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COURT OF APPEALS
DIVISION II

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STATE OF WASHINGTON

BY CA
DEPUTY

NO. 46818-2-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON
Appellant

v.

MICHAEL FREDERICK WELLS
Respondent

FROM THE SUPERIOR COURT FOR CLARK COUNTY
CLARK COUNTY SUPERIOR COURT CAUSE NO 13-1-01975-2

BRIEF OF RESPONDENT

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A. ASSIGNMENTS OF ERROR

None.

B. ISSUES PRESENTED

1. Was there substantial evidence to support the trial court's findings of fact?
2. Did the trial court abuse its discretion in finding a fact by making a decision that was manifestly unreasonable or a decision that is on untenable grounds or untenable reasons?
3. Do the findings of fact made by the trial court support its conclusion of lack of probable cause to detain to search respondent's car?

C. STATEMENT OF THE CASE **Procedural History**

Respondent accepts Appellants statement of procedural history except as noted: In respondents motion to suppress (CP 21) he argued it was a pretextual stop. Judge Nichols ruled the stop was lawful but suppressed on other grounds.

The court prepared an order granting the motion to suppress (CP 40). It was referred to as exhibit A in the findings of fact and conclusions of law (CP 44). It appears it was not attached as an exhibit to the findings of fact and conclusions of law filed with the court.

Statement of Facts

Respondent accepts the appellant's statement of facts except as set forth below. The appellate court should consult the findings of fact and conclusions of law on Defendant's motion to suppress and order of dismissal as the primary guide for factual findings. Respondent supplements the statement of facts as follows:

The surveillance team did not observe any exchange of items between Bryan Valdez and respondent (CP 44, 40, Findings of Fact No. 4). Respondent and Nora Thomas were inside the Goodwill Store about one hour then left in the Camaro. Sergeant Hoss followed the Camaro and stopped respondent when he observed the vehicle's rear tire hit a curb (CP 44, 40, Findings of Fact No. 8).

Sergeant Hoss noticed Nora Thomas was not wearing a seat belt and discovered an outstanding warrant from the Department of Corrections. Sgt. Hoss asked Nora Thomas to step out of the vehicle which she did holding her purse. Sgt Hoss searched her purse incident to arrest outside the vehicle and discovered what appeared to be a methamphetamine pipe and a small amount of suspect methamphetamine consistent with personal use (CP 44, 40, Findings of Fact No. 9).

Respondent is detained at the scene and not free to go given his vehicle is seized by the police when he is stopped for an infraction,

investigation, and arrest of Nora Thomas (CP 44, 40).

Detective Stevens observed a small metal safe on the floor in front of the driver's seat and a leather zipper bank pouch wedged between the driver's seat and the center console (CP 44, 40, Findings of Fact No. 10). None of these items afforded a plain view of their contents.

Respondent admitted to possessing a small amount of marijuana but denied any other controlled substances (CP 44, 40, Findings of Fact No. 12).

Respondent is detained while Detective Stevens requests a K-9 unit to conduct a sniff of the vehicle. Respondent was advised he was free to go (CP 44, 40, Findings of Fact No. 13).

The K-9 dog was trained prior to Initiative 502 which legalized small amounts of marijuana. The dog, Ory, was trained to give an affirmative alert to a wide variety of controlled substances including marijuana (CP 44, 40, Findings of Fact No. 14).

The K-9 dog gave an affirmative alert to controlled substances at the passenger side door, the bottom seam on the driver's side door, near the rear of the door and the bottom front portion of the passenger door seam. The K-9 could not indicate which odor it alerted to (CP 44, 40, Findings of Fact No. 15).

A search warrant was granted, executed, and methamphetamine, marijuana, and cash were discovered. The cash was found in the small

black lock box, the marijuana was located by the driver's seat and controlled substance in the trunk (CP 44, 40, Findings of Fact No. 16).

Respondent's Additional Procedural Facts

The parties discussed the scope of the search warrant (RP 1-7). It was respondent's position the 3.6 hearing was on the basis of the search within the four corners of the affidavit for search warrant. In respondent's motion to suppress he argued the stop of his vehicle was a pretextual stop and the pretextual stop was part of the search warrant affidavit. Appellant wanted to produce evidence through live testimony. The search warrant was admitted (RP 1). The respondent noted the search warrant was based on pretextual evidence (RP 4.16). Respondent argued if the search warrant is found to be valid then the next suppression issue would be if the stop was pretextual (RP 5.11-6.6). The hearing was limited to the affidavit but the officers were allowed to testify since they were present as a result of the states subpoenas (RP 6.1-6.11).

