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NO. 53983-7-II

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON

Respondent,

vs.

KYRSTIN WOODCOCK,

Appellant.

**ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF
WASHINGTON FOR JEFFERSON COUNTY**

Brief of the Respondent

Jefferson County Superior Court No. 18-1-00243-16

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A. STATEMENT OF THE CASE

On the evening of December 12, 2018, Officer Kolby Schreier of the Port Townsend Police Department was on patrol in his police car. RP 6-7. He was wearing a one-piece zip up uniform with insignia as well as a baseball cap. Over the one-piece he was wearing a vest. RP 7-8. In his vest he had “mags, his radio, flashlight and other gear. On his belt he had a firearm. RP 8.

He saw two individuals walking on the street – a man and a woman - and thought he recognized the man as Aaron Nolan, someone he had previous contact with and who is known to have warrants and someone that Officer Schreier has spoken to often. RP 11, RP 26. Officer Schreier drove past the two pedestrians, parked on the shoulder and got out to talk to them. Officer Schreier did not activate his lights or employ his siren. RP 12. They were several feet away from the rear of his car. RP 12. Officer Schreier realized that the man was not Nolan but someone else he knew, Harry Goodrich. The two had played baseball together in the past and Goodrich was surprised that Officer Schreier was now a police officer. The two engaged in some small talk. RP 13-14, RP 40. Goodrich recalled that the conversation was social and that the two were catching up, “kind of like fill each other in.” RP 41. Officer Schreier testified that he talks to people on the street and sometimes asks for identification because he like to know who is in his community. RP 30-31.

As they caught up Officer Schreier told Goodrich that he had heard some “not great” things from Goodrich’s sister about Goodrich’s time in Yakima and Goodrich admitted he had had some struggles. RP 14. Officer Schreier asked if Goodrich would mind if he checked him for warrants and Goodrich agreed, handing Officer Schreier his identification. RP 14. Officer Schreier looked at the identification, ran it and handed it back to Goodrich. RP 14. Officer Schreier ran him using his portable radio, remaining with Goodrich. Had Goodrich started to walk away he would have offered him his ID back. RP 29.

The small talk continued with Officer Schreier introducing himself to the Appellant, who he had not met prior to that evening. RP 16. Officer Schreier asked her if she had been staying out of trouble and she replied that she had come with Goodrich from Yakima. Officer Schreier asked if she minded if he saw her identification and as she patted her pants and said that she would not mind but did not have it on her. RP 16. He told her that it was okay and could he have her name at which time she told him and he wrote it down on his note pad. RP 17, RP 31-32. Officer Schreier told them to have a good night, they told him the same, and they all went on their way. RP 17. There is no evidence in the record that Officer Schreier asked the appellant for her date of birth.

During this entire encounter no other officers were present. RP 17. Officer Schreier did not un-holster or display his weapon or even put his

hand on it. The closest that he ever got to either Goodrich or the Appellant was three feet. He never touched either of them. RP 18. He never told either of them that they were required to show identification. RP 18. Officer Schreier's tone was relaxed when talking to Goodrich and the Appellant. RP 15. RP 18. Officer Schreier did not block their movement either with his body or his car. RP 19, RP 47. Officer Schreier is 5'6" tall. RP 8. Mr. Goodrich is 5'7". RP 44.

After everyone went on their way Goodrich and the Appellant crossed the street. RP 20. Officer Schreier returned to his patrol car. RP 20. It was then after running Appellant's information that he learned through dispatch that she had a warrant out of Yakima. RP 20. After learning of the warrant, Officer Schreier re-contacted the Appellant in order to detain her on the warrant. When the warrant was confirmed she was arrested and placed in the back of his patrol car and transported to the jail. RP 21, RP 33-34. It was only when they arrived at the jail that he found a baggie with methamphetamine on the floorboard of the car in front of the Appellant.

Following this hearing the court enter Findings of Facts and Conclusions of Law. RP 17-20.

1. DNA Collection Fee

At the time of sentencing the court ordered a \$100 DNA collection fee. The State concedes that this was in error as the appellant has a prior

felony conviction and no evidence was presented at the sentencing hearing that she has not previously given a DNA sample.

B. ISSUES PRESENTED

1. Whether the appellant was seized at the time that she told Officer Schreier her name?
2. The State concedes that the DNA Collection fee was assessed in error and the matter should be remanded for further proceedings on this issue.

