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No. 71196-2

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STATE OF WASHINGTON
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**COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION ONE**

STATE OF WASHINGTON, Respondent,

v.

BRADLEY D. McALLISTER, Appellant.

BRIEF OF RESPONDENT

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By HILARY A. THOMAS
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ORIGINAL

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A. ASSIGNMENTS OF ERROR

None.

B. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR

1. Whether there was substantial evidence to support the trial court's conclusion that the officer had a reasonable and articulable suspicion sufficient to detain the vehicle the defendant was driving and to investigate the defendant's identity where the officer was aware that there was an arrest warrant connected to the vehicle, that the warrant was for a male for the crime of driving while license suspended in the third degree and that the driver was male.

C. FACTS

1. Procedural facts

On July 12, 2012 Appellant Bradley McAllister was charged with Unlawful Possession of a Controlled Substance, To-Wit: Methamphetamine, in violation of RCW 69.50.4013(1), for his actions on or about July 6, 2012. CP 2-3. McAllister moved to suppress evidence of the drugs that were found on his person pursuant to CrR 3.6, but that motion was denied. CP 6-18, 20-22. McAllister then waived his right to a jury trial, stipulated to the police reports and was found guilty at a bench trial on Oct. 28, 2013. CP 19, 46-47; Supp CP __, Sub Nom. 76; 1RP 63-69.

The case was short set for sentencing on Oct. 30, 2013, but McAllister did not appear and apparently was not aware of the hearing. 2RP 3-5. The case was then set for sentencing on November 18, 2013, after the deputy prosecutor who handled the CrR 3.6 hearing and trial had retired. 3RP 3. The CrR 3.6 hearing findings of fact and conclusions of law that the trial deputy had drafted were presented to the court, and after defense counsel indicated that he didn't have any objections to them, the court signed them. 3RP 3-4. The State and defense agreed that McAllister was looking at a standard range of 0-6 months although it was not agreed as to whether his offender score was zero or one from a 1998 felony conviction. 3RP 6-7. The State recommended 3 months and defense requested 30 days with credit for any inpatient treatment McAllister might do. 3RP 10. The court imposed 10 days in jail and another 30 days in a drug treatment program. 3RP 14-19; CP 30.

2. Substantive Facts

On July 6, 2012 Whatcom County Sheriff's Deputy Hubby randomly checked the license plate #ADD2958 with the Department of Licensing ("DOL") database. 1RP 7-9; CP 20, FF 1. The license plate came back with a warrant attached to it, and the warrant was for a male, Bradley McAllister, for Driving While License Suspended in the Third Degree and Failure to Transfer Title Within 45 Days. 1RP 9, 33, 38-39,

41, 43-44; Supp CP __, Sub Nom. 41, Ex. 2 at 3; CP 20-21, FF 2, 3. The information he received also included McAllister's date of birth. 1RP 34; Ex. 2, CP 21, FF 3. Dep. Hubby explained that when he runs a plate, a description of the vehicle along with the registered owner's name comes up, including the year, make, model and VIN number for the vehicle. 1RP 8-9. When he ran the plate, he also obtained the registered owner's name, Shakinah McAllister, and her address in addition to the vehicle information. 1RP 19, 33, 39-40. Dep. Hubby was aware the driver was not the registered owner because the driver was male. 1RP 9-10.

After he received the information that there was a warrant for a male attached to the license plate number, and the specifics about the warrant, Dep. Hubby followed the vehicle. 1RP 10, 34, 38; CP 21 FF 4. After he stopped the vehicle, he was able to identify the driver, and the name matched that in the warrant. 1RP 11-12, 37; CP 21, FF 4. McAllister was then placed under arrest, and drugs were found on him in a search incident to arrest and additional drugs were found in the car in a consensual search. 1RP 12-14; CP 21, FF 4.

D. ARGUMENT

- 1. The trial court did not err in concluding that the officer had a reasonable articulable suspicion to detain McAllister because the officer was aware that there was a warrant associated with the vehicle and that the warrant was for a male, not the registered owner, for a failure to appear on a driving while license suspended charge and a failure to transfer title charge.**

McAllister asserts that the trial court erred in concluding that the officer had a reasonable, articulable suspicion supporting the stop of the vehicle he was driving. The trial court did not err in concluding that the officer had a reasonable, articulable basis to stop the car because at the time the officer stopped the car he knew there was a warrant was connected with the car, that the warrant was for a male, Bradley McAllister, and that the driver was male. In addition, the warrant was fairly recent, it was for Driving While License Suspended in the Third Degree, and the registered owner had the same last name. The officer had a lawful basis to detain the vehicle and to investigate further regarding the identity of the driver to determine if he in fact was the subject of the warrant, which he was.