Sergeant Duncan Hoss

Sergeant Duncan Hoss testified with the understanding the courts analysis began with the four corners of the affidavit (RP 7.1). Sgt. Hoss testified law enforcement had information that Bryan Valdez was dealing narcotics (RP 8.14). Law enforcement observed Bryan Valdez and an unknown female meet respondent and Nora Thomas at Krispy Kreme's

parking lot. The females go inside Krispy Kreme and Bryan Valdez sits in the Camaro with respondent. The females exit Krispy Kreme and enter the vehicles they arrived in. Sgt. Hoss followed the Camaro from Krispy Kreme parking lot to develop additional information and to keep the Camaro in sight until the detectives had a chance to stop Bryan Valdez, interview him, and see if there was an additional crime that the Camaro had been involved in (RP 9.23-10.4). Sgt. Hoss followed the Camaro to the Goodwill Store and both the male and female go inside the store. Sgt. Hoss noted prior to going to the Goodwill he could have stopped the Camaro because there are usually traffic infractions, such as not signaling for a lane change that could be used for that purpose (RP 10.22).

While waiting in the parking lot at Goodwill Sgt. Hoss observed the female, Nora Thomas, exit the Goodwill Store, meet someone in the parking lot, get in their vehicle, drive around the parking lot once then exit the vehicle and go back inside the Goodwill Store (RP 11.10). Sgt. Hoss found that suspicious behavior because in his experience with controlled buys and confidential reliable informants they often get into cars and make strange loops around parking lots and then get out of the car (RP 11.16-11.24). Respondent and Nora Thomas exit the Goodwill Store and Sgt. Hoss again follows the Camaro. Sgt. Hoss observed the vehicle weaving within its lane a little bit, which he described "isn't a huge deal" but

eventually the rear passenger side tire actually struck the curb (RP 12.10). Sgt. Hoss concluded he could not follow the vehicle in good faith because he was concerned the driver was under the influence of something or at least was having some sort of issue that was not normal (RP 12.19). Sgt. Hoss stopped the vehicle and asked respondent why he struck the curb (RP 12.23). During direct examination Sgt. Hoss testified his goal was not to continue or further the narcotics investigation. He testified had he wanted to stop the car there was ample time between the Krispy Kreme and the Goodwill Store. His concern was that the driver was impaired and he didn't want to be the first witness to a collision (RP 13.10-14.6). Respondent, prior to allowing this line of questioning, objected to leading questions of the appellant concerning the nature of the stop not being a part of the narcotics investigation.

Sgt. Hoss testified he approached the car from the driver's side and observed the passenger is not wearing a seat belt. He asked for their identification. He did not notice any signs of impairment or intoxication of respondent (RP 14.14). Sgt. Hoss asked respondent why he struck the curb and respondent replied he just wasn't paying attention and was talking to the passenger (RP 14.23). Sgt. Hoss agreed that could be a possible reason why the traffic incident occurred (RP 15.2). Sgt Hoss ran a standard warrants check and found a felony warrant for arrest for Nora Thomas. He

asked her to get out of the vehicle and she exited with her purse. In a search of Nora Thomas and her belongings incident to arrest the officers found a small glass vial and a glass smoking pipe with clear crystalline substance in it (RP 15.6). By this time Detective Stevens arrived at the location and he was asked to request a narcotics dog to come sniff the car (RP 16.5). Sgt. Hoss summoned the K-9 unit because based on the "totality of what we had" it was reasonable to him there was more narcotics in the car (RP 16.10). There was an objection concerning the scope of the testimony given the focus was on the four corners of the affidavit for search warrant. The appellant was allowed to ask questions concerning why the scope of the stop was expanded. Respondent noted he wanted to make sure the court and the court of appeals understand the motion to suppress was based upon the four corners of the search warrant and it was not permissible to supplement the search warrant affidavit with any of this testimony and the court agreed (RP 17.8-17.21). Sgt. Hoss testified as to why he called for a K-9 unit. He testified based on the information he already testified to it was the next logical step in the investigation to determine if there were any more items of evidence in the vehicle, either relating to Nora Thomas and her possession of the narcotics or Mr. Valdez, or was there something else going on (RP 18.1-18.7).