C. ARGUMENT

A trial Court's findings of fact are *verities* on appeal so long as those findings are supported by substantial evidence. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.3d 313 (1994). Substantial evidence is present when a sufficient quantity of evidence exists in the record "to persuade a fair-minded, rational person of the truth of the finding." *Id.*

The only finding the Appellant contests was the Court finding that she was not seized during the initial encounter. Here substantial evidence supports the court's finding that "There is simply no testimony or evidence that objectively proves she was not free to walk away from the conversation with Officer Schreier." CP 20.

The Court held a hearing on the Appellant's motion to suppress evidence. At the hearing Officer Kolby Schreier and Harry Goodrich testified. The appellant did not testify at the hearing. During that testimony

the evidence showed that no objective person would have felt seized by Officer Schreier. Officer Schreier was alone and out-numbered. He did not block the Appellant from leaving with his vehicle or his body. He did not activate the emergency lights on his patrol car. He never took possession of her identification nor did he demand that she hand it over to him. The conversation was casual and covered Mr. Goodrich and Officer's Schreier's past history playing sports together. Officer Schreier left the Appellant alone and drove away before confirming the warrant and then re-contacting her so that he could arrest her on the warrant.

There was therefore substantial evidence presented at the hearing to support this finding.

1. The appellant was not seized at the time that Officer Schreier asked her name.

A police officer's conduct in engaging a defendant in conversation in a public place and asking for identification does not, alone, raise the encounter to an investigative detention. *State v. Armenta*, 134 Wn. 2d 1, 11, 948 P.2d 1280 (1997).

Washington courts have long recognized that effective policing requires contact and interaction with citizens. *State v. Young*, 135 Wash.2d 498, 510, 957 P.2d 681 (1998); citing *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

Under article I, section 7, a person is seized “ ‘only when, by means of physical force or a show of authority’ ” his or her freedom of movement is restrained and a reasonable person would not have believed he or she is (1) free to leave, given all the circumstances, *State v. Young*, 135 Wash.2d 498, 510, 957 P.2d 681 (1998) (quoting *State v. Stroud*, 30 Wash.App. 392, 394–95, 634 P.2d 316 (1981) and citing *United States v. Mendenhall*, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980)), or (2) free to otherwise decline an officer's request and terminate the encounter, *see Florida v. Bostick*, 501 U.S. 429, 436, 111 S.Ct. 2382, 115 L.Ed.2d 389 (1991). The standard for seizure is a “a purely *objective* one, looking to the actions of the law enforcement officer.” *Young*, 135 Wash.2d at 501, 957 P.2d 681 (emphasis added). Ms. Woodcock had the burden of proving that a seizure occurred in violation of article I, section 7. *Id.* at 509 at the CrR 3.6 hearing, a burden that she failed to meet.

As this court said in *Young*: “... characterizing every street encounter between a citizen and the police as a ‘seizure,’ while not enhancing any interest secured by the Fourth Amendment, would impose wholly unrealistic restrictions upon a wide variety of legitimate law enforcement practices.” *Id.* at 544.

Where an officer *commands* a person to halt or demands information from the person, a seizure occurs. *Mendenhall*, 446 U.S. at 554, ;*State v. Gleason*, 70 Wash.App. 13, 17, 851 P.2d 731 (1993). But no

seizure occurs where an officer approaches an individual in public and *requests* to talk to him or her, engages in conversation, or *requests* identification, so long as the person involved need not answer and may walk away. *State v. Cormier*, 100 Wash.App. 457, 460–61, 997 P.2d 950 (2000) (emphasis added); *see Mendenhall*, 446 U.S. at 555, 100 S.Ct. 1870.

“It is important to bear in mind that the relevant question is whether a reasonable person in O'Neill's position would feel he or she was being detained. The reasonable person standard does not mean that when a uniformed law enforcement officer, with holstered weapon and official vehicle, approaches and asks questions, he has made such a show of authority as to rise to the level of a *Terry* stop. If that were true, then the vast majority of encounters between citizens and law enforcement officers would be seizures”. *State v. O'Neill*, 148 Wn.2d 564, 581, 62 P.3d 489, 499, 2003.

The *O'Neill* court went on, “Instead, as this court noted in *Young* when it approved the analysis in *Mendenhall*:

"Examples of circumstance[s] that might indicate a seizure, even where the person did not attempt to leave, would be the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might

be compelled. . . . In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person."

