Supreme Court No. 1028032
Court of Appeals No. 39019-5-III

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JAROD ROLAND TAYLOR,
Petitioner.

ANSWER TO PETITION FOR REVIEW

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I. ISSUES PERTAINING TO PETITIONER'S ASSIGNMENTS OF ERROR

A. Would a reasonable person feel free to leave under the totality of the circumstances when a person encounters a lone officer, the officer keeps a respectful distance from the person, the officer only uses the spill of his flashlight to illuminate the area, the officer respectfully keeps the hotspot of the flashlight out of the person's face, the officer never directs the person's movements, the officer requests the person's name or ID, the officer briefly holds the ID the person hands the officer, and the officer and person have a polite and cordial contact.
(Assignment of Error No. 1).

II. STATEMENT OF THE CASE[1]

On April 7, 2022, a jury found Mr. Taylor guilty of Unlawful Possession of a Firearm in the Second Degree. CP 71.

The account of events leading up to this conviction are adopted from the Court of Appeals decision in *State v. Taylor*,

[1] The State utilizes the Appellant's citing method for the Verbatim Report of Proceedings as "1 RP" XX to refer to the transcripts for 03/24/2022, 04/04/2022, 04/18/2022, and 04/26/2022; "2 RP" XX to refer to the transcript for 04/06/2022 and 04/07/2022; and to the related clerk's papers as CP XX.

541 P.3d 1061 (2024) as well as the State's Brief of Respondent for the Court of Appeals and they are incorporated into this Answer. In addition, the State highlights some additional facts from the record.

During the encounter, the officer never directed the Petitioner on what position to take—whether to sit, stand, or even where to place his hands—or otherwise attempt to direct the Petitioner's movements until dispatch relayed to the officer that the Petitioner had a warrant. *See generally* Pretrial Ex. D1. The officer never told the Petitioner that relaying the Petitioner's information to dispatch would result in a warrant check. *Id.* The officer never even mentioned a warrant check until dispatch came back with the warrant information. *Id.* The officer specifically told the Petitioner that the Petitioner did not match the suspect the officer was looking for. *Id.* at 00:46–00:55. The officer maintained a comfortable distance from the Petitioner to carry on a casual conversation. *See generally id.* The officer asked the Petitioner questions that would assist in

assessing whether the Petitioner had relevant information to the case the officer was investigating, as well as establishing where the Petitioner lived if the officer needed to follow up with the Petitioner. *Id.*

Contrary to what the Petitioner asserts, the trial court did not conclude "that the encounter was too 'cordial' to have been a seizure." *See* Pet. for Review 5. Rather, the fact that the encounter was cordial was one of the factors the trial court considered when evaluating whether under the totality of the circumstances "whether a reasonable person would feel free to leave." CP 53.

III. THE COURT OF APPEALS DECISION

The Court of Appeals affirmed the trial court's finding that the officer did not unconstitutionally seize Mr. Taylor. *Taylor*, 541 P.3d at 1070. In their decision, the court agreed with the Petitioner, that "a seizure can occur even if an officer is cordial." *Id.* at 1069. The court, however, found:

Officer Ayer's language would have assured a

> reasonable person that the officer was not making a show of authority: the officer assured Mr. Taylor he was not a suspect, but wanted to "get [his] name just so we have that in case we need to contact you again at some point in time."

Id. Additionally, the Court of Appeals found,

> Officer Ayers held onto Mr. Taylor's identification briefly and spoke with him while dispatch obtained information about Mr. Taylor. . . . Officer Ayers did not display his authority by blocking Mr. Taylor from leaving nor did he issue any verbal commands. . . . Because Officer Ayers did not use physical force or display authority, a reasonable person in Mr. Taylor's position would not have believed he was unable to leave or terminate the encounter "due to an officer's use of 'physical force or a show of authority.'"

Taylor, 541 P.3d at 1068–69. *Contra* Pet. for Review 6.

