

**FILED**

APR 15, 2014

Court of Appeals  
Division III  
State of Washington

31988-1-III

COURT OF APPEALS  
DIVISION III  
OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, RESPONDENT

v.

RICARDO J. RUBIO, JR., APPELLANT

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APPEAL FROM THE SUPERIOR COURT  
OF SPOKANE COUNTY

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BRIEF OF RESPONDENT

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STEVEN J. TUCKER  
Prosecuting Attorney

Andrew J. Metts  
Deputy Prosecuting Attorney  
Attorneys for Respondent

County-City Public Safety Building  
West 1100 Mallon  
Spokane, Washington 99260  
(509) 477-3662

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I.

ASSIGNMENT OF ERROR

1. The trial court's conclusion of law entered after a CrR 3.6 hearing is contrary to case law pertaining to the seizure of a witness. (CP 85; appendix "A")

II.

ISSUE

- A. Did the trial court properly find that the actions of the police officers were reasonable?

III.

STATEMENT OF THE CASE

For the purposes of this appeal the State accepts the defendant's version of the Statement of the Case.

IV.

ARGUMENT

- A. THE TRIAL COURT CORRECTLY FOUND THAT THE ACTIONS OF THE OFFICERS WERE PROPER.

The defendant was charged in Spokane County Superior Court with Possession of Methamphetamine as a result of jail officers discovering materials in the defendant's socks. CP 5. The reason that the defendant was being

processed into jail was that he had open warrants. The defendant was the captain of his own fate when he decided to carry illegal items in his socks and continue his daily life with misdemeanor warrants outstanding. The defense does not question the finding of the materials or the transport to the jail.

The defendant has not challenged the Findings of Fact from the CrR 3.6 hearing, making those findings verities on appeal. *State v. Halstien*, 122 Wn.2d 109, 128, 857 P.2d 270 (1993); *State v. Hill*, 123 Wn.2d 641, 870 P.2d 313 (1994).

The defendant begins his arguments by ignoring certain facts and including facts that were not part of the trial court's Findings of Fact. The defendant states that when he was contacted by Officer Kirby, there was no indication that the defendant was involved in any criminal activity. Brf. of App. 4. The officer was responding to the address because of a call to authorities that there was yelling and a woman outside the apartment was holding her stomach and shouting about a "miscarriage."

At the time the apartment door was opened, the officer knew that there was a report of a ruckus at that location that involved the possible death of a child. The officer asked the occupants to leave the apartment. The defendant did not leave, remaining on the couch. At this point, the officer was dealing with a possibly serious situation with a person refusing to follow commands. The

defendant made himself suspicious by refusing to comply with the orders given by police. To add to the situation, the defendant gave an alias name.

The defendant states that the officer was “merely trying to find witnesses to an alleged incident...” Brf. of App. 4. That statement is not what the trial court found. The Findings of Fact from the CrR 3.6 hearing indicate that the officer contacted the defendant to check on welfare and to figure out what was going on. CP 82.

The defendant states in his brief that he and three other people were “temporarily seized while Officer Kirby conducted a sweep of the apartment.” Brf. of App. 4. Again, the defendant is adding his own facts. The trial court mentioned nothing about “seizures” in its findings of fact. Likewise, there was no factual finding that the witnesses were not free to leave.

The defendant wishes to move backwards on the timeline and fault the arresting officer for checking the defendant’s name and alias which resulted in the discovery of outstanding warrants. The primary focus of the defendant’s arguments is that the officer had no right to ask the defendant’s name.

The defendant relies on *State v. Carney*, 142 Wn. App. 197, 203, 174 P.3d 142 (2007) as support for his argument that the officer had no right to seize him. *Carney* is not applicable here as the police in *Carney* had no exigent circumstances or other reason providing an exception to the general warrant requirement.

The defendant also relies on *State v. Dorey*, 145 Wn. App. 423, 186 P.3d 363 (2008). Once again, the defendant cites to a case in which there were no exigent circumstances involved in the officer's stop of the defendant. The *Dorey* court did note, "Police officers are permitted to approach citizens and permissively inquire into whether they will answer questions as part of their "community caretaking" function." *Dorey, Id.* at 428. That is precisely what was occurring here. The officer could hardly walk away from the defendant who was sitting in the apartment identified by a 9-1-1 caller.

As a side note, the defendant does not explain why he has any standing to complain about the actions of the police officers. The apartment in question did not belong to him, he had arrived for a visit some time before the incident and there was no indication that he lived there.

For purposes of a suppression hearing, the question is whether the findings of fact support the conclusions of law. *State v. Hill*, 123 Wn.2d 641, 645-47, 870 P.2d 313 (1994). "We review *de novo* the trial court's conclusions of law." *State v. Schultz*, 170 Wn.2d 746, 248 P.3d 484 (2011). The facts are set by the lack of any contest of the trial court's findings of fact.

The trial court concluded that the facts supported Officer Kirby briefly detaining and identifying the defendant. CP 83. The trial court further concluded that *Terry v. Ohio*, 392 U.S. 1, 4, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) supported the officer's actions.

The uncontested Findings of Fact from the suppression hearing support the trial court's Conclusions of Law and those conclusion should be upheld.

The position of the defendant does not promote intelligent actions by police officers. The defendant would have officers open the door to the apartment, check everyone for physical injuries/evidence of a fight and then leave without asking any questions. This would not be an example of good police work.

V.

#### CONCLUSION

For the reasons stated above, the State respectfully requests that the rulings of the trial court be affirmed.

Dated this 15<sup>th</sup> day of April, 2014.

STEVEN J. TUCKER  
Prosecuting Attorney

A handwritten signature in black ink, appearing to read "Andrew J. Metts", with a circular mark at the beginning.

Andrew J. Metts #19578  
Deputy Prosecuting Attorney  
Attorney for Respondent



IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,            )  
  )  
                                  Respondent,    )     NO.   31988-1-III  
                                  v.                )  
  )  
RICARDO J. RUBIO, JR.,        )  
  )  
                                  Appellant,    )  
\_\_\_\_\_

I certify under penalty of perjury under the laws of the State of Washington, that on April 15, 2014, I e-mailed a copy of the Respondent's Brief in this matter, pursuant to the parties' agreement, to:

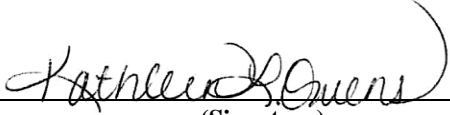
Dennis W. Morgan  
nodblspk@rcabletv.com

and mailed a copy to:

Ricardo J. Rubio, Jr.  
c/o PO Box 1019  
Republic WA 99166

4/15/2014  
(Date)

Spokane, WA  
(Place)

  
(Signature)