Young 135 Wn.2d at 512 (quoting *Mendenhall*, 446 U.S. at 554- 55); *see also State v. Ellwood*, 52 Wn. App. 70, 73, 757 P.2d 547

(1988) (generally, "the approach of a uniformed officer carrying a gun is not in itself a sufficient show of force to instill in one the reasonable belief that he [or she] is being detained"). *State v. O'Neill*, 148 Wn.2d 564, 581, 62 P.3d 489, 499, 2003.

There are no facts that objectively show a seizure occurred. Officer Schreier was alone. The entire encounter was casual and relaxed. He requested identification from her, he did not demand it. He never obtained the Appellant's identification because she said she did not have it with her. Officer Schreier not make any show of force, *i.e.*, he did not activate his emergency lights, place his hand on his gun, block the Appellant's movement or take any action that restricted her freedom of movement. Then, after talking with her and her companion, Officer Schreier drove away from the Appellant and only re-contacted her after a warrant check showed that she had an existing warrant.

The Appellant was never quizzed about her possible involvement in criminal activity as the Appellant asserts. She never handed over her identification and the only identification Officer Schreier held in his hand

was Mr. Goodrich's, and Officer Schreier held that identification in the presence of Mr. Goodrich, and only possessed it long enough to run him for warrants through dispatch, which conduct did not amount to a seizure of Mr. Goodrich much less the Appellant. *State v. Carriero*, 8 Wn. App. 2d 641, 658, 439 P.3d 679, 688, 2019, citing *State v. Armenta*, 134 Wn.2d at 11 (1997); *State v. Hansen*, 99 Wn. App. 575, 577, 994 P.2d 855 (2000).

Appellant cites *State v. Crane*, 105 Wn. App. 301 (2001) in support of her contention that she was seized. *Crane*, However, is distinguishable on its facts. In *Crane* the police followed a car on to private property and then pulled the police car behind the defendant's car. The police were also surveilling the home. Those facts, together with asking Crane to stop, and then asking for identification and retaining it - all together – amounted to a seizure.

“This was not a casual contact on a public street. Green had parked his patrol car behind the car Crane arrived in, requested Crane's identification, and retained it while running a warrants check. Crane was also aware he had entered an area the police had secured. Thus, we conclude that Green seized Crane at the latest when Green held Crane's identification and ran the warrants check. *State v. Crane*, 105 Wn. App. 301 (2001).

In *Crane* several factors other than those noted by Appellant were important to the court's decision – factors not here: the police car followed Crane onto a private driveway of a home; ¹ The officer pulled his car in behind Crane's car; and the officer gave commanding directions to occupants of the home who came out to see what was happening, telling them to stay inside because the police were getting a warrant. *Crane* at 304. It was against this backdrop that the officer contacted Crane and asked him for identification. The court in *Crane* made it clear that, "This was not a casual contact on a public street." *State v. Crane*, 105 Wn. App. 301, 311.

Also distinguishable is *State v. Bieto*, 147 Wn App 504, cited by Appellant. In *Bieto* two police officers parked directly behind a car that was parked in a convenience store parking lot, then approached, one officer on the passenger side and another on the driver's side. *Bieto* was the passenger in the car. The driver was specifically told that she was not free to leave. After engaging in some conversation the officer on the passenger side actually told *Bieto* that he was suspicious of his story. It was on this backdrop that the asked for *Bieto*'s identification and the court found a seizure. The fact of the police officer blocking the passenger door

¹ "O'Neill was parked in a public place. The occupant of a car does not have the same expectation of privacy in a vehicle parked in a public place as he or she might have in a vehicle in a private location--he or she is visible and accessible to anyone approaching. *State v. O'Neill*, 148 Wn.2d 564, 579, 62 P.3d 489, 497-498, 2003.

was likely the deciding factor for the court in *Bieto*. As the court noted in *State v. Carriero*, 8 Wn.App 2d 641 (2019), (cited by Appellant, and also involving a police officer approaching a car and blocking egress of occupants) “Courts universally hold that law enforcement's blocking the exit of the accused's car constitutes a significant, if not a decisive, factor in finding a seizure.” *State v. Carriero*, 8 Wn. App. 2d 641, 660, 439 P.3d 679, 689. Unlike *Bieto*, in this case there was just one officer present. There was also no evidence here that Officer Schreier blocked anyone’s path on the public street – to the contrary. Unlike *Bieto*, the appellant was never “immobilized by a verbal show of authority.” *Bieto* at 510. Unlike *Bieto*, Schreier never told anyone that they were not free to go, and he never used an accusatory or commanding tone.