Ultimately, the court found that in Washington, "A show of authority requires more than obtaining a subject's driver's license and calling dispatch for information about the subject." *Id.* at 1070 (citing *State v. Armenta*, 134 Wn.2d 1, 6, 11, 21 n.10, 948 P.2d 1280 (1997)).

IV. THE PETITION FOR REVIEW SHOULD BE DENIED

A. Standard of Review

When a reviewing court considers whether the trial court properly denied a defendant's motion to suppress evidence, factual findings and conclusions of law are reviewed under different standards. "The resolution by a trial court, of differing accounts of the circumstances surrounding the encounter, are factual findings entitled to great deference." *State v. Harrington*, 167 Wn.2d 656, 662, 222 P.3d 92 (2009) (quoting *Armenta*, 134 Wn.2d at 9. Differing factual accounts of an encounter are resolved by the trial court, and those factual findings are given great deference by the reviewing court. *Id.* (quoting *State v. Thorn*, 129 Wn.2d 347, 351, 917 P.2d 108 (1996)). Findings of fact entered by the trial court following a suppression hearing that are unchallenged are "verities on appeal." *State v. Meredith*, 1 Wn.3d 262, 269, 525 P.3d 584 (2023) (citing *State v. O'Neill*, 148 Wn.2d 564, 571, 62 P.3d 489 (2003)).

Mr. Taylor did not assign error to any of the trial court's written findings of fact. Appellant's Br. 2; *see also* 1 RP 45–47. The trial court's written findings of fact are verities on appeal. *In re Det. of Smith*, 117 Wn. App. 611, 615, 72 P.3d 186, 188 (2003). An appellate court may consider the trial court's oral findings to supplement the written findings if the written findings are inadequate. *Id.*; *see also In re LaBelle*, 107 Wn.2d 196, 219, 728 P.2d 138, 152 (1986) (citing *State v. Holland*, 98 Wn.2d 507, 518, 656 P.2d 1056 (1983).

The reviewing court reviews "conclusions of law from an order pertaining to the suppression of evidence de novo." *Meredith*, 1 Wn.3d at 269 (quoting *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002)).

B. General legal principles for evaluating whether a law enforcement contact remains a social contact or ripens into a seizure.

Washington State's Constitution Article I Section 7 "protects against unwarranted government intrusions into private affairs." *Meredith*, 1 Wn.3d at 269 (citing *State v.*

Doughty, 170 Wn.2d 57, 61, 239 P.3d 573 (2010)). The Washington Constitution "does not forbid social contact between police and citizens" *Harrington*, 167 Wn.2d at 665. Social contact "occupies an amorphous area . . . resting someplace between an officer's saying 'hello' to a stranger on the street and, at the other end of the spectrum, an investigative detention." *Id.* at 664.

"A police officer has not seized an individual merely by approaching him in a public place and asking him questions, as long as the individual need not answer and may simply walk away." *State v. Hansen*, 99 Wn. App. 575, 578, 994 P.2d 855, 856 (2000) (citing *State v. Thomas,* 91 Wn. App. 195, 200, 955 P.2d 420, *review denied,* 136 Wash.2d 1030, 972 P.2d 467 (1998)); *see also State v. O'Neill*, 148 Wn.2d 564, 577–78, 62 P.3d 489, 497 (2003) ("[N]o seizure occurs where an officer approaches an individual in public and *requests* to talk to him or her, engages in conversation, or *requests* identification, so

long as the person involved need not answer and may walk away.")

A seizure occurs if from the objective view of an innocent person under the totality of the circumstances surrounding the incident, "a reasonable person would have believed that [the person] was not free to leave.'" *State v. Nettles*, 70 Wn. App. 706, 710, 855 P.2d 699, 701 (1993) (quoting *Richardson,* 64 Wn. App. 693, 696, 825 P.2d 754 (1992)); *State v. Johnson*, 8 Wn. App. 2d 728, 737, 440 P.3d 1032, 1038 (2019). The person asserting an encounter rose to a seizure under article I, section 7 bears the burden to prove a seizure occurred. *State v. Young,* 135 Wn.2d 498, 510, 957 P.2d 681 (1998).

