

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

**STATE OF WASHINGTON,**

**No. 28494-8-III**

**Respondent,**

)

)

) **Division Three**

**v.**

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)

**ERIKA SANDRA SANCHEZ,**

) **UNPUBLISHED OPINION**

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**Appellant.**

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Kulik, C.J. — At the conclusion of a stipulated facts trial, Erika Sanchez was convicted of unlawful possession of a controlled substance, hydrocodone. On appeal, Ms. Sanchez contends that there was insufficient information in the warrant affidavit to allow the search of her house and that she received ineffective assistance of counsel when defense counsel failed to move to strike the warrant affidavit.

We review the magistrate’s issuance of a warrant for an abuse of discretion and the trial court’s denial of the motion to suppress de novo. We conclude that the 13-page affidavit in support of the warrant was sufficient to establish probable cause.

Accordingly, we affirm the conviction.

## FACTS

The request for a warrant to search Erika Sanchez's house followed two months of investigative activities relating to Ms. Sanchez and alleged drug dealing in Franklin County, Washington.

On August 28, 2008, FBI Special Agent Jessica Huckemeyer interviewed Lee Rocha while he was in custody at the Franklin County Jail. Mr. Rocha stated that Erika Sanchez lived behind the old Kentucky Fried Chicken restaurant in Pasco, Washington, and that she dealt in quantities of up to one-half pounds of methamphetamine. Mr. Rocha also said that "Rhino" and "Rachel" dealt in one-ounce quantities of methamphetamine. Detective Aaron Clem of the Tri-Cities Violent Gang Task Force knew "Rhino" was Robert Soto, a member of the 18th Street gang, and "Rachel" was Mr. Soto's girl friend, Maria Rachel Mendoza. Clerk's Papers (CP) at 61, 69.

On September 4, Officer Ken Taylor of the Kennewick Police Department arrested Maurillo Trejo for driving with a suspended license. A search of Mr. Trejo's vehicle uncovered one pound of methamphetamine and a stolen pistol. Mr. Trejo waived his *Miranda*<sup>1</sup> rights and told Detective Clem that he had just purchased the methamphetamine

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

and still owed \$21,000 for this purchase. Mr. Trejo stated that he was on his way to make deliveries to Ms. Sanchez and Isaiah Hinojosa. Mr. Trejo said that he was going to split one-quarter pound between Ms. Sanchez and Mr. Hinojosa.

On October 23, Detective Clem and Officer Jeff Zaro observed a white sedan with five occupants parked in Pasco. A white male, later identified as Dustin Benson, exited the driver's side rear door and walked across the street to a self-service car wash. Detective Clem and Officer Zaro saw Officer Rick Brito and FBI Special Agent William Leahy driving nearby and asked them to watch Mr. Benson. The first vehicle traveled to a mini mart and parked. An adult male exited the passenger side. Officer Zaro recognized the man as Carlos Rodriguez, a known drug user, who lives in Richland.

Meanwhile, Special Agent Leahy and Officer Brito watched Mr. Benson walk through the car wash toward a white vehicle, but the officers did not see him make contact with anyone. Detective Clem and Officer Zaro then saw Mr. Benson walk toward the mini mart through an alley while he was talking on a cell phone. Mr. Benson got back in the rear passenger seat of the first vehicle which then left the mini mart. Special Agent Leahy and Officer Brito followed this vehicle.

The first vehicle parked in front of the Dollar Store. Mr. Benson again exited the vehicle and walked about 200 yards to the Schuck's Auto Supply. Special Agent Leahy

and Officer Brito watched as Mr. Benson went into Schuck's for a short time and then got into the rear passenger seat of a second vehicle that was parked in the parking lot. The second vehicle was a white Toyota bearing a Washington plate of 907VGX. This vehicle was driven by Ms. Sanchez. The second vehicle left the area, followed by Special Agent Leahy and Officer Brito. The first vehicle left the Dollar Store parking lot and drove to the Hastings parking lot. In response to a request for backup, Officers Gaines and Banner arrived at the Hastings parking lot.

When the second vehicle arrived in the parking lot, Mr. Benson got out of the rear passenger seat. He walked over to the first vehicle and got into the rear passenger seat. Detective Clem and Officer Zaro approached the first vehicle, announced themselves as police officers, and directed the vehicle's occupants to show their hands. The occupants complied. The second vehicle began driving into the parking lot, and Officers Gaines and Banner pulled behind it and activated their emergency lights. As the vehicle came to a stop, the officers noticed that the occupants appeared to be stuffing items in or around their seats.

