

FILED
SEPTEMBER 22, 2016
In the Office of the Clerk of Court
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION THREE**

STATE OF WASHINGTON,)	
)	No. 33312-4-III
Appellant,)	
)	ORDER GRANTING
v.)	MOTION FOR LEAVE TO FILE
)	AMICUS CURIAE BRIEF,
ERIC DANIEL CRUZ,)	DENYING MOTION FOR
)	RECONSIDERATION AND
Respondent.)	AMENDING OPINION
)	

THE COURT has considered appellant's motion for reconsideration of our July 19, 2016 opinion, the respondent's answer thereto, the Washington State Patrol and Washington Department of Fish and Wildlife's motion for leave to file an amicus curiae brief in support of the appellant's motion for reconsideration, and the amicus curiae brief filed by the Washington State Patrol and Washington Department of Fish and Wildlife on August 9, 2016.

IT IS ORDERED that the motion for leave to file amicus curiae brief in support of the appellant's motion for reconsideration is granted.

IT IS FURTHER ORDERED that the appellant's motion for reconsideration of this court's July 19, 2016 opinion is denied.

IT IS FURTHER ORDERED that the court's July 19, 2016 opinion is amended as follows:

In the first paragraph on page five, the following is added after the sentence “Both components must be present.”:

Neither the plain wording of *Terry* nor our case law permit reducing the standard to a disjunctive test.³

³ See *State v. Russell*, 180 Wn.2d 860, 868, 330 P.3d 151 (2014) (“stop was justified because [the officer] could point to specific and articulable facts that supported a belief that [defendant] could be armed *and* dangerous”) (emphasis added); *State v. Collins*, 121 Wn.2d 168, 847 P.2d 919 (1993) (protective frisk of driver was lawful as the officer had a reasonable suspicion the driver was armed and dangerous where there was a reliable informant tip the driver had a gun, the stop occurred early in the morning, and the officer previously arrested the driver for a felony); *State v. Horrace*, 144 Wn.2d 386, 28 P.3d 753 (2001) (frisk of vehicle passenger supported by specific and articulable facts giving rise to an objectively reasonable belief that passenger could be armed and dangerous where trooper saw driver lean in passenger’s direction, passenger was in close proximity to driver’s movements, passenger was wearing a bulky jacket in which driver could have concealed a weapon, and the stop occurred in a relatively isolated spot in the middle of night); *Kennedy*, 107 Wn.2d 1, 726 P.2d 445 (1986) (where driver made suspicious furtive movements and passenger remained in the car, officer’s *Terry* search of car justified); *Larson*, 88 Wn. App. 849 (driver’s furtive movements combined with the officer’s knowledge he would have to let driver back into his car justified *Terry* frisk of car).

In the first paragraph on page six, the following footnote is added after the citation “RP at 27.”:

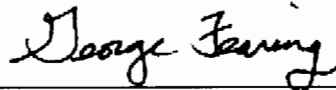
⁴ Although Officer McCormick’s subjective impressions are not dispositive, they are relevant to the court’s objective assessment of how a reasonable officer would assess the situation. See *Ornelas v. United States*, 517 U.S. 690, 699, 116 S. Ct. 1657, 134 L. Ed. 2d 911 (1996) (in making determinations of reasonable suspicion and probable cause, “due weight” should be given to inferences drawn by “local law enforcement officers”).

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With the addition of the two above-referenced footnotes, the footnote on page eight will be renumbered from “3” to “5.”

PANEL: Judges Fearing, Lawrence-Berrey and Pennell

FOR THE COURT:



GEORGE FEARING
Chief Judge