C. The Supreme Court should deny discretionary review under RAP 13.4(b).

1. The Court of Appeals decision does not conflict with this Court's decisions.

This Court has reviewed numerous decisions considering the issue of whether a law enforcement contact with a private citizen remains as a social contact or ripens into a seizure. The

Petitioner alleges the Court of Appeal's decision conflicts with longstanding state and federal precedent, but fails to provide any authority or argument for the assertion. Pet. for Review 7. The Court may find that a proposition not supported by authority fails. *In re Sorenson*, 200 Wn. App. 692, 704, 403 P.3d 109, 115 (2017) (citing RAP 10.3; *State v. Cox*, 109 Wn. App. 937, 943, 38 P.3d 371 (2002); *State v. Manajares*, 197 Wn. App. 798, 810, 391 P.3d 530 (2017)).

Even so, the cases from this Court affirm the Court of Appeals conclusion that Mr. Taylor was not unconstitutionally seized. *State v. Taylor*, No. 39019-5-III, 541 P.3d 1061, 1070 (Wash. Ct. App. January 23, 2024); *see also State v. O'Neill*. 148 Wn.2d 564, 571–72, 581, 62 P.3d 489 (2003) (approaching a car, shining a flashlight in the driver's face, asking for the driver's window to be rolled down, asking additional questions, asking for identification, registration, and insurance papers did not cause an officer's encounter with the defendant to rise to a seizure).

This Court's case, *State v. Armenta*, is particularly instructive. 134 Wn.2d 1, 4–5, 948 P.2d 1280 (1997). While this case was evaluated under the Fourth Amendment, *id.* at 4, this Court has applied it in cases involving the Washington State Constitution. *See e.g. State v. Young*, 135 Wn.2d 498, 511, 957 P.2d 681 (1998).

In *State v. Armenta*, this Court evaluated whether an officer who is in a public place, asks for identification, and communicates the information to dispatch for a "driver's check" unlawfully seized the defendant. 135 Wn.2d at 5–6, 11–12. At this point in the encounter, this Court determined that an unlawful seizure had not occurred. *Id.* at 11–12. In contrast, this Court found that the encounter rose to a seizure when the officer took $4000 in cash from the two men he had encountered and placed it in his patrol car. *Id.* at 12.

It is significant to note that this Court in *Armenta*, differentiated between requesting and holding an ID then calling in a driver's check to dispatch and putting $4000 in the

officer's patrol car. *Id.* at 12–13. In Mr. Taylor's case the officer took the ID, held on to it for somewhere around 30 seconds providing dispatch the ID information, while gathering information that may have been relevant had Mr. Taylor been a witness. *See generally* Pretrial Ex. D1. The encounter between Mr. Taylor and the officer was more like the initial part of the officer's encounter in *Armenta*, which this Court determined was not a seizure.

As the Court of Appeals found relying on *Armenta* among other cases, "A show of authority requires more than obtaining a subject's driver's license and calling dispatch for information about the subject." *Taylor*, 541 P.3d at 1070.

2. The *Taylor* decision does not conflict with published Court of Appeals decisions.

The Petitioner asserts that the Court of Appeals decision conflicts with other Court of Appeals cases, including published Division I cases, although the defendant does not cite to any published Division I cases or any other case for this

proposition. Pet. for Review 7. The Court may find that a proposition not supported by authority fails. *Supra* 9. Even so, no such conflict with the Court of Appeals cases exists.

