

NO. 69753-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

MILAHN NATHANIEL MOORE,

Respondent.

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STATE OF WASHINGTON
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE SUSAN CRAIGHEAD

BRIEF OF APPELLANT

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A ASSIGNMENTS OF ERROR

1. The trial court erred by entering Finding of Fact 5.
2. The trial court erred by entering Finding of Fact 6.
3. The trial court erred by entering Finding of Fact 7.
4. The trial court erred by entering Conclusion of Law 5.
5. The trial court erred by entering Conclusion of Law 6.
6. The trial court erred by entering Conclusion of Law 7.
7. The trial court erred by entering Conclusion of Law 8.
8. The trial court erred by entering Conclusion of Law 10.
9. The trial court erred by entering the court's order on

December 12, 2012, granting Moore's motion to suppress evidence and dismissing this case based on the court's finding that the State is unable to proceed. CP 88.

B. ISSUE PRESENTED

An officer may conduct an investigatory stop based on a reasonable articulable suspicion that a suspect is involved in criminal activity. Here, Officer Hurst stopped Moore where:

1) Moore was seen sprinting through a residential yard, traveling from near an alley towards the street while he had a fearful look on his face, 2) upon seeing police officers, Moore reacted by slowing

from a sprint to a walk, 3) officers observed that Moore had dirt on the shoulder of his otherwise clean jacket, 4) officers had just received a report from a neighbor of an ongoing trespass or burglary of an abandoned home within one block of where Moore was running, 5) the suspects were described as three African-American males who appeared to be between 15 to 18 years-old, 6) Moore is a twenty-two year-old African-American male who appears youthful, and 7) less than two hours earlier, a residential burglary involving four juvenile males occurred within two blocks of where Moore was seen running and two of four suspects had not been apprehended. Based on the totality of the circumstances, did the trial court misapply the law when it found that Officer Hurst did not have a reasonable articulable suspicion that Moore was involved in criminal activity to justify an investigatory stop, a conclusion that the court reached based upon considering potentially innocent explanations for Moore's actions?

C. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Milahn Moore was charged by Information with Residential Burglary. CP 1-2. Moore proceeded to trial before the

Honorable Susan Craighead. 3RP¹ 3. Pursuant to Criminal Rule 3.6, Moore made a pretrial motion to suppress evidence of an out-of-court identification, arguing that the identification was impermissibly suggestive. CP 23-26. The State called eyewitness Neale Frothingham, Officer Jason Suarez, and Officer Matthew Hurst to testify for the hearing. 4RP 5, 44, 76. After the State concluded direct examination of its final pretrial witness, Moore challenged, for the first time, the investigatory stop. 4RP 103.² Moore chose to not testify at the suppression hearing. 4RP 138.

At the conclusion of the pretrial hearing, the trial court ruled that the stopping officer did not have reasonable, articulable suspicion to believe Moore was involved in criminal activity at the time Moore was detained. 6RP 40. The court granted Moore's motion to suppress. CP 88; 6RP 40. The court ruled that based on the suppression of evidence, the State could not proceed and

¹ There are 6 volumes of verbatim report of proceedings. They will be referred to as follows: 1RP (Dec. 4, 2012); 2RP (Dec. 5, 2012 before the Honorable Richard Eadie); 3RP (Dec. 5, 2012 before the Honorable Susan Craighead); 4RP (Dec. 6, 2012); 5RP (Dec. 11, 2012); and 6RP (Dec. 12, 2012).

² In other words, Moore did not raise this issue until the State's last witness was testifying during the suppression hearing. 4RP 103. Moore initially requested that a suppression hearing be held solely to challenge his out-of-court show-up identification by witness Frothingham. CP 23-26. Because Moore had not challenged the investigative stop, the parties and the court were not focused on the circumstances of the investigative stop during the examination of the first two witnesses and direct examination of the third (and final) witness of the suppression hearing. 4RP 1-103.

dismissed the charge against Moore. CP 88. The State appealed the court's ruling pursuant to RAP 2.2(b)(2) and filed this timely appeal. CP 86-87.

2. SUBSTANTIVE FACTS.

On January 17, 2012, during an approximately two-hour period, between 1:54 p.m. and 3:33 p.m., three separate 911 calls were made to report burglary, attempted burglary, or suspected trespass. CP 89. All of these calls reported incidents that happened within a two-block area of the Rainier Beach neighborhood in Seattle. CP 89. See Appendix A and Appendix B.³

a. The First 911 Call.

