



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, No. 54736-8-II

Respondent,

v.

RAYMOND CHARLES ERICKSON, UNPUBLISHED OPINION

Appellant.

VELJACIC, J. Following a bench trial, the trial court convicted Raymond C. Erickson of two counts of unlawful possession of a firearm in the second degree and one count of unlawful possession of a controlled substance, methamphetamine. He challenges the legality of the stop that led to the firearm convictions and he challenges his controlled substance conviction under *State v. Blake*, 197 Wn.2d 170, 481 P.3d 521 (2021). Because the court did not err in denying in the second degree conviction. However, in light of *Blake*, we reverse unlawful possession of a controlled substance conviction and remand for resentencing.

FACTS 1

Around noon on August 6, 2019, Department of Corrections Officer Thomas Grabski and Both officers are members of the South Sound Gang Task Force. They observed the occupants of 1 finding of fact 17, unchallenged and therefore verities on appeal. , 148 Wn.2d 564,



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

571, 62 P.3d 489 (2003). Filed Washington State Court of Appeals Division Two

November 2, 2021 a Dodge Dart drive by and throw garbage out the windows. 2 Grabski asked Olson if he should

stop the vehicle. Olson responded yes. Neither officer knew the individuals inside the vehicle.

Grabski pulled his vehicle behind the Dodge and activated his emergency lights. The driver

of the vehicle, Matthew Fullerton, pulled over. Erickson was in the passenger seat. Erickson told

Olson that he recognized him from a prior police encounter. Olson asked Erickson if he was on

community custody, and he said yes. Grabski asked Fullerton if he was also on community

custody, and he said yes. Erickson did not have identification on him, but he provided Olson with

his name and birthdate.

s identities. At that time, he learned

both Fullerton and Erickson were indeed on active Department of Corrections community custody

supervision and both were prohibited from possessing drugs or drug paraphernalia.

Olson walked back to the Dodge. He then observed a glass pipe inside the vehicle opened

driver side door compartment and informed Grabski. Because this was a violation of a community

custody condition, Grabski conducted a compliance check of the Dodge.

Grabski opened the trunk and observed a locked backpack. He picked up the backpack

and, based on his experience, believed the weight of the bag was consistent with a bag containing

firearms. He asked who the backpack belonged to and Erickson told the officer that it was his and

that there was a gun inside. When Grabski opened the backpack he located two firearms, drug

paraphernalia, and a small bag of methamphetamine.



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

The State charged Erickson with two counts of unlawful possession of a firearm in the second degree and unlawful possession of methamphetamine. Erickson moved to suppress the firearms and methamphetamine based on unlawful seizure and search. He argued that the stop of 2 Littering is a civil infraction. Former RCW 70.93.060(2)(a) (2003). the car, which led to the search of the car, was pretextual. The trial court denied his motion. The finding of Fact 17). The court then concluded that the CP at 74 (Conclusion of Law 2) Erickson proceeded to a stipulated facts bench trial where the trial court convicted him as Erickson appeals.

ANALYSIS

I. MOTION TO SUPPRESS

Erickson argues that the trial court erred in denying his CrR 3.6 motion to suppress because he contends that the stop of the Dodge, which led to the search of the car and the finding of contraband, was pretextual. He further argues that, assuming the stop was lawful, the officers exceeded the scope of the stop. We disagree.

A. Standard of Review

whether substantial evidence supports findings support the conclusions of law. State v. Russell, 180 Wn.2d 860, 866, 330 P.3d 151 (2014). -minded, rational person of the finding State v. Stewart, 12 Wn. App. 2d 236, 240, 457 P.3d 1213 (2020). We review conclusions of law de novo. Id. B. Traffic Stop



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

In general, the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution prohibit searches and seizures absent a warrant or an exception to the warrant requirement. *State v. Ladson*, 138 Wn.2d 343, 348-50, 979 P.2d 833 (1999). The State bears the burden of showing that an exception to the warrant requirement applies. *Id.* at 350. There are several recognized exceptions to the warrant requirement including consent, exigent circumstances, inventory searches, searches incident to arrest, plain view, and investigative Terry 3 detentions. *Id.* at 349. *State v. Duncan*, 146 Wn.2d 166, 178, 43 P.3d 513 (2002). A stop to issue a civil infraction is distinct from a Terry stop. *Id.* Littering is a civil infraction. Former RCW 70.93.060(2)(a) (2003). presence. RCW 7.80.050(2). Pretextual traffic stops are unconstitutional under *Ladson*, 138 Wn.2d at 353, 358. A traffic stop is pretextual when an officer relies on some legal authorization as a reason for the seizure is not exempt. *Id.* at 358. The court in *Ladson* held that a pretextual traffic stop is that it is a search or seizure which cannot be constitutionally justified for its true reason (i.e., speculative criminal investigation), but only for some other reason (i.e., to investigate a traffic violation). *Id.* at 351. When determining whether a stop is pretextual, we consider the totality of the circumstances, including the officer's subjective intent. *Id.* at 358-59. 3 *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). subjective intent. *State v. Hoang*, 101 Wn. App. 732, 742, 6 P.3d 602 (2000). When an



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

unconstitutional search or seizure occurs, all subsequently uncovered evidence must be suppressed. *State v. Betancourth*, 190 Wn.2d 357, 364, 413 P.3d 566 (2018).