In *State v. Carriero*, the Court of Appeals Division III specifically states:

> On the one hand, police activities such as engaging a citizen in conversation, identifying themselves as officers, *or simply requesting identification* do not convert a casual encounter into a seizure. Under Washington law, *officers may request identification, including date of birth, and check for outstanding warrants during a social contact.* During such contact, the officer need not warn the citizen that he has the right to remain silent or walk away.

8 Wn. App. 2d 641, 658, 439 P.3d 679, 688 (2019) (citations omitted) (emphasis added); *see also State v. Smith*, 154 Wn. App. 695, 698, 700, 226 P.3d 195, 198 (2010) (finding defendant was not seized while an officer held the defendant's identification, remained two to three feet from the defendant and conducted a warrant search); *State v. Hansen*, 99 Wn. App. 575, 579, 994 P.2d 855 (2000) (finding no seizure when one officer handed another officer a person's identification, the

second officer wrote down the name and birth date, the officers held the ID for no longer than 30 seconds, and then the second officer left to conduct a warrant check).

The Petitioner argues that cases such as *State v. Thomas*, 91 Wn. App. 195, 955 P.2d 420 (1998); *State v. Dudas*, 52 Wn. App. 832, 764 P.2d 1012 (1998); and *State v. Aranguren*, 42 Wn. App. 452, 711 P.2d 1096 (1985), stands for the proposition that a person has been seized when an officer retains an individual's ID while questioning the person or conducting a warrant check. Pet. for Review 10. However, these cases have been distinguished by Washington Courts. The courts have identified that these cases stand for a seizure occurring when "the officer removed defendant's identification or property from defendant's presence." *State v. Hansen*, 99 Wn. App. 575, 579, 994 P.2d 855 (2000); *see also State v. Crane*, 105 Wn. App. 301, 310, 19 P.3d 1100 (2001), *overruled on other grounds by State v. O'Neill*, 148 Wn.2d 564, 62 P.3d 489 (2003) ("It is well established that if an officer retains the suspect's

identification while conducting a warrants check away from the suspect, there has been a seizure within the meaning of the Fourth Amendment"); *State v. Coyne*, 99 Wn. App. 566, 572, 995 P.2d 78 (2000) ("[O]nce an officer retains a suspect's identification or driver's license, and takes it with him to conduct a warrants check, a seizure within the meaning of the Fourth Amendment has occurred").

Case law under Washington State Court of Appeals supports the Court of Appeals decision in Mr. Taylor's case.

3. The law is well settled how Washington state addresses the state and federal constitution issues.

While the Petitioner asserts that this Court should review the Court of Appeal's decision under RAP 13.4(b)(3)— the Court of Appeals decision involves a significant question of law under the state or federal constitution—no argument or authority is provided to support this proposition. Again, the Court may find that a proposition not supported by argument and authority fails. *Supra* 9.

Still, Washington state cases address both the state and federal constitution for this issue. The cases cited in support of both this Court and the Court of Appeals supporting the *Taylor* court's decision address the issues within either the Washington State Constitution or the federal Constitution, or both. *See e.g. State v. Harrington*, 167 Wn.2d 656, 222 P.3d 92 (2009) (reviewing under Washington Constitution); *State v. O'Neill*, 148 Wn.2d 564, 570, 62 P.3d 489 (2003) (reviewing under Washington Constitution); *State v. Armenta*, 134 Wn.2d 1, 4, 948 P.2d 1280 (1997) (reviewing under the Fourth Amendment, but subsequent courts applying it to cases under the Washington Constitution, *see e.g. State v. Young*, 135 Wn.2d 498, 511, 957 P.2d 681 (1998); *State v. Carriero*, 8 Wn. App. 2d 641, 658, 439 P.3d 679 (2019))).

Under Washington State law, there is no significant question of law under the Constitution of Washington or the United States.

4. As the case law is well settled, this issue does not merit review under RAP 13.4(b)(4) as a substantial public interest.

