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Court of Appeals
Division II
State of Washington
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No. 53331-6-II

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION II

STATE OF WASHINGTON

V.

TERESA YORK

BRIEF OF APPELLANT

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A. Assignment of Error

Assignment of Error

The trial court erred by denying Ms. York's motion to suppress evidence stemming from her illegal seizure on January 19, 2018.

Issues Pertaining to Assignment of Error

1. Did the trial court properly accept the State's concession that Ms. York was detained when the officer shone his spotlight on her and ordered her to remaining seated in her car with her hands on her lap?
2. Was the detention of Ms. York unlawful from the inception when the officer's only information was that she was seated in the driver's seat of an illegally parked car in a residential neighborhood and her boyfriend was observed walking from his car to hers?
3. Assuming arguendo the legality of the initial detention, did the officer exceed the permissible scope of the detention when he detained Ms. York and her boyfriend for over nine minutes after receiving an innocent, plausible explanation for their presence in the neighborhood?

B. Statement of Facts

Teresa York was charged by Information with one count of Possession of Methamphetamine stemming from her detention during a traffic encounter on January 19, 2018. CP, 2. Prior to trial, defense counsel filed a motion pursuant to CrR 3.6 to suppress all evidence seized during the traffic encounter. CP, 3. The State filed a written response. CP, 14.

A hearing on the motion was held on June 25, 2018. RP, 1. In its response, the State conceded that Ms. York was seized during the traffic encounter. CP, 20. The disputed issue was whether the officer had sufficient information to establish reasonable suspicion for the seizure pursuant to *Terry v. Ohio*, 392 U.S. 1, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968). The trial court denied the motion and filed written findings of fact and conclusions of law. CP, 40.

Immediately following the hearing, Ms. York waived her right to a jury and proceeded by way of a bench trial. CP, 24. The trial court found her guilty. CP, 31. The court imposed a standard range sentence of 30 days in jail. CP, 55. A timely notice of appeal followed. CP, 61.

The court heard from one witness at the CrR 3.6 hearing, Fircrest Police Officer Christopher Roberts. RP, 4. Officer Roberts was on patrol at 1:30 in the morning on January 19, 2018 in the 1200 block of Berkley

Avenue between Drake Street and Emerson Street in Fircrest. RP, 6-7.

This is a residential neighborhood with no businesses and little traffic late at night. RP, 8. Officer Roberts was not investigating anything specific and there had been no reports of vehicles prowls in the neighborhood that night. RP, 35. Officer Roberts did not recall any other vehicles driving on the road during the entire interaction. RP, 32.

As he was driving west on Emerson, Officer Roberts noticed a pair of headlights on the wrong side of the street on Berkeley. RP, 9. Deciding to investigate, he drove around the block and onto Berkeley. RP, 9. As he approached, he observed two vehicles, both in the southbound lane and facing each other, a Suzuki Grand Vitara facing southbound and a Cadillac Deville facing northbound. RP, 9-10. The headlights were on in both vehicles. RP, 11. The vehicles were approximately 20 to 30 feet apart, more than the distance necessary to use jumper cables. RP, 13, 25. Officer Roberts decided to investigate further because it is illegal to park on the wrong side of the road and because of the possibility of vehicle prowls. RP, 11.

As Officer Roberts approached, he observed the headlights turn off and a man get out of the driver's seat of the Grand Vitara. RP, 11. The man, later identified as Todd Hanson, walked towards the Cadillac and tried to open the passenger door of the Cadillac. RP, 12. Mr. Hanson was

not running, but was walking at a “deliberate pace of walking.” RP, 25. Officer Roberts heard Mr. Hanson say, “Hey, open the door.” RP, 14. In the driver’s seat of the Cadillac was a woman, later identified as the appellant, Teresa York. RP, 12. The engine to the Cadillac was running. RP, 17. Officer Roberts had never before met and did not know Ms. York. RP, 33.

Mr. Hanson was holding nothing in his hands, including “theft tools.” RP, 18. Officer Roberts observed no contraband or potential stolen items in either Mr. Hanson’s hands or in either car. RP, 38.