The first 911 call was placed at 1:54 p.m. by Neale Frothingham. 4RP 12-13; CP 89. Frothingham heard the sound of glass breaking coming from a neighbor's yard. 4RP 5. He then saw four African-American males attempting to break into his neighbor, Bobbi Jenkins', home, located at the corner of 53rd

³ Appendix A is Exhibit 6. Appendix B is Exhibit 6 with notations to the record. Italicized text and arrows were added by the undersigned attorney for the Court's convenience.

Avenue South and Hamlet Avenue South.⁴ CP 89; 4RP 92; Exhibit 2. The males were described as being between 16 to 19 years old. Exhibit 2. Frothingham followed the four men to a nearby house and gave the police a description of the vehicle in which two of them left. CP 89. Within minutes, police stopped that vehicle and discovered an empty gun holster. CP 89; Exhibit 2.

Seattle Police Officer Matthew Hurst and his partner, Officer Jason Suarez, returned to the area of the burglary to search for the missing firearm due to the concern that the weapon had been cast from the vehicle as two of the suspects fled. CP 90; 4RP 79.

Officer Hurst is a patrol officer with seven years of experience. 4RP 76. The Rainier Beach area is one of the primary neighborhoods where Hurst patrols and he knows the area to be a high-crime area that frequently has burglaries. 4RP 77.

b. The Second 911 Call.

The second 911 call was placed approximately one and a half hours later at 3:26 p.m. 4RP 126; Exhibit 4. Ashley Gunderson reported that three African-American males were either

⁴ The backyard of Bobbi Jenkins' home is also bordered by Grattan Place South. 4RP 12, 92; see Appendix A. Grattan Place South is an alleyway that has a dead-end several houses to the east of Bobbi Jenkins' home. 4RP 12; see Appendix A.

trespassing or attempting to break into an abandoned house across the street from her home on Hamlet Avenue South. 4RP 126; Exhibit 4. She described the males as looking between 15 to 18 years old. 4RP 125. One of the three males was wearing a purple sweater; no clothing description was given for the other two males. 4RP 125. The officers received the information provided by Gunderson between 3:26 p.m. to 3:28 p.m., shortly after beginning their search for the gun along Hamlet Avenue South. 4RP 125-26; Exhibit 4. At 3:31 p.m., the officers volunteered to respond to Gunderson's 911 call while traveling along on Hamlet Avenue South. CP 90; 4RP 79-80, 82. At the time, Hurst was driving a fully-marked Seattle Police patrol car. CP 83.

Shortly after notifying dispatch that they would respond to the call, Hurst saw Moore sprinting through the yard at 8728 Hamlet Avenue South. 4RP 79-80, 92. Moore had a look of fear or panic on his face. 4RP 79-80. Moore was running through the yard away from the alley located behind the home; he was traveling roughly from east to west towards Hamlet Avenue South. 4RP 79-80, 129; see Appendix B. When Moore saw the officers, he slowed from a sprint to a walk. 4RP 128-29. When running through the yard, Moore was approximately "a half block or so away" from the

reported burglary-in-progress. 4RP 81. Moore is an African-American male. Exhibit 3. Although twenty-two years-old at the time, Moore looked youthful, as if he was in his "late teens or early 20s." 4RP 127-28.

Based on the way he was running, his direction of travel away from the alley, and the look on his face, Hurst suspected that Moore was trespassing through the yard. 4RP 82, 114, 129. Moore also had dirt or dust on the back shoulder-area on his otherwise clean jacket. 4RP 79-80, 83. When Hurst noticed the dirt on Moore's jacket, it gave him the impression that Moore may have just been crawling through a window or a bush. 4RP 83. After Moore reached Hamlet Avenue South, he walked up the street toward 53rd Avenue South. 4RP 113. The officers drove slowly behind Moore for approximately 30 seconds before verbally telling Moore to stop near the corner of 53rd Avenue South and Hamlet Avenue South. 4RP 13; see Appendix B.

Upon stopping Moore, the officers asked him if he lived in the house of the yard that he just ran through. 4RP 84. Moore told the officers that he did not live in that house and that he had been following his cousin. 4RP 85. There was little foot traffic in the area at the time and the officers had not seen Moore following

anyone. 4RP 85, 123. The officers notified dispatch by radio that they had stopped Moore at 3:33 p.m., approximately one minute after he had been stopped. 4RP 69.

c. The Third 911 Call.

Less than two hours after the first burglary at approximately 3:30 p.m., Frothingham, the neighbor who reported the first burglary, again heard the sound of glass breaking. 4RP 5-6. The sound was coming from Jenkins' home, the home that was broken into earlier that day. 4RP 5-6; see Appendix B. When he returned to Jenkins' home, Frothingham saw Moore exiting the stairs from the lower entrance of the home. 4RP 16, 11. Moore ran out of the backyard and down Grattan Place South, toward the end of the alley. 4RP 6-13. Frothingham yelled for Moore to stop and started to call 911. 4RP 12-13. Moore then jumped over a fence at the end of the alley and ran through a yard leading onto Hamlet Avenue South. 4RP 13. Frothingham's 911 call was made roughly contemporaneously with the second 911 call placed by Gunderson. Exhibit 2. In his call, Frothingham gave a description of Moore that was dispatched to the officers. 4RP 13, 48.