Although the Washington state case law is well settled, regarding the facts in this case, Petitioner attempts to gain review by misconstruing the Court of Appeals' decision. The Petitioner frames the Court of Appeals holding as "detention is not really a detention if it is (somewhat) cordial." Pet. for Review 8. This is not what the Court of Appeals held. In fact, the Court of Appeals acknowledged and agreed that a seizure may occur even if an officer is cordial. *Taylor*, 541 P.3d at 1069. The Court of Appeals stated, "Context matters." *Id.*

In contrast to the Petitioner's assertions, the Court of Appeals held that,

> Mr. Taylor was not seized because the officer did not use physical force or a show of authority. Absent this a reasonable person could not believe they were not free to leave *due to* an officer's use of physical force or a show of authority. This is especially true where, as here, the officer assured the person they were not suspected of any criminal activity.

Id. at 1064. The Court of Appeals considered the totality of the circumstances noting that "As in *Hansen*, Officer Ayers held onto Mr. Taylor's identification briefly and spoke with him while dispatch obtained information about Mr. Taylor." *Id.* at 1068. Officer Ayers did not block Mr. Taylor from leaving nor did the officer issue any verbal commands. *Id.* at 1069. The Court of Appeals highlighted that the officer used language that would have reassured a reasonable person that the officer was not making a show of authority, "the officer assured Mr. Taylor he was not a suspect, but wanted to 'get [his] name just so we have that in case we need to contact you again at some point in time.'" *Id.* at 1069.

The Petitioner also asserts that "The majority found no seizure occurred because—even though Mr. Taylor was *not free to leave* while Officer Ayers retained his identification and questioned him—this restraint was not "*due to* the] . . . officer's use of 'physical force or show of authority.'"

However, contrary to the Petitioner's assertions, the Court of Appeals held, "Mr. Taylor was not seized because the officer did not use physical force or a show of authority. Absent this, a reasonable person could not believe they were not free to leave *due to* an officer's use of physical force or a show of authority. This is especially true where, as here, the officer assured the person they were not suspected of criminal activity." *Id.* at 1064. At no time does the Court of Appeal say that Mr. Taylor was not free to leave. In fact, the Court of Appeals cites to the trial court's finding "There was nothing about the contact that suggested the defendant was not free to leave prior to the time the officer learned the defendant had a warrant." *Id.* at 1065 (citing CP 53). The Court of Appeals also cites the trial court, which said: "Considering the totality of the circumstances, the Court cannot find there was any sort of coercion of [sic] force that would lead a reasonable person to believe he or she was not free to leave." *Id.* (citing CP 53).

In addition, the Petitioner attempts to support his claim for discretionary review by pointing to cases in Washington state and outside of Washington state. As demonstrated above, Washington state case law supports this Court dismissal of the Petitioner's Petition for Review.

Additionally, case law outside Washington state also supports dismissal. While there is not room in this Answer to address all of the Petitioner's cases cited to attempt to support his position, the State highlights a few of the helpful cases outside Washington's jurisdiction supporting the Court of Appeals decision.

The Fourth Circuit in *United States v. Weaver*, declined to find that retaining a citizen's identification or other personal property is dispositive to the question of whether someone is seized. 282 F.3d 302, 310 (4th Cir. 2002). Instead, the court found that it is highly material under the totality of the circumstances. *Id.* Similarly, the First Circuit declined to adopt a per se rule but considers the retention of a license in the

context of the totality of the circumstances. *United States v. Ford*, 548 F.3d 1, 6 (1st Cir. 2008).

Additionally, the Eleventh Circuit has not adopted a per se rule. In *United States v. De La Rosa*, the court found that no seizure occurred when after a person exited a vehicle, officers temporarily retained a person's driver's license while asking for permission to search the person's vehicle. 922 F.2d 675, 678 (11th Cir. 1991). Previously, the Eleventh Circuit found that retaining a driver's license with a person in a car became a seizure because if the person had attempted to drive away, they could have been arrested for driving without a license. *United States v. Thompson*, 712 F.2d 1356, 1359 (11th Cir. 1983).

