NO. 102803-2

SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JAROD ROLAND TAYLOR,
Petitioner.

AMENDED ANSWER OF RESPONDENT TO BRIEF OF WACDL AS AMICUS CURIAE

KEVIN MCCRAE
GRANT COUNTY PROSECUTING ATTORNEY

Rebekah M. Kaylor, WSBA# 53257
Deputy Prosecuting Attorney
Attorneys for Respondent

P.O. Box 37
Ephrata, Washington 98823
PH: (509) 754-2011

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

State Cases

Other Cases

Regulations and Rules

Other Authorities

I. RESTATEMENT OF THE AMICUS ISSUE

Whether a reasonable person would feel free under the totality of the circumstances when an officer happens upon a person laying on the ground, the officer tells the person that he does not meet the description of the suspect for whom the officer is looking, and the officer states that he needs to get the person's name to potentially follow up with the person later.

II. WHY THE AMICUS BRIEF DOES NOT SUPPORT REVIEW[1]

A. Factual background.

Officer Ayers responding to a theft report from a nearby store, walked up a dirt mound—around 20 feet tall—in back of the store to get a better view of the area as he looked for the

---

[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.

theft suspect. CP 51–52; 1 RP 11–14. Officer Ayers came across a person lying on the ground and turned on his body camera. CP 52; RP 14; Pretrial Ex. D1 at 0:00–0:40. Because of the 30 second buffer prior to the officer turning on the camera, there is no audio for the first few seconds. *See Id.*

The trial court found "Officer Ayers did shine a flashlight on the defendant as it was dark." CP 52. The video shows the encounter was at night and Officer Ayers used the spill of the flashlight's beam to illuminate the area including Mr. Taylor. *See generally* Pretrial Ex. D1. In the video, Officer Ayers avoids using the flashlight hotspot to illuminate the defendant's face. *Id.* At the very beginning of the encounter, there is only moment where the flashlight hotspot illuminates Mr. Taylor mid-body, and then Officer Ayers attempts to keep the hotspot off Mr. Taylor. Pretrial Ex. D1 at 0:05-0:27. The video shows the officer tilting the flashlight away from Mr. Taylor so Mr. Taylor is only illuminated by the flashlight beam spill. Pretrial Ex. D1 at 0:27.

The initial conversation, between Officer Ayers and Mr. Taylor as captured on body camera, is as follows:

Mr. Taylor: "What's going on?"

Officer: "So, someone saw someone running out of the back of Lowe's over here in the field. With a bunch of stuff in their hands...No...Ok. And you don't, uh, match the description or anything, but we just gotta, I just gotta get your name just to, just so we have that and we need to contact you again at some point."

Pretrial Ex. D1, at 0:30–0:55. In response, Mr. Taylor hands Officer Ayers his ID. *Id.* at 0:56; CP at 52. Officer Ayers held the ID for around 30 seconds. 1 RP 41. The conversation between Officer Ayers and Mr. Taylor was "polite and cordial." CP 52.

The Court of Appeals found under the totality of the circumstances a reasonable person would have felt free to leave where Officer Ayers assured Mr. Taylor he was not a suspect, the officer expressed wanting to get Mr. Taylor's name in case the officer needed to follow up, the officer briefly held Mr. Taylor's identification and spoke with him as dispatch retrieved

information about Mr. Taylor, and the officer neither blocked Mr. Taylor from leaving nor gave any verbal commands. *State v. Taylor*, 541 P.3d 1061, 1068–69 (2024).

B. The issue in this case does not rise to being a substantial public interest.

As explained in the Respondent's Answer to the Petition for Review, Washington State boasts a robust collection of case law addressing whether an encounter falls within a social encounter or rises to a seizure. At 8–15.

Evaluating whether an encounter with a law enforcement officer remains a social contact or ripens into a seizure, is fact intensive. 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 *State v. 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 courts in Washington State have developed a robust body of case law addressing cases trying to determine where a case falls between the sliding scale of a social contact and a seizure. This Court in *State v. Harrington*, acknowledged, "[Social contact] occupies an amorphous area in our jurisprudence, 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 (i.e., *Terry* stop)." 167 Wn.2d 656, 664, 222 P.3d 92, 95 (2009) (citing *Terry v. Ohio,* 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)).

The *Amicus* attempts to assert that having more details available to the court for consideration of the totality of the circumstances, requires this Court to provide more guidance to lower courts regarding whether an encounter between a citizen and an officer is a social contact or a seizure. *See* Br. of WACDL as *Amicus Curiae* in Supp. of Pet. for Review [*Amicus* Br.] 2–5. This argument does not hold.

First, although the *Amicus* asks for more guidance from this Court, it does not suggest what additional guidance would be helpful nor how it would be helpful. The *Amicus* asserts that it "anticipates that this area of law will necessitate even more complex litigation as more and more police departments deploy body worn cameras." *Amicus* Br. 3. However, it does not explain how body-worn cameras make a totality of the circumstances assessment subject to more complex litigation. While body-worn cameras potentially provide more factual details of an encounter, the court is simply able to consider those additional facts, if relevant, in its consideration of the totality of the circumstances.