Within one to two minutes of when Moore was stopped, the officers were notified of the 911 call from Frothingham. 4RP 85-86; Exhibit 2. The description provided by Frothingham matched Moore. 4RP 48, 87. Frothingham later identified Moore as the person he had seen coming out of his neighbor's home. 4RP 16; CP 92. After speaking with Frothingham and Jenkins, the officers arrested Moore on suspicion of burglarizing Jenkins' home. 4RP 94-95.⁵

D. ARGUMENT

OFFICER HURST HAD A REASONABLE, ARTICULABLE SUSPICION THAT MOORE WAS INVOLVED IN CRIMINAL ACTIVITY.

Reasonable, articulable suspicion is determined based on the totality of the circumstances within the knowledge of the detaining officer at the time of the investigatory stop. The totality of the circumstances known to the officer is to be considered together; facts or observations are not to be viewed independently or in a vacuum. Additionally, reasonable, articulable suspicion is not negated by potentially innocent explanations for the observed conduct. Here, the trial court mistakenly failed to consider the

⁵ See Appendix C. Appendix C is a timeline of events for January 17, 2012. The timeline was prepared by undersigned attorney for the Court's convenience.

totality of all of the circumstances known to the officer at the time of the stop and reasonable inferences from those circumstances. The trial court also erred by allowing potentially innocent explanations for Moore's behavior to negate the reasonable, articulable suspicion that Moore was involved in criminal activity.

When reviewing a motion to suppress, appellate courts review conclusions of law de novo. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), overruled on other grounds by Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). A trial court's findings of fact are reviewed for substantial evidence. Id. Unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

Under the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution, warrantless seizures are per se unreasonable, unless they fall under one of the "jealously and carefully drawn exceptions" to the warrant requirement. State v. Doughty, 170 Wn.2d 57, 61, 239 P.3d 573 (2010) (quoting Arkansas v. Sanders, 442 U.S. 753, 759, 99 S. Ct. 2586, 62 L. Ed. 2d 235 (1979)). An investigatory stop is one such exception to the warrant requirement. Doughty, 170 Wn.2d at 61 (citing Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868,

20 L. Ed. 2d 889 (1968)). An investigatory stop must be supported by reasonable suspicion of criminal activity based on objective, articulable facts. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008) (citing Terry, 392 U.S. at 21).

Because no single rule can be fashioned to meet every encounter between the police and citizens, courts evaluate the reasonableness of police action in light of the particular circumstances facing the officer. State v. Kennedy, 107 Wn.2d 1, 7-8, 726 P.2d 445 (1986). The reasonableness of the officer's suspicion is determined by the totality of the circumstances known at the inception of the stop. State v. Lee, 147 Wn. App. 912, 917, 199 P.3d 445 (2008), review denied, 166 Wn.2d 1016 (2009).

Moreover, in evaluating the totality of the circumstances, courts have perennially “rejected rigid rules, bright-line tests, and mechanistic inquiries in favor of a more flexible, all-things-considered approach.” Florida v. Harris, 568 U.S. ___, 133 S. Ct. 1050, 1055, ___ L. Ed. 2d ___ (2013) (citing Illinois v. Gates, 462 U.S. 213, 235, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)). In evaluating the validity of a stop, courts must consider “the totality of the circumstances – the whole picture.” United States v. Cortez, 449 U.S. 411, 417, 101 S. Ct. 690, 695, 66 L. Ed. 2d 621 (1981).

As pointed out in State v. Marcum, 149 Wn. App. 894, 205 P.3d 969 (2009):

[T]he United States Supreme Court has specifically criticized viewing incriminating police observations, one by one, in a manner divorced from their context as a 'divide and conquer' approach that is inconsistent with the totality of the circumstances test.

Marcum, 149 Wn. App. at 907 (citing United States v. Arvizu, 534 U.S. 266, 274, 122 S. Ct. 744, 151 L. Ed. 2d 740 (2002)).

Moreover, "the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." Illinois v. Wardlow, 528 U.S. 119, 125, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000). The reasonableness of a stop is a matter of probability, not a matter of certainty. State v. Mercer, 45 Wn. App. 769, 774, 727 P.2d 676 (1986).