Officer Brito and Special Agent Leahy arrived and removed the occupants from the first vehicle. The occupants were identified as James Dove, Kelly Lozensky, Nicole Hawkins, and Carlos Rodriguez. Mr. Dove and Mr. Rodriguez said that Mr. Benson was

buying methamphetamine for Ms. Lozensky. Ms. Lozensky and Ms. Hawkins admitted that they were driving around so that Mr. Benson could look for methamphetamine, but they would not say who the methamphetamine was for.

Detective Clem contacted Officer Gaines and Officer Banner at the second vehicle. The occupants, Tamara Garcia and Ms. Sanchez, were handcuffed. Ms. Sanchez had been arrested for driving while license suspended. Ms. Garcia had been arrested because a glass smoking pipe was found in her pants pocket during a pat-down search. In the vehicle on the passenger seat, there were, among other things, a large amount of money and torn plastic bags. These items came from Ms. Garcia's purse.

Mr. Benson had two baggies of a crystalline substance. After he was given his *Miranda* warnings, Mr. Benson admitted that one of the bags contained methamphetamine. Mr. Benson explained that Mr. Rodriguez had given him \$40 to purchase methamphetamine for Ms. Lozensky. Mr. Benson stated that while he did not know which of the two women in the second vehicle had sold him the drugs, one of them placed the baggie on the center console and the other picked up the money.

Detective Clem counted the money from Ms. Garcia's purse. The total was \$517. Earlier, Ms. Garcia had informed Detective Clem that she had only \$250 and that if there was any more money than that, the money was not hers. Ms. Sanchez was given her

*Miranda* warnings. She then told Officer Zaro that she used methamphetamine and had used it earlier that day. Ms. Sanchez denied selling drugs to anyone. She stated that she went to the car wash to wash her vehicle and later drove to Schuck's for cleaning supplies. Ms. Sanchez explained that upon leaving Schuck's, she found Mr. Benson, an acquaintance, sitting in the back seat of her vehicle. She gave him a ride to Hastings at his request.

Officer Zaro located a cell phone sitting on top of a police car. Ms. Sanchez claimed the telephone was hers. Officer Zaro asked her whether Mr. Benson had called her that day. Mr. Benson gave his number as 528-0764. Officer Zaro verified the number by using his cell phone to call Mr. Benson's phone. Officer Zaro looked at the call history on Ms. Sanchez's phone and discovered that she had received a call from Mr. Benson at 4:24 p.m.

Mr. Benson told Officer Zaro that he had called Ms. Sanchez earlier and asked that she sell him some methamphetamine. According to Mr. Benson, they agreed to meet at the car wash. The first vehicle, driven by Ms. Lozensky, picked up Mr. Benson. They drove to the car wash and Mr. Benson approached a white vehicle, but Ms. Sanchez was not there. Mr. Benson called Ms. Sanchez and learned that she was at a different car wash. Ms. Sanchez told Mr. Benson to meet her at Schuck's, which he did. When they

met, he paid \$40 for the methamphetamine.

Detective Clem applied for a search warrant for the telephones owned by Mr. Benson, Ms. Sanchez, and Ms. Garcia. The trial court authorized the search. Ms. Sanchez's telephone contained the numbers of 16 people who had been arrested for methamphetamine, marijuana, and/or paraphernalia charges, and/or drug manufacturing/delivery charges.

On November 13, a search of Robert Soto's residence uncovered one and one-half ounces of methamphetamine. Mr. Soto and his girl friend, Ms. Mendoza, were arrested.

On November 14, FBI Special Agent Huckemeyer interviewed Ms. Mendoza at the Franklin County Jail. Ms. Mendoza stated that Ms. Sanchez sells about one-quarter pound of methamphetamine per week and that she usually keeps the methamphetamine close to her, in her room, on her person, or in her vehicle. Ms. Mendoza stated that Ms. Sanchez does not have a driver's license. Later, Ms. Mendoza told Officer Alice Rogers that she had seen Ms. Sanchez with methamphetamine a couple of days before her arrest on November 13. Based on that information, Detective Clem obtained a warrant to search Ms. Sanchez's house.

