

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

Jonathan Patrick Jones,

Appellant.

No. 40640-3-II

UNPUBLISHED OPINION

Worswick, A.C.J. — Jonathan Jones appeals from his conviction for unlawful possession of methamphetamine. He argues that he was unlawfully seized and that he was subjected to an unlawful pretextual traffic stop. We affirm.

FACTS

On May 19, 2009, Port Angeles Police Department Corporal Jesse Winfield was on patrol near C Street and Lauridsen Boulevard at about 8:30 am. Corporal Winfield observed Jones drive southbound on C Street and come to a stop at a T intersection without signaling within the required 100 foot distance.¹ It was only after Jones came to a complete stop that he signaled to

go left. Corporal Winfield then observed Jones fail to signal again as required. He also noticed that the car windows were so darkly tinted that he was unable to determine the race or gender of the occupants.²

After observing these three infractions, Corporal Winfield followed the driver as he turned into a parking lot moments later.³ As Jones left the car, Corporal Winfield exited his patrol car and confronted him to discuss the infractions.⁴ Corporal Winfield, who had not encountered Jones before, asked him for his driver's license, which Jones did not have. He then asked Jones for his name and birthdate and asked dispatch to run a check on him. Jones was not relaxed during this contact. Jones kept looking around and trying to edge toward an apartment building and would not comply with requests to keep his hands out of his pockets. Corporal Winfield asked him to stand in a particular location.

Eventually the dispatcher responded with information that Jones's license was suspended. After that, Corporal Winfield arrested him for driving with a suspended license. After he placed

¹ RCW 46.61.305(2) requires that "[a] signal of intention to turn or move right or left when required shall be given continuously during not less than the last one hundred feet traveled by the vehicle before turning."

² RCW 46.37.430(5)(a) imposes a window tinting limit:

The maximum level of net film sunscreening to be applied to any window, except the windshield, shall have a total reflectance of thirty-five percent or less, and a light transmission of twenty-four percent or more, where the vehicle is equipped with outside rearview mirrors on both the right and left. Installation of more than a single sheet of film suncreening material to any window is prohibited.

³ Corporal Winfield never activated his emergency lights or sirens.

⁴ A passenger in the car also got out of the car. Corporal Winfield did not stop or pursue that individual, however.

Jones in his patrol car, Corporal Winfield conducted a search of his person and found several items, including a container that had a baggie of suspected methamphetamine.

The State charged Jones by information with one count of possession of a controlled substance (methamphetamine) and one count of third degree driving while license suspended or revoked on May 21, 2009. Before trial, Jones moved to suppress the methamphetamine evidence retrieved following his search incident to arrest, arguing that he was unlawfully seized by Corporal Winfield and that the stop was pretextual. The trial court held a CrR 3.6 suppression hearing on October 8, 2009. After hearing testimony from Corporal Winfield and others, the trial court denied Jones's motion and entered findings of fact and conclusions of law.⁵ The matter then went to trial and a jury found Jones guilty as charged. He now appeals.

ANALYSIS

Jones contends that the trial court erred in denying his motion to suppress. At the outset, he assigns error to a series of the trial court's findings of fact and conclusions of law. He also argues that he was unlawfully seized and that the stop was pretextual.

3.6 Hearing Findings and Conclusions

Jones first argues that several findings of fact and conclusions of law are not supported by substantial evidence. We review conclusions of law related to a motion to suppress *de novo*. *State v. Levy*, 156 Wn.2d 709, 733, 132 P.3d 1076 (2006). And we review findings of fact for substantial evidence. *Levy*, 156 Wn.2d at 733.

⁵ The trial court determined that under the circumstances, Corporal Winfield had the right to contact Jones and ask for his identification and that the arrest and search incident to Jones's arrest for driving with a suspended license was proper.

Jones assigns error to the following findings of fact: (1) that the suspect told the officer his name was “John Jones;” (2) that Corporal Winfield asked Jones for his middle name and date of birth; (3) after Corporal Winfield removed a tin box from Jones’s pocket, Jones said “it’s full of drugs”; and (4) Corporal Winfield discovered a “large bag” filled with methamphetamine.. Clerk’s Papers at 51-52. And he assigns error to two conclusions of law: (1) that the officer saw the vehicle and had reasonable suspicion that the window was tinted in excess of the legal limit; and (2) had the officer been using the stop for pretextual purposes, he probably would have used his lights to investigate.⁶

As the State concedes, substantial evidence does not exist to support these findings of fact. In fact, there is simply no support for these findings in the record whatsoever. Nevertheless, these unsupported findings of fact do not warrant reversal because they did not materially affect the conclusions of law. *See State v. Caldera*, 66 Wn. App. 548, 551, 832 P.2d 139 (1992). The unchallenged findings of fact that remain, which are verities on appeal, substantially support the conclusions of law in this case.⁷ *See State v. Ross*, 106 Wn. App. 876, 880, 26 P.3d 298 (2001). Thus, Jones’s argument on this first issue fails.

