

NO. 34239-1-II  
Cowlitz Co. Cause No. 05-1-01244-4

**COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON**

STATE OF WASHINGTON,

Respondent,

v.

LUCAS R. RASMUSSEN,

Appellant.

FILED  
COURT OF APPEALS  
DIVISION II  
07 JUN 15 PM 12:29  
STATE OF WASHINGTON  
DEPT. OF JUSTICE  
BY 

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**BRIEF OF RESPONDENT**

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## **RESPONSE TO ASSIGNMENT OF ERROR**

1. Deputy Bauman's investigative detention was reasonable.
2. All statements the defendant made prior to his arrest were voluntary and not subject to *Miranda*.

## **ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did Deputy Bauman's contact with the defendant constitute a lawful investigative detention pursuant to *Terry v. Ohio*?

## **STATEMENT OF THE CASE**

On October 6, 2005, Cowlitz County Sheriff's Deputy Brad Bauman was dispatched to the Tangen Road area. RP 7-9. Tangen Road is a dead end private road in Cowlitz County, WA. RP 9-10. The information received by Deputy Bauman from dispatch was that Walter Cople, a wheelchair-bound gentleman, had called to report a trespasser on his property. RP 9. The stranger had told Mr. Cople that his vehicle had broken down, but Mr. Cople reported that the man was wandering about on his property, and appeared to be under the influence of drugs as the intruder had slurred speech and was acting strange. RP 9.

When Deputy Bauman arrived on the scene he contacted the man, herein referred to as the defendant, sitting in the driver's seat of a truck pointed down Mr. Cople's driveway. RP 11-12. The defendant provided

multiple conflicting and confusing stories to Deputy Bauman. RP 12-17. For example, the defendant told Deputy Bauman that his vehicle had run out of gas. RP 24, 28. This explanation did not make sense given the fact that his vehicle's position in Mr. Copple's driveway was higher in elevation than the address he reported as having visited. RP 36. Therefore, if his vehicle had run out of gas, it would have had to coast up hill to its current location. RP 36.

Deputy Bauman also observed that the defendant's speech was slurred, and he gave slow responses to Deputy Bauman's questions. RP 13. Additionally, the defendant's responses were inconsistent and included various explanations as to why he was in the area, from visiting friends, to working on a job, to having run out of gas. RP 13, 24, 28. The defendant indicated that he had lost his identification and provided the name of Jonathan T. Smith. RP 14. The defendant then gave Deputy Bauman two different birthdates, and an age that was inconsistent with both birthdates. RP 14.

Deputy Bauman's contact with the defendant lasted between ten and fifteen minutes. RP 27. However, during that period of time, the defendant was unable to provide a complete residential address. RP 15.

The defendant told Deputy Bauman that a person named "Sam" was at 234 Tangen Road, but the defendant apparently did not go there despite the fact he was claiming to be stranded. RP 16. Instead, after wondering about Walter Cople's property, he sat in his vehicle for approximately an hour before Deputy Bauman arrived. RP 25. The only identification the defendant provided to Deputy Bauman was a Lowe's business card from the state of Michigan with a different name, "J. Q. Smith". RP 16.

Deputy Bauman then arrested the defendant for trespassing and obstructing, and searched the defendant and his vehicle incident to that arrest. RP 19. Pursuant to the search incident to arrest, both suspect drugs and identification in another name were located. RP 19. Deputy Bauman then read the defendant his rights pursuant to *Miranda* from a pre-printed card issued by his agency, however, he did not ask the defendant any questions. RP 20-21.

### **ARGUMENT**

The defendant argues on appeal that he was unlawfully detained prior to arrest, and as a result, all statements made and evidence seized should have been suppressed.

**I. DEPUTY BAUMAN'S INITIAL CONTACT AND BRIEF DETENTION OF THE DEFENDANT WERE LAWFUL PURSUANT TO *TERRY v. OHIO*.**

Crime prevention and crime detection are generally recognized legitimate purposes for investigative stops or detentions. *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Less than probable cause is required for such a stop because *Terry* stops are significantly less intrusive than an arrest. *State v. Kennedy*, 107 Wash.2d 1, 6, 726 P.2d 445 (1986). Article 1, Section 7 requires a reviewing court to examine the reasonableness of the officer's actions, in view of the facts known to the officer at the time. *State v. Kennedy*, 107 Wash.2d at 6. Where an officer has a reasonable basis to believe that criminal activity has occurred, or is about to occur, an investigative detention is reasonable even if the conduct in question could be consistent with non-criminal behavior. *Id.*

In evaluating investigative stops, a reviewing court must make several inquiries. First, the court should consider whether the officer's initial interference with the suspect's freedom was justified at its inception. *Terry v. Ohio*, *supra*, 392 at 19-20. To justify such an intrusion, the police officer must be able to point to "specific and

articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21.