When executing the search warrant on November 21, detectives found six pills in the top drawer of Ms. Sanchez's dresser. The pills were marked "M357" and were

suspected to be hydrocodone. Clerk's Papers (CP) at 30. This was later confirmed by the Washington State Patrol crime laboratory. Ms. Sanchez was charged by information with unlawful possession of a controlled substance, hydrocodone, on January 15, 2009.

The trial court denied defense counsel's motion to suppress the evidence obtained at Ms. Sanchez's house. Ms. Sanchez was convicted after a stipulated facts trial.

#### ANALYSIS

*Probable Cause to Search.* Ms. Sanchez asserts that the information in the warrant affidavit was insufficient to establish probable cause. Specifically, Ms. Sanchez argues that the information obtained from informants does not meet the *Aguilar-Spinelli* test,<sup>2</sup> that there was no nexus between the alleged criminal activity and Ms. Sanchez's house, and that the information obtained from Mr. Trejo was stale.

An affidavit for a search warrant establishes probable cause if it sets forth facts sufficient for a reasonable person to conclude that the defendant is probably involved in criminal activity and that the police will find evidence of the criminal activity at the place to be searched. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999).

We review the magistrate's decision to issue the warrant for an abuse of

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<sup>2</sup> The *Aguilar-Spinelli* test is the two-prong test articulated by the United States Supreme Court in *Spinelli v. United States*, 393 U.S. 410, 413, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969) and *Aguilar v. Texas*, 378 U.S. 108, 114, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964).



discretion. *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004). But the trial court's assessment of probable cause is a legal conclusion that we review de novo. *State v. Chamberlin*, 161 Wn.2d 30, 40, 162 P.3d 389 (2007). We afford great deference to a magistrate's determination of probable cause. *State v. Young*, 123 Wn.2d 173, 195, 867 P.2d 593 (1994). We do not defer to a magistrate's decision if the information on which it is based is insufficient to establish probable cause. *State v. Perez*, 92 Wn. App. 1, 4, 963 P.2d 881 (1998).

The affidavit should be interpreted in a "common sense, practical manner," rather than applying a hypertechnical standard. *State v. Stenson*, 132 Wn.2d 668, 692, 940 P.2d 1239 (1997). Our review is limited to the four corners of the affidavit. *State v. Murray*, 110 Wn.2d 706, 709-10, 757 P.2d 487 (1988). We resolve any doubts in favor of the validity of the warrant. *State v. Garcia*, 63 Wn. App. 868, 871, 824 P.2d 1220 (1992).

Aguilar-Spinelli. Ms. Sanchez first argues that the information obtained from the informants was insufficient to satisfy the *Aguilar-Spinelli* test.

When an informant's tip forms the basis for probable cause, Washington courts apply the *Aguilar-Spinelli* test.<sup>3</sup> *State v. Jackson*, 102 Wn.2d 432, 433, 688 P.2d 136

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<sup>3</sup> Washington courts continue to follow the *Aguilar-Spinelli* test despite the United States Supreme Court's adoption of a "totality of the circumstances" test in *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). The Washington Supreme Court determined that the *Gates* test is inapplicable to article I, section 7 of the

(1984). Under *Aguilar-Spinelli*, an affidavit of probable cause to support a search warrant must set forth facts establishing an informant’s veracity and basis of knowledge. *State v. Mejia*, 111 Wn.2d 892, 896-97, 766 P.2d 454 (1989). For an informant’s tip to create probable cause, the warrant affidavit must set forth (1) the circumstances from which the informant drew his information so that a magistrate can independently evaluate the informant’s basis of knowledge (the “basis of knowledge” prong), and (2) the underlying circumstances establishing that the informant was credible or his information reliable (the “veracity” prong). *Jackson*, 102 Wn.2d at 435.