Officer Roberts subjectively believed Mr. Hanson was prowling cars and Ms. York was standing by as a getaway driver. RP, 17. Officer Roberts activated his spotlight to illuminate the Cadillac. RP, 14. Officer Roberts got out of his patrol vehicle holding a flashlight and asked Mr. Hanson what was going on. RP, 27-28.¹ Mr. Hanson replied he was trying to help a friend get her car running. RP, 26. Officer Roberts then ordered Mr. Hanson to place his hands on the hood and Ms. York to place her hands on her lap. RP, 14. Both people promptly complied with the order.

¹ The record from the transcript is somewhat ambiguous whether Officer Roberts asked this question before or after ordering them to show their hands. RP, 26-27. This is true, in part, because he did not remember asking the question, but relied instead on his report to refresh his memory. RP, 27. Officer Roberts agreed that his report, which was written the same night of the arrest, would be more accurate than his memory six months later. RP, 27. The report, which is in the record, makes clear that the question was asked before he ordered them to show their hands. CP, 12.

RP, 29. The time between when Officer Roberts observed Mr. Hanson get out of the Grand Vitara and when he ordered them to place their hands in view was “a very brief period of time, seconds.” RP, 19. Officer Roberts asked for identification from both individuals. RP, 20. Neither had any identification, although they truthfully disclosed their names and dates of birth. RP, 21.

Although Officer Roberts did not initially notice it, he later saw that the Grand Vitara was partially blocking a driveway. RP, 15. There were no indications of forced entry with either car. RP, 30. Both people were compliant and he observed no “furtive movement[s]” from either of them. RP, 30, 34. Nevertheless, Officer Roberts called out for back up officers at 1:35:28 a.m. RP, 30. The three of them then stood in relative silence, with Officer Roberts maintaining an officer’s safety distance where he could clearly see both of them, waiting for the backup officers to arrive. RP, 39. When Mr. Hanson and Ms. York attempted to explain what was going on, Officer Roberts interrupted them and told them they would figure out what was going on after additional units arrived. RP, 31. Officer Roberts heard Ms. York say that her car had stopped working earlier in the day and she had returned with her boyfriend, Mr. Hanson, to try and get the car running again. RP, 37.

At 1:38 a.m. the first backup officers, Officers Smith and Gallenger, arrived. RP, 42. As soon as the backup officers arrived, Officer Roberts returned to his patrol car to run both of their names. RP, 39. He ran Mr. Hanson's name at 1:41:11 a.m. and Ms. York's name at 1:44:34 a.m. RP, 44. He learned at 1:44:35 that Ms. York had a misdemeanor warrant for third degree theft. RP, 22, 45.

At trial, the following additional facts were introduced. Ms. York was arrested on the warrant and taken to the Pierce County Jail. RP, 105. At the jail, the booking officer located a small baggie of methamphetamine. RP, 107.

C. Argument

As a threshold issue, the State conceded at the trial level that Mr. Hanson and Ms. York were seized when, after Officer Roberts shone his spotlight on the Cadillac, he ordered Mr. Hanson to place his hands on the vehicle and Ms. York to place her hands on her lap. The trial court accepted this concession. The concession is well taken.

A person is "seized" within the meaning of the Fourth Amendment when, by means of physical force or a show of authority, his freedom of movement is restrained. There is a "seizure" when, in view of all the circumstances surrounding the incident, a reasonable person would have

believed that he was not free to leave. *State v. Young*, 135 Wn.2d 498, 510, 957 P.2d 681 (1998), citing *State v. Stroud*, 30 Wn.App. 392, 634 P.2d 316 (1981). In *Young*, the Court held that shining a police spotlight, coupled with a positive command from the officer, constitutes a seizure. *Young* at 514. As the State conceded, and the trial court properly concluded, Ms. York was seized when, while being illuminated in the officer's spotlight, the officer ordered her to place her hands on her lap. The seizure occurred within "seconds" of Officer Roberts getting out of his patrol car.

