

66866-8

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NO. 66866-8-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

SCOTT A. MEEDS,

Appellant.

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BRIEF OF RESPONDENT

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I. ISSUES

1. The defendant was a passenger in a car stopped for an infraction. The car smelled of burnt methamphetamine. Because he had a history of being physical with police, an officer frisked him. During the frisk the defendant admitted both to possessing a “dope pipe” and to “a little dope.” Was the ensuing arrest, and search of the defendant’s person incident thereto, lawful?

II. STATEMENT OF THE CASE

The defendant was charged by amended information with possession of a controlled substance, methamphetamine. 1 CP 81-82. He noted a hearing asking the trial court to suppress the evidence of contraband, as allegedly having been unlawfully seized. The testimony at that hearing form the basis of this appeal.

At the hearing, Snohomish County Sheriff’s Deputy James Hager testified he stopped a vehicle on Ben Howard Rd., a rural road in unincorporated Snohomish County, at 8:40 p.m. on June 29, 2009. 1 CP 83 (Finding of Fact # 1, 2, 3); Verbatim Report of Proceedings, 4/1/10 CrR 3.5/3.6 Suppression Hearing (hereafter “Hrg RP”) 3-6. He stopped the vehicle for expired tabs. Hrg RP 4. It turned out the driver, a Ms. Mathison, had failed to transfer title and get the vehicle registered. Hrg RP 4, 8. Deputy Hager

arrested Ms. Mathison for failing to transfer title. Hrg RP 4-6, 8-9; see former RCW 46.12.101(6) (recodified as RCW 46.12.650(7)) (defining the misdemeanor offense). During a search of Ms. Mathison's person incident to arrest, Ms. Mathison admitted she had some "meth," as well as a "meth" pipe tucked into her bra. Hrg RP 4, 9.

The defendant, Scott Meeds, was in the passenger seat. 1 CP 84 (Finding of Fact # 4); Hrg RP 14. Deputy Hager recognized him from prior contacts. In those contacts, the defendant had been resistant, antagonistic, and combative. Deputy Hager knew him to carry weapons – specifically, knives and swords. 1 CP 84 (Findings of Fact 4, 5, 6, 7); Hrg RP 7, 15, 16. (The defendant was not, however, known for carrying firearms. Hrg RP 15.) Given what police knew of the defendant, Hager called for backup, and Sheriff's Deputy Daniel Johnson arrived shortly thereafter. 1 CP 84 (Findings of Fact # 9, 10): Hrg RP 6-7, 21. Deputy Johnson did not know of the defendant's history with police until Deputy Hager told him about it once Johnson arrived onscene. 1 CP 84 (Findings of Fact 11, 14); Hrg RP 6-7, 22.

While approaching the driver and passenger, Deputy Hager had detected an odor of used or burnt methamphetamine

emanating from the interior of the vehicle. 1 CP 84 (Finding of Fact # 8); Hrg RP 4, 8, 14. He could not, however, isolate whether one or both of the occupants had been smoking "meth." Hrg RP 17.

While Deputy Hager was in the process of arresting Ms. Mathison (the driver), Deputy Johnson contacted the defendant. 1 CP 84 (Finding of Fact # 12); Hrg RP 9, 23. The defendant was fidgeting. Hrg RP 23. He was holding a cell phone in one hand, and kept the other hand in his pocket. 1 CP 84 (Finding of Fact 13); Hrg RP 23. He was putting his hand in and out. Hrg RP 26-27. Deputy Johnson asked the defendant to step out of the car. 1 CP 84 (Finding of Fact # 15). He did so initially just to have the defendant "hang tight" while the driver was arrested and pending the arrival of a K-9 unit. Hrg RP 22, 28. But as he got out of the car, the defendant again was "trying to reach for his pocket." Hrg RP 23, 28. This, coupled with Hager had told him, gave Deputy Johnson some concern. 1 CP 84 (Findings of Fact # 11, 14-15); Hrg RP 23.

Asked if he had a weapon, the defendant said no. Hrg RP 28. Deputy Johnson decided not to take his word for it. Instead, he decided to pat Mr. Meeds down. 1 CP 84 (Findings of Fact 15, 16; Hrg RP 10, 23, 28-29. As he was doing so, the deputy felt two

things: a hard cylindrical object and a hard round object. 1 CP 84 (Finding of Fact # 17); Hrg RP 23. The deputy could tell by touch that the cylindrical object was a pipe. 1 CP 84 (Finding of Fact # 17). The defendant admitted the cylindrical object was a ‘dope pipe.’ 1 CP 84 (Finding of Fact # 18); Hrg RP 24. Asked if he had anything else illegal, the defendant admitted he had “a little dope,” too. Hrg RP 25.¹

Deputy Johnson proceeded to arrest the defendant for, he explained, possession of drug paraphernalia. Hrg RP 25. The defendant started to resist, tensing up, but ceased doing so when the deputy warned him he would use force. Hrg RP 25.