"[T]he totality of the circumstances...include[s] factors such as] the officer's training and experience, the location of the stop, and the conduct of the person detained"; as well as "the purpose of the stop, the amount of physical intrusion upon the suspect's liberty, and the length of time the suspect is detained." State v. Acrey, 148 Wn.2d 738, 747, 64 P.3d 594 (2003) (quoting State v. Williams, 102 Wn.2d 733, 740, 689 P.2d 1065 (1984)).

Additionally, in evaluating the totality of the circumstances, a suspect's apparent reaction to the presence of police may properly be considered. State v. Pressley, 64 Wn. App. 591, 825 P.2d 749 (1992).

Analysis of an investigatory stop is a two-step process asking (1) whether the initial detention was justified, and (2) whether the detention was reasonably related in scope to the reason for the detention. State v. Tarica, 59 Wn. App. 368, 375, 798 P.2d 296 (1990); State v. Ortiz, 52 Wn. App. 523, 762 P.2d 12 (1988). The scope of an investigatory stop may be enlarged if the stop confirms existing suspicions or arouses further suspicions. State v. Smith, 115 Wn.2d 775, 785, 801 P.2d 975 (1990) (quoting State v. Guzman-Cuellar, 47 Wn. App. 326, 332, 734 P.2d 966, review denied, 108 Wn.2d 1027 (1987)).

A "determination that reasonable suspicion exists... need not rule out the possibility of innocent conduct." Arvizu, 534 U.S. at 277; see also Kennedy, 107 Wn.2d at 6 (activity consistent with both criminal and noncriminal activity may justify a brief detention). Likewise, an officer need not determine the absence of a defense prior to conducting an investigatory stop. Guzman-Cuellar, 47 Wn. App at 331. Although innocuous explanations might exist,

circumstances appearing innocuous to the average person may appear incriminating to a police officer, based on the officer's experience. State v. Samsel, 39 Wn. App. 564, 570, 694 P.2d 670 (1985). The officer is "not required to ignore that experience." Mercer, 45 Wn. App. at 774.

Crime prevention and detection are legitimate purposes for an investigatory stop. Guzman-Cuellar, 47 Wn. App at 331, citing Kennedy, 107 Wn.2d at 5-6. Reports of criminal activity or 911 calls are certainly facts to be considered, however, the absence of these facts is "not dispositive" of the question of reasonable articulable suspicion. Guzman-Cuellar, 47 Wn. App at 331. Indeed, Terry itself involved a "series of acts each of them perhaps innocent" if viewed separately, which warranted an investigatory detention on the basis of the *suspicion* of a crime. 392 U.S. at 22-23.

Here, in light of the totality of the circumstances known, Officer Hurst had a sufficient basis to stop Moore. Within minutes of receiving information of an ongoing criminal trespass or burglary involving three African-American males between 15 to 18 years-of-age, Hurst observed Moore sprinting through a yard. 4RP 125-26; Exhibit 4. The yard was located less than a block away from where

the reported crime was occurring. 4RP 125-26; see Attachment B. Moore had a frightened or panicked expression on his face and matched the general physical description for two of the three suspects.⁶ 4RP 79-80, 127-28. Moore was running from the direction of an alleyway located behind the yard and towards the street where Hurst and his partner were driving their police car. 4RP 79-80. Based on the manner and the direction of Moore's travel, Hurst suspected that Moore was trespassing in the yard he was running through. 4RP 114, 129. Upon seeing the officers, Moore immediately reacted by slowing from a sprint to a walk. 4RP 128-29. Hurst noticed that Moore had dirt on the shoulder of his otherwise clean jacket. 4RP 79-80, 83. These events occurred in a high-crime area where a burglary occurred less than two hours earlier approximately six houses away from where Moore was seen running.⁷ 4RP 12-13, 77; see Appendix B.

As Hurst articulated, he suspected Moore had just trespassed through the yard he was sprinting through and was

⁶ In the 911 call placed by the neighbor, one of the three young men was described as wearing a purple sweater; the caller was unable to provide a clothing description for the other two men. 4RP 108-10, 125; Exhibit 4. Moore was wearing a red jacket when stopped. 4RP 48-49.

⁷ Two of the four African-American young adult males suspected of committing the earlier burglary had not been located nor had police located the firearm that may have been abandoned in the area. CP 89-90.

potentially involved in the ongoing trespass or burglary that had just been reported at a house less than a block away. 4RP 114, 129, 132-33. Based on the totality of these circumstances, rational inferences drawn from these facts, and his training and experience, Officer Hurst had reasonable, articulable suspicion to believe Moore was involved in criminal activity. The seizure of Moore was limited in scope and duration and was specifically tailored to the reason justifying the initial stop. The scope of the stop was enlarged only after Hurst received additional information from dispatch linking Moore to the third 911 call. 4RP 85-87.

