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No. 102803-2

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,
Respondent,

v.

JAROD ROLAND TAYLOR,
Petitioner.

BRIEF OF WACDL AS *AMICUS CURIAE* IN SUPPORT OF PETITION FOR REVIEW

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I. IDENTITY AND INTEREST OF AMICUS

The identity and interest of *amicus curiae* are set forth in the accompanying motion for leave to file this brief.

II. ISSUE ADDRESSED BY AMICUS

Whether a person is seized when a police officer wakes up a sleeping person and tells them that they are obligated to provide personal identifying information to the police.

III. WHY REVIEW SHOULD BE GRANTED

It is not disputed that a law enforcement officer woke up a sleeping man, shined a flashlight near his face, requested identification, and told him that the police "gotta get your name." *State v. Taylor*, 541 P.3d 1061, 1064 (Wash. Ct. App. 2024). According to the Court of Appeals majority opinion, a reasonable person being awoken by an armed police officer and informed that they were obligated to provide personal identifying information would have known that they were in

fact free to decline the officers' demand and leave the scene without consequence.

The Court of Appeals' holding both deviates from existing precedent and, as the dissent below points out, justifies re-examination of appellate opinions that have departed from the original intent of Article 1, Section 7 to protect individuals from unwarranted law enforcement intrusion. *Id.* at 1072 (Fearing, J., dissenting). This Court should grant review to clarify when a police officer's interaction with an individual constitutes a seizure.

A. This is an Issue of Substantial Public Interest

This Court should grant review because the issue presented is of "substantial public interest." RAP 13.4(b). Courts in our state frequently have to grapple with the issue of when an interaction between a police officer and a civilian constitutes a "social interaction" or a "seizure." *See* Petition for Review at 9-11 (collecting cases). Further, the published cases in this area have not always been clear. Indeed, not long ago,

this Court noted that the question of whether an interaction is a "social contact" occupies an "amorphous area in our jurisprudence." *State v. Harrington*, 167 Wn.2d 656, 664, 222 P.3d 92, 95 (2009).

Amicus anticipates that this area of law will necessitate even more complex litigation as more and more police departments deploy body worn cameras. *See* City of Bellevue, "Bellevue Police to deploy new body-worn cameras, tasers," Jan. 31, 2024[1]; City of Tacoma, "Body Cameras," (noting that the body cam program is "fully implemented")[2]; Government Technology, "Wash. Cities Adopt Body Cameras After New Law Takes Effect," Jan. 19, 2022 (noting that Kennewick,

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[1] *Available at* https://bellevuewa.gov/city-news/body-cameras, last visited 4/5/2024.
[2] *Available at* https://www.cityoftacoma.org/cms/one.aspx?pageId=192848, last visited 4/5/2024.

Pasco, Richland and West Richland are purchasing body cameras for officers).[3]

In years past, trial courts considering suppression motions were asked to determine whether a seizure occurred based almost exclusively on testimony from officers who were well-trained in both search and seizure law and how to testify effectively in court. While officers might be expected to testify that they followed all constitutional mandates, "lying intended to convict the guilty—in particular, lying to evade the consequences of the exclusionary rule—is so common and so accepted in some jurisdictions that the police themselves have come up with a name for it: 'testilying.'" Christopher Slobogin, "Testilying: Police Perjury and What to Do about It," 67 U. COLO. L. REV. 1037, 1040 (1996).[4]

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[3] *Available at* https://www.govtech.com/public-safety/wash-cities-adopt-body-cameras-after-new-law-takes-effect, last visited 4/5/2024.

[4] As David Simon wrote in his 1991 masterpiece *Homicide: A Year on the Killing Streets*: "Probable Cause on a street search is and always will be a cosmic joke, a systemic deceit. . . . The

In the era of the body camera, however, high-definition video footage rather than live testimony is more likely to be the emphasis of suppression hearings. Factors that have been deemed important to suppression motions, such as the officer's "tone of voice" and the "specific words spoken" during the seizure will in many cases no longer be subject to the vagaries of an incomplete trial court record, faded memories, or conflicting testimony of witnesses. *See, e.g.,* S*tate v. Rankin,* 151 Wn.2d 689, 712, 92 P.3d 202 (2004) (noting the absence of such information in prior decisions). In an era when trial courts will be expected to decide motions based on more detailed and accurate information about the interaction between police and civilians, more detailed guidance from this Court is appropriate.

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courts can't acknowledge it, but in the real world you watch a guy until you're sure he's dirty, then you jack him up, find the dope or the gun and then create a legal justification for the arrest." *Id.* at 462.

B. The Court of Appeals Majority is Incorrect

This Court should also accept review because the Court of Appeals erred both in its analysis and its ultimate conclusion. As outlined in Judge Fearing's dissent, the majority holding is emblematic of cases that have ignored the practical realities of interactions between citizens and the police. *Taylor*, 541 P.3d at 1075 (Fearing, J., dissenting) ("If Washington courts truly wish to apply a reasonable person standard, the courts need to recognize the compelling and frightening nature of an officer confronting a citizen."). This Court can and should use this case as a vehicle to reassess what police actions should actually be viewed as coercive to a reasonable person with knowledge of the long history of how police-citizen interactions in our country may actually unfold. *See id.* at 1077 ("African-American and other minority communities know that a 'request' by a law enforcement officer equates to a 'command.'").

In the alternative, this Court could simply find that the court below simply erred in applying existing caselaw to the undisputed facts of this case. Under clearly-established law, officers may only "ask to examine [an] individual's identification" so long as they "do not convey a message that compliance with their requests is required." *Florida v. Bostick*, 501 U.S. 429, 435, 111 S. Ct. 2382, 115 L. Ed. 2d 389 (1991).

Contrary to the ruling of the trial court and Court of Appeals, the record in this case is clear that the officer did not merely "request" identification. Instead, the record clearly reflects that officer told Mr. Taylor that he was **obligated** to provide personal identifying information to the police. The officer twice used the word "gotta," which clearly conveyed that Mr. Taylor "ha[d] to" or "must" provide identification. *See* Collins Dictionary: "Gotta"[5]; *see also* Cambridge Dictionary: "Gotta" defined as "have got to."[6] By using the word "gotta"

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[5] https://www.collinsdictionary.com/us/dictionary/english/gotta
[6] https://dictionary.cambridge.org/us/dictionary/english/gotta

rather than merely requesting identification, the officer conveyed that compliance with his request was required. This contravenes the clear holding of *Bostick*. At a basic level, the Court of Appeals thus erred in emphasizing that the interaction was “cordial” rather than acknowledging the fact that the officer used language implying that Mr. Taylor was required to respond to his request for information.

IV. CONCLUSION

For the foregoing reasons, this Court should grant review and reverse the Court of Appeals finding that Mr. Taylor was not unlawfully seized.

I certify that, according to Microsoft Word, the portion of this memorandum subject to word counting has 1,247 words.

Respectfully submitted this 5th day of April, 2024.

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