On cross-examination Sgt. Hoss testified the focus of his unit, the

Tactical Detective's Unit, was to investigate everything below a homicide, below drug trafficking organizations, all the way down to serial burglaries and robberies but traffic infractions and driving while intoxicated are not the focus of the unit (RP 18.24-19.1). The members of the Tactical Detective's Unit did not know respondent prior to Bryan Valdez' contact with him (RP 19.11). There was no evidence of an exchange of packages or anything like that between Bryan Valdez and respondent (RP 20.15). Sgt. Hoss agreed there are always numerous traffic infractions you can stop about anybody for at anytime (RP 20.23-21.8). Sgt. Hoss agreed there were no significant traffic infraction to stop respondent prior to him going to Goodwill (RP 21.9). Sgt. Hoss agreed there was nothing that brought concern to him about respondent's driving.

When Sgt. Hoss observed Nora Thomas exit the Goodwill Store and get into a vehicle and drive around the parking lot in a loop it became a matter of concern (RP 21.21). Respondent was still in the Goodwill Store while this activity occurred (RP 22.17). Because of the activity of Nora Thomas and the prior connection of the Camaro and Mr. Valdez Sgt. Hoss suspected there may have been a drug transaction with Nora Thomas but did not have probable cause to stop (RP 23.5).

Prior to respondent hitting the curb there was nothing wrong with his driving that would have been of any significance for a DUI stop (RP

23.17). Sgt. Hoss agreed he stopped the car largely because he saw the tire hit the curb and was suspicious of DUI or impairment (RP 24.17). Sgt. Hoss agreed the immediate cause to detain the car was only because Nora Thomas was not wearing a seat belt (RP 25.17). The Camaro was stopped at approximately 21:12 hours (RP 26.3). Sgt. Hoss could not recall if respondent was free to go at that point (RP 26.14). The Camaro was not lawfully parked at the place it was stopped (RP 27.6). Sgt. Hoss agreed that had respondent chose to drive the car away he would have stopped him because he wasn't finished arresting Nora Thomas out of the passenger seat (RP 27.10).

During cross, Sgt. Hoss admitted he asked Detective Stevens to call for a K-9 unit at 21:19:02 hours (RP 29.6). At that time respondent was not free to go (RP 29.9). The K-9 unit cleared the scene at 21:46 hours (RP 29.14). Sgt. Hoss agreed his entire activity the day of the stop of respondent's vehicle was a narcotics investigation, prior to seeing respondent's vehicle hit the curb (RP 29.21-30.4).

**Respondent Supplements From The Direct-Examination of Officer
Jarod Stevens**

Officer Stevens is a detective with the Tactical Detective's Unit (RP 31.17). They had learned from a confidential reliable informant that Bryan Valdez was actively possessing and dealing methamphetamine (RP 32.3).

After the respondent and Bryan Valdez's vehicles separated at Krispy Kreme Officer Stevens was part of the unit that followed Bryan Valdez' vehicle a short distance away and then initiated a traffic stop (RP 32.21). Officer Stevens testified he was enroute to assist Sgt. Hoss when Sgt. Hoss initiated his traffic stop (RP 33.3) Officer Steven's testified after Nora Thomas was in custody he contacted respondent and asked him to step out of the vehicle (RP 33.22). In the vehicle on the floor of the driver's side he observed the end of a small black metal safe and then he could see the thick, leather like zipper pouch envelopes that are often used by businesses to make bank deposits. From his training and experience he recognized the items were commonly used to store controlled substances and money (RP 34.7). At that point Officer Stevens requested a K-9, Officer Starbuck was already enroute (RP 34.11). Officer Stevens asked respondent to wait on the curb (RP 34.11). No one was allowed to go near the vehicle until the K-9 unit arrived (RP 34.14). Officer Stevens testified the purpose of calling the K-9 unit was because they had already found methamphetamine in the purse of Nora Thomas, because respondent and Nora Thomas were convicted felons for possession of controlled substance, so based on the totality of these reasons he wanted to see if there was any further controlled substance in the vehicle (RP 34.21-35.2). Officer Stevens agreed respondent was not arrested that day (RP 35.8) and eventually

respondent left the scene after being told the vehicle was being seized and he was free to leave on foot (RP 35.8-35.16).