Second, the ability of the court to have more details of an encounter does not affect the applicable standard or its application. Both this Court and the Court of Appeals have developed a robust area of law where the applicable standard is applied to the various facts of the case. Body-worn cameras do not change this by potentially adding relevant details of an

encounter. This would be like saying this Court should give additional guidance for probable cause in DUI cases because the officers now have the ability to record the entire encounter with a citizen who an officer pulled over on suspicion of DUI. The ability to view an encounter in greater detail does not change the application of the law.

Rather than adding complexity, body-worn cameras may cut down on disputed facts in a case, lessening areas parties need to litigate. Various studies have been undertaken on the effect of law enforcement wearing body-worn cameras. Brett Chapman, *Body-Worn Cameras: What the Evidence Tells Us*, NIJ J. no. 280, Jan. 2019, https://www.nij.gov/journals/280/Pages/body-worn-cameras-what-evidence-tells-us.aspx. A couple of the many benefits body-worn cameras provide is to deter citizens from making "frivolous" or untruthful complaints as well as assist in quickly disposing of unfounded citizen complaints against officers. Michael D. White, Ph.D., *Police Officer Body-Worn Cameras: Assessing the Evidence* 024

(2014), https://bja.ojp.gov/sites/g/files/xyckuh186/files/media/document/diagnosticcenter_policeofficerbody-worncameras.pdf. One chief stated, "'We've actually had citizens come into the department to file a complaint, but after we show them the video, they literally turn and walk back out.'" Lindsay Miller et. al, Police Executive Research Forum, *Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned* 6 (2014), https://www.policeforum.org/assets/docs/Free_Online_Documents/Technology/implementing%20a%20body-worn%20camera%20program.pdf. Another study showed, where complaints were lodged, the complaints were less likely to be found sustained when the officers were wearing cameras. Charles M. Katz, Ph.D. et al., *Evaluating the Impact of Officer Worn Body Cameras in the Phoenix Police Department* 3 (2014), https://publicservice.asu.edu/sites/default/files/ppd_spi_feb_20_2015_final.pdf.

For criminal cases, one study showed that cases involving body-worn cameras were 70 to 80 percent less likely to go to trial. White, *supra*, at 24.

These studies support the contention that the added details body-worn cameras bring to a case *clarify* cases rather than add complexity.

C. The Court of Appeals correctly applied the law.

1. The law correctly acknowledges officers may request identification from citizens in a public place.

"[I]t is well-established that '[e]ffective law enforcement techniques not only require passive police observation, but also necessitate their interaction with citizens on the streets.'" *State v. Young*, 135 Wn.2d 498, 511–12, 957 P.2d 681, 688 (1998) (quoting *State v. Tucker*, 136 N.J. 158, 166, 642 A.2d 401, 406 (1994) (police are more than "mere spectators")); *see also Harrington*, 167 Wn.2d at 665. The law recognizes requesting a person's ID and briefly holding it does not amount to a seizure. In *Young*, this Court affirmed, "Article I, section 7 does not

forbid social contacts between police and citizens: '[A] police officer's conduct in engaging a defendant in conversation in a public place and asking for identification does not, alone, raise the encounter to an investigative detention.'" *Young*, 135 Wn.2d at 511 (quoting *State v. Armenta,* 134 Wn.2d 1, 11, 948 P.2d 1280 (1997)). Again, in *State v. O'Neill*, this Court stated,

> Citizens of this state expect police officers to do more than react to crimes that have already occurred. They also expect the police to investigate when circumstances are suspicious, to interact with citizens to keep informed about what is happening in a neighborhood, and to be available for citizens' questions, comments, and information citizens may offer.

148 Wn.2d 564, 576, 62 P.3d 489, 496 (2003). This Court further elaborated saying: "Accordingly, we reject the premise that under article I, section 7 a police officer cannot question an individual or ask for identification because the officer subjectively suspects the possibility of criminal activity, but does not have a suspicion rising to the level to justify a *Terry* stop." *Id.* at 577.

In our society, requesting and inspecting IDs are commonplace. Society recognizes in a variety of settings that someone requesting ID then holding and inspecting it does not amount to a seizure of their person. Hotel staff request ID from people checking in and may record the ID information. Stores ask for ID when people pick up items in-store they bought online. Servers and store clerks request people's ID to ensure they can legally order alcoholic beverages. Some stores scan and record the ID information. When someone requests identification, the expectation of society is that the requestor will take the ID, inspect it, possibly record information from the ID, and return it. Society does not view this common-place interaction as being detained by the requestor.

Similarly, an officer does not display a show of authority which restrains someone simply by requesting someone's ID, briefly holding the ID, and relaying identification information to dispatch.

Additionally, police often are in situations—such as this case—where it is not certain what an individual may know, how a person is involved, or how what they know will become important later. At first, people may not appear to have relevant information, but officers may need to follow up with people as an investigation develops. It is important for officers to be able to request identification so they may accurately identify potential witnesses for future possible follow-up.