Second, the court must determine if the detention reasonably related *in scope* to the circumstances that justified the interference in the first place. *Terry*, 392 U.S. at 21. In determining whether the intrusion was reasonable in scope, the court should consider three relevant factors: (1) the purpose of the stop, (2) the amount of physical intrusion upon the suspect’s liberty, and (3) the length of time the suspect is detained. *State v. Williams*, 102 Wash.2d 733, 740, 689 P.2d 1065 (1984).

In the present case, it appears that the defendant is not challenging Deputy Bauman’s basis for the initial contact – or that the circumstances warranted an investigation by Deputy Bauman. Unquestionably, based upon Mr. Copple’s report of an intoxicated man parked on and wandering upon his property, Deputy Bauman had a basis to suspect the defendant was not only trespassing, but also driving under the influence.

Instead, it appears that the defendant is challenging the scope of Deputy Bauman’s detention by arguing that Deputy Bauman executed an unlawful arrest of the defendant upon his initial contact. The record simply does not support the defendant’s contention.

Police affect a seizure of a person when they objectively manifest that they are restraining the person's movement, and "a reasonable person would have believed that he was not free to leave." *Michigan v. Chesternut*, 486 U.S. 567, 573, 108 S.Ct. 1975, 1979, 100 L.Ed.2d 565 (1988); quoted in *State v. Lund*, 70 Wash.App. 437, 583 P.2d 1379 (Div. 2 1993). When this test is met, the seizure may be lawful for a variety of legitimate reasons. For instance, a person may be seized for later charging and trial (a "custodial arrest"); for purposes of further investigation (a "Terry stop"); or often a person is subject to seizure for purposes of issuing a traffic citation, or to insure orderly execution of a search warrant. *State v. Lund*, 70 Wash.App. 437, 853 P.2d 1379, citing to *United States v. Robinson*, 414 U.S. 218, 94 S.Ct. 467, 38 L.Ed.2d 427 (1973), *Terry v. Ohio*, supra, *State v. Hehman*, 90 Wash.2d 45, 578 P.2d 527 (1978), *Michigan v. Summers*, 452 U.S. 692, 696, 101 S.Ct. 2587, 2591, 69 L.Ed.2d 340 (1981).

Accordingly, the issue is not whether a seizure occurred as the defendant appears to frame it. Of course a seizure of the defendant occurred, and the purpose of the seizure was investigative in nature. The

only question presented here is whether that seizure was reasonable in its scope.

Here, the purpose of the contact was to investigate a property owner's report of a trespasser who appeared to be under the influence and acting strangely. The defendant was contacted while still present on the reporting party's property after at least an hour had passed. The defendant was contacted while in his vehicle, and remained in his vehicle during the contact. Deputy Bauman neither ordered him to stay in his vehicle, nor to exit his vehicle. RP 22. In fact, there is no evidence in the record that Deputy Bauman restricted the defendant's movement in any way. RP 22.

Deputy Bauman's contact with the defendant lasted between 10 to 15 minutes, which given the defendant's unwillingness to provide accurate or consistent information, was reasonable. In fact, not only was Deputy Bauman's contact with the defendant prolonged by the defendant's own conduct, but the defendant remained in the location he'd been on his own volition for at least an hour prior to Deputy Bauman's arrival. Consequently, the defendant's freedom was not unreasonably restricted for a prolonged length of time.