On cross-examination Officer Stevens testified he was third to arrive on the scene. Deputy Nichols was already there. Nora Thomas was not difficult while being arrested. It was not standard procedure for three officers to arrest Nora Thomas because she got out of the car with no problems (RP 36.12). Officer Steven testified there was only a small amount of crystalline substance discovered (RP 37.10). Officer Stevens testified respondent was not free to go because the vehicle was stopped and they were learning about narcotics (RP 37.24-38.6). He agreed on cross-examination respondent was not detained simply to pat him down and he was being detained for something beyond a pat down (RP 38.7-38.16). Officer Stevens agreed after the arrest of Nora Thomas the respondent was detained based on what they had testified to (RP 38.22). Officer Stevens was asked if he commanded respondent to get out of the vehicle and he said he just asked respondent to step out of the vehicle and he complied (RP 39.9). Officer Stevens said if respondent got out of the car and tried to leave he would have arrested him (RP 39.23-40.3).

Officer Stevens testified he saw no visible residue baggies, pipe, or any paraphernalia in the vehicle (RP 40.13). The lock box and the zipper bag were not illegal (RP 40.23). Respondent was detained while waiting for

the K-9 unit to arrive (RP 40.22). The respondent was detained and a K-9 unit requested because methamphetamine was found in Nora Thomas' purse and because of the respondent and Nora Thomas' criminal history (RP 41.8). The K-9 dog alerted to controlled substance in the vehicle and the officers seize the vehicle (RP 41.15). Officer Stevens at that point told respondent he was free to go but prior to that he was not free to go (RP 41.15-41.23).

On cross-examination Officer Stevens agreed that Nora Thomas exiting the Goodwill Store and getting into a vehicle, driving around the parking lot, and exiting the vehicle would have been a significant to him yet he did not place it in the affidavit for search warrant. He believed such activity by Nora Thomas was consistent with a drug buy but his warrant was based off the K-9 sniff (RP 43.9-43.16). Officer Stevens testified on recross he did not have probable cause to search the vehicle but Nora Thomas was in control of her area of the car and was in control of her purse so it warranted further investigation so they detained the vehicle based on that (RP 45.4).

**Respondent Supplements From The Direct-Examination of
K-9 Officer Starbuck**

Officer Starbuck testified as the K-9 handler (RP 45.23). During direct examination respondent objected arguing the premise for this hearing

was still within the four corners of the warrant (RP 47.18). The court agreed to limit the officer's testimony to only what he observed of the stop (RP 48.1-48.11).

On cross-examination Officer Starbuck testified the K-9 does not distinguish between the types of drugs (RP 50.18) it could be any of the five odors of marijuana, methamphetamine, crack cocaine, cocaine, or heroin (RP 50.20). If the dog smelled the odor of marijuana there is no way to know how much marijuana is in the car or if there is a testable amount (RP 51.5).

Standard of Review

Appellate courts give great deference to the findings of fact and conclusions of law of a trial court. Unlike a magistrate issuing a warrant the trial court actually hears testimony. In this instance the initial decision for probable cause was made by the officers at the scene who later get a search warrant based on a dogs sniff after detaining respondent and his vehicle.

The premise for analysis of search and seizure issues under the Washington Constitution is Article 1 § 1. It provides all political power is inherent in the people, and governments derive their just powers from the consent of the governed, and are established to protect and maintain individual rights.

Defendant's right under the constitution to be free of unlawful search and seizure is stated in Article 1, § 7 of the Constitution of the State of Washington; "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

The standard of review is abuse of discretion. The application of this standard was reviewed in State v. Constantine, 182 Wn. App. 635 (2014). At issue in Constantine was the use of a helicopter flight where alleged marijuana plants were observed and a search warrant was authorized. The court reviewed the search warrant on the basis of whether there was probable cause to search the house. The court noted a review of a probable cause determination has a historical fact component and a legal component, noting State v. Emery, 164 Wn. App. 172; 174 Wn.2d 741 (2012). On matters of historical fact finding the court applies abuse of discretion standard when reviewing an issuing magistrate's decision on whether information provided in the warrant is reliable and credible. For the legal component the court applies the de novo review to determine whether the qualifying information as a whole amounts to probable cause. The court only considers information that was available to the issuing magistrate. De novo means anew, afresh, a second time; Black's Law Dictionary, Revised Fourth Edition.

