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Supreme Court No. 93472-0

COA No. 33598-4-III

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IN THE SUPREME COURT  
OF THE STATE OF WASHINGTON

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STATE OF WASHINGTON,

Plaintiff/Respondent

v.

BRYAN DAVID BEWICK,

Defendant/Petitioner.

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**ANSWER TO DEFENDANT'S PETITION FOR REVIEW**

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## **I. IDENTITY OF RESPONDENT AND INTRODUCTION**

Respondent, State of Washington, respectfully requests that this Court deny review of the Court of Appeals Division Three's unpublished decision dated July 7, 2016 ("Opinion") attached as Appendix to the Petition for Review.

Often, an examination of the reasonableness of a *Terry* stop is fluid; as the circumstances surrounding the initial stop change, and as the justifications for the stop change, the analysis develops.

Here, it was initially reasonable for law enforcement officers to attempt to stop and talk to Mr. Bewick, as they had a reasonable suspicion that he was the person they were seeking on an arrest warrant. As the officers attempted to talk to Mr. Bewick regarding this warrant, but before they could confirm or dispel his identity, Mr. Bewick saw the officers, recognized them as police and began a headlong flight from the scene. After Mr. Bewick began to flee, one of the officers shouted a verbal command for him to stop. He did not. His immediate flight from law enforcement properly increased the officers' suspicions. Upon stopping Mr. Bewick, officers observed him accessing or attempting to access his right front pocket which gave rise to a further reasonable suspicion that he was attempting to discard or conceal contraband. He was asked if the officers'

suspicion of illegal drug possession was correct - he confirmed that it was. This confirmation provided further reason, probable cause, to detain him and arrest him on the drug charges and an extant arrest warrant.

## **II. STATEMENT OF THE CASE**

On February 19, 2015, the U.S. Marshals' Violent Offender's Task Force was searching for a wanted person in the area of 12114 E. Cataldo Avenue, in Spokane County, Washington. CP 57, Finding of Fact 1. The subject being sought was a white male known as Brent Graham, known to be staying in number 17 of the apartment complex at the above address. CP 58, Finding of Fact 2. The defendant was observed walking down a stairway from the general area of apartment number 17, wearing sunglasses and a hoodie covering his head. Nothing could be discerned visually other than the defendant's physical stature and ethnicity. CP 58, Finding of Fact 3.

At that point, the police officers believed that this individual might well be Mr. Graham. Court's Oral Decision Report of Proceedings Motion to Dismiss, Reporter Wilkens, May 14, 2015, p. 10, lines 8-10 ("RPM" hereinafter). The Task Force officers, who were wearing protective body armor with the word "POLICE" on the front, approached the defendant, who was getting into a vehicle with a white female. CP 58, Finding of

Fact 4; RPM 10:14-18. Upon seeing the officers, who were immediately recognizable as law enforcement, the defendant began running from the scene. CP 58, Finding of Fact 5; RPM 10. Agent Eric Carlson yelled “stop, police.” Appellant’s Br. at 12 (“Mr. Bewick began to run away from the Marshals when Agent Eric Carlson effectuated a seizure by yelling, ‘stop, police’”); CP 28.

The defendant was stopped by the officers after a short foot pursuit. CP 58, Finding of Fact 6; RPM 10. “Upon being detained, Defendant Mr. Bewick was, in the officers’ opinion, being fidgety, displaying furtive movements, and reaching around in the front left pocket of his jeans.” RPM 10-11; CP 58, Finding of Fact 7. The officers reasonably believed, based on their training and experience, Mr. Bewick might be attempting to hide, discard or destroy contraband or evidence in those motions and movements, in reference to the left front pocket of his jeans. CP 58, Finding of Fact 7; RPM 11; CP 59, Conclusion of law 3. “It was reasonable on the part of the officers to interpret these movements as furtive gestures, again according to their experience and training.” RPM 11; CP 58, Finding of Fact 7; CP 59, Conclusion of Law 3. “And at a point right after that, Mr. Bewick did indicate upon being asked the question that he did have contraband, *i.e.*, unlawful drugs in his pocket.” RPM 11.

The officers then retrieved a baggie containing a white crystalline substance appearing to be methamphetamine, and a vial containing what appeared to be black tar heroin. CP 58, Finding of Fact 8. Thereafter, the officers did an identification check “and learned that Mr. Bewick had a warrant for his arrest, that in fact he was not Mr. Graham, and he was arrested.” RPM 11; CP 58, Finding of Fact 10. A field test administered by Detective Dean Meyer of the Spokane County Sheriff’s Department confirmed the referenced substances to be methamphetamine and heroin, respectively. CP 58, Finding of Facts 9 and 10. The trial court determined that “[t]he totality of the circumstances, the officer’s observations and reasonable conclusions, render the stop and subsequent discovery of the contraband, and service of the outstanding warrant, lawful.” CP 59, Conclusion of Law 4.

