

No. 93732-0

COA No. 33312-4-III

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Petitioner.

vs.

ERIC DANIEL CRUZ,

Respondent.

DEFENDANT'S RESPONSE TO AMICUS BRIEF OF WASHINGTON
STATE PATROL AND DEPARTMENT OF FISH AND WILDLIFE

Ronald Hammett wsba # 06164
Attorney for Respondent
email:ron@hammettlaw.com
(509) 826-1918

RECEIVED ELECTRONICALLY

6/1/2017 2:57 pm

CLERK'S OFFICE

RECEIVED
SUPREME COURT
STATE OF WASHINGTON

TABLE OF CONTENTS

I. INTRODUCTION	1
II. ARGUMENT	1
III.CONCLUSION.....	4

TABLE OF AUTHORITIES

TABLE OF CASES

Arizona v. Gant, 556 U.S. 332 556 U.S. 1719, 173 L.Ed.2d 485
(2009).....1,3

Michigan v. Long, 463 U.S.1032, 103 S.Ct 3469, 77 L.Ed.2d 1201
(1983).....1,2,3

State v. Chang, 147 Wn.App 409, 195 P.3d. 1008 (2008).....3,4

State v. Glossbrener, 146 Wn.2d 670, 680-81 (2002).....1

State v. Larson, 88 Wn. App. 849, 946 P. 2d. 1212 (1997).....3,4

CONSTITUTIONS

Const. art 1, section 7.....1

Fourth Amendment.....1

I. INTRODUCTION

The Court of Appeals followed well established rules and guidelines set out by the U.S. Supreme Court and by this Court for determining when police may search a citizen's vehicle for safety reasons during the detention of a suspect. The rules under both the Fourth Amendment and under Consti. art 1, section 7 are consistent. A search of the passenger compartment of a vehicle for weapons is only permissible if the police officer possesses a reasonable belief that the suspect is dangerous and the suspect may gain control of weapons inside the vehicle. The same rules apply whether the person in the vehicle at the time or will return to the vehicle after the contact.

The State seeks to change the rules for this well delineated exception to the warrant requirement to a rule which would allow police to search and seize weapons from a suspect's vehicle based merely on knowledge of the presence of firearms within the vehicle without any reasonable belief by police that the suspect poses a danger.

II. ARGUMENT

The Supreme Court in *Michigan v. Long*, 463 U.S.1032, 103 S.Ct 3469, 77 L.Ed.2d 1201 (1983) expanded the area for a search incident to an investigatory stop to the inside of the passenger compartment of a

vehicle. The Court concluded that a search of the passenger area of a vehicle, "is permissible if the police officer possesses a reasonable belief based on 'specific and articulable facts' which taken together with the rational inferences from those facts, reasonably warrant the officer in believing the suspect is dangerous and the suspect may gain immediate control of weapons". *Michigan v. Long*, 463 U.S at 1049. This test is consistent with the test set forth by this Court in *State v. Glossbrener*, 146 Wn.2d 670, 680-81 (2002). The defendant believes it is the correct standard and points out that such language was repeated by the Supreme Court in *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct 1710, 173 L.Ed.2d 485 (2009), when the Court said, "For instance, *Michigan v. Long*, 463 U.S. 1032,103 S.Ct 3469, 77 L.Ed.2d 1201 (1983), permits an officer to search a vehicle's passenger compartment when he has reasonable suspicion that an individual, whether or not the arrestee, is 'dangerous' and might access the vehicle to 'gain immediate control of weapons'."

In this case, the officer presented no specific and articulable facts which would warrant him in believing Mr. Cruz was dangerous. Under *Michigan v. Long*, 463 U.S. at 1049, the Court held the officer must "possess a reasonable belief based on 'specific and articulable facts'" to "reasonably warrant the officer in believing the suspect is dangerous and may gain control of weapons." There is no evidence in this case that

officer possessed such a belief. On the contrary, the officer testified he did not feel Mr. Cruz was a danger and planned on releasing him and returning the firearms to him. (RP 27, L2) (RP 12-13,23-24). His purpose in taking the firearms was "simply to secure them during the contact" (RP13 L4.). The seizure of a weapon during an arrest or during an investigatory stop requires a showing by the State that police reasonably believed the suspect was dangerous and that the firearm was in area where the suspect might gain immediate control of the weapon. *Michigan v. Long* , 463 U.S at 1049 and *Arizona v. Gant*, 556 U.S. 332, 129 S.Ct. 1710, 173 L.Ed.2d 485 (2009). In this case, Mr. Cruz was handcuffed and locked a patrol at the time of the seizure and was clearly not able to gain immediate access to the weapons in his vehicle.

There also is no evidence that the firearms were seized based upon a reasonable belief by the officer that Mr. Cruz posed a danger if he were permitted to return to his vehicle. As previously stated above, the officer testified they firearms were seized to secure them during the contact, and his intent was to return them to Mr. Cruz.

The State relies on *State v. Larson*, 88 Wn. App. 849, 946 P. 2d. 1212 (1997) and *State v. Chang*, 147 Wn.App 409, 195 P.3d. 1008 (2008) for support of its position that police may search a vehicle and seize weapons from it merely because a detainee might return to the vehicle. Both cases

involved situations where the officer actually had a reasonable belief that the suspect was dangerous. In *Larson*, it was based upon furtive movements and in *Chang* upon suspicion he was involved in a felony inside a bank to which he had driven another suspect and the police had information that he had a gun in the car. Both cases were based on the officer's objectively reasonable suspicion the suspects were dangerous and were going to be let back into their vehicles because there was no basis to arrest them,

As previously mentioned, in the present case, the State was unable to present any evidence that the officer believed Mr. Cruz posed a danger to the officer's safety if allowed to return to the vehicle where the weapons were located, or if the officer did believe he posed a risk, that such a belief was objectively reasonably based upon specific and articulable facts. The State failed to prove an exception to the warrant requirement by clear and convincing evidence, and the evidence was properly suppressed.

IV. CONCLUSION

This Court should affirm the decision of the Court of Appeals.

Respectfully Submitted this 1st day of June, 2017



Ronald Hammett WSBA# 06164
Attorney for Respondent/Defendant
(509)826-1918
E-Mail: ron@hammettlaw.com

PROOF OF SERVICE

CERTIFICATE

I certify that I mailed a copy of the foregoing Defendant's Answer to State's Petition for Review to the following individuals, postage prepaid, on June 1, 2017:

Branden Platter
Okanogan Deputy Prosecutor
P.O. Bo 1130
Okanogan, WA 98840

Pamela Loginsky
Special Deputy Prosecutor
206 10th Ave. SE
Olympia, WA 98501

Kelly Paradis
Peter Gonick
Assistant AG
P.O. Box 40100
Olympia, WA 98504-0100

Eric Cruz
123 Fritz Road
Riverside, WA 98849



Ronald Hammett wsba# 06164
Attorney for Respondent