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26573-1-III

COURT OF APPEALS

DIVISION III

OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

WALTER M. DOUGHTY, APPELLANT

APPEAL FROM THE SUPERIOR COURT

OF SPOKANE COUNTY

HONORABLE MARYANN MORENO

BRIEF OF RESPONDENT

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COURT OF APPEALS
DIVISION III
STATE OF WASHINGTON
By _____

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I.

ASSIGNMENT OF ERROR

1. The trial court erred in denying the motion to suppress evidence obtained following the *Terry* stop.

II.

ISSUES

1. Did trial court properly deny defendant's motion to suppress?
2. Did trial court properly reject defendant's argument that officer's arrest of defendant for driving while license suspended was a "pretext" stop?

III.

STATEMENT OF THE CASE

Defendant was charged by information with the crime of possession of a controlled substance, methamphetamine, filed with the Superior Court of Washington for Spokane County. Prior to trial, defendant brought a motion to suppress based on a lack of articulable suspicion to contact defendant and the characterization of the Officer's contact of defendant as "pre-textual." CP 7, 43-48.

At the suppression hearing, the trial court reviewed the summary of facts filed in support of the information and the police reports per the stipulation of the parties. The evidence before the trial court was that Spokane Police Department Officer Bishop was parked east of 2311 W. Gardner, Spokane, Washington. CP 45. Officer Bishop was observing the residence for drug activity. The residence at 2311 W. Gardner had been identified as a drug house based upon numerous reports from neighbors of heavy traffic (including, foot, bicycle, and vehicle) to the residence all hours of the day for only minutes at a time. CP 45. On August 14, 2007, Officer Bishop was detailed to watch the drug house for drug activity. CP 45.

On August 14, 2007 at around 3:20 am, Officer Bishop observed a vehicle turn onto W. Gardner, drive into the oncoming lane of traffic and park illegally in front of the identified drug house. CP 45. Officer Bishop watched the only occupant of the vehicle exit, walk up to the drug house, return to his vehicle and drive off in less than two minutes. CP 45. Officer Bishop proceeded to stop the vehicle and contacted the driver, who identified himself as Walter M. Doughty, the defendant. CP 45. Officer Bishop checked defendant's status with the Department of Licensing and was advised that Mr. Doughty's license was suspended for prior convictions. CP 45.

At that point, Officer Bishop had probable cause to arrest defendant for the crime of driving while license suspended based upon his witnessing of defendant's driving. Officer Bishop arrested defendant, searched his vehicle incident to the arrest and discovered a glass pipe with methamphetamine residue. CP 45. Later, a booking officer at the jail discovered a plastic baggie containing crystal methamphetamine on defendant's person. CP 46.

Based upon the Summary of Facts and the Officer's report, the trial court denied the defendant's motion to suppress the glass pipe and baggie of crystal methamphetamine. RP¹ 10. The trial court found that the officer's contact of the defendant was justified based upon his observations of defendant's activities. RP 10. The trial court found that the officer's identification of defendant was justified as well as his discovery of the suspended status of defendant's driver's license. RP II 5. The trial court found the arrest of defendant after discovery of the status of the driver's license was not pre-textual and was lawful. CP 20-35.

¹ RP # designates the transcript of the Motion to Suppress heard October 4, 2007.
RP II # designates the transcript of the Stipulated Facts Trial heard October 15, 2007.

The trial court convicted defendant of possession of a controlled substance, to-wit: methamphetamine following a stipulated facts trial. CP 20-35.

Defendant appeals the verdict.

IV.

ARGUMENT

A. THE TRIAL COURT PROPERLY DENIED DEFENDANT'S MOTION TO SUPPRESS AND CONCLUDED THE EVIDENCE WAS ADMISSIBLE.

A careful review of the record reveals that the trial court properly denied defendant's motion to suppress. The trial court examined the basis for the officer watching the residence located at 2311 W. Gardner, Spokane, WA. The trial court found that the uncontroverted evidence was that two separate law enforcement entities had identified the residence at that location as a "drug house." The trial court found that it was uncontroverted that law enforcement had received numerous complaints from neighbors of heavy foot and vehicle traffic of very short visits to the drug house daily at all hours of the day. RP 10.