A trial court's decision regarding a CrR 3.6 motion is reviewed on appeal to determine whether substantial evidence supports the findings of fact, and then whether those findings of fact support the trial court's

conclusions of law. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Conclusions of law from an order regarding a motion to suppress are reviewed de novo. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *overruled on other grounds*, Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L.Ed.2d 132 (2007). Unchallenged findings are deemed verities on appeal. Hill, 123 Wn.2d at 644. Substantial evidence exists where there is a sufficient quantity of evidence in the record to persuade a fair minded, rational person of the truth of the finding. State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). A court's oral findings can be used to supplement the court's written findings as long as they don't contradict the written findings. State v. Bynum, 76 Wn. App. 262, 266, 884 P.2d 10 (1994), *rev. den.*, 126 Wn.2d 1012 (1995). In addition, a trial court's denial of a motion to suppress may be upheld on an alternative ground supported by the record. State v. Bobic, 140 Wn.2d 250, 257-258, 996 P.2d 610 (2000). McAllister has not challenged any of the findings of fact, therefore they are verities on appeal.

“[I]n order for an investigative stop to be valid under either our state or federal constitutions, the officer must have ‘specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.’ ... No greater level of articulable suspicion is required for a car stop than for a pedestrian stop.” City of

Seattle v. Yeager, 67 Wn. App. 41, 46, 834 P.2d 73 (1992), *rev. den.* 121 Wn.2d 1027 (1993). “[R]easonable suspicion requires only sufficient probability, not absolute certainty.” State v. Bonds, 174 Wn. App. 553, 566-67, 299 P.3d 663, *rev. den.*, 178 Wn.2d 1011 (2013). If a person’s actions are consistent with both criminal and noncriminal activity, a brief detention may be justified. Yeager, 67 Wn. App. at 47. In determining whether there was reasonable suspicion warranting a Terry stop, the court looks at the totality of the circumstances. State v. Bliss, 153 Wn. App. 197, 204, 222 P.3d 107 (2009).

In State v. Bliss, the officer performed a registration check on a van driven by a white or light-skinned female with light-colored hair. Bliss, 153 Wn. App. at 200. The check revealed that the van was registered to the defendant and that the defendant had outstanding felony and misdemeanor arrest warrants. *Id.* The officer, who believed the driver fit the defendant’s description (white female, 5 feet 6 inches tall, 140 pounds with blond hair), stopped the van, verified that the defendant was the driver and arrested her. *Id.* The court concluded that the officer acted lawfully in briefly detaining the defendant in order to verify her identity based on the facts that he knew there were outstanding arrest warrants for the registered owner of the vehicle, that the registered owner, Bliss, was a

white woman with blond hair, and that the driver fit the general description accompanying the registration information.

As in Bliss, there was a sufficient basis to detain the vehicle here in order to identify the driver because there was a connection between the warrant and the driver of the vehicle, and the driver fit the general description or gender of the person in the warrant. In this case, the officer knew there was a warrant connected with the vehicle. He knew that the warrant was for a male and that the driver was a male. He also knew that the warrant was for driving while license suspended in the third degree. The warrant had only been issued four to five months before. 1RP 61-62; Ex. 2. As the trial court found, this information provided an articulable basis for the officer to have a reasonable suspicion that McAllister was the one driving the vehicle and/or that he was still driving with a suspended license. 1RP 61-62; *see, State v. Bonds*, 174 Wn. App. 553, 567, 299 P.3d 663, *rev. den.*, 178 Wn.2d 1011 (2013) (officer's belief, though not certain, that passenger was defendant and that defendant had an outstanding DOL warrant were sufficient articulable facts supporting Terry stop of car); Yeager, 67 Wn. App. at 47 (brief investigatory stop of vehicle warranted based on special tab on license indicating the owner of the vehicle had previously been cited for not having a valid driver's license); *see also, State v. Penfield*, 106 Wn. App. 157, 161, 22 P.3d 293

(2001) (stops of vehicles pursuant to RCW 46.20.349 are constitutionally permissible because the fact that a driver who has a suspended license is the registered owner of the vehicle creates an articulable suspicion of criminal conduct); *accord*, State v. Phillips, 126 Wn. App. 584, 587-88, 109 P.3d 470 (2005). Moreover, although not referenced by the trial court, the registered owner's last name was the same as the one on the warrant, McAllister¹. The information provided to the officer established a reasonable, articulable suspicion that the driver was the subject of the warrant and/or that he was driving again with a suspended license.

2. Remand for entry of findings is not necessary because the findings regarding guilt have now been entered.

McAllister argues that reversal or remand is required because findings of fact and conclusions of law were not entered on the Unlawful Possession of Controlled Substance, To-Wit: Methamphetamine conviction before he filed his opening brief on appeal. The court was required to enter findings and conclusions pursuant to CrR 6.1. Findings and conclusions have now been entered and are attached as Appendix A. Supp CP __, Sub Nom 76. The State concedes that findings and

¹ It turns out that Shakinah McAllister was McAllister's wife. 3RP 9.

conclusions were not entered in a timely manner due to the deputy having retired in the interim.