Erickson challenges the tri
pretextual.

Here, Grabski and Olson were sitting inside their vehicles in a store parking lot. They to stop the vehicle for littering. At the time, the officers did not recognize the occupants in the vehicle and there was no other basis for the stop.

presence, the officers had a basis to stop the vehicle. RCW 7.80.050(2); *Duncan*, 146 Wn.2d at 178. citation for littering. While the officers ultimately did not issue the citation, the subsequent sequence of events justifies the lack of a citati also objectively reasonable. We h conclusion that the stop was not pretextual.

C. Scope of Stop

Erickson next argues that the officers exceeded the scope of a lawful stop to issue a citation for a civil infraction by investigating whether Fullerton and Erickson were on community custody. Erickson did not identify this argument below as a basis for suppressing the evidence seized.

Because of this, we are without the benefit of findings of fact or conclusions of law to review this issue. In general, the failure to raise an issue below precludes appellate review. RAP 2.5(a)(3).

Erickson also points to several places in the record where the trial court makes passing comments about the detention. Assuming this is sufficient to preserve the issue for review, we conclude the valid scope of the stop to issue a citation for a civil infraction was not exceeded. A stop is generally limited in scope and duration to fulfill the purpose of the stop. *State v.*



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

Acree officer may briefly detain a person long enough to check his or her identification Duncan, 146 Wn.2d at 174. A stop for a civil infraction where no vehicle is involved is not as broad in scope as a stop for a traffic infraction. See Id.

In Duncan, officers noticed Duncan sitting at a bus stop with what appeared to be a bottle inside a paper bag on the bench next to him. 146 Wn.2d at 169. They approached Duncan with Id. One of the officers

recognized Duncan from prior police contact. Id. The officer remember that Duncan had a violent history. The officer decided to frisk Duncan because he was wearing a bulky jacket; he discovered Id. at 170. Officers also located stolen property. Id. Duncan

filed a motion to suppress the evidence seized. The trial court granted the motion. Id. The Supreme Court agreed with the trial court, . Id.at 170.

Here, the civil infraction occurred inside a moving vehicle. In this sense, the stop is more analogous to a stop for a traffic infraction. As the Supreme Court stated in Duncan violations create a unique set of circumstances that may justify [the] extension of Terry For example ready mobility of vehicles and governmental interests in ensuring safe travel Id.

at 174 (quoting State v. Johnson, 128 Wn.2d 431, 454, 909 P.2d 293 (1996)). Terry stops may be prolonged when interaction with a suspect arouses further suspicions. State v. Smith, 115 Wn.2d 775, 785, 801 P.2d 975 (1990) (quoting State v. Guzman-Cuellar, 47 Wn. App. 326, 332, 734 P.2d 966 (1987)). Notably, this case is distinguishable from State v. Day, 161 Wn.2d 889, 898, 168 P.3d 1265 (2007), where our Supreme Court declined to extend Terry to a parked vehicle that was the subject of a parking infraction. Instead, this case concerns an infraction involving a moving vehicle, squarely within the unique set of circumstances that may justify extension of



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

Terry, as held in Johnson, 128 Wn.2d 431.

Here, the initial stop was lawful. During that stop, Erickson did not provide a form of identification, but instead identified himself only verbally. He also volunteered that he had a prior police encounter with Olson. Moreover, after Erickson began the conversation, Olson was permitted to follow up by asking if Erickson was on community custody. He said yes. Grabski then asked Fullerton if he was also on community custody and he said yes. 4 Meanwhile, Olson walked to his vehicle, confirmed the men were on community custody, learned they were restricted from possessing drug paraphernalia, and returned to the Dodge. All this is within the permissible scope of a traffic stop for an infraction associated with a moving vehicle where an officer must attempt to confirm the identity of the driver. At this point, based on our unchallenged findings of fact, the pipe was discovered in plain view inside the vehicle.

The possession of the pipe was a community custody violation. This provided articulable facts to justify extending the scope of the stop, which eventually led to the discovery of the firearms 4 W ; Erickson lacks standing to do so. and methamphetamine. Therefore, we conclude the purpose of the stop reasonably expanded to include investigations for the community custody violation. The lawful scope of the stop was not exceeded.

