No. 86610-4

CHAMBERS, J. (dissenting) — A traffic stop without authority of law violates our constitution. *See* Const. art. I, § 7. In *State v. Ladson*, 138 Wn.2d 343, 352-53, 979 P.2d 833 (1999), we held that commission of a traffic offense cannot justify a seizure that would not otherwise be permitted absent the authority of law our constitution requires. We explained that "the problem with 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 enforce traffic code) *which is at once lawfully sufficient but not the real reason*." *Id.* at 351 (emphasis added). The majority in this case now holds a stop is not pretextual even if the officer's primary reason for stopping a car is to conduct a speculative investigation as long as the secondary, lawfully sufficient reason is independent of the primary reason. Majority at 13-14. The majority does not offer any convincing means of distinguishing a "primary" reason from a "real" reason. Because I do not believe the spirit of *Ladson* will survive the court's opinion in this case, I dissent.

In the present case, an officer admitted his primary reason for stopping a car

was to conduct a speculative criminal investigation—that is, to check for intoxication despite having no constitutionally permissible basis for doing so. The officer noticed, after following the car he wished to stop for a half mile or so, that its exhaust system was not in compliance with traffic regulations. The officer claims at that point he made a conscious and independent decision to pull the vehicle over for the tailpipe violation. It is uncontested that the officer's primary reason for the stop was unconstitutional. He does not deny the primary reason for pulling the vehicle over was to conduct an investigation without authority of law. But the majority asserts this primary motivation does not matter as long as there was an independent secondary justification for the stop. This reasoning is for all practical purposes indistinguishable from the reasoning this court rejected in *Ladson*.[1]

Going forward, police officers in Washington will be free to stop citizens *primarily* to conduct an unconstitutional speculative investigation as long as they can claim there was an independent secondary reason for the seizure. I do not believe such a result comports with our holding in *Ladson* or with article I, section 7's command that "[n]o person shall be disturbed in his private affairs . . . without

[1] The majority notes that the officers in *Ladson* admitted to the purely pretextual nature of the stop. But it is likely the officers in *Ladson* freely admitted the stop was pretextual because a purely pretextual stop was and still is permissible under federal law, and we had not yet decided *Ladson*. *See Whren v. United States*, 517 U.S. 806, 813, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996).

authority of law." I respectfully dissent.

AUTHOR:
Justice Tom Chambers

WE CONCUR:

Justice Debra L. Stephens