In State v. Neth, 165 Wn.2d 177 (2008) the court noted at page 182 that it reviews the issuance of a search warrant only for abuse of discretion. The court normally gives great deference to the issuing judge or magistrate, however at a suppression hearing the trial court acts in an appellate capacity; its review, is like the review of an appellate court, is limited to the four corners of the affidavit supporting probable cause. Although the court may defer to the magistrate's determination the courts assessment of probable cause is a legal conclusion to be reviewed de novo.

State v. Brewer, 148 Wn. App. 666 (2009) noted at page 676, paragraph 26, in reviewing a suppression motion the court independently evaluates the evidence to determine whether substantial evidence supports the trial courts finding and whether the finding supports the conclusions. Evidence is substantial when it is sufficient to persuade a fair minded rational person the truth of the finding. The court reviews de novo the trial courts conclusions of law. The court noted the issuance of a search warrant is reviewed under an abuse of discretion standard and great deference is to be given to the issuing magistrate's determination of probable cause and to resolve any doubts in favor of the warrants validity.

State v. Lohr, 164 Wn. App. 414 (2011) noted in reviewing a trial courts denial of a motion to suppress the court reviews its findings of fact for whether substantial evidence supports them and whether the findings

support its conclusions of law. Substantial evidence exists where there is sufficient quantity of evidence in the record to persuade a fair minded rational person of the truth of the findings. The court defers to the fact finder on issues of conflicting testimony, witnesses credibility, and persuasiveness of the evidence. The appellate court reviews the trial courts conclusions of law de novo.

How is an abuse of discretion standard to be applied? The Superior Court is sitting as an Appellate Court and the above case law states as an appellate court there must be substantial evidence to support the findings of fact. The issuing magistrate does not make findings of fact. All facts available are within the four corners of the search warrant affidavit.

Coggle v. Snow, 56 Wn. App. 499 (1990) discusses the issue of what is discretion. Coggle was a civil case on the issue of denial of a motion for continuance on a summary judgment hearing. The court does extended analysis of what judicial discretion is (starting at page 504) and has been quoted since then as authority in criminal cases, such as State v. Allert, 58 Wn. App. 200 (1990). Coggle v. Snow is noted in the National Judicial Colleges textbook "Judicial Discretion" published in 1991.

In Coggle the court was reviewing whether there was a manifest abuse of discretion. The court noted the standard by which to determine whether a trial court has properly exercised its discretion is in disarray in

this state (page504). Justice Benjamin Cardozo in his series of lectures collected in “the Nature of the Judicial Process” (1921) noted that while the judge is free to exercise discretion it is not “wholly free.” The judge is not a knight-errant roaming at will.

In Coggle the court noted the precise meaning of discretion is affected by the reasons and the purpose for which the decision maker is to exercise his or her discretion (page 505). The court criticized what it calls “imprudent” standard for the exercise of discretion introduced in Rehak v. Rehak, 1 Wn. App. 963 (1970). Rehak introduced into Washington law a standard that is incorrect. In Rehak the mistake was instead of examining the reasons for the discretion it focused on the reasonableness of the decision maker (at page 506). The court in Coggle concluded it is incorrect to say an abuse of discretion exists when no reasonable man, woman, or judge could have taken the view adopted by the trial court. Coggle concluded it cannot be said that a trial court cannot be reversed unless the trial court is not reasonable. A judge does not become reasonable or unreasonable from one day to the next. The court said the correct standard was in State ex rel. Carroll v. Junker, 79 Wn.2d 12 (1971). Judicial discretion is based upon, among other things, conclusions drawn from objective criteria. When reviewing a matter of discretion the courts exercise of discretion is not disturbed on review except on a clear showing of abuse

of discretion. It described abuse of discretion as discretion manifestly unreasonable or exercised on untenable grounds for untenable reasons. The proper standard is whether discretion is exercised on untenable grounds for untenable reasons considering the purpose for the trial courts discretion (page 507).