It is well settled that under certain circumstances the police may make an investigatory stop without a warrant. *State v. Randall*, 73 Wn.App. 225, 227, 868 P.2d 207, 208 (1994) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968)). Reasonable suspicion of criminal activity warrants a temporary seizure for the purpose of questioning limited to the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 498, 103 S. Ct. 1319, 1324, 75 L. Ed. 2d 229 (1983). In evaluating investigative stops, the court must determine: (1) Was the initial interference with the suspect's freedom of movement justified at its inception? (2) Was it reasonably related in scope to the circumstances which justified the interference in the first place? *State v. Tijerina*, 61 Wn.App. 626, 629, 811 P.2d 241 (1991), citing *Terry* at 19-20. In Ms.

York's case, the *Terry* stop was unlawful for both reasons: it was neither justified at its inception nor was it reasonably related in scope to the circumstances which justified the interference in the first place.

The facts of Ms. York's case are materially indistinguishable from those of *State v. Larson*, 93 Wn.2d 638, 611 P.2d 771 (1980). In *Larson*, officers observed a vehicle illegally parked in a high crime area. As the officers approached, the vehicle started to pull away. The officers responded by executing a traffic stop. The Washington Supreme Court held that these facts, viewed separately or collectively, were insufficient for a lawful traffic stop. The Court concluded, "When considered in totality, therefore, the circumstances known to the officers at the time they decided to stop the car did not give rise to a reasonable and articulable suspicion that the occupants were engaged or had engaged in criminal conduct, but at best amounted to nothing more substantial than an inarticulate hunch." *Larson* at 643 (citations omitted).

In Ms. York's case, her boyfriend, Todd Hanson, was in the driver's seat of an illegally parked car. When the officer approached, Mr. Hanson got out of the car and walked to Ms. York's car. While Officer Roberts was generally aware that vehicle prowls can occur in residential neighborhoods, he had no reports of vehicle prowls that night, Mr. Hanson had no tools or potential stolen property, there was no sign of forced entry

into either vehicle, and neither Mr. Hanson nor Ms. York made any furtive movements. Further, when Officer Roberts asked Mr. Hanson what was going on, he gave an innocent and plausible answer: he was trying to help a friend get her car running. Taken in their totality, the decision to detain both Mr. Hanson and Ms. York at that juncture was not based upon reasonable suspicion and was unlawful.

The Washington Supreme Court reached the same result in *State v. Sandoz*, reported *sub nom. State v. Fuentes*, 183 Wn.2d 149, 352 P.3d 152 (2015), a case Ms. York relied heavily on in the trial court. RP, 54. In *Sandoz*, the suspect was detained exiting a suspected drug house. The State relied on five facts to justify the detention: (1) Sandoz's surprise when he saw the officer, (2) the “conflicting” stories between Sandoz and the driver, (3) Sandoz's pale appearance and shaking, (4) the officer did not recognize the Jeep, and (5) the officer had authority to admonish nonoccupants for “loitering” under a trespass agreement. The Supreme Court found insufficient information for a *Terry* detention.

Ms. York argued her case was analogous to *Sandoz*. The trial court disagreed and distinguished *Sandoz*, saying, “[I]n *Sandoz* there was no conduct to observe. In *Sandoz*, my recollection is the suspect went into an apartment complex, albeit a suspicious apartment complex, but nevertheless an apartment complex, and came out. That was that. The

Court held that there was not a basis for reasonable suspicion. I believe that the totality of the circumstances in this case are different than that.” RP, 69.

It is difficult to understand the trial court’s reasoning on this point. In *Sandoz*, the defendant exited a known drug house that was the subject of a non-loitering trespassing agreement; in Ms. York’s case, she was on a public street. In *Sandoz*, the suspect looked surprised and was pale and shaking when he saw the officer; in Ms. York’s case, there were no furtive movements or other suspicious actions. In *Sandoz*, the officer believed the driver and suspect were giving him conflicting stories; in Ms. York’s case, Mr. Hanson and Ms. York gave consistent, reasonable explanations for their presence on the street. Taken as a whole, the observed activity in *Sandoz* was significantly more suspicious, yet the Supreme Court still found it wanting. The trial court’s attempts to distinguish *Sandoz* are unavailing. The initial detention was without justification and reversal is required.

