IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. BRYAN DANIEL POTTER, Appellant.	No. 39102-3-II UNPUBLISHED OPINION

Hunt, J. — Bryan Daniel Potter appeals his jury conviction for possession of a controlled substance. He argues that the trial court should have suppressed the evidence obtained in a search incident to his arrest because the traffic stop leading to the arrest was illegal. We affirm.[1]

FACTS

On June 13, 2008, a grey Honda passed Jefferson County Deputy Sheriff Brett Anglin while he was on patrol. Because the driver was attempting to conceal his face, Deputy Anglin ran the license plate and learned that Bryan Potter had recently purchased the vehicle. Having known Potter for 20 years, Anglin believed it was Potter driving the Honda, and began following it while

[1] A commissioner of this court initially considered this matter pursuant to RAP 18.14 and referred it to a panel of judges.

he checked Potter's driving status. He lost sight of Potter, and was unable to catch up with him in spite of driving faster than the speed limit. Anglin radioed Sergeant Andrew Pernsteiner to request help in locating the car.

Sergeant Pernsteiner began searching for Potter on Highway 101. As he turned onto a side road, Pernsteiner saw Potter's car coming toward him. "The radiator was steaming and there was a large clump of grass and dirt [under] the front bumper." Report of Proceedings (RP) at 13. Pernsteiner stopped the car. The driver was not Potter, who was in the passenger seat. After stopping the Honda, but before he ordering Potter out the car, Pernsteiner heard dispatch's radio communication confirming that Potter's driver's license was suspended in the first degree. Pernsteiner then handcuffed Potter and placed him in the backseat of the patrol car.

After Anglin arrived, the officers arrested the driver for making the false statement that he, not Potter, had been driving the grey Honda. When they transferred the driver to the patrol car, they asked Potter to get out and to trade places. Inside Pernsteiner's patrol car, on the floor next to Potter's feet, they discovered a methamphetamine pipe, which contained residue of the drug.

The State charged Potter with possession of a controlled substance. He moved to suppress the pipe, arguing that the stop was illegal. During the evidentiary hearing, the State asked Sergeant Pernsteiner if he was familiar with Potter's driving status at the time of the stop. Pernsteiner replied that (1) he had dealt with Potter on numerous occasions over a 10-year period; (2) he had never known Potter to have a driver's license; (3) a few weeks earlier he had heard that Potter's driving status was suspended in the first degree; and (4) he believed that Potter's driving status was still suspended when he (Pernsteiner) stopped the car. The trial court denied the

motion to suppress, concluding that Pernsteiner had a reasonable suspicion of criminal activity when he stopped Potter and that confirmation from dispatch justified Potter's subsequent arrest.

A jury convicted Potter as charged. He appeals.

ANALYSIS

Potter argues that the trial court should have suppressed the evidence because Sergeant Pernsteiner did not have a reasonable suspicion to justify the traffic stop that led to his arrest.[2] We disagree.

Under Article I, section 7 of the Washington Constitution, warrantless searches are per se unreasonable and exceptions to the warrant requirement are narrowly drawn. *State v. Potter*, 156 Wn.2d 835, 840, 132 P.3d 1089 (2006). An officer may briefly detain and question a vehicle's driver or any passenger if he has a well-founded suspicion based on objective facts that the person detained is connected to actual or potential criminal activity. *Terry v. Ohio*, 392 U.S. 1, 25-26, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *State v. Rankin*, 151 Wn.2d 689, 92 P.3d 202 (2004); *State v. Perea*, 85 Wn. App. 339, 342, 932 P.2d 1258 (1997). The officer must be able to identify specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant intrusion. *State v. Mendez*, 137 Wn.2d 208, 223, 970 P.2d 722 (1999) (citing *Terry*, 392 U.S. at 21). In determining whether the officer's suspicion was reasonable, courts look to the totality of the circumstances. *State v. Randall*, 73 Wn. App. 225, 229, 868 P.2d 207 (1994).

Sergeant Pernsteiner was familiar with Potter and had never known him to have a driver's

[2] Potter does not challenge the arrest itself. He argues only that the initial stop was illegal.

license. He also had specific knowledge that Potter's license had been suspended in the first degree a few weeks earlier. Potter contends that this information was stale, relying on *Perea*, for the proposition that information obtained more than one week before the stop is too old. The *Perea* court noted only that one-week-old information about driving status was not stale; it did not hold that information more than a week old was stale. Furthermore, the test for staleness is one of common sense; if the facts indicate information is recent and contemporaneous, then it is not stale. *Perea*, 85 Wn. App. at 343.

Here, Potter's driving status was suspended in the first degree, a status imposed when the driver is a habitual traffic offender. *See* RCW 46.20.342(1)(a).[3] A driver under such a suspension is not eligible for reinstatement for at least four years. After four years, he may petition the Department of Licensing for reinstatement, but the Department will grant such a petition only upon a "good and sufficient showing." RCW 46.65.070, 46.65.080. Here, Pernsteiner could rationally infer that Potter's license remained suspended when he (Pernsteiner) stopped the grey Honda.

The reasonableness of this inference was further supported by Potter's attempt to avoid contact with the police. *See State v. Lyons,* 85 Wn. App. 268, 269, 271, 932 P.2d 188 (1997).[4] Potter tried to hide his face from Officer Anglin and fled in his vehicle at a speed too fast for Anglin to catch him. The Honda's condition at the time of the stop, namely the steaming radiator

[3] Perea's suspension was in the third degree. *Perea*, 85 Wn. App. at 343.

[4] The *Lyons* court held that the officer's belief was supported by evidence that the defendant abruptly pulled into a driveway when he saw the officer, got out of his car, and began walking away, refusing to stop when the officer directed him to do so. 85 Wn. App. at 269.

was steaming and grass clod encrusted bumper, suggested that Potter had driven off the road in an attempt to frustrate Anglin's pursuit. We hold that under the totality of the circumstances, Sergeant Pernsteiner's suspicion of criminal activity was reasonable, his stop of Potter's Honda was not illegal, and the trial court did not err in denying Potter's motion to suppress.

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.

Hunt, J.

We concur:

Houghton, .J.

Penoyar, ACJ.