The trial court found it uncontroverted that Officer Bishop had been assigned to observe the drug house at 2311 W. Gardner for drug activity on August 14, 2007. RP 10. It was uncontroverted that Officer Bishop observed a vehicle turn onto Gardner and travel in the oncoming lane of traffic before parking in front of the drug house illegally at around 3:20 am on August 14, 2007. RP 10. It was uncontroverted that Officer Bishop observed defendant exit his vehicle, walk to the drug house, return to his vehicle and drive away all in less than two minutes. RP 10. Finally, it was uncontroverted that the residence at 2311 W. Gardner was not a business open for legitimate purposes at 3:20 am. RP 10-11. Based upon the record and findings, the trial court concluded that Officer Bishop's contact of defendant on August 14, 2007 at around 3:20 am was based upon reasonable suspicions of criminal activity and was proper. Accordingly, the trial court denied the defendant's motion to suppress. RP 10.

Officer Bishop made a valid stop of defendant pursuant to the dictates of *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). The *Terry* court established the standard for officer contact for purposes short of arrest. Specifically, that the trial court examines whether the officer had specific articulable facts, which coupled with the rational inferences therefrom, reasonably justify the officer's intrusion into

the subject individual's private affairs. *Terry* 392 at 21. In this case, the officer was observing an identified drug house in the early morning for possible illegal drug activity when defendant arrived at the house after committing traffic infractions, walked to the house, returned to his vehicle and drove off all in less than two minutes time.

B. THE TRIAL COURT PROPERLY REJECTED THE ARGUMENT THAT THE OFFICER'S ARREST OF DEFENDANT FOR DRIVING WHILE LICENSE SUSPENDED WAS A "PRETEXT" STOP.

The record before the trial court contains no evidence, or reasonable inferences therefrom, that the officer's contact with defendant was based upon a pretext. Defendant did not testify at the hearing and stipulated to the trial court's review of the officer's summary of facts and report in deciding the motion. CP 16-17. The only evidence before the trial court consisted of evidence which clearly establishes that the officer had more than a pre-textual basis to contact defendant. The officer observed defendant commit traffic infractions before defendant even approached the residence identified as a drug house located at 2311 W. Gardner. The officer observed defendant visit the identified drug house and drive away in less than two minutes time. There was no evidence in the record before the trial court to support a finding that the officer's

initial contact of defendant was pre-textual since the officer was observing the drug house for activity when defendant committed traffic infractions before going to the drug house.

In *State v. Kennedy*, 107 Wn. 2d 1, 726 P.2d 445 (1986), the court found crime prevention and detection were legitimate purposes supporting investigative stops or detentions. Specifically, the court held that less than probable cause is required because such a stop is less intrusive than an arrest. *Id.* at 6. The court defined articulable suspicion as whether there is a substantial possibility that criminal activity has occurred or is about to occur. Even in circumstances where the activity is consistent with both criminal and non-criminal actions, it may justify a brief detention. *Id.* at 6. In this case, Officer Bishop was observing the identified drug house for activity when defendant drove into the oncoming lane of traffic and parked illegally in front of the drug house at 3:20 am. Officer Bishop then observed the lone occupant of that vehicle walk up to the drug house, return to his vehicle and drive off in less than two minutes time.

The record before the trial court is unequivocal that, at that moment, Officer Bishop was aware that the sole occupant of that vehicle had visited an identified drug house for a very brief period of time in the early morning. Officer Bishop observed actions which were consistent with the purchase of illegal drugs. Officer Bishop did not need probable

cause to arrest defendant at that time in order to contact and briefly detain defendant. Officer Bishop lawfully contacted defendant to determine whether he was engaged in illegal activity pursuant to *Terry v. Ohio*, and *State v. Kennedy*.

Pursuant to the valid *Terry* stop, Officer Bishop could request defendant identify himself and explain his actions. *State v. White*, 97 Wn.2d 92, 105, 640 P.2d 1061 (1982). Additionally, Officer Bishop was justified in checking defendant's name for warrants and status of his operator's license in the context of such a stop. *State v. Madrigal*, 65 Wn. App. 279, 283, 827 P.2d 1105 (1992). Once Officer Bishop was advised that defendant's operator's license was suspended for prior convictions, he had probable cause to arrest defendant for driving while license suspended and could search the vehicle incident to that arrest. Officer Bishop's actions in contacting the defendant were proper and constitutionally permissible. Accordingly, the trial court correctly denied defendant's motion to suppress the methamphetamine discovered in defendant's vehicle and on his person.

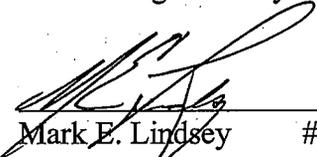
V.

CONCLUSION

For the reasons stated, the State respectfully requests that the conviction of the defendant be affirmed.

Dated this 4TH day of June, 2008.

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