14 RP 25-27). Because these concerns were not traffic violations, the court's finding is unsupported by the record.

B. The Court Erred When It Denied The Motion To Suppress Evidence And Held The Stop Was Justified¹.

A trial court's findings of fact must justify its conclusions of law. *Mitchell v. Washington State Institute of Public Policy*, 153 Wn.App. 803, 814, 225 P.3d 280 (2009). Here, because finding of fact number 2 is not supported by substantial evidence, it cannot support the court's conclusion that the stop was justified.

The Fourth Amendment to the United States Constitution guarantees against an unreasonable search or seizure absent a warrant or proof that the seizure qualifies under an exception to the warrant requirement. *State v. Jones*, 186 Wn.App. at 789-90.

Similarly, Article 1§7 of the Washington Constitution is implicated whenever the State intrudes on an individual's private affairs².

Under Washington law, a traffic stop is a seizure for purposes of constitutional analysis. *State v. Doughty*, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). The State must show by clear and convincing evidence that such a stop is justified. *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009). An officer may make a warrantless investigative traffic stop if there is a reasonable, articulable suspicion the driver has engaged in unlawful conduct. *State v. Chacon Arreola*, 176 Wn.2d 284, 292-93, 290 P.3d 983 (2012). The admissibility of evidence turns on whether the State can prove the officer had a well-founded suspicion based on articulable facts for such an investigatory stop. *State v. O'Cain*, 108 Wn.App. 542, 545, 31 P.3d 733 (2001).

Here, Mr. Haag's vehicle had stalled and rolled back toward the curb in his lane. It was obvious he was trying to get the car to move forward as the officer plainly saw the brake lights going on and off before the vehicle was able to catch and move back into traffic. Furthermore, the officer testified she only had to slow her

² No person shall be disturbed in his private affairs, or his home invaded, without authority of law.

patrol car down before he was able to get the car going again. At most, this was a very brief car engine problem and not a traffic infraction. It did not warrant an investigatory stop and seizure.

In *DeArman*, an officer initially thought a car was disabled because it waited 45 to 60 seconds before proceeding through a stop sign. *State v. DeArman*, 54 Wn.App. 621, 774 P.2d 1247 (1989). The Court held that fact did not rise to the level of providing a reasonable suspicion the driver was engaged in criminal activity. *Id.* at 625. The Court noted the officer testified that his initial decision to stop DeArman was based on his concern that DeArman's car might be disabled; he secondarily was "suspicious" of DeArman. *Id.* The Court found that once it became apparent that DeArman's car was *not* disabled, the officer had no reason to proceed with the stop and no right to compel him to produce identification. *Id.*

Similarly, here the officer testified that she wanted to see "if the driver needed assistance, if the vehicle was out of gas, or what the circumstances were for it having been stalled, as well as checking the trip permit, and the validity of the registration." Like *DeArman*, the officer had no reason to proceed with the stop once Mr. Haag's car was back in the flow of traffic.

Officer Woodyard's speculation that the vehicle might be stolen because it appeared to be about the same year as the stolen model, is insufficient to support a reasonable suspicion of criminal activity, and did not justify an investigatory stop. Even for a brief detention, an officer must have more than innocuous facts or a mere hunch. *O'Cain*, 108 Wn.App. at 549.

The trial court's ruling the stop was justified was error. The evidence taken off of Mr. Haag's person was illegally seized and must be suppressed. *State v. Williams*, 102 Wn.2d 733, 743, 689 P.2d 1065 (1984).

C. The Trial Court Failed To Enter Written Findings of Fact and Conclusions of Law Pursuant to CrR 6.1(d).

A trial court, sitting as trier of fact, must enter written findings of fact and conclusions of law at the conclusion of a bench trial. CrR 6.1(d)³; *State v. Head*, 136 Wn.2d 619, 622, 964 P.2d 1187 (1998). The purpose of the requirement is to ensure the trial judge has fully and properly dealt with all the issues in the case before he decides it; and secondly, to enable an appellate court to review the

³ CrR 6.1(d): In a case tried without a jury, the court shall enter findings of fact and conclusions of law. In giving the decision, the facts found and the conclusions of law shall be separately stated. The court shall enter such findings of fact and conclusions of law only upon 5 days' notice of presentation to the parties.

questions raise don appeal and know the basis of the trial court's judgment. *State v. Agee*, 89 Wn.2d 416, 421, 573 P.2d 355 (1977). A court's oral opinion is not a finding of fact; rather, it is merely an expression of the court's informal opinion when rendered. *Id.* An oral opinion has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment. *Id.* (internal citations omitted).

As of the date of appellant's brief, no findings of fact and conclusions of law were submitted by the prevailing party or entered by the court⁴. Where there is a complete failure to comply with CrR 6.1(d) the proper remedy is to vacate the judgment and sentence and remand for entry of the required findings and conclusions. *Head*, 136 Wn.2d 624-25. In its written findings and conclusions, the trial court must tie the facts to each separate element of the charged crime. *State v. Banks*, 149 Wn.2d 38, 43, 65 P.3d 1198 (2003). Each element must be addressed separately, with the factual basis set out for each conclusion of law. *Id.* The findings may not be tailored based on appellant's opening

⁴ The findings of fact and conclusions of law referenced in sections A and B of argument are the written findings of fact and conclusions of law entered for the CrR 3.6 hearing. The stipulated facts are found in CP 53-55.

brief, and no additional evidence may be taken. *Head*, at 624-25.

Mr. Haag maintains the right to appeal all findings and conclusions, as in the usual course of things. *Id.*

IV. CONCLUSION

Based on the foregoing facts and authorities, Mr. Haag respectfully asks this Court to reverse the trial court's ruling, with instructions to suppress the illegally seized evidence and the matter dismissed for insufficient evidence.

Respectfully submitted this 9th day of November 2015.

/s/ Marie J. Trombley, WSBA # 41410
P.O. Box 829
Graham, WA 98338
(253)445-920
Fax: None
marietrombley@comcast.net