The trial court mistakenly relied on Doughty in finding that Hurst lacked reasonable suspicion to stop Moore. 170 Wn.2d at 57; 6RP 40-41. The facts here are distinguishable from Doughty. In Doughty, the court found officers had an insufficient basis to conduct an investigatory stop where officers observed Doughty visit a suspected drug house for a two-minute stay in the early hours of the morning. Id. Moreover, the only facts supporting the assertion that the house Doughty entered was a “drug house,” were complaints that the house received a high volume of visitors, who stayed for short periods of time. Id. at 60. In Doughty, no actual criminal activity was reported. Id. Additionally, officers did not

observe anything about Doughty's physical appearance or his reaction to seeing police that raised their suspicion that he was involved in criminal activity. Id.

Here, Hurst possessed significantly more information in support of his decision to detain Moore than the officers had to detain Doughty. Hurst had a specific and immediate report of ongoing criminal activity at a house less than a block away from where Moore was first seen by Hurst. Additionally, Hurst observed Moore *currently engaged* in a suspected trespass as Moore sprinted through the yard.⁸ Finally, Moore's physical appearance itself raised Hurst's suspicions that he was involved in criminal activity. Moore had a frightened expression on his face, he had dirt on his jacket, and he reacted upon seeing police officers. Unlike the officers in Doughty, Hurst had several articulable facts that led him to reasonably suspect that Moore was involved in criminal activity.

⁸ Pursuant to RCW 9A.52.080, a person is guilty of criminal trespass in the second degree, a misdemeanor, "if he or she knowingly enters or remains unlawfully in or upon premises of another under circumstances not constituting criminal trespass in the first degree." RCW 9A.52.080.

1. The Trial Court Mistakenly Employed A Hyper-technical Analysis And Allowed Potentially Innocent Explanations For Moore's Behavior To Negate The Reasonable, Articulable Suspicion That Existed At The Time Of Moore's Stop.

The trial court appeared to believe that each of Hurst's observations that was by itself susceptible to an innocent explanation was entitled to no weight. In employing this hyper-technical analysis of reasonable suspicion, the trial court used the divide-and-conquer analysis that is precluded by Terry.

The trial court failed to view Moore's behavior of sprinting through a yard as one of many observations used to calculate reasonable suspicion. Conclusion of Law 5. Hurst explained that based on his observations of how Moore was sprinting through the yard, it "looked unusual" and "based on the way he was running, it was my opinion that he probably didn't live there." 4RP 79-80, 82, 114. The trial court dismissed the rational inferences drawn by the officer's observations simply because the court could conceive of innocent explanations for Moore's behavior:

While it does not seem likely that it was the defendant's own yard he was running through, *he could have had permission* from the owners – who might be relatives, friends, or neighbors – to cross the yard. Had he crossed multiple yards, the inference would be raised that he likely did not have permission

to cross them all. But here it was only one yard. To say that running through a yard is per se reasonable suspicion of criminal trespass would mean that unless an officer knew a person's family owned or rented a piece of property, anyone could be stopped when seen in someone else's yard.

CP 93 (emphasis added). This concern was wholly hypothetical, as there was no testimony that Moore had permission to run across that yard.

Similarly, the court dismissed the relevance of Moore's reaction immediately upon seeing the police car. Conclusion of Law 6. Hurst described, "[w]hen I first saw [Moore], he was sprinting, and then like I said he came through the yard, seemed to notice us, and slowed down and started walking." 4RP 113. Again, the court replaced rational inferences drawn from Officer Hurst's observation with a potentially innocent explanation.

Given his race and the neighborhood in which these events took place, slowing one's paces upon seeing a police car is likely *almost as consistent with innocence as it is with guilt*.

CP 93 (emphasis added). There was no testimony as to how people of Moore's race behave when they see police. Also, Moore did not simply "slow" his "pace," he went from a dead run to a walk.

The court employed a hyper-technical analysis to reject Officer Hurst's observation of Moore's frightened or panicked expression. Finding of Fact 6.

When asked to describe what made Moore look fearful, Hurst answered,

That question is always hard.... You know, I don't know how to describe the look on someone's face. Obviously, I think we all know what different facial expressions look like... I got the impression when I saw him that, you know, fear, panic, something, and he's running fast... he's sprinting and he has that look on his face like maybe someone's chasing him or something like that.

4RP 134-35. The court second-guessed Hurst's observation:

The court does not put significant weight on this testimony in light of all the circumstances and the Officer's *inability to articulate what he observed* that led him to believe the young man was frightened.

CP 91 (emphasis added). The officer testified that he observed a frightened, panicked expression on the face of someone running through private property. It is unclear what more the officer could have "articulated."