This court reviews the trial court’s conclusion that an informant meets the *Aguilar-Spinelli* test de novo as a matter of law. *In re Det. of Peterson*, 145 Wn.2d 789, 800, 42 P.3d 952 (2002). We review a factual determination of whether an informant is credible and reliable for an abuse of discretion; that is, whether tenable grounds or reasons support the determination. *Id.*

The most common way to satisfy the veracity prong of *Aguilar-Spinelli* is to evaluate the informant’s track record, that is, the informant’s success or failure at providing accurate information to police on prior occasions. *Jackson*, 102 Wn.2d at 437. When an informant is a named citizen, the veracity prong of the *Aguilar-Spinelli* test is

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Washington Constitution. See *State v. Jackson*, 102 Wn.2d 432, 440-43, 688 P.2d 136 (1984).

relaxed. *State v. Tarter*, 111 Wn. App. 336, 340, 44 P.3d 899 (2002). “An informant’s veracity is established when the informant provides firsthand details and is a named citizen.” *Id.* Another way the veracity prong can be satisfied is by showing that the declaration was against the informant’s penal interest. *State v. Lair*, 95 Wn.2d 706, 711, 630 P.2d 427 (1981). *Aguillar-Spinelli*’s knowledge prong is satisfied where the informant has personally witnessed the facts asserted and is passing on firsthand information. *State v. Duncan*, 81 Wn. App. 70, 76, 912 P.2d 1090 (1996).

Significantly, an independent police investigation may establish probable cause if the independent investigation corroborates the confidential informant. *Jackson*, 102 Wn.2d at 438. Probable cause is not established if the independent investigation merely verifies innocuous details, commonly known facts, or easily predictable events. *Id.* Probable cause is established only if the independent police investigation points to “suspicious activity.” *Id.*

Ms. Sanchez challenges the information obtained from three informants. First, Ms. Sanchez challenges the August 28 information obtained from Mr. Rocha while he was in custody. Mr. Rocha stated that Ms. Sanchez lived behind the old Kentucky Fried Chicken restaurant and dealt in one-half pound quantities of methamphetamine. Second, Ms. Sanchez challenges Mr. Trejo’s September 4 statement that he was going to deliver

one-eighth pound of the methamphetamine in his possession to Ms. Sanchez. Third, Ms. Sanchez challenges Ms. Mendoza's November 14 statement that Ms. Sanchez sold about one-quarter pound of methamphetamine per week and that she kept the drugs close to her, in her room, on her person, or in her car.

The State concedes that there is no evidence of a track record for Mr. Rocha, Mr. Trejo, or Ms. Mendoza. However, these three individuals were all named citizen informants as opposed to confidential or professional informants.

While Mr. Rocha is a named citizen, there is no information in the affidavit as to how he learned that Ms. Sanchez was a dealer of methamphetamine. Consequently, this information does not meet the *Aguilar-Spinelli* test. Mr. Rocha also stated that Ms. Sanchez lived behind the old Kentucky Fried Chicken restaurant, but this information is an innocuous fact that does not support a finding of probable cause. Mr. Rocha's statement concerning the location of Ms. Sanchez's house was confirmed later by independent police investigation.

Mr. Trejo, a named citizen, gave information based on his firsthand knowledge. He stated that he was going to deliver one-eighth pound of methamphetamine to Ms. Sanchez. A search of Mr. Trejo's vehicle uncovered one pound of methamphetamine. Mr. Trejo's statement satisfies the *Aguilar-Spinelli* test. His statement was based on

firsthand information and was against his penal interest. Moreover, Mr. Trejo was arrested while in possession of a large quantity of methamphetamine.

Ms. Sanchez contends that the warrant affidavit does not establish Mr. Trejo's reliability or demonstrate where the delivery was to be made or where Ms. Sanchez's house was located. Mr. Trejo's statement was based on firsthand information. He stated that he was delivering methamphetamine to Ms. Sanchez. Mr. Trejo's statement did not provide where he was going to deliver the methamphetamine. However, Ms. Mendoza's statement supplied the information that Ms. Sanchez kept methamphetamine close to her, in her vehicle, in her room, or on her person.

Ms. Sanchez maintains that no effort was made to establish that Ms. Mendoza was reliable. Ms. Sanchez asserts that Ms. Mendoza provided no information as to how she knew about the one-quarter pound per week sales or where Ms. Sanchez kept her drugs. In Ms. Sanchez's view, nothing Ms. Mendoza told police was against her penal interest.

For the most part, the information obtained from Ms. Mendoza meets the *Aguilar-Spinelli* test. Ms. Mendoza was a named citizen informant. She stated that she saw Ms. Sanchez with methamphetamine a few days before Ms. Mendoza's November 13 arrest. Ms. Mendoza also knew that Ms. Sanchez had a suspended license. Ms. Mendoza stated that Ms. Sanchez kept her drugs in her vehicle, in her room, or on her person. This

information appears to be based on firsthand information. It is less clear how Ms. Mendoza knew that Ms. Sanchez sold about one-quarter pound of methamphetamine per week. This latter information does not meet the *Aguilar-Spinelli* test.