To the contrary, he engaged in some basic community policing by catching up with Goodrich and engaging with the appellant. “Citizens of this state expect police officers to do more than react to crimes that have already occurred. They also expect the police to investigate when circumstances are suspicious, to interact with citizens to keep informed about what is happening in a neighborhood, and to be available for citizens' questions, comments, and information citizens may offer. Of course, *if* a police officer's conduct or show of authority, objectively viewed, rises to the level of a seizure, that seizure is valid only where there are "specific and articulable facts which, taken together with rational

inferences from those facts, reasonably warrant" the detention of the person. *Terry*, 392 U.S. at 21. The officer's reasonable suspicions are, therefore, relevant *once a seizure occurs*, and relate to the question whether the seizure is *valid* under article I, section 7. *State v. O'Neill*, 148 Wn.2d 564, 576, 62 P.3d 489, 496, 2003.

The facts of this case are analogous to those in *State v. Bailey*, 154 Wn. App. 295 (2010). In *Bailey* a police officer approach Bailey on a deserted street and asked if he "had a minute," He engaged him a conversation about where he was going and what he was up to and then asked for identification. The court found that no seizure had occurred.

"Officer Walker's first questions did not amount to a seizure. And, in light of relevant case law, none of Officer Walker's subsequent questions transformed the situation into one in which Mr. Bailey objectively would no longer have felt free to leave. See *id.* at 309-11. Officer Walker did not use force or display authority to the same degree as cases in which courts have found a seizure. Compare RP at 5-9 (Officer Walker did not illuminate spotlight, emergency lights, or siren; asked Mr. Bailey whether he had a minute, first at a volume too low for Mr. Bailey to hear; and then asked only where Mr. Bailey was going and if he had any identification), with, e.g., *Harrington*, 167 Wn.2d at 661 (one of two officers present asked person to remove his hands from his pockets and

requested permission to pat him down). *State v. Bailey*, 154 Wn. App. 295, 302, 224 P.3d 852, 856, 2010.

At the suppression hearing the Appellant failed to show that there was sufficient evidence to indicate that *she* was ever seized during the initial encounter. “Whether there was any show of authority on the officer's part, and the extent of any such showing, are crucial factual questions in assessing whether a seizure occurred.” *State v. O’Neill*, 148 Wn.2d 564, 577, 62 P.3d 489, 497,

There was simply no showing of physical authority in any of its forms in this case. Appellant did not show that she could not refuse Officer Schreier’s request for her name or identification. Ultimately, the trial court found: “[t]here is simply no testimony or evidence that objectively proves she was not free to walk away from the conversation with Officer Schreier.” CP 20 and therefore she was not seized within the meaning of Article 1, Section 7. This finding was supported by substantial evidence and therefore the court’s ruling denying the motion to suppress was not in error.

For the foregoing reasons the court did not err in denying Appellants motion to suppress.

Because the Appellant was not seized there is no need to justify the encounter between Officer Schreier, Mr. Greenwood and Appellant as a valid Terry stop.

2. The State Agrees that the DNA Collection fee should not have been ordered absent findings that the Appellant had not previously given a DNA sample..

D. CONCLUSION

For the aforementioned reasons the Respondent respectfully requests that the Court of Appeals reject the arguments made by the Appellant except for that involving the application of the DNA collection fee.

Respectfully submitted this 14th day August of 2020.



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PROOF OF SERVICE

I, Laura Mikelson, declare that on this date:

I filed the State's BRIEF OF RESPONDENT electronically with the Court of Appeals, Division II, through the Court's online filing system. I delivered an electronic version of the brief, using the Court's filing portal, to:

Maureen M. Cyr, WSBA #28724
email address

I declare under penalty of perjury of the laws of the State of Washington that the foregoing information is true and correct. Dated this 14th day of August, 2020, and signed at Port Townsend, Washington.



Laura Mikelson
Legal Assistant

JEFFERSON COUNTY PROSECUTING ATTORNEY'S OFFICE

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