The above case law requires the appellate court to give great discretion to the trial courts finding of historical facts and de novo review of the trial courts decision on probable cause. The court's finding of historical facts can only be disregarded if there is an abuse of discretion which requires the trial court made a decision that was manifestly unreasonable on untenable grounds for untenable reasons. The appellate court should look to the purposes for which the trial court exercising its discretion. Given Article 1, § 7 provides the purpose of government is to protect individual rights and Article 1, § 7 of Washington's Constitution protects privacy even against reasonable searches, State v. Eisfeldt, 163 Wn.2d 628 (2003). The trial court properly exercised its discretion to suppress the evidence. There was no nexus between the defendant, his vehicle, and the arrest of Nora Thomas because of controlled substance discovered in her purse. There was no basis to detain Defendant's vehicle for a K-9 sniff.

D. ARGUMENT

Respondent's vehicle was detained based on a traffic stop to issue a traffic infraction, the discovery that Nora Thomas was not wearing a seat belt, and discovering a warrant for her arrest. There is a limited scope for traffic infraction detention. The only purpose for the detention is to issue a traffic infraction, RCW 46.61.021.

Additionally, the ability to detain a vehicle for a K-9 sniff is limited. Marijuana is legal in the state of Washington so the trial court rightfully reasoned a sniff of marijuana does not mean there is illegal substance or even lead to illegal substance.

The respondent argues the court has authority to issue a search warrant to find evidence that may lead to evidence of a crime. However, at some point there is a stacking on inferences of criminal activity in asking the court to find probable cause because there is some evidence that would lead to a crime rather than an actual crime has occurred. Probable cause requires more. There is no inference from any facts that would lead to a probable cause inference respondent committed a crime in this case. The officers did not see any transactions or exchanges between respondent and Bryan Valdez. The fact that Bryan Valdez and respondent met at a Krispy Kreme parking lot does not lead to an inference of criminal activity. The fact respondent had a prior criminal history does not lead to a probable

cause basis to assume his contacts with the public are drug related activities.

The following case law illustrates the limits of permitting inferences on inferences: In State v. Dalton, 73 Wn. App. 132 (1994) the court held that probable cause to believe a defendant committed a crime on the street does not necessarily give probable cause to search his house.

State v. Sanchez, 74 Wn. App. 763 (1994) held probable cause to believe an informant obtained drugs from the house existed does not give enough to believe under the facts presented that "some means more."

While "some may mean more" there is insufficient evidence in this case. State v. Thein, 138 Wn.2d 139 (1999) held an officer's general conclusions and conclusionary predictions and inferences do not establish the necessary specific underlying circumstances that establish evidence of illegal activity to authorize a search of a home. Probable cause to believe that a person has committed a crime does not necessarily give rise to probable cause to search his home; State v. Johnson, 104 Wn. App. 489 (2001) held general statements regarding an affidavit for search warrant regarding common habits of child abuser are not alone sufficient to establish probable cause.

The United States Supreme Court recently addressed the issue of K-9 units in a traffic stop; Rodriguez v. United States, ___ U.S. ___ (Decided

April 21, 2015). Rodriguez held a police extension of a traffic stop in order to conduct a dog sniff violated the Constitution's shield against unreasonable search and seizure. This is in reference to the Fourth Amendment of the United States Constitution. Article 1, § 7 of the Constitution of the State of Washington has repeatedly held to be more protective.

The court in Rodriguez specifically held a police stop exceeding the time needed to handle the matter for which the stop was made violates the constitutional shield against unreasonable searches.

Clearly, in respondent's case the vehicle was detained far in excess of the time needed to issue an infraction. An infraction was not actually issued. Respondent argued the stop of his vehicle was a pretext stop but did not cross-appeal in a timely manner. Respondent will move to expand the time to file a cross-appeal on the pretext stop.

The officer's requested that Nora Thomas get out of the vehicle and she was searched incident to arrest on the warrant. That ended the officer's ability to detain the vehicle. There was no nexus between respondent and Nora Thomas's arrest warrant and methamphetamine discovered on her. Respondent's admission he had a small amount of marijuana is of no weight because marijuana is legal.