A search incident to arrest of the defendant’s person yielded a glass pipe and a rock the size of a tennis ball. 1 CP 84 (Findings of Fact 17, 18); Hrg RP 23-25. During the search Deputy Johnson also located a chopsticks container that had a crystalline substance inside it. Hrg RP 25. The crystals field-tested positive for methamphetamine. Hrg RP 26.

The trial court denied the defendant’s motion to suppress, finding that the defendant’s removal from the vehicle, and the

¹ The defendant omits this fact in his otherwise straightforward rendition of the facts. See BOA 4.

subsequent frisk or pat down of him, were lawful. 1 CP 85 (Conclusions of Law); Hrg RP 38-43.

The defendant waived jury and stipulated to the police reports, to retain the pretrial appeal issue while simultaneously being able to take advantage of the State's offer not to file an additional charge arising from another incident. Verbatim Report of Proceedings, 10/25/10 bench trial (hereafter "Bench Trial RP") 3-9; 1 CP 35-40. The trial court found him guilty on the stipulated reports, Bench Trial RP 9-10, and sentenced him to a year's incarceration under the prison-based Drug Offender Sentencing Alternative ("DOSA"). Bench Trial RP 25; 1 CP 4-16; see RCW 9.94A.660. This appeal followed. 1 CP 2-3.

III. ARGUMENT

A. THE PRE-ARREST SETTING LEADING UP TO ARREST.

Contact started as a simple infraction stop for expired tabs. See former RCW 46.16.010 (recodified as RCW 46.16A.030) (defining the infraction of expired tabs); RCW 46.61.021 statutory authority to detain). The defendant has not argued otherwise.

The odor of methamphetamine emanating from the car as the deputy approached transformed the infraction stop into a Terry stop. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889

(1968) (brief investigative detention permissible if based on reasonable and articulable suspicion); e.g., State v. Glossbrener, 146 Wn.2d 670, 676, 49 P.3d 128 (2002) (stop for equipment violation properly expanded to Terry investigation for DUI based on odor and bloodshot eyes); State v. Lemus, 103 Wn. App. 94, 101, 11 P.3d 326 (2000) (traffic stop properly expands to Terry drug investigation after officer sees white powder on driver's pants and, on second contact, smelled odor).

The officer also could order the defendant to remain in or step out of the car, based on the necessity to "control the scene" for safety concerns triggered by the defendant's history with police. State v. Mendez, 137 Wn.2d 208, 220, 970 P.2d 722 (1999).

Based on the defendant's past history of carrying knives and fighting with police, and his now making furtive movements, the deputy frisked the defendant after the defendant got out of the car. 1 CP 84 (Findings of Fact # 11, 13, 14, 15), 16); Hrg RP 10, 22-23, 26-28. Such a Terry stop-and-frisk is justified when the initial stop is legitimate and the officer can point to specific and articulable facts supporting an objectively reasonable belief that the suspect is armed and dangerous. Terry v. Ohio, 392 U.S. at 21-24, 30; State v. Collins, 121 Wn.2d 168, 173, 847 P.2d 919 (1993); State v.

Laskowski, 88 Wn. App. 858, 860, 950 P.2d 950 (1997). The defendant has not challenged the pat down, either.

As he was frisking the defendant, the deputy felt a hard cylindrical object. 1 CP 84 (Finding of Fact # 17); Hrg RP 23. The deputy could tell by touch that the cylindrical object was a pipe. 1 CP 84 (Finding of Fact # 17). The defendant admitted the cylindrical object was a 'dope pipe.' 1 CP 84 (Finding of Fact # 18); Hrg RP 24. Asked if he had anything else illegal, the defendant admitted he had "a little dope," too. Hrg RP 25.

B. THE ENSUING ARREST WAS SUPPORTED BY PROBABLE CAUSE, AND THE SEARCH INCIDENT THERETO WAS LAWFUL.

It is only at this point that the defendant alleges any illegality occurred. BOA 6-15.