*Traffic Stop.* Ms. Sanchez also argues that any evidence obtained during the October 23 traffic stop must be excluded because the stop was unlawful. Because defense counsel did not raise this issue before the trial court, Ms. Sanchez raises this issue in her ineffective assistance of counsel claim discussed below.

*Staleness.* Ms. Sanchez points out that Mr. Trejo's statement was obtained on September 4, 2008, but that her house was not searched until November 21, 2008. Ms. Sanchez argues that Mr. Trejo's statement does not establish probable cause to believe that methamphetamine was at her house on the date the warrant was served because the information was stale.

"A delay in executing the warrant may render the magistrate's probable cause determination stale." *Maddox*, 152 Wn.2d at 505. We apply a commonsense test to determine the staleness of information in a search warrant affidavit by looking to the totality of the circumstances surrounding its issuance. *Id.* at 506.

Ms. Sanchez's argument that the information in the warrant was stale is unpersuasive. Mr. Trejo's statement was obtained on September 4, 2008. Mr. Trejo

stated that he was delivering one-eighth pound of methamphetamine to Ms. Sanchez. On October 23, additional police work resulted in Ms. Sanchez's arrest. The search warrant issued on November 11 allowed the search of Ms. Sanchez's cell phone. This search revealed e-mails suggesting that Ms. Sanchez was a drug dealer. Officers discovered e-mails from apparent buyers. This search also revealed that 16 of the 86 names attached to telephone numbers belonged to people who had arrests for methamphetamine, marijuana, and/or drug paraphernalia possession charges, and/or drug manufacturing/delivery charges. On November 14, Ms. Mendoza provided her statements that she saw Ms. Sanchez with methamphetamine and that Ms. Sanchez kept the drugs close to her, in her vehicle, in her room, or on her person. The warrant was executed on November 21.

The September 4 statement is not stale because it is part of the information used to obtain a warrant to search the premises where there was probable cause to believe that Ms. Sanchez was a drug dealer and was engaged in ongoing criminal activity. Ms. Mendoza told officers that she saw Ms. Sanchez with methamphetamine a few days before Ms. Mendoza's November 13 arrest. Even if we assume that Ms. Mendoza's statement about Ms. Sanchez's role was not based on firsthand knowledge, Mr. Trejo's statement about his plan to deliver one-eighth pound of methamphetamine to Ms. Sanchez, and independent police work, gave officers probable cause to believe that Ms.

Sanchez was involved in criminal activity.

Nexus. Ms. Sanchez asserts that the only nexus between her alleged drug dealing and her house is Ms. Mendoza's statement that Ms. Sanchez usually keeps the methamphetamine close to her, in her room, on her person, or in her car. In Ms. Sanchez's view, there is no probable cause to support the warrant because there was no reasonable nexus between the illegal drugs and her house.

A finding of probable cause requires ““a nexus between the criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched.”” *Thein*, 138 Wn.2d at 140 (quoting *State v. Goble*, 88 Wn. App. 503, 509, 945 P.2d 263 (1997)). The mere showing that a defendant deals drugs and lives at a specific residence is not enough to meet the probable cause standard. *Id.* at 151. However, a nexus can be established if there are additional facts to reasonably infer that this drug dealer probably kept drugs at his or her house. *State v. McGovern*, 111 Wn. App. 495, 499, 45 P.3d 624 (2002).

Here, there is a nexus between the crime being investigated and Ms. Sanchez's house. Independent police investigation confirmed the location of Ms. Sanchez's house. Information obtained from Ms. Sanchez and Ms. Mendoza confirmed Ms. Sanchez's address. The vehicle Ms. Sanchez was driving on October 23 was present at this address



when the search of her house was conducted. Significantly, Mr. Trejo told officers that Ms. Sanchez dealt in large quantities of methamphetamine. Specifically, Mr. Trejo stated that he was delivering one-eighth pound of methamphetamine to Ms. Sanchez. On October 23, officers observed that Ms. Sanchez was involved in a delivery of methamphetamine to Mr. Benson. Finally, Ms. Mendoza stated that she saw Ms. Sanchez with methamphetamine several days before Ms. Mendoza's November 13 arrest, which was seven days before Ms. Sanchez's house was searched. Ms. Mendoza also informed officers that Ms. Sanchez usually keeps the methamphetamine close to her, in her room, on her person, or in her car. Ms. Mendoza also identified one of Ms. Sanchez's vehicles and knew that she did not have a driver's license.

