

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

No. 28432-8-III

Respondent,

)

)

) **Division Three**

v.

)

)

ENRIQUE VILLARREAL, JR.,

) **UNPUBLISHED OPINION**

)

Appellant.

)

)

Kulik, C.J. — Grant County Sheriff’s Deputy Darrik Gregg stopped a vehicle whose registered owner had a suspended license. Deputy Gregg determined that the driver was not the registered owner. Deputy Gregg then noticed that Enrique Villarreal, Jr., who was sitting in the backseat, was not wearing a seatbelt. Deputy Gregg asked Mr. Villarreal for identification, ran a warrant check, and determined that Mr. Villarreal had two outstanding warrants for his arrest. Deputy Gregg arrested Mr. Villarreal and found a bag in plain view where Mr. Villarreal had been sitting in the vehicle. The substance in the bag tested positive for methamphetamine. The trial court convicted Mr. Villarreal of possession of a controlled substance at a stipulated facts bench trial. Mr. Villarreal

appeals, asserting the trial court erred by denying his motion to suppress and by considering deficient documents.

We disagree and affirm.

FACTS

On May 15, 2008, Deputy Gregg pulled over a vehicle because the registered owner had a suspended license and the driver matched the description of the registered owner. The driver stated she was not the registered owner, but that the registered owner was sitting in the front passenger seat. Deputy Gregg asked both women for identification. Deputy Gregg was satisfied that the registered owner was not the driver.

Deputy Gregg observed a man in the backseat, later identified as Enrique Villarreal, Jr., who was not wearing a seatbelt. Deputy Gregg asked Mr. Villarreal for identification, ran a warrant check, and determined Mr. Villarreal had two outstanding warrants for his arrest. Deputy Gregg arrested Mr. Villarreal and read him his *Miranda*¹ rights. Deputy Gregg saw a white bag in plain view where Mr. Villarreal had been sitting. This bag was consistent with the type of bag used to conceal narcotics. Deputy Gregg field tested the bag, which contained a white crystalline substance. The substance tested positive for methamphetamine. Mr. Villarreal initially denied that the bag was his,

¹ *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

but later stated that he bought the methamphetamine for \$10.

The State charged Mr. Villarreal with one count of possession of a controlled substance. Defense counsel brought a motion to suppress the methamphetamine asserting that Mr. Villarreal was unlawfully seized following an improperly conducted *Terry*² stop. The trial court denied the motion to suppress after considering the briefs of defense counsel and the State, the affidavit of Deputy Gregg, and Deputy Gregg's report.

The trial court considered Deputy Gregg's unsigned affidavit, stating, "I'm going to take you at your word that the affidavit of Deputy Gregg will be filed in a form that is signed. Otherwise, of course, I couldn't consider it." Report of Proceedings (Jan. 15, 2009) at 2. Mr. Villarreal did not object to this procedure, or to any of the documents considered by the trial court. The day after the suppression hearing, the prosecutor filed a second version of Deputy Gregg's affidavit, containing Deputy Gregg's typed name on the signature line.

The parties agreed to a stipulated facts bench trial. The trial court found Mr. Villarreal guilty as charged and sentenced him to 15 days' confinement, which was converted to 120 hours of community service.

Mr. Villarreal appeals, asserting that Deputy Gregg's affidavit was insufficient as

² *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

a matter of law to establish the facts in evidence and that Deputy Gregg exceeded the scope of the *Terry* stop, such that Mr. Villarreal was unlawfully detained and all fruits from the unlawful detainment should have been suppressed.

ANALYSIS

Mr. Villarreal asserts that the motion to suppress should have been granted. Initially, he challenges, for the first time on appeal, the documents considered by the trial court when ruling on the motion to suppress. Specifically, he argues that Deputy Gregg's affidavit and police report were not properly signed and, therefore, they should not have been considered by the trial court.

In general, this court will not review an issue raised for the first time on appeal unless it is a ““manifest error affecting a constitutional right.”” *State v. McFarland*, 127 Wn.2d 322, 332-33, 899 P.2d 1251 (1995) (quoting RAP 2.5(a)(3)). Here, the issue raised by Mr. Villarreal does not affect a constitutional right. Rather, the issue is procedural, concerning what evidence the trial court could consider when ruling on his motion to suppress. Therefore, we decline to consider the issue.

Next, Mr. Villarreal asserts that Deputy Gregg exceeded the scope of the *Terry* stop when he detained Mr. Villarreal after dispelling his suspicion of illegal driving. This court reviews de novo whether a *Terry* stop passes constitutional muster. *State v. Rankin*,

151 Wn.2d 689, 694, 92 P.3d 202 (2004).

A *Terry* stop of a person or vehicle is justified if the officer can point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *State v. Kennedy*, 107 Wn.2d 1, 5, 726 P.2d 445 (1986) (quoting *Terry*, 392 U.S. at 21). A reasonable suspicion is the substantial possibility that criminal conduct has occurred or is about to occur. *Id.* at 6. Whether an officer's suspicion is reasonable is determined by the totality of the circumstances known to the officer at the inception of the stop. *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

Deputy Gregg stated in his police report that the women identified themselves and that he then noticed that Mr. Villarreal was not wearing a seatbelt. Persons 16 years of age or older must wear a seatbelt when operating or riding in a motor vehicle. RCW 46.61.688(3). A law enforcement officer can ask passengers for identification if the officer believes the passenger was violating the seatbelt law. *State v. Chelly*, 94 Wn. App. 254, 260, 970 P.2d 376 (1999).

Here, Deputy Gregg observed that Mr. Villarreal was not wearing a seatbelt after speaking to the front seat occupants to determine whether the driver was the registered owner of the vehicle. Deputy Gregg's observation led him to an articulable suspicion that

No. 28432-8-III
State v. Villarreal

Mr. Villarreal violated the traffic code. The deputy could then detain Mr. Villarreal briefly under the *Terry* stop exception to the warrant requirement. The trial court did not err by denying the defense's motion to suppress based on an unlawful seizure.

We affirm the conviction.

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

Kulik, C.J.

WE CONCUR:

Brown, J.

Siddoway, J.