In Rodriguez the police stopped his vehicle for driving on a

highway shoulder, a violation of Nebraska law. After the officer attended to everything relating to the stop he asked permission to walk his dog around his vehicle. The court noted a traffic violation justifies a police investigation of that violation and is more analogous to a Terry stop than a formal arrest. Like a Terry stop the tolerable duration of a police inquiry in a traffic stop context is determined by the seizures "mission;" to address a traffic infraction that warranted the stop.

Washington Case law supports the idea that a stop of a vehicle for a traffic infraction cannot exceed the reason for the stop. RCW 46.61.021 defines the purpose of a traffic stop and its limits.

In State v. Veltri, 136 Wn. App. 818 (2007) the court held if the traffic stop is initially justified the detention length and scope of the traffic stop must be reasonably related to the purpose justifying the stop. Officers may not use routine traffic stops as a basis for generalized investigative detentions or searches. RCW 46.61.021 limits the scope of a traffic stop to a period of time necessary to identify the person, check for warrants, check the status of the person's license, insurance, and registration, and complete and issue an infraction.

E. CONCLUSION

The trial court's decision to suppress was not an abuse of discretion. It was based on substantial evidence. There was no nexus between the

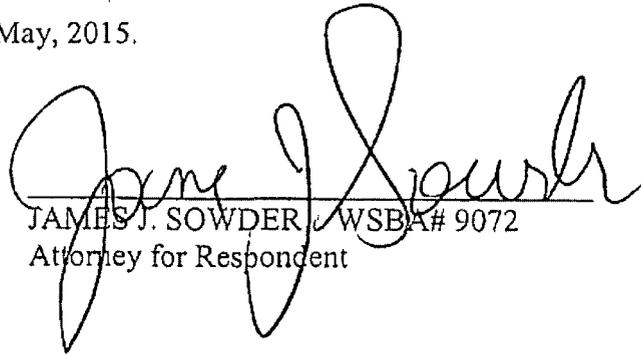
respondent and the arrest of Nora Thomas that would allow the police to detain him to allow for a K-9 sniff of the vehicle. A K-9 sniff of the vehicle does not provide a basis to obtain a search warrant, Rodriguez v. United States, ___ U.S. ___ (Decided April 21, 2015).

The primary issue in this case is the detention of the respondent and his vehicle to conduct a K-9 sniff search. Florida v. Jardines, 561 U.S. 1 (2013) held police dog sniffs are searches.

Washington courts had an opportunity to address the issue in State v. Neth, 165 Wn.2d 177 (2008). The issue was presented before but the court declined to address it given the trial courts ruling that there was insufficient proof of reliability. The Washington Supreme Court noted the issues of the unreliability of K-9 dog sniffs as a basis for probable cause.

Respondent would urge this court to follow the lead of the United States Supreme Court in Florida v. Jardines, 561 U.S. 1 (2013) and hold that even if there were grounds to detain the respondent and his vehicle for a K-9 dog sniff search it does not provide probable cause. Article 1, § 7 has been routinely held to be more protective than the Fourth Amendment. Such retention of respondent or his property would be even if construed to be reasonable would violate Article 1, § 7 because it has its flat exclusion of searches not authorized by a warrant or an exception.

DATED this 28 day of May, 2015.



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Attorney for Respondent

FILED
COURT OF APPEALS
DIVISION II

2015 JUN -5 PM 1:13

STATE OF WASHINGTON

BY _____
DEPUTY

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON,)	
Appellant,)	NO. 46818-2-II
v.)	
)	DECLARATION OF SERVICE
MICHAEL FREDERICK WELLS,)	
Respondent.)	

I, REBA D. GRAHAM, certify and declare under the penalty of perjury under the laws of the State of Washington that the following is true and correct:

On the 2nd day of June, 2015, I deposited in the United States mail in a properly stamped, addressed envelope the original and a copy of the Respondent's Brief, an original and copy of the Motion for Extension of Time to File Cross-Appeal, as well as an original and copy of this declaration of service to the Clerk of the Court of Appeals, Division II to be filed in the above captioned case number. Copies of all the above documents were delivered to the following:

Aaron T. Bartlett
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DATED this 2nd day of June, 2015.



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