II. UNLAWFUL POSSESSION OF A CONTROLLED SUBSTANCE CONVICTION

Erickson argues that his unlawful possession of methamphetamine conviction should be reversed. We agree.

In Blake, our Supreme Court held that former RCW 69.50.4013(1) (2017), the statute



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

criminalizing simple possession of a controlled substance, is unconstitutional and, therefore, void.

197 Wn.2d at 186, 195. After the court decided Blake, Erickson filed a supplemental brief asking us to remand for the trial court to vacate his conviction for unlawful possession of a controlled substance and resentence him because that conviction was included in his offender score. The State concedes that this is the appropriate remedy.

When the Supreme Court holds a statute unconstitutional, anyone who has been convicted under that statute is entitled to have their conviction vacated. See State v. Carnahan, 130 Wn. App. 159, 164, 122 P.3d 187 (2005). A conviction based on an unconstitutional statute cannot be considered in calculating an offender score. State v. Ammons, 105 Wn.2d 175, 187-88, 713 P.2d 719, 718 P.2d 796 (1986).

The trial court convicted Erickson of unlawful possession of a controlled substance, methamphetamine, in violation of former RCW 69.50.4013(1). This conviction was included in Erickson's conviction for unlawful possession of a controlled substance, and remand for the trial court to vacate that conviction and resentence Erickson with his updated offender score. 5

CONCLUSION

firearms, we affirm his unlawful possession of a firearm in the second degree convictions.

However, in light of Blake, we reverse Erickson's unlawful possession of a controlled substance conviction and remand for resentencing.

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 in accordance with RCW 2.06.040, it is so ordered.



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

Veljacic, J.

I concur:

Glasgow, A.C.J.

5 We note that Erickson has multiple prior convictions for unlawful possession of a controlled substance. Defendants who were sentenced based on an offender score that included prior convictions under RCW 69.50.4013(1) are entitled to resentencing. *State v. LaBounty*, 17 Wn. App. 2d 576, 581-82, 487 P.3d 221 (2021). We direct the trial court to take this into account when resentencing. WORSWICK, J. (concurring) I agree with the resolution of this case. However, I write

Terry 6

ADDITIONAL FACTS

Prior to a stipulated bench trial in this case, Erickson filed a motion to suppress under CrR 3.6, and the trial court conducted an evidentiary hearing. During that hearing, Department of Corrections (DOC) Officer Thomas Grabski and Pierce County testified.

-11.

Officer Grabski stopped the vehicle on the street. Deputy Olson contacted Erickson who was sitting in the front passenger seat. Erickson

said he did not have any identification on him, but instead told Deputy Olson his name. Deputy Olson remained at the vehicle.

The law enforcement database revealed that both Erickson and Fullerton were under DOC supervision. While Deputy Olson was running names, Officer Grabski asked Fullerton if he was under DOC supervision, and Fullerton responded in the affirmative. Officer Grabski asked Fullerton to step out of the car so he could speak with him. Officer Grabski testified that



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

he wanted to speak with Fullerton because he was on active supervision with DOC, had just been
ging

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

Erickson argues that because this was a stop for a civil infraction, the officers exceeded the proper length and scope of this stop when they questioned the occupants about their DOC status, ran their names through the law enforcement database, and removed Fullerton from the vehicle. The majority resolves these arguments by determining that because this civil infraction involved a moving vehicle, the Terry exception to the warrant requirement applies. Majority at 6. I disagree.

that the Terry exception to the warrant requirement does not extend to civil infractions. State v.

Day, 161 Wn.2d 889, 897, 168 P.3d 1265 (2007). Our Supreme Court has shown no sign of

expa constitutional protections. Day analysis. However, I agree that the officers involved here did not viola constitutional rights.

First, RCW 7.80.060 states:

A person who is to receive a notice of civil infraction under RCW 7.80.050 is required to identify himself or herself to the enforcement officer by giving his or her name, address, and date of birth. Upon the request of the officer, the person

A person who is unable or unwilling to reasonably identify himself or herself to an enforcement officer may be detained for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction.

by Deputy Olson for the purposes must be reasonably rel State v. Veltri, 136 Wn.

App. 818, 822, 150 P.3d 1178 (2007).

Here, Officer Grabski testified that he wanted to have a conversation with Fullerton about



State Of Washington, Respondent V. Raymond Erickson, Appellant

2021 | Cited 0 times | Court of Appeals of Washington | November 2, 2021

red while Deputy Olson was running the names

related to the circumstances justifying the stop and did not extend the length of the stop.

onversation with Fullerton, Deputy Olson discovered the drug

pipe. And upon discovery of the drug pipe, the officers had sufficient suspicion to extend the

stop under Terry

result, I respectfully concur.

Worswick, J.