At this point, Deputies Hager and Johnson knew the following: The car smelled of burnt or used methamphetamine. 1 CP 84 (Finding of Fact # 8); Hrg RP 4, 8, 14. The driver, Ms. Mathison, had admitted to possession drugs and a drug pipe. Hrg RP 4, 9. The deputy felt something in frisking the defendant that he recognized by touch as a pipe. 1 CP 84 (Finding of Fact # 17); Hrg RP 23. And the defendant had admitted to possessing both a drug pipe and drugs. 1 CP 84 (Finding of Fact # 18); Hrg RP 24-25.

Probable cause exists where the facts and circumstances within the arresting officer's knowledge would be sufficient to cause a reasonable person to believe that the suspect has committed or is in the process of committing an offense. State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996); State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986); O'Neill v. Dep't of Licensing, 62 Wn. App. 112, 116-17, 813 P.2d 166 (1991). Appellate review of a probable cause determination is based on a practical, nontechnical review of the total facts of the case under consideration and within the officer's knowledge at the time, taking into consideration any special experience and expertise of the officer. State v. Gaddy, 152 Wn.2d 64, 70, 93 P.3d 872 (2004); State v. Gillenwater, 96 Wn. App. 667, 671, 980 P.2d 318 (1999); Bokor v. Dep't of Licensing, 74 Wn. App. 523, 527, 874 P.2d 168 (1994). The standard is applied in light of everyday experience rather than a strict legal formula. State v. Scott, 93 Wn.2d 7, 11, 604 P.2d 943 (1980).

Here the officer had probable cause to arrest the defendant for two crimes.

First, the defendant emerged from a car smelling of burnt methamphetamine and *admitted to possession of drugs* during a

pat down. His admission was to a *crime*. This is enough to support a warrantless arrest for drug possession. State v. Robertson, 134 Idaho 180, 186, 997 P.2d 641, 647 (Id.,2000) (discovery of syringe during pat down, and defendant's admission that film canister contained methamphetamine, sufficient to establish probable cause); State v. Bingman, 162 Or. App. 615, 619, 986 P.2d 676, 679 (Or.,1999) (strong odor of marijuana from car, and admission that bag contained marijuana, sufficient to establish probable cause); Smith v. Thornburg, 136 F.3d 1070, 1074 (6th Cir.1998) ("probable cause exists when there is a fair probability that contraband or evidence of a crime will be found in a particular place").

That this is not the crime the deputy articulated is irrelevant. Even if an officer believes he has probable cause to arrest for one crime, but he in fact does not, the arrest is valid so long as there is probable cause to arrest for another crime. State v. Huff, 64 Wn. App. 641, 646, 826 P.2d 698, review denied, 119 Wn.2d 1007 (1992). The subjective legal conclusions of an officer do not determine whether that officer had probable cause to arrest a suspect. Arkansas v. Sullivan, 532 U.S. 769, 772, 121 S. Ct. 1876,

149 L. Ed. 2d 994 (2001); Whren v. United States, 517 U.S. 806, 813, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996).

Secondly, the officers had probable cause to arrest the defendant for possession of drug paraphernalia under the Snohomish County Code. A county ordinance prohibits possession of drug paraphernalia with intent to use. SCC 10.48.020; State v. Fisher, 132 Wn. App. 26, 29, 130 P.3d 382, review denied, 158 Wn.2d 1021 (2006) (probable cause to arrest for SCC 10.48.020 established when officer found a glass pipe with burnt residue during pat down). (The ordinance is attached.) The county ordinance is not preempted by, or in conflict with, the state statute at RCW 69.50.412. Fisher, 132 Wn. App. at 30-32. The restrictions and proof problems applying to the latter, discussed in appellant's briefing, BOA 9-11, do not apply to the more easily-proven county ordinance. The defendant admitted to possessing a "dope" pipe, and to possessing "dope," after emerging from a car smelling of burnt methamphetamine. This is certainly "intent to use," and establishes probable cause to arrest for a violation of SCC 10.48.020. Since the arrest was lawful, the search of the defendant's person incident to that arrest was lawful as well.

IV. CONCLUSION

The judgment and sentence should be *affirmed*.

Respectfully submitted on December 1, 2011.

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SNOHOMISH COUNTY CODE (SCC)

Title 10 – PUBLIC PEACE, SAFETY AND MORALS

Chapter 10.48 – Drug Paraphernalia

SCC 10.48.020 Possession of drug paraphernalia.

It is unlawful for any person to use, or to possess with intent to use, any item of drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance in violation of this act. Any person who violates this section is guilty of a misdemeanor and upon conviction may be imprisoned for not more than 90 days or fined not more than \$500.00, or both.

(Ord. 80-111, adopted December 15, 1980).