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Dec 07, 2012  
Court of Appeals  
Division III  
State of Washington

No. 30900-2-III

IN THE COURT OF APPEALS  
FOR THE STATE OF WASHINGTON  
DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

CURTIS R. COPSTEAD,

Defendant/Appellant.

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BRIEF OF APPELLANT  
AMENDED

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in concluding that the defendant's behavior prevented [the officers from contacting the children] as his belligerence, threatening and swearing caused Officer Valdez concern for his safety.

Conclusion of Law No. 5, CP 14.

2. The trial court erred in concluding that the extension of the detention to include placing the defendant on the ground and handcuffing him was appropriate based on the defendant's actions extending the scope of *Terry*. Conclusion of Law No. 7, CP 14.

3. The trial court erred in concluding the detention of the defendant was lawful. Conclusion of Law No. 8, CP 14.

4. The trial court erred in denying Mr. Copstead's motion to suppress evidence that was illegally seized. Conclusion of Law No. 9, CP 14.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Was the officer's detention and investigation of Mr. Copstead illegal because the officer did not have a reasonable suspicion arising from specific and articulable facts that criminal activity was afoot?

C. STATEMENT OF THE CASE

Officer Tony Valdez responded to a call of a “suspicious person” who was talking with some small children playing outside an apartment complex. The callers said the man didn't seem to belong to the area and they'd never seen him before. RP 3. When Officer Valdez arrived at the scene it was 7:24 p.m. but still daylight as it was June. Mr. Copstead was talking with several children and had his hand on one child. RP 4, 8-9. Officer Valdez got out of his patrol car and asked Mr. Copstead what he was doing there and whether he lived there. RP 5, 12. Mr. Copstead responded with obscenities that he wasn't doing anything wrong. Officer Valdez testified Mr. Copstead appeared intoxicated, angry, smelled from not bathing and generally looked like a homeless person. RP 5-6, 11.

Officer Valdez asked Mr. Copstead to sit down on the curb. Mr. Copstead dropped his backpack, glared at the officer but eventually complied. RP 6. Officer Valdez asked Mr. Copstead for some identification. Mr. Copstead complied. While Valdez was running a warrant check, Officer Brown arrived. Mr. Copstead started to stand up saying, “You better have another unit. You're going to need one.” Officer Valdez then took Mr. Copstead to the ground and handcuffed him. He

was arrested for disorderly conduct and obstructing. RP 7-8. A search incident to arrest yielded a controlled substance. RP 27, CP 16.

Mr. Copstead moved to suppress the results of the search incident to arrest as an unlawful detention CP 3-7. At the suppression hearing, Officer Valdez admitted he was not investigating any crime—only a suspicious circumstance. RP 13. He also admitted that Mr. Copstead did not make any move toward him when Mr. Copstead started to stand. RP 11. The officers later learned from talking with the children that the children were signing each other's shirts as was customary at the end of the school year and Mr. Copstead had signed some of the shirts. RP 8-9.

The Court denied the motion holding the detention was a valid *Terry* stop and the officer's action in wrestling Mr. Copstead to the ground did not exceed the scope of a *Terry* stop. RP 25-28. Mr. Copstead was subsequently convicted of possession of a controlled substance, methamphetamine, following a trial to stipulated facts. RP 29-31. This appeal followed. CP 30.

D. ARGUMENT

The officer's detention and investigation of Mr. Copstead was illegal because the officer did not have a reasonable suspicion arising from specific and articulable facts that criminal activity was afoot.

*Standard of Review.* In reviewing a trial court's findings of fact following a suppression hearing, the reviewing court makes an independent review of all the evidence. *State v. Apodaca*, 67 Wn. App. 736, 739, 839 P.2d 352 (1992), (citing *State v. Mennegar*, 114 Wn.2d 304, 310, 787 P.2d 1347 (1990)). Findings of fact on a motion to suppress are reviewed under the substantial evidence standard. Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. Conclusions of law in an order pertaining to suppression of evidence are reviewed *de novo*. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999).

*Substantive Argument.* The Fourth Amendment, made applicable to the states by way of the Fourteenth Amendment, guarantees the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures. *Mapp v. Ohio*, 367 U.S. 643, 647, 81 S.Ct. 1684, 1687, 6 L.Ed.2d 1081, 84 A.L.R.2d 933 (1961). Its "key principle," or "ultimate standard," is one of "reasonableness." *Dunaway v.*

*New York*, 442 U.S. 200, 219, 99 S.Ct. 2248, 2260, 60 L.Ed.2d 824 (1979) (White, J., concurring). This key principle has many specific applications. Of those involving the detention of persons, undoubtedly the most fundamental is that it is reasonable for an officer to detain a person indefinitely, e.g., for appearance in court or prosecution, only if the officer has probable cause to believe the person has committed a crime. *Gerstein v. Pugh*, 420 U.S. 103, 114, 95 S.Ct. 854, 863, 43 L.Ed.2d 54 (1975); *State v. Broadnax*, 98 Wn.2d 289, 293, 654 P.2d 96 (1982).

Another, narrower application is that even in the absence of probable cause, it is reasonable for an officer to detain a person briefly, for investigation, if the officer harbors a reasonable suspicion, arising from specific and articulable facts, that criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 1879, 20 L.Ed.2d 889 (1968); *State v. Kennedy*, 107 Wn.2d 1, 5-6, 726 P.2d 445 (1986). A police officer's act of stopping a vehicle and detaining its occupants constitutes a seizure. *State v. Takesgun*, 89 Wn. App. 608, 610, 949 P.2d 845 (1998) (citing *Delaware v. Prouse*, 440 U.S. 648, 653, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979)). To be lawful, it must have been justified at its inception and reasonable in scope. *State v. Henry*, 80 Wn.A pp. 544, 549-50, 910 P.2d 1290 (1995).