Despite the delay in entering findings, a conviction should not be reversed because of late entry of those findings and conclusions unless the defendant can demonstrate that the defendant was prejudiced by the delay or that the findings were tailored to meet the issues in the appellate brief. State v. Tagas, 121 Wn. App. 872, 875-76, 90 P.3d 1088 (2004).

Prejudice will not be inferred from a delay in entry of findings. State v. Head, 136 Wn.2d 619, 964 P.2d 1187 (1998); *see also*, State v. Cannon, 130 Wn.2d 313, 329, 922 P.2d 1293 (1996) (no prejudice resulted from findings entered almost two years after sentencing where findings were not tailored to the opening brief).

The deputy prosecutor who handled the trial retired before sentencing was held and before findings of guilt were entered. Supp CP. ___, Sub Nom. 77. Sentencing was not heard on Oct. 30th, when the trial deputy was available, because McAllister did not appear and may not have been aware of the date. 2RP 3-4. Apparently the trial deputy had drafted some findings regarding the conviction, but had not finalized them. Supp CP ___, Sub Nom. 77. Another deputy prosecutor corrected some typographical errors in the draft and presented those findings to the court on June 25th. *Id.* That prosecutor filed an affidavit indicating that he had

not read, nor knew the contents of, the opening brief prior to presenting the findings. Id. The court signed the proposed findings on June 25th. Under these circumstances, where there is no prejudice from the delay in entry of the findings, reversal is not warranted and remand is unnecessary.

E. CONCLUSION

The State respectfully requests this Court to deny McAllister's appeal and affirm his conviction for Unlawful Possession of a Controlled Substance, To-Wit: Methamphetamine.

Respectfully submitted this 7th day of July, 2014.



HILARY A. THOMAS, WSBA #22007
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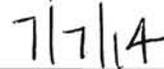
CERTIFICATE

I certify that on this date I placed in the U.S. mail with proper postage thereon, or otherwise caused to be delivered, a true and correct copy of the foregoing document to this Court, and appellant's counsel of record, addressed as follows:

Eric Nielsen
Nielsen, Broman and Koch
1908 E. Madison St.
Seattle, WA 98122



Legal Assistant



Date

APPENDIX A

ORIGINAL

SCANNED 2

FILED IN OPEN COURT
6-25-2014
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Deputy

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR WHATCOM COUNTY

15	THE STATE OF WASHINGTON,)	
17	Plaintiff.)	No.: 12-1-00770-8
19	vs.)	FINDINGS OF FACT AND
21	BRADLEY DUANE MCALLISTER,)	CONCLUSIONS OF LAW RE: GUILT
23	Defendant.)	

This matter having come regularly before the court on the 25th day for June, 2014, and the defendant having stipulated that the court could determine his guilt or innocence of the charge set forth in the Information filed herein solely upon the police reports admitted by stipulation and the court having considered these reports makes the following:

I. FINDINGS OF FACT

1. On July 6, 2012, Deputy Hubby of the Whatcom County Sheriff's Office observed a vehicle being operated in Whatcom County near the city of Ferndale. This vehicle bore the license plate number WA ADD2958.
2. Deputy Hubby was able to confirm that there was a warrant attached to this license plate number in the law enforcement data base. This warrant arose from the Lynden Municipal Court on vehicular charges.

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FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: GUILT

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- 1
- 3 3. Deputy Hubby stopped the vehicle bearing this license plate, a 1995 Chevy, and
5 identified its driver as Bradley McAllister. Mr. McAllister was the person named
7 in the warrant and he was taken into custody.
- 9 4. Mr. McAllister was searched incident to arrest and two baggies containing a
11 crystal substance were found in his pants pocket. The crystal substance was sent
13 to the crime lab and identified as methamphetamine by a forensic chemist.
- 15 5. Mr. McAllister admitted to being a former heroin addict and current
17 methamphetamine user. He advised that there was a loaded syringe under the
19 driver's seat. Deputy Hubby located the syringe after having been granted
21 consent by Mr. McAllister to enter his vehicle.

23 From the foregoing Findings of Fact, the court makes the following:

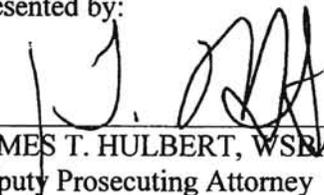
25 I. CONCLUSIONS OF LAW

- 27
- 29 1. The court finds the defendant Bradley D. McAllister guilty beyond a reasonable
31 doubt of possessing a controlled substance, methamphetamine, on July 6, 2012 in
Whatcom County, Washington.

33 DATED this 25 day of June, 2014.

35 
37 _____
Judge Deborra Garrett

39 Presented by:

41 
43 _____
45 JAMES T. HULBERT, WSBA #39673
Deputy Prosecuting Attorney

Approved as to form:

47 
RICHARD LARSON, WSBA#91001
Attorney for Defendant

FINDINGS OF FACT AND CONCLUSIONS OF LAW RE: GUILT