The court also dismissed the significance of the dirt seen on Moore's otherwise clean jacket. Finding of Fact 7. Hurst explained that he thought the dirt on Moore's jacket was unusual and gave him the impression that maybe Moore had been "crawling through a

window or crawling through a bush.” 4RP 83. The court found that the dirt was of “*unclear relevance* to the abandoned house call.” CP 91 (emphasis added). But, of course, there was no testimony that would have called into question Hurst’s reasonable inference as to the source of the dirt.

Additionally, the court rejected the relevance for an investigatory stop of Moore matching the description given by the 911 caller reporting an ongoing crime less than a block away. Conclusion of Law 7. Ignoring the totality of the circumstances known to Hurst, the court found “[b]y that logic, every young black male in the area would have been a suspect.” CP 93. Officer Hurst did not attempt to stop “every young black male in the area.” He attempted to stop the one young African-American male running through private property with a panicked look on his face, near where multiple invasions of private property had just occurred.

Here, contrary to the court’s findings and conclusions, Moore was not stopped because he was a young African-American man. Moore was not stopped solely because he was running through a yard. He was not stopped solely because he had dirt on his jacket; nor was he stopped solely because he reacted to the presence of police officers. Rather, Moore was stopped because the totality of

the circumstances, when paired with rational inferences from those observations, amounted to reasonable suspicion. The court's evaluation and rejection of certain factors in isolation from each other does not take into account the totality of the circumstances.

2. The Trial Court Erred By Relying On Facts That Are Not Supported By Substantial Evidence.

Findings of fact are reviewed on appeal for substantial evidence. Mendez, 137 Wn.2d at 214. Here, the trial court mistakenly entered factual findings that are not supported by substantial evidence.⁹

Officer Hurst testified that he could not recall whether Moore looked back while he was sprinting through the yard. 4RP 134. Finding of Fact 6 inaccurately states that Moore "was not looking back as if he were being pursued." CP 91. Thus, the record does not resolve whether Moore was looking back. The trial court's

⁹ The timing reflected in Finding of Fact 5 is imprecise. Finding of Fact 5 states that information from the second 911 call was "broadcast at 3:29 p.m." CP 90. Officer Hurst testified that this information was broadcast to him and his partner at 3:26 p.m. and 3:28 p.m. 4RP 125-26. The timing of the broadcasts is further confirmed in the CAD log itself. See Exhibit 4. It is unclear if this inaccurate finding affected the trial court's ruling.

finding turns the “maybe” into a definitive “no.” This error likely influenced the trial court to conclude that Moore was simply “running” rather than “fleeing.”

Based on the totality of the circumstances known to Officer Hurst, the trial court misapplied the law in finding that Hurst lacked reasonable articulable suspicion to stop Moore. The facts here clearly support a determination that Hurst’s stop of Moore was not based upon an “inarticulate hunch.” Rather, the pieces of information known to Hurst at the time he detained Moore combine to provide reasonable articulable suspicion based on specific facts that Moore was engaged in criminal activity. Thus, his detention of Moore was valid. The subsequent identification of Moore and his statements should not have been suppressed and the charge against him should not have been dismissed.

E. CONCLUSION

For all of the foregoing reasons, this Court should reverse the trial court’s finding that Officer Hurst lacked a reasonable, articulable suspicion to support the investigatory stop of Moore.

This case should be remanded for a trial with the fruits of Officer Hurst's stop of Moore being admissible.

DATED this 3 day of May, 2013.