### **III. WHY REVIEW SHOULD NOT BE ACCEPTED.**

Petitioner has failed to satisfy his heavy burden under RAP 13.4(b) of demonstrating that the Court of Appeals’ unanimous opinion conflicts with any appellate decision dealing with the scope of a detention under the unique, narrow, and stipulated factual scenario presented in this case. RAP 13.4(b)(1), (2). Because the unique facts of this case are controlled by extant law, no significant questions of constitutional law or substantial public interest are presented. RAP 13.4(b)(4).

Here, the Court of Appeals correctly determined the original seizure of the defendant did not occur until he was ordered to stop. Opinion at 6. This flight occurred after he recognized the officers as law enforcement, and the officers observed him as closely resembling the person they sought:

Mr. Bewick asserts he was seized when the officers approached him wearing tactical vests. However, at that point the officers were doing nothing more than trying to contact Mr. Bewick to identify him. Law enforcement officers are permitted to approach a citizen and ask for identification as part of a casual conversation. *State v. Bailey*, 154 Wn. App. 295, 300, 224 P.3d 852 (2010). Mr. Bewick fled before any conversation could be initiated. At that point, he was ordered to stop. Mr. Bewick was seized when one of the officers ordered him to stop. *See Sweet*, 44 Wn. App. at 230; *State v. Friederick*, 34 Wn. App. 537, 541, 663 P.2d 122 (1983).

*State v. Bewick*, No. 33598-4-III, 2016 WL 3742010, at \*3 (Wash. Ct. App. July 7, 2016).

The Court of Appeals properly found, in the continuum of events, there was reasonable suspicion to detain the defendant under a *Terry* analysis:

But the critical fact here is that Mr. Bewick fled as soon as he saw the officers. Mr. Bewick's flight from the officers, in addition to the fact he matched the vague physical description of Mr. Graham and was seen leaving the vicinity of Mr. Graham's apartment, gave the officers "a reasonable, articulable suspicion" that Mr. Bewick was Mr. Graham. *See Gatewood*, 163 Wn.2d [534,] at 539 [182 p.3d 426 (2008)]. We conclude the officers had a sufficient reasonable,



articulable suspicion to initially detain Mr. Bewick to determine whether he was Mr. Graham.

*Bewick*, at \*3

Additionally, the Court of Appeals correctly determined that the scope and duration of the detention was supported by the facts of this case, and this Court's decision in *State v. Graham*, 130 Wn.2d 711, 927 P.2d 227 (1996):

Mr. Bewick's initial flight from the officers and refusal to obey an officer's command to stop justified the officers' cautious decision to perform a status check to assure that Mr. Bewick was not Mr. Graham. Although dispatch eventually verified that Mr. Bewick's identification was accurate, this verification did not occur until after Mr. Bewick admitted to having the illegal drugs. We conclude that the officers did not exceed the lawful scope and purpose of the *Terry* stop when they performed a status check to verify that Mr. Bewick was not Mr. Graham.

*Bewick*, at \*3.

Finally, there exists an alternate basis for upholding the stop and detention that should be addressed if review were accepted. The defendant conceded that he ran away from the U.S. Marshals when Agent Eric Carlson yelled "stop, police." Appellant's Br. at 12 ("Mr. Bewick began to run away from the Marshals when Agent Eric Carlson effectuated a seizure by yelling, 'stop, police'"). The trial court made the factual finding that the defendant fled from the officers *knowing* they were police. CP 58, Finding

of Fact 5; RPM 10. Under these facts, the officers had additional probable cause to arrest Mr. Bewick for obstructing a public servant.

A person is guilty of obstructing a public servant if he willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or duties. RCW 9A.76.020. Official duties encompass all aspects of a law enforcement officer's good faith performance of job-related duties, excluding conduct occurring when the officer is on a frolic of his or her own. *State v. Mierz*, 127 Wn.2d 460, 479, 901 P.2d 286 (1995); *see also*, *State v. Little*, 116 Wn.2d 488, 806 P.2d 749 (1991) (holding defendants' flight from the officers and refusal to stop when ordered to do so constituted an obstruction of a public servant).

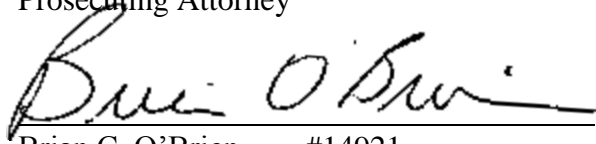
This issue was raised in the trial court. CP 24-26 (State's response to Defendant's Motion to Suppress). The issue was also addressed in the State's appellate brief. Response Br. at 13-16. Thus, the obstruction issue would be properly before this Court if review is accepted. *State v. Bobic*, 140 Wn.2d 250, 257-58, 996 P.2d 610 (2000).

#### IV. CONCLUSION

For the reasons stated above, Respondent requests the Court deny the petitioner's request for review.

Respectfully submitted this September 1, 2016.

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A handwritten signature in black ink, appearing to read "Brian O'Brien", written over a horizontal line.

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