A warrantless, investigatory stop must be reasonable under the Fourth Amendment and article I, section 7 of the Washington State Constitution. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002). The State must prove an investigatory stop's reasonableness. *Id.* An investigatory stop is reasonable if the arresting officer can attest to specific and objective facts that provide a reasonable suspicion that the person stopped has committed or is about to commit a crime. *State v. Armenta*, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997). An investigatory stop occurs at the moment when, given the incident's circumstances, a reasonable person would not feel free to leave. *Armenta*, 134 Wn.2d at 10, 948 P.2d 1280; *State v. Williams*, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984).

It is generally recognized that crime prevention and crime detection are legitimate purposes for investigative stops or detentions. *Kennedy*, 107 Wn.2d at 5-6, 726 P.2d 445. However, there must be sufficient articulable facts supporting a reasonable suspicion of criminal activity to justify a temporary investigative stop. See *State v. Thornton*, 41 Wn. App. 506, 705 P.2d 271 (1985); *State v. Samsel*, 39 Wn. App. 564, 694 P.2d 670 (1985).

"The reasonableness of the officer's suspicion is determined by the totality of the circumstances known to the officer at the inception of the

stop." *State v. Lee*, 147 Wn. App. 912, 917, 199 P.3d 445 (2008) (citing *State v. Rowe*, 63 Wn. App. 750, 753, 822 P.2d 290 (1991)); See *Illinois v. Gates*, 462 U.S. 213, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). The totality of the circumstances test allows the court and police officers to consider several factors when deciding whether a *Terry* stop based on an informant's tip is allowable, such as the nature of the crime, the officer's experience, and whether the officer's own observations corroborate information from the informant. *Kennedy*, 107 Wn.2d at 8, 726 P.2d 445; *State v. Sieler*, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980); *State v. Lesnick*, 84 Wn.2d 940, 944, 530 P.2d 243 (1975). Moreover, "the determination of reasonable suspicion must be based on common sense judgments and inferences about human behavior." *Lee*, 147 Wn. App. at 917, 199 P.3d 445 (citing *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000)).

Reasonable suspicion, like probable cause, is dependant upon both the content of information possessed by police and its degree of reliability. Id. Both factors--quantity and quality--are considered in the "totality of the circumstances--the whole picture," that must be taken into account when evaluating whether there is reasonable suspicion. *Id.* (quoting *Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990)).

Herein, the “content of information” possessed by Officer Valdez when he got out of his patrol car and conduct an investigative detention did not support a reasonable suspicion of criminal activity. Officer Valdez admitted he was not investigating any crime—only a suspicious circumstance. RP 13. Nothing in the record suggests any criminal activity was occurring when Officer Valdez arrived at the scene. Nothing in the officer's own observations corroborated information of possible criminal activity that might have been suggested by the persons who initially called the police. See *Kennedy*, supra.

Being rude to police officers, smelling of intoxicants and looking like a homeless person are not crimes. The fact that none of the children ran up to the police officers when the officers arrived and accused Mr. Copstead of doing anything also suggests no crime had been committed. The innocuous situation was confirmed when the officers later learned from talking with the children that the children were signing each other’s shirts as was customary at the end of the school year, and Mr. Copstead had merely signed some of the shirts. RP 8-9. Therefore, the detention cannot be justified as a *Terry* stop.

However, assuming *arguendo* the initial detention was justified as a *Terry* stop, Officer Valdez exceeded the scope of a *Terry* stop by wrestling

Mr. Copstead to the ground and handcuffing him. Nothing in the record suggests any realistic threat to officer safety. There was no indication Mr. Copstead was armed with any weapon and Officer Valdez must not have believed so either, since Officer Valdez never asked to frisk or attempted to frisk Mr. Copstead.

Mr. Copstead did make what could be interpreted as verbal threats to the officers, but his obvious level of intoxication and subsequent lack of physical coordination negated any actual threat. Moreover, a second officer had arrived as backup before Officer Valdez wrestled Mr. Copstead to the ground thus further negating any perceived threats to officer safety. In addition, Officer Valdez admitted that Mr. Copstead did not make any move toward him when Mr. Copstead started to stand up. RP 11. Thus, there was no necessity or justification for wrestling Mr. Copstead to the ground based on officer safety. The officer exceeded the scope of a *Terry* stop by doing so. Once the officers ascertained that no criminal activity was occurring, the detention should have ended and Mr. Copstead should have been free to leave.

Since the initial detention and subsequent arrest was an unlawful seizure without probable cause, all evidence obtained by exploitation of that primary illegality must be excluded as “fruit of the poisonous tree.”

Wong Sun v. United States, 371 U.S. 471, 83 S.Ct. 407, 9 L.Ed.2d 441

(1963). Therefore, the controlled substance discovered during the search incident to Mr. Copstead's arrest must be suppressed under the exclusionary rule.

E. CONCLUSION

For the reasons stated, the conviction should be reversed.

Respectfully submitted December 7, 2012,

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PROOF OF SERVICE (RAP 18.5(b))

I, David N. Gasch, do hereby certify under penalty of perjury that on December 7, 2012, I mailed to the following by U.S. Postal Service first class mail, postage prepaid, or provided e-mail service by prior agreement (as indicated), a true and correct copy of the brief of appellant:

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