Respectfully submitted,

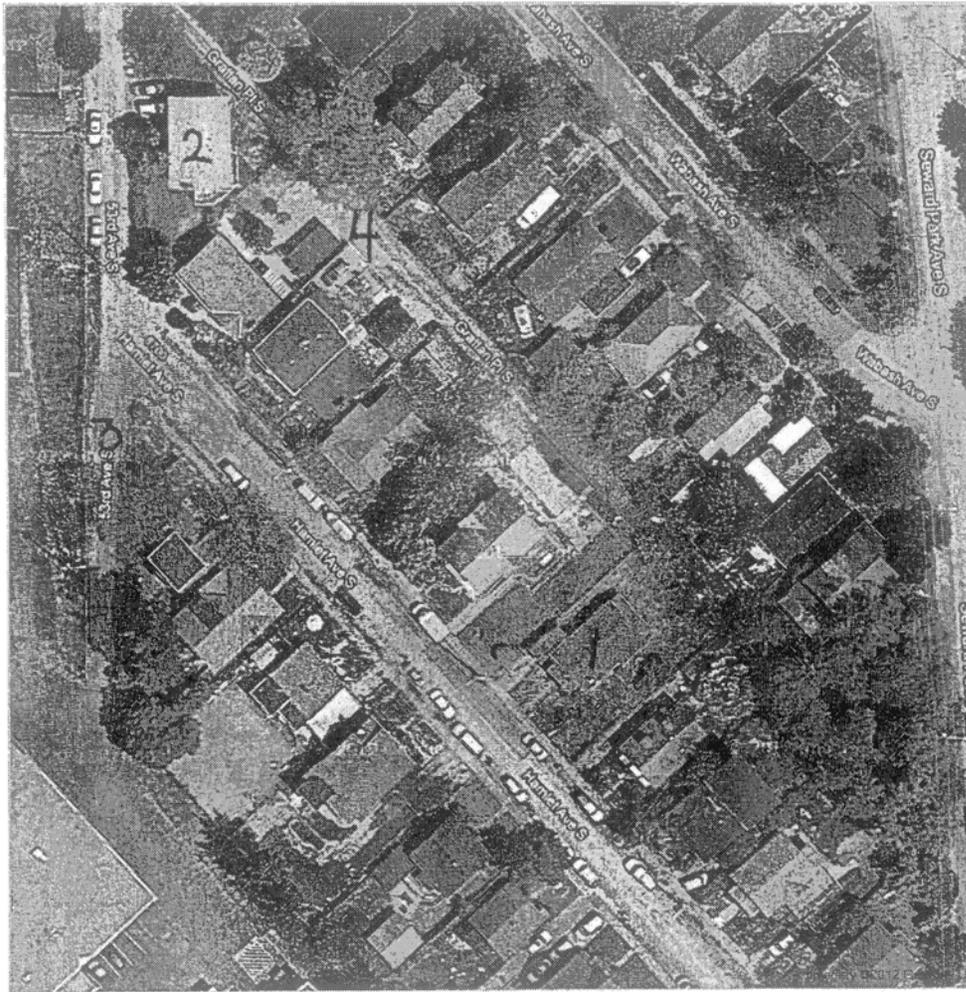
DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 

LINDSEY M. GRIEVE, WSBA #42951
Deputy Prosecuting Attorney
Attorneys for Appellant
Office WSBA #91002