**II. DEPUTY BAUMAN WAS NOT REQUIRED TO READ THE DEFENDANT *MIRANDA* WARNINGS BEFORE QUESTIONING HIM DURING AN INVESTIGATIVE DETENTION.**

Furthermore, upon initial contact, the questioning Deputy Bauman engaged the defendant in was not “custodial interrogation” which would require *Miranda* warnings. “Custody” for the purposes of *Miranda* is “narrowly circumscribed and requires formal arrest or restraint of freedom of movement to a degree associated with formal arrest.” *State v. Post*, 118 Wash.2d 596, 606, 826 P.2d 172, 837 P.2d 599 (1992); *State v. Sargent*, 111 Wash.2d 641, 649-50, 762 P.2d 1127 (1988). Importantly, in the context of defining custody for purposes of *Miranda*, the question posed is not whether a reasonable person would believe he or she was not free to leave, but rather “[w]hether such a person would believe he was in police custody of the degree associated with formal arrest”. 1 W. LaFave & J. Israel, *Criminal Procedure* § 6.6, at 105 (Supp.1991). Helpful is a quote from *Berkemer v. McMarty*, 468 U.S. 420, 104 S.Ct. 3138, 82 L.Ed.2d 317 (1984) where the United States Supreme Court opined regarding the necessity of warnings pursuant to *Miranda*:

[T]he usual traffic stop is more analogous to a so-called “Terry stop”, see *Terry v. Ohio* (citation omitted), than to a formal arrest. Under the Fourth Amendment, we have held, a policeman who

lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed ... a crime, may detain that person briefly in order to investigate the circumstances that provoke suspicion. [T]he stop and inquiry must be reasonably related in scope to the justification for their initiation. Typically, this means that the officer may ask the detainee a moderate number of questions to determine his identity and to try to obtain information confirming or dispelling the officer's suspicions. But the detainee is not obliged to respond.... The comparatively non-threatening character of detentions of this sort explains the absence of any suggestion in our opinions that *Terry* stops are subject to the dictates of *Miranda*. The similarly non-coercive aspect of ordinary traffic stops prompts us to hold that persons temporarily detained pursuant to such stops are not "in custody" for the purposes of *Miranda*.

(Footnotes, citations and some quotation marks omitted.) *Berkemer*, 468 U.S. at 439-40, 104 S.Ct. at 3150. *Accord, Heinemann v. Whitman Cy.*, 105 Wash.2d 796, 808, 718 P.2d 789 (1986). (request for performance of field sobriety tests during routine traffic stop does not amount to custody so as to require *Miranda* warnings). Hence, it is clear that *Miranda* warnings are not required even if a defendant is seized for purposes of conducting a *Terry* investigation, as was the situation in the case at bar.

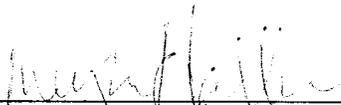
### CONCLUSION

Deputy Bauman contacted the defendant to investigate a citizen's report of an intruder on his property who appeared to be under the influence of drugs or alcohol. Deputy Bauman acted reasonably by

contacting the defendant to inquire as to his presence on the property. Based on the defendant's lack of cooperation in providing his name, address, or a reasonable explanation for his presence on the property, Deputy Bauman continued to talk with the defendant for a period of time reasonable to surmise whether he was investigating a stranded vehicle, or criminal activity. Based upon the false information provided to Deputy Bauman, he soon had probable cause to arrest the defendant and search his person and vehicle incident to that arrest. Because the initial seizure of the defendant was for investigative purposes and did not constitute a "custodial arrest," *Miranda* was not required, and all statements made by the defendant prior to his custodial arrest were voluntary.

Respectfully submitted this 12<sup>th</sup> day of June, 2007.

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STATE OF WASHINGTON  
BY [Signature]  
DEPUTY

**COURT OF APPEALS, STATE OF WASHINGTON  
DIVISION II**

<b>STATE OF WASHINGTON,</b>	)	<b>NO. 34239-1-II</b>
	)	<b>Cowlitz County No.</b>
<b>Appellant,</b>	)	<b>05-1-01244-4</b>
	)	
<b>vs.</b>	)	<b>CERTIFICATE OF</b>
	)	<b>MAILING</b>
<b>LUCAS R. RASMUSSEN,</b>	)	
	)	
<b>Respondent.</b>	)	
	)	

I, Audrey J. Gilliam, certify and declare:

That on the 13 day of June, 2007, I deposited in the mails of the United States Postal Service, first class mail, a properly stamped and address envelope, containing Brief of Respondent addressed to the following parties:

Court of Appeals  
950 Broadway, Suite 300  
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Catherine E. Glinski  
Attorney at Law  
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Manchester, WA 98353

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

Dated this 13 day of June, 2007.

[Signature]  
Audrey J. Gilliam