

FILED
SUPREME COURT
STATE OF WASHINGTON
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NO. 98266-0

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

AARON JUSTIN CALLOWAY,

Petitioner.

ANSWER TO
PETITION FOR REVIEW

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I. IDENTITY OF RESPONDENT

The State of Washington, respondent, asks that review be denied.

II. STATEMENT OF THE CASE

The facts are correctly set out in the Court of Appeals opinion.

III. ARGUMENT

THERE IS NO REASON FOR THIS COURT TO REVIEW THE COURT OF APPEALS' APPLICATION OF A WELL-ESTABLISHED LEGAL STANDARD.

The standards for an investigatory detention are well-established. A person can be detained if an officer has reasonable suspicion that the person is engaged in criminal activity. State v. Fuentes, 183 Wn.2d 149, 158 ¶¶ 17-18, 352 P.3d 152 (2015). In its unpublished opinion in this case, the Court of Appeals applied this standard to the particular facts in this record. Such a decision does not warrant review.

The petitioner is asking this court to make it essentially impossible for police to assist landowners in protecting their buildings from trespassers. According to the petitioner, it does not matter that the owners specifically requested such protection. It does not matter that they identified the specific individuals who are

allowed access. 1 RP 7-8. It does not matter that a police officer saw a person enter the building with no apparent permission. Nor does it matter that the officer knocked on the door but received no response from any authorized person. 1 RP 10.

Despite all this, the petitioner claims that police could not detain the apparent trespasser, unless they knew his relationship to the lawful occupants. PRV at 6. But unless an officer happens to know the person already, he can obtain this information only by detaining him for questioning. So all the trespasser needs to do is walk away when an officer attempts to contact him. The trespasser can then resume his illegal activities as soon as the officer leaves. As a member of this court has pointed out, this would "reduce the officer's function to that of a watchdog, able only to provoke flight at his or her approach." State v. Little, 116 Wn.2d 488, 499, 806 P.2d 749 (1991) (Guy, J., concurring).

Before detaining the petitioner, the officer here took reasonable steps to determine whether he was an authorized guest. The officer knocked on the door in an attempt to contact the occupants. The only person who responded was another apparent trespasser. 1 RP 10. As the Court of Appeals pointed out, the officer could reasonably believe that if an authorized person had

been present, he would have responded to the officer's knock. Slip op. at 9. This is particularly true in light of the owners' expressed desire for the assistance of police in protecting their property.

The petitioner also argues that the detention extended for too long a period. This contention is hard to understand. Starting from the moment that the officer told the petitioner to "come over and talk to me," it took about 70 seconds to learn that he had outstanding arrest warrants. Ex. 2 at 8:20:21 – 8:21:29. Moreover, it took only 15 seconds to catch the petitioner in an apparent lie. In response to the officer's second question, the petitioner said that "Boo Boo" (an authorized occupant) was inside the house. Ex. 2 at 8:20:34. As discussed above, the officer had reason to suspect that this was not true.

The petitioner appears to believe that as soon as he claimed authorization, the officer was required to believe his claim and release him. There is no legal basis for such a rule. A lawful investigatory detention is "limited in scope and duration to fulfilling the investigative purpose of the stop." State v. Acrey, 148 Wn.2d 738, 747, 64 P.3d 594, 599 (2003). Seventy seconds of questioning is well within these limits. This issue as well does not warrant review.

IV. CONCLUSION

The petition for review should be denied.

Respectfully submitted on April 6, 2020.

ADAM CORNELL
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Respondent,

AARON JUSTIN CALLOWAY,

Petitioner.

No. 98266-0

DECLARATION OF DOCUMENT
FILING AND E-SERVICE

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The undersigned certifies that on the 6th day of April, 2020, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

ANSWER TO PETITION FOR REVIEW

I certify that I sent via e-mail a copy of the foregoing document to: The Supreme Court via Electronic Filing and to the attorney(s) for the Petitioner; Nielsen, Koch; Sloanej@nwattorney.net; MarchK@nwattorney.net

I certify (or declare) under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 6th day of April, 2020, at the Snohomish County Office.



Diane K. Kremenich
Legal Assistant/Appeals Unit
Snohomish County Prosecutor's Office

SNOHOMISH COUNTY PROSECUTOR'S OFFICE

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