Summary. On the ultimate issue of probable cause, the information provided by the warrant application leads to a reasonable, commonsense determination that there was a probability that Ms. Sanchez was involved in criminal activity and that officers would find evidence of the criminal activity at her house. There was probable cause to issue the warrant. The trial court properly denied Ms. Sanchez's motion to suppress the evidence seized through the search warrant.

Ineffective Assistance of Counsel. Ms. Sanchez argues that she received ineffective assistance of counsel when her attorney failed to move to exclude the portions

of the warrant affidavit obtained as the result of the illegal stop of Ms. Sanchez's vehicle and a second vehicle. She asserts that when defense counsel argued the warrant was insufficient to establish probable cause, counsel should also have moved to strike the information in the warrant affidavit obtained by the illegal stop.

“To demonstrate ineffective assistance of counsel, the defendant must show: (1) that his counsel's performance was deficient, defined as falling below an objective standard of reasonableness, and (2) that counsel's deficient performance prejudiced the defendant, i.e., there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different.” *State v. Saunders*, 91 Wn. App. 575, 578, 958 P.2d 364 (1998) (citing *Strickland v. Washington*, 466 U.S. 668, 687-88, 694, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984)). The defendant “must *affirmatively prove prejudice*, not simply show that ‘the errors had some conceivable effect on the outcome.’” *State v. Crawford*, 159 Wn.2d 86, 99, 147 P.3d 1288 (2006) (quoting *Strickland*, 466 U.S. at 693). Both prongs must be met to satisfy the test. *State v. Brockob*, 159 Wn.2d 311, 345, 150 P.3d 59 (2006).

Ms. Sanchez attempts to raise a suppression issue that was not considered by the trial court. To succeed, she must establish: (1) the facts necessary to adjudicate the claimed error, (2) that the trial court would likely have granted the motion if it had been

made, and (3) that defense counsel had no legitimate tactical basis for not raising the motion in the trial court. *See State v. McFarland*, 127 Wn.2d 322, 333-35, 899 P.2d 1251 (1995).

Ms. Sanchez’s argument fails because her vehicle was lawfully stopped. Officers here conducted a *Terry*<sup>4</sup> stop. When conducting a *Terry* stop, police must be able to point to “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). The level of articulable suspicion required is “a substantial possibility that criminal conduct has occurred or is about to occur.” *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986).

Here, Mr. Trejo had informed police that Ms. Sanchez sold methamphetamine. And police stopped Ms. Sanchez when she was driving while license suspended and when she was acting suspicious by moving her vehicle while Mr. Benson was walking back and forth and getting in and out of the two vehicles. Also, when officers stopped Ms. Sanchez’s vehicle, she and the other occupant of the vehicle appeared to be stuffing items in or around their seats.

“In evaluating the reasonableness of an investigative stop, courts consider the

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<sup>4</sup> *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

totality of the circumstances, including the officer's training and experience, the location of the stop, and the conduct of the person detained." *State v. Acrey*, 148 Wn.2d 738, 747, 64 P.3d 594 (2003). A *Terry* stop is not unreasonable merely because the officer did not rule out all possibilities of innocent behavior before initiating the stop. *State v. Anderson*, 51 Wn. App. 775, 780, 755 P.2d 191 (1988).

The officers' prior knowledge of Ms. Sanchez's delivery and use of methamphetamine and the suspicious activity of her vehicle and Mr. Benson were sufficient to show the level of suspicion required to support a *Terry* stop. Additionally, Ms. Sanchez was committing a crime in the officers' presence by driving with a suspended license.

Ms. Sanchez has failed to establish that the *Terry* stop was unlawful. Consequently, she cannot show that the trial court would have granted a motion to exclude evidence obtained as a result of the stop. Hence, Ms. Sanchez cannot establish ineffective assistance of counsel.

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

No. 28494-8-III  
*State v. Sanchez*

RCW 2.06.040.

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Kulik, C.J.

WE CONCUR:

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Sweeney, J.

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Korsmo, J.