Other jurisdictions recognize an officer's request for identification does not amount to a seizure. Resp't Answer for the Pet. for Review 19–23. One particularly insightful case is *State v. Backstrand*, 354 Or. 392, 313 P.3d 1084 (2013). In this case the Oregon State Supreme Court lay out the principles regarding police officers requesting citizen identification and found an officer's request for identification in and of itself does not convert a contact to a seizure. *Id.* at 394. The court noted that officers do not show the required constitutional show of authority for a seizure simply by "wearing uniforms, displaying

their badges, driving in marked patrol cars, and verbally identifying themselves as police officers." *Id.* at 401. Rather, "What is required is a reasonable perception that an officer is exercising his or her official authority *to restrain.*" *Id.* at 401 (emphasis added). *Id.* The court further explained that the inherent pressure in an encounter with a citizen and police officer does not alone raise the request for identification to a seizure. *See Id.* at 402. "[W]hat is required is a show of authority by which, through words or action, the officer's conduct reasonably conveys that the officer is exercising his or her authority to significantly restrain the citizen's liberty or freedom of movement." *Id.* A recent Oregon Supreme Court case affirmed these principles. *State v. Reyes-Herrera*, 369 Or. 54, 64, 500 P.3d 1, 7 (2021).

This Court should deny the Petition for Review as there is a robust body of law allowing for an officer to request a person's identification in a public place.

2. *The Court of Appeals correctly found that the officer* ***requested*** *the defendant's identification.*

The trial court found Officer Ayers *requested* Mr. Taylor's identification. CP 53; *Taylor*, 541 P.3d at 1065. 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 *O'Neill*, 148 Wn.2d at 571).

Even if this Court were to consider this challenge to the trial court's findings that the officer requested Mr. Taylor's identification, the officer's language makes it clear he was not demanding Mr. Taylor's identification nor imposing an obligation on Mr. Taylor. The officer's language of obligation was directed at the officer himself. In other words, the officer was requesting Mr. Taylor's help with something the officer needed to do.

The officer said: "And you don't, uh, match the description or anything, but we just gotta, I just gotta get your

name just to, just so we have that and we need to contact you again at some point." Pretrial Ex. D1, at 0:30–0:55. Nowhere in the officer's statement does he indicate Mr. Taylor is obligated to do anything. The officer ***does not*** say, "**You** gotta give me your identification." The context of the statement shows that the officer is requesting Mr. Taylor's name to allow the officer to follow up later with Mr. Taylor if needed. The officer did not convey Mr. Taylor was required or obligated to comply.

This Court should deny Mr. Taylor's Petition for Review because the Court of Appeals correctly applied the law and found the officer did not use a display of authority, "a reasonable person in Mr. Taylor's position would not have believed he was unable to leave or terminate the encounter." *Taylor*, 541 P.3d at 1069.

III. CONCLUSION

As the law surrounding officers requesting identification is well-established and the Court of Appeals properly applied the law in this case, this Court should deny the Petition for Review.

This document contains 2493 words, excluding the parts of the document exempted from the word count by RAP 18.17.

DATED this 30th day of April 2024.

Respectfully submitted,

KEVIN MCCRAE
Grant County Prosecuting Attorney

Rebekah M. Kaylor, WSBA# 53257
Deputy Prosecuting Attorney
Attorneys for Respondent
rmkaylor@grantcountywa.gov

CERTIFICATE OF SERVICE

On this day I served a copy of the Amended Answer to Brief of WACDL as Amicus Curiae in this matter by e-mail on the following parties, receipt confirmed, pursuant to the parties' agreement:

Mark Middaugh
mark@middaughlaw.com

Erin Moody
moodye@nwattorney.net

Dated: April 30, 2024.

Janet Millard

GRANT COUNTY PROSECUTOR'S OFFICE

April 30, 2024 - 4:11 PM

Transmittal Information

Filed with Court:	Supreme Court
Appellate Court Case Number:	102,803-2
Appellate Court Case Title:	State of Washington v. Jarod Roland Taylor
Superior Court Case Number:	21-1-00261-6

The following documents have been uploaded:

- 1028032_Answer_Reply_20240430161051SC284627_3649.pdf
  This File Contains:
  Answer/Reply - Other
  The Original File Name was AMENDED ANSWER OF RESPONDENT TO BRIEF OF WACDL AS AMICUS CURIAE.pdf

A copy of the uploaded files will be sent to:

- MoodyE@nwattorney.net
- Sloanej@nwattorney.net
- mark@middaughlaw.com

Comments:

Sender Name: Janet Millard - Email: jmillard@grantcountywa.gov
Filing on Behalf of: Rebekah Kaylor - Email: rmkaylor@grantcountywa.gov (Alternate Email:)

Address:
PO Box 37
Ephrata, WA, 98823
Phone: (509) 754-2011 EXT 3905

Note: The Filing Id is 20240430161051SC284627