In the United States Supreme Court case, *Florida v. Royer*, while a plurality decision, the lead opinion states:

> Asking for and examining Royer's ticket and his driver's license were no doubt permissible in themselves, but when the officers identified themselves as narcotics agents, *told Royer that he was suspected of transporting narcotics, and asked him to accompany them to the police room, while retaining his ticket and driver's license* and without indicating

> in any way that he was free to depart, Royer was effectively seized for the purposes of the Fourth Amendment. These circumstances surely amount to a show of official authority such that "a reasonable person would have believed he was not free to leave."

Florida v. Royer, 460 U.S. 491, 501–02, 103 S. Ct. 1319, 1326, 75 L. Ed. 2d 229 (1983) (quoting *United States v. Mendenhall,* 446 U.S. 544, 554, 100 S. Ct. 1870, 1877, 64 L. Ed. 2d 497 (1980)) (emphasis added).

Additionally, when the 9th Circuit case *United States v. Low*, 887 F.2d 232 (9th Cir. 1989), is carefully considered, even if one was to equate identification with an airplane ticket rather than the $4000 in *Armenta*, *Low* too supports the Court of Appeals' decision in *Taylor*. The court in *Low* states: "Law enforcement officers do not violate the fourth amendment by approaching an individual in a public place, 'by asking him if he is willing to answer some questions, [and] by putting questions to him if the person is willing to listen.'" 887 F.2d at 234 (quoting *Florida v. Royer,* 460 U.S. 491, 497, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229 (1983)). The court further

recognized "[r]equesting and examining an airplane ticket is permissible and does not by itself constitute a seizure." *United States v. Low*, 887 F.2d 232, 234 (9th Cir. 1989) (citing *Royer*, 460 U.S. at 501). The court found that if the law enforcement agent had questioned the defendant "about the nature of his trip *while* he examined his ticket, we conclude the encounter during that time was consensual." *Id.* at 236 (citing *Royer*, 460 U.S. at 501).

The State continues to contend that an airplane ticket is more like the $4000 in *Armenta*, however, even so, similar to law enforcement in *Low*, Officer Ayer's when encountering the Petitioner held the Petitioner's identification for a very brief time, around 30 seconds, and Officer Ayers gave the ID back to the Petitioner after he finished relaying the defendant's name and birthdate to dispatch.

In State cases, the Oregon State Supreme Court in *State v. Highley*, found that a defendant was not seized when an officer asked for the defendant's identification; wrote down the

license numbers and then handed it back totaling between "30 seconds and a minute"; called dispatch to check the defendant's probationary status based on his identification; and then asked the defendant for consent to search. 354 Or. 459, 461, 462–63, 313 P.3d 1068 (2013).

Similarly, the Florida Supreme Court found that telling a suspect that the officer was a narcotics officer while standing in front of the suspect, retaining the suspect's identification and airline tickets long enough to examine them then returning them, and then asking to search the suspect's bag did not amount to a seizure. *Jacobson v. State*, 476 So. 2d 1282, 1285 (Fla. 1985).

This Court should deny Mr. Taylor's Petition and affirm the Court of Appeals decision.

IV. CONCLUSION

This Court should affirm Mr. Taylor's conviction for Unlawful Possession of a Firearm in the Second Degree as the trial court properly denied his suppression motion and the Court of Appeals properly affirmed Mr. Taylor's conviction.

This document contains 4,122 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 21st of March 2024

Respectfully submitted,

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CERTIFICATE OF SERVICE

On this day I served a copy of the Answer to Petition for Review in this matter by e-mail on the following parties, receipt confirmed, pursuant to the parties' agreement:

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Dated: March 21, 2024

Janet Millard

GRANT COUNTY PROSECUTOR'S OFFICE

March 21, 2024 - 2:29 PM

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