

No. 34511-4-III

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

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**STATE OF WASHINGTON, Plaintiff/Respondent**

**v.**

**SEAN MICHAEL HEALY, Defendant/Appellant**

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**BRIEF OF RESPONDENT**

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**Attorney for Respondent**

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## **RESTATEMENT OF THE ISSUES**

1. Did Officer Gordon have reasonable suspicion to initially detain the Appellant because a misdemeanor might be occurring in his presence?
2. Did Officer Gordon have *reasonable cause* to seize the Appellant in order to issue an infraction?
3. Did Officer Gordon have reasonable suspicion sufficient to detain the Appellant for obstructing a law enforcement officer while the officer was performing his official duties?

## **BRIEF ANSWERS**

1. Yes. Pullman City Code 5.50.020 has defined two levels for the prohibited act of Urinating in Public. The first level is an infraction, but the second offense is a misdemeanor. Furthermore, Officer Gordon had reasonable suspicion that the defendant might be in violation of RCW 66.44.270.
2. Yes. Officer Gordon had sufficient evidence before him to detain the Appellant long enough to issue a citation.
3. Because Officer Gordon had various legally sufficient facts to detain the Appellant, when the Appellant ran from the Officer, the Appellant was in violation of RCW 9A.76.020.

## **STATEMENT OF THE CASE**

On April 30, 2015, Officer Alex Gordon, employed by the Pullman Police Department for over 6 years, was on patrol in the college hill neighborhood in Pullman, Washington. RP 5, 8, 16. Officer Gordon explained that the College Hill area is the nickname for one of the four large hills in Pullman which contain residential

neighborhoods. RP 12-14. College hill is the area where most of the college bars are located, as well as homes and large apartment complexes which house the majority of college students. RP 12-13. The location of the incident at issue in the case is one block from the large food and bar complex known as Adam's Mall, and near several fraternities, and where most of the large parties are held. *Id.* Finally, this is also the area where officers see the vast majority of Urination in Public (UIP) issues. *Id.*

Officer Gordon, being a male and a college hill beat officer, has extensive experience with men standing up to urinate. Officer Gordon has urinated standing up somewhere between 30,000 and 50,000 times. RP 5. Officer Gordon noted that his own stance, and that which he had seen thousands of times with other men, included standing with feet slightly more than shoulder width apart, head looking down, hands around the genital area. RP 5-6. In addition, typically he and other men try to conceal their genital area. RP 5-9. Further, Officer Gordon was a student at Washington State University (WSU), saw other men commit UIP while he attended WSU, had done so himself, and has seen hundreds of men doing so as a patrol officer. RP 5-9, 35-36. When urinating in an appropriate place such as a public bathroom, he has seen men

from behind and from the side urinating, and knew they had done so even when he didn't hear or see a stream of urine. *Id.* Typically, public restroom urinals and stalls are designed to help conceal the front and sides of the men urinating. *Id.* Men urinating in public also tend to try and shield themselves with whatever is available, such as a tree, building, bush, or "whatever object is at their disposal." *Id.* Officer Gordon testified that he has seen neither the penis nor a stream of urine in 50% of the incidents he has seen, though he will sometimes see the puddle or wet spot afterwards. RP 9-11.

Officer Gordon also testified that while he has worked all 24 hours of the day, he has seen UIP in Pullman predominantly late at night, from 10:00 PM until 3:00 AM. RP 11-12. Typically, UIP is coupled with alcohol consumption, because people are drinking alcohol and have to pee more frequently. RP 11. In addition, the officer also testified that the lack of inhibitions and poor decision-making that accompanies alcohol consumption contributes to UIP. *Id.* In addition, offenders are in larger groups that run out of bathrooms in the locations and buildings they are not familiar with, so they urinate in public view. *Id.* UIP happens most frequently on Thursday through Saturday nights as those are the party nights in Pullman. RP 11-12.

Officer Gordon contacts men for UIP on a regular basis because the Pullman Police Department and the city consider it a quality of life issue. RP 14. Officer Gordon rarely writes a citation for the offense because he sees it as an opportunity to correct the behavior, and prefers to do so without punishment if possible. RP 14-15. Officer Gordon also explained that while men holding their cell phone have a similar stance, it only takes a second glance to determine they are using their cell phone, and not urinating. RP 15-16. Finally, in hundreds of contacts for UIP as a police officer, he has never contacted someone for UIP that wasn't actually urinating or getting ready to do so. RP 15-16, 38.