⁶ As to this “conclusion of law,” both parties agree that it is not an actual conclusion of law.

⁷ The unchallenged findings of fact that support the conclusions of law include: (1) at 8:35 am Corporal Winfield observed a car approach an intersection and turn; (2) as the car turned, Corporal Winfield observed very dark window tint, such that he could not determine the gender of the occupants; (3) Corporal Winfield observed that the driver activated the turn signal at a significantly shorter distance than the 100 feet required by law; (4) Corporal Winfield observed Jones continually putting his hands in and out of his pockets; and (5) Corporal Winfield found a substance on Jones later verified to be methamphetamine.

Unlawful Seizure

Jones next argues that he was unlawfully seized because the stop was not an actual traffic stop.⁸ “As a general rule, warrantless searches and seizures are per se unreasonable, in violation of the Fourth Amendment and article I, section 7 of the Washington State Constitution.” *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002). “[A] seizure occurs, under article I, section 7, when considering all the circumstances, an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer's use of force or display of authority.” *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004). For a seizure to pass constitutional muster, “that seizure must be based on ‘specific and articulable’ objective facts that give rise to a reasonable suspicion.” *State v. Bailey*, 154 Wn. App. 295, 300, 224 P.3d 852 (2010) (quoting *Terry v. Ohio*, 392 U.S. 1, 21–22, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)).

Despite Jones’s argument, however, the facts clearly demonstrate that Corporal Winfield was conducting a traffic stop based on Jones’s failure to signal and to investigate the window tinting. Moreover, RCW 46.61.021(2) specifically authorizes a law enforcement officer to detain the driver during a traffic stop “for a reasonable period of time necessary to identify the person, check for outstanding warrants, check the status of the person’s license, insurance identification card, and the vehicle’s registration” And a traffic stop does not become an unlawful seizure

⁸ Despite this argument, Jones appears to concede that Corporal Winfield had a sufficient basis to detain him, measure the window tinting, and issue a citation or warning for that. Jones, however, suggests that Corporal Winfield’s failure to do so prevented him from conducting a warrant check and arresting Jones for driving with a suspended license. There is no authority for this proposition.

simply because the officer inquires into matters unrelated to the justification for the stop, so long as those inquiries “do not measurably extend the duration of the stop.” *Arizona v. Johnson*, 555 U.S. 323, 129 S. Ct. 781, 788, 172 L. Ed. 2d 694 (2009). Thus, Jones’s argument on this point also fails.

Pretextual Stop

Jones finally argues that Officer Winfield conducted an unlawful pretextual stop. A pretextual traffic stop occurs when an officer stops a vehicle, not to enforce the traffic code, but to conduct an investigation unrelated to driving. *State v. Ladson*, 138 Wn.2d 343, 349-351, 979 P.2d 833 (1999). Pretext stops “generally take the form of police stopping a driver for a minor traffic offense to investigate more serious violations-violations for which the officer does not have probable cause.” *State v. Myers*, 117 Wn. App. 93, 94-95, 69 P.3d 367 (2003). A warrantless traffic stop based on pretext violates article I, section 7 of the Washington Constitution because it does not fall within any exception to the warrant requirement and therefore lacks the authority of law necessary to intrude upon a citizen's privacy interests. *Ladson*, 138 Wn.2d at 358.

In determining whether a stop is pretextual, the totality of the circumstances must be considered, including the subjective intent of the officer and the objective reasonableness of the officer's conduct. If the court finds the stop is pretextual, all evidence subsequently obtained from the stop must be suppressed. *Ladson*, 138 Wn.2d at 358-359. But a stop is pretextual only “when an officer stops a vehicle in order to conduct a speculative criminal investigation unrelated to the driving, and not for the purpose of enforcing the traffic code.” *State v. Nichols*, 161 Wn.2d 1, 8, 162 P.3d 1122 (2007).

In this case, the evidence does not support Jones's claim that Officer Winfield conducted an unlawful pretextual stop to investigate crimes for which he had no probable cause. Jones clearly violated the law by failing to comply with the 100 foot signaling requirement on two occasions. And based on Officer Winfield's experience with window tinting, his suspicions that the tinting on Jones's car violated the law was reasonable. There are no facts that cause us to believe that Officer Winfield's suspicions were aroused by some other non-illegal conduct and that he then used a traffic stop as a pretext to investigate further. Based on this, Jones's argument on this final point fails.

Affirmed.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

Armstrong, J.

Hunt, J.