Even assuming *arguendo* that the initial detention was lawful, the scope of the seizure exceeded the permissible scope of the stop. There are three factors to be considered in determining whether a detention is reasonably related in scope to the circumstances: the purpose of the stop, the amount of physical intrusion upon the suspect’s liberty, and the length

of time that the suspect is detained.” *State v. Williams*, 102 Wn.2d 733, 736, 689 P.2d 1065, 1067 (1984). Although a stop may initially be justified under *Terry*, the intensity and scope of the intrusion can render the detention improper. *Id.* at 739. In *Williams*, a police officer responding to a burglar alarm call stopped a car that was just pulling away from the front of the house. He handcuffed the driver of the car and detained him in the back of a police car. He asked the defendant what he was doing in the area, and the defendant replied that he was visiting a friend but he did not know the friend’s address. The defendant then remained handcuffed in the police car for approximately 35 minutes while officers called a canine unit and examined the house. The defendant’s car was “inventoried” and jewelry from the house was discovered. Ultimately, the court found that the police actions exceeded the purpose and scope of a *Terry* stop and that all evidence discovered as a result of the detention of the defendant should be suppressed. *Id.* at 735.

In this case, the purpose of the stop was ostensibly to determine if the officer was observing a vehicle prowl in progress. The officer observed no evidence of a vehicle prowl: no tools, no signs of forced entry, no potentially stolen property. In addition, Mr. Hanson promptly and prior to the detention provided a reasonable explanation for their

presence on the street. The decision to prolong the detention after hearing Mr. Hanson's explanation was unreasonable.

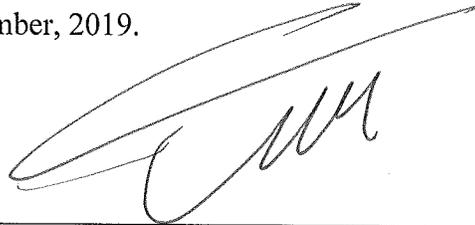
Second, although the officer did not handcuff Ms. York or place her into a patrol car, there was a significant amount of physical intrusion. The testimony was that he ordered Mr. Hanson and Ms. York to remain where they were with their hands in plain view while he called for backup. What followed was a period of awkward silence with Officer Roberts training his flashlight on the two of them as all three remained in place. When Mr. Hanson and Ms. York tried to further explain their actions, he told them to remain silent until other officers arrived. Eventually, two other officers arrived, apparently in separate patrol vehicles, thereby heightening the physical intrusion.

Third, the amount of time for the detention was unreasonable given the purpose of the intrusion in the first place. Officer Roberts wanted, without legal cause, to run their names prior to releasing them but was unwilling to do so without backup. Therefore, for over nine minutes, from 1:35:28, when he called for backup, to 1:44:35, when he learned of the warrant, he detained Ms. York without any suspicion of wrongdoing. The scope of the detention exceeded the scope of the initial intrusion and was unlawful.

D. Conclusion

This Court should reverse the ordering denying Ms. York's motion to suppress and dismiss the case.

DATED this 27th day of September, 2019.

A handwritten signature in black ink, appearing to read 'T. E. Weaver', written over a horizontal line.

Thomas E. Weaver, WSBA #22488
Attorney for Defendant/Appellant

THE LAW OFFICE OF THOMAS E. WEAVER

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

STATE OF WASHINGTON,) Court of Appeals No.: 53331-6-II
)
Plaintiff/Respondent,) DECLARATION OF SERVICE OF BRIEF
) OF APPELLANT
vs.)
)
TERESA YORK,)
)
Defendant/Appellant.)

STATE OF WASHINGTON)
)
COUNTY OF KITSAP)

I, Alisha Freeman, declare that I am at least 18 years of age and not a party to this action.

On September 27, 2019, I e-filed the Brief of Appellant in the above-captioned case with the Washington State Court of Appeals, Division Two; and designated a copy of said document to be sent to Michelle Hyer of the Pierce County Prosecuting Attorney's Office via email to: mlhyer@hotmail.com through the Court of Appeals transmittal system.

On September 27, 2019, I deposited into the U.S. Mail, first class, postage prepaid, a true and correct copy of the Brief of Appellant to the defendant:

Teresa York
6702 Twin Hills Ct W
University Place, WA 98467

///
///

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

3 DATED: September 27, 2019, at Bremerton, Washington.

4 

5 _____
6 Alisha Freeman

THE LAW OFFICE OF THOMAS E. WEAVER

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