Appendix A

Google



To see screen

PRETRIAL

STATE'S EXHIBIT

6

State of Washington
 vs
 Milahn Moore
 12-1-00925-9 SEA

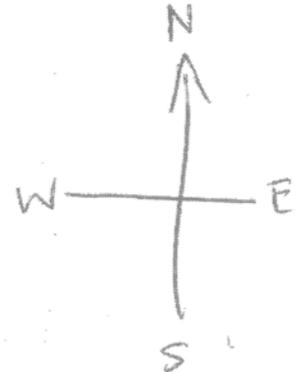
FILED

KING COUNTY, WASHINGTON

DEC 06 2012

SUPERIOR COURT CLERK
 BY Carolina Ceja
 DEPUTY

M. Flores
 12-6-12

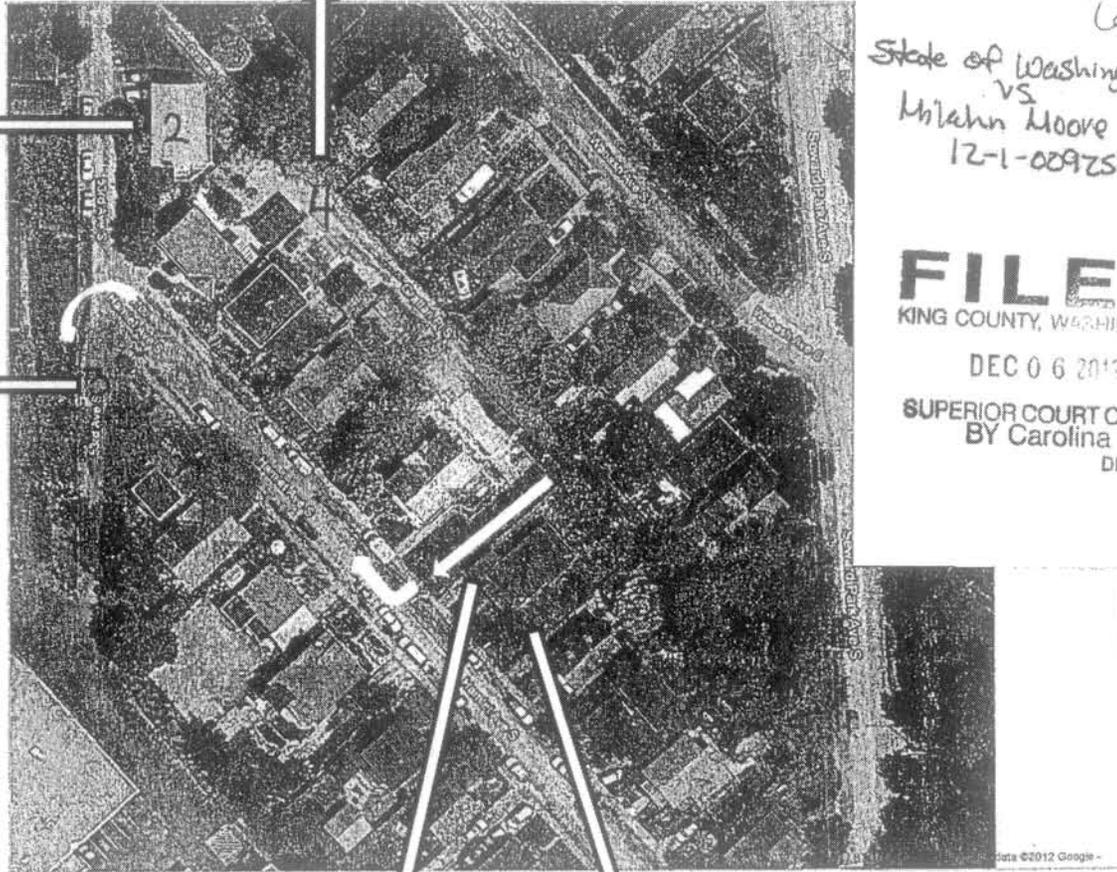


Appendix B

#2
Bobbi Jenkins' home, located at 5620 53rd Avenue South. 4RP 92; CP 1.

#4
Grattan Place South, the alley where Frothingham saw Moore. 4RP 92.

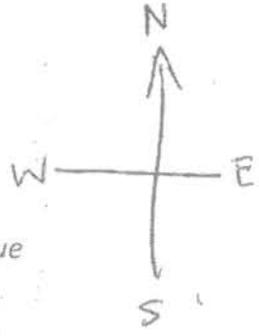
#3
Officers stopped Moore here. 4RP 92.



M. Horn
12-6-12

Moore's direction of travel as he ran through the yard from the location of the alley towards the street. 4RP 130-31.

#1
Officer Hurst was driving northwest along Hamlet Avenue when he saw Moore sprinting through the yard of this home, located at 8738 Hamlet Avenue South. 4RP 80, 92, 130-31.



Italicized text and arrows added by undersigned attorney for the State.

PRETRIAL

STATE'S EXHIBIT

State of Washington
vs
Malah Moore
12-1-00925-9 SEA

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Appendix C

Milahn Moore Timeline

January 17, 2012

Time:	Event:
1:54 p.m.	911 call placed by Neale Frothingham to report four males breaking into Bobbi Jenkin's home. Ex. 2; 4RP 5, 12-13.
1:58 p.m.	Frothingham gave description of vehicle leaving the area with two suspects. Ex. 2.
2:02 p.m.	Police stopped vehicle with two suspects and discover empty gun holster inside vehicle; two burglary suspects remain unaccounted for. Ex. 2; CP 89.
-----	-----
Approx. 3:20 p.m.	Approximate time that Officers Hurst and Suarez began searching area for gun. CP 90; 4RP 79.
3:26 p.m.	911 call placed by Ashley Gunderson to report three African-American males trespassing or breaking into abandoned house on Hamlet Ave. Ex. 4.
Approx. 3:30 p.m.	Frothingham observed a male exiting Bobbi Jenkin's home. 4RP 11, 16. The male then ran down the alley and jumped a fence headed toward Hamlet Ave. 4RP 13.
3:31 p.m.	Officers Hurst and Suarez notify dispatch that they will respond to Gunderson's 911 call. Ex. 4.
Approx. 3:31 p.m.	Officer Hurst observed Moore running through a yard from the location of the alley toward Hamlet Ave. 4RP 130-31.
3:33 p.m.	Officers Hurst and Suarez stop Moore. 4RP 13; Ex. 2.
3:33 p.m.	911 call placed by Frothingham to report male breaking into Jenkin's home. Ex. 2.
3:33- 3:34 p.m.	Frothingham gave description of suspect. Ex. 2. Suspect description matched Moore. 4RP 48, 85-87; Ex. 2.
3:37 p.m.	Frothingham identified Moore as person he observed exiting Jenkin's home at approximately 3:30 p.m. 4RP 16; Ex. 2.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Eric Nielsen, the attorney for the respondent, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the BRIEF OF APPELLANT, in STATE V. MILAHN NATHANIEL MOORE, Cause No. 69753-6 -I, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 3rd day of May, 2013

U Brame

Name

Done in Seattle, Washington