Turning to the specific facts of this case, Officer Gordon was on patrol in the 900 block of NE Monroe Street on a Thursday night at about 11:20PM, in a fully marked patrol vehicle. RP 16-19. He was aware of the fact that there had already been one UIP call around the address of 952 Monroe Street about one hour earlier, to which another officer responded. *Id.* Officer Gordon saw a man, later identified as Mr. Healy, shielding his front and side with a large garbage or recycle can, standing with his feet shoulder width apart, hands near his genitals, and head pointed down. *Id.* The officer believed Mr. Healy was urinating in public. RP 46-47.

Officer Gordon also noticed there was a party going on at the residence where he saw Mr. Healy urinating. RP 20. The Officer pulled his car to the side of the road and exited his vehicle without activating his emergency lights, no gun drawn, nor did he issue any commands to Mr. Healy. RP 20-21. As the officer began to walk towards the garbage cans, he saw Mr. Healy running away and then ran after him. RP 21. Officer Gordon chased Mr. Healy for over a block and told Mr. Healy to stop several times before Mr. Healy stopped running. RP 21. After Mr. Healy stopped running and turned around, the officer placed him in handcuffs to insure he wouldn't flee again and for overall safety. RP 25.

Officer Gordon also testified that at the point Mr. Healy began to run, he had reasonable suspicion that Mr. Healy was committing the crime of Minor Exhibiting the Effects of Alcohol in Public (MIP) per RCW 66.44.270. RP 26. The facts he stated included the specific location on college hill, the party going on at the house which did include people 18-22 years old, that Mr. Healy appeared to be of college age, and that in Officer Gordon's experience, every person he contacted for UIP who fled was under the age of 21. RP 26-27, 52-53. Officer Gordon had also contacted hundreds of people who were committing MIPs in that same

location, same time of night, and the same manner of contact. RP 27-28. Furthermore, when contacting people for UIP where the stop turned into an MIP arrest, those individuals were more furtive, to include fleeing. RP 27, 52-53. Though it occurred after the initial seizure, shortly after Officer Gordon began to interact with him, the officer learned that Mr. Healy was under 21 years old and had the odor of alcohol on his breath. RP 59-60. Shortly thereafter, he found the bag of chips the Defendant dropped which contained cocaine. RP 61.

The officer also believed that Mr. Healy was obstructing while he ran away, and when he made contact with Mr. Healy, that was the first crime the officer mentioned to him. RP 28-29. The officer believed he had two misdemeanors and a class C felony by the time the initial contact had resolved. RP 60-61. These facts superseded the concern over the UIP issue, and he never went back to check for a puddle of liquid at the location he originally saw Mr. Healy. *Id.*

## **ARGUMENT**

The trial court did not err when it concluded that Officer Gordon had substantial facts to support several different reasons in which to detain Mr. Healy.

When the Court of Appeals reviews a defendant's motion to suppress evidence, the Court will first decide whether the findings of fact are supported by substantial evidence, and then review de novo the conclusions of law made by the trial court. *State v. Aase*, 121 Wn.App. 558, 564 (2004). In the case at bar, the Appellant is not challenging the trial court's findings, only its legal conclusions. Brief of Appellant (BoA), p.5, ¶ 2. "Where the trial court's findings of fact and conclusions of law are supported by substantial but disputed evidence, we will not disturb its ruling." *State v. Aase*, 121 Wn.App. at 564.

The City of Pullman has prohibited public urination, which is defined as urinating in "any place generally visible to the public view and includes streets, sidewalks, bridges, alleys, plazas, parks, driveways, parking lots ... or other places on private property where the conduct is visible to the public from other private or public property without going on the private property where the conduct occurs." Pullman City Code (PCC) 5.50.020. The offense of public urination is an infraction the first time a person is cited for it, however, it is a misdemeanor if the person commits a second or

subsequent violation. PCC 5.50.030 and 5.50.040. The penalty of a misdemeanor is a noted exception to the city's penalty provisions for other infractions and crimes as noted in PCC 1.02.010(1).

I. Officer Gordon had reasonable suspicion that a misdemeanor was being committed in his presence.

The State concedes that *Terry Stops* do not apply to non-traffic civil infractions. *State v. Duncan*, 146 Wn.2d 166 (2002), see also *State v. Day*, 161 Wn.2d 889 (2007). However, there were sufficient facts that gave rise to a reasonable suspicion that criminal activity was afoot as to the misdemeanor version of the UIP, or even Minors Exhibiting the Effects of Alcohol (MIP) as defined in RCW 66.44.270. Therefore, the court can apply a *Terry Stop* analysis to this issue.

“A seizure is reasonable if the (officer) can point to ‘specific and articulable facts giving rise to a reasonable suspicion that the person stopped is, or is about to be, engaged in criminal activity.’” *State v. Armenta*, 134 Wn.2d 1, 10 (1997) (quoting *State v. Gleason*, 70 Wn.App. 13, 17 (1993)). “The reasonableness of an officer’s suspicion is determined by the totality of the circumstances

known to the officer at the inception of the stop.” *State v. Gleason*, 70 Wn.App. 13, 17 (1993). When applying the test, a court should examine the totality of the objective circumstances known to the officer, including but not limited to the officer’s training and experience, the character of the neighborhood, and the conduct of the person detained. *State v. Glover*, 116 Wn.2d. 509, 514 (1991), *State v. Pressley*, 64 Wn.App. 591, 596 (1992). “While an inchoate hunch is insufficient to justify a stop, circumstances which appear innocuous to the average person may appear incriminating to a police officer in light of past experience.” *State v. Mercer*, 45 Wn.App. 769, 774 (1986). “The officer is not required to ignore that experience.” *Id.*

“The permissible scope of an investigatory stop is determined by all of the circumstances facing the officer at the time of the stop.” *State v. Mitchell*, 80 Wn.App. 143, 146 (1995). When the facts of a case support a reasonable suspicion of criminal activity it does not matter whether the officer could articulate the reasonable suspicion of a specific crime. *Id.* at 147. Rather, “the existence of ... reasonable suspicion is determined based on an objective view of the known facts, and is not dependent upon the

officer's subjective belief or upon the officer's ability to correctly articulate his or her suspicion in reference to a particular crime." *Id.*

In *Mitchell*, an officer was on patrol at night when he observed the defendant walking down a residential street in Seattle carrying a hand-gun. *Id.* at 144. As the officer passed Mr. Mitchell, the officer observed him place the hand-gun in the waist band of his pants. *Id.* The officer approached Mr. Mitchell as he was walking away and ordered him to stop and put his hands up. *Id.* at 144-145. Mr. Mitchell was charged with and convicted of unlawful possession of a firearm. *Id.* at 145. The Court of Appeals held that, at the time of the stop, the officer had reasonable suspicion of the crime of unlawful display of a weapon even if the officer couldn't state that himself. *Id.* at 147-148.

When seen in the light of the officer's experience and training, a series of observations may establish a well-founded suspicion of criminal activity. *State v. Pressley*, 64 Wn.App. 591, 597 (1992). In that case, a law enforcement officer in Seattle was on patrol in an area well known for narcotics activity, in part because local citizens had requested that the police patrol the area due to the high volume of criminal (narcotic) activity. *Id.* at 593. The officer had received training in identifying narcotics and how they

are hidden and destroyed. *Id.* In addition, he was trained to watch for the hands of people who were suspected of being engaged in drug transactions. *Id.* He came upon two women huddled close together who were pointing to and counting objects in the defendant's hand. *Id.* at 596-594. As the officer approached in his marked patrol car, he heard the defendant mention an expletive and the two women separated and began walking away from each other. *Id.* at 594. The Court held that the officer's initial stop of the defendants hovered on the line of a legal stop, but amounted to more than an "inarticulate hunch" *Id.* at 597.

In this case, it must be determined whether or not Officer Gordon had sufficient facts to establish reasonable suspicion of a crime at the time he stopped Mr. Healy. Whether the officer could state which crime he was concerned with does not matter, but rather whether he had objective facts of any crime. Just as in *Mitchell*, even if Officer Gordon did not know there was a misdemeanor version of UIP when he stopped Mr. Healy, as long as he had sufficient facts before him to establish reasonable suspicion of either UIP or MIP, then the brief investigatory seizure of Mr. Healy was justified.

Mr. Healy was seized at the moment Officer Gordon yelled Stop, which was after all of the observations regarding UIP, and after Mr. Healy began running away from the officer down the alley. As stated in *Glover*, the officer's training and experience, the character of the neighborhood, and the conduct of the person detained are all factors that can be considered in determining if there were sufficient facts to establish reasonable suspicion that criminal activity may be happening. Also, as stated in *Pressley*, when seen in the light of the officer's experience and training, a series of observations may establish a well-founded suspicion of criminal activity. In the case at bar, Officer Gordon was on College Hill, on a Thursday Night, in an area where a party was going on. He was working graveyard, and the shift before him had already received a complaint of public urination in that same area. He observed the Defendant, "shielding" himself with a recycle bin, just off the alley. His legs were spread more than shoulder-width apart, his arms were in front of his groin area, and his head was pointed down.

Though the officer did not initially check the area of the recycle or garbage can for urine or wetness, it is because Mr. Healy fled that he could not. He never went back to check, because while

interacting with Mr. Healy the officer quickly developed probable cause that Mr. Healy was MIP, and very quickly after that probable cause that Mr. Healy was in possession of cocaine.

Officer Gordon relied not only on his experience as a patrol officer, but decades as a male who has urinated standing up. The “posture” of a male urinating is well known to him. It is hard to imagine a person more perfectly suited to detecting UIP with a male defendant. Officer Gordon is a real whiz where this particular prohibited action is concerned.

Regarding the evidence of MIP, the officer noted specifics about the neighborhood where these facts took place, just as the officer in *Pressley* had done. Here, it was a Thursday night, between the hours of 10:00PM and 3:00AM, there was a party going on with people who clearly looked under the age of 21. Specific to Mr. Healy, the officer believed he was urinating in public, and even more importantly, fled after the officer exited his patrol car, but before he contacted or issued any commands to Mr. Healy. Officer Gordon said he had never had a UIP who fled, who was over the age of 21. Therefore, Officer Gordon also had enough facts to establish a reasonable suspicion that Mr. Healy was MIP as he started to flee.

Not only is there sufficient evidence to establish reasonable suspicion of UIP or MIP, there was sufficient evidence for Officer Gordon to have developed “reasonable cause,” as discussed in the next section.

II. Officer Gordon had reasonable cause to stop the Defendant in order to obtain Mr. Healy’s identity.

“A person who is to receive a notice of civil infraction under RCW 7.80.050 is required to identify himself or herself to the enforcement officer by giving his or her name, address, and date of birth.” RCW 7.80.060. In addition, the officer is allowed to detain the person, though for no longer than reasonably necessary, if the suspect is unwilling or unable to identify themselves for the officer. *Id.* In order for an officer to give a suspect a civil infraction, the infraction has to occur in the officer’s presence. RCW 7.80.050(2). A court may, however, issue a notice of civil infraction if “the officer has reasonable cause to believe that a civil infraction was committed.” RCW 7.80.050(3), *emphasis added*. Therefore, it stands to reason that an officer needs “reasonable cause” to detain a person for an infraction, in order to identify that person to 1) issue a notice of infraction or 2) provide reasonable cause to a court. By

contrast, a court needs to find by a preponderance of the evidence that an infraction has been committed. IRLJ 3.3.

The only case the State could find where “Reasonable Cause” in relation to an infraction was discussed, was *State v. Duncan*, 146 Wn.2d 166, 178-183 (2002). *Duncan* is also cited and relied upon by the Appellant to point out that *Terry Stops* are not applicable to non-traffic civil infractions. However, the *Duncan* Court went on to discuss whether or not the officer could enforce a reasonable detention in order to cite the defendant in that case for the civil infraction. *Id.* The Court held in that matter that the act did not occur in the officer’s presence. *Id.* However, in the case at bar, Officer Gordon was present in order to witness the actions of Mr. Healy. The question then is whether Officer Gordon had “reasonable cause” to believe the infraction was committed. The “reasonable cause” standard would appear to be less than “preponderance of the evidence,” but more than “reasonable suspicion.”

It stands to reason that “reasonable cause” is equivalent to “probable cause.” Very few recent cases actually use the term “reasonable cause” in the criminal context. However, as late as the 1960s, the Washington Supreme Court treated “reasonable cause”

as synonymous with “probable cause.” *State v. Smith*, 56 Wn.2d 368 (1960), see also *State v. Maxie*, 61 Wn.2d 126 (1962), and *State v. Johnson*, 64 Wn.2d 613 (1964). This court can therefore apply a probable cause analysis to determine if Officer Gordon had reasonable cause to detain Mr. Healy for urinating in public.

“Probable cause to arrest exists where the totality of the facts and circumstances known to the officers at the time of arrest would warrant a reasonably cautious person to believe an offense is being committed.” *O’Neill v. Department of Licensing*, 62 Wn.App. 112, 116-117 (1991), citing *Waid v. Department of Licensing*, 43 Wn.App 32, 34-35 (1986). “Probable cause to arrest must be judged on the facts known to the arresting officer before or at the time of arrest.” *State v. Gillenwater*, 96 Wn.App 667, 670 (1999). “Probable cause to arrest requires more than ‘a bare suspicion of criminal activity,’ *State v. Terrovona*, 105 Wn.2d 632, 642 (1986), but does not require facts that would establish guilt beyond a reasonable doubt.” *Id.*, Citing *State v. Conner*, 58 Wn.App. 90, 98 (1990).

“[T]he arresting officer’s special expertise in identifying criminal behavior must be given consideration.” *State v. Cottell*, 86 Wn.2d 130, 132 (1975). “The experience and expertise of an officer

may be taken into account in determining whether there is probable cause.” *State v. Remboldt*, 64 Wn.App. 505, 510 (1992). “The question of probable cause should not be viewed in a hyper-technical manner.” *Id.* Probable cause is based on “the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act.” *Id.* at 511. “In fact, what constitutes probable cause is viewed from the vantage point of a reasonably prudent and cautious police officer.” *Id.* at 510, *citing* 1. W. LaFave, §3.2(c), at 570-75.

In *Remboldt*, officers were tipped off by a young informant of a possible marijuana grow operation. *Id.* at 506. One officer confirmed the details about the residence that were provided and also confirmed who the residents were. *Id.* About eight days later that officer and Deputy Van Leuven returned to the residence and contacted the defendants at the front door, when the door was being closed Deputy Van Leuven smelled a moderate odor of what he knew to be marijuana based on his training and experience. *Id.* at 506-507. A warrant was issued and evidence of a marijuana grow operation was discovered at the defendant’s residence. *Id.* at 507. Attached to the warrant was an affidavit of the officer’s training and experience, which included visiting 150 marijuana grow

operations in the preceding three years. *Id.* The appellate court reversed the lower court and found that probable cause existed largely in part due to the deputy's expertise in determining what was marijuana, and that it was not a mere opinion. *Id.* at 511.

Finally, running from the scene is a factor that the court can consider in determining probable cause. *State v. Baxter*, 68 Wn.2d 416 (1966). In that case, two officers were in a marked patrol car at 3:45 AM when they observed Mr. Baxter carrying 2 hats and another object, and that he had appeared to come from behind one business or out of an adjacent business. *Id.* at 418. The officer driving the patrol car stopped and began to back to where Mr. Baxter was after they had passed him. *Id.* As the car got closer to Mr. Baxter, he dropped what he was carrying and began to run from the scene. *Id.* The *Baxter* Court held that the time of night, closed businesses, and particularly the flight of the Defendant, could lead a reasonable officer to develop probable cause that a felony had been committed. *Id.*

In the case at bar, Officer Gordon saw facts that would lead a reasonable officer to believe that Mr. Healy was urinating in public. However, before Officer Gordon yelled stop (arguably the moment where he initiated a seizure) the Defendant fled the scene

running. This fact, coupled with the other facts discussed above, would lead a cautious officer to develop probable cause/reasonable cause that an infraction was committed, much less a crime. As there was not only reasonable suspicion, but reasonable cause to believe that the Defendant was engaged in a misdemeanor or civil infraction, he was obstructing as he ran away from Officer Gordon. Thus, at all points, Officer Gordon's seizure was lawful.

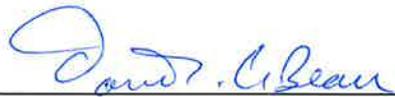
III. Officer Gordon had sufficient facts that at least one misdemeanor was being committed in his presence, so when Mr. Healy ran, he was violating RCW 9A.76.020.

If a person "willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his ... official powers or duties," then they are violating RCW 9A.76.020. As stated repeatedly herein, Officer Gordon had sufficient facts to establish reasonable suspicion of a crime, or reasonable cause of an infraction. Shortly after Mr. Healy fled from the scene and while he continued to do so after being ordered to stop, that also gave Officer Gordon reasonable suspicion of the crime of Obstructing. Therefore, Officer Gordon was engaged in lawful activity when he detained Mr. Healy.

## CONCLUSION

For the above reasons, the State respectfully requests that this court deny Mr. Healy's appeal issue and affirm the decision below.

Dated this 15th day of September, 2017.



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

STATE OF WASHINGTON,  
Plaintiff,

Court of Appeals No. 345114  
No. 15-1-00161-7

v.

AFFIDAVIT OF DELIVERY

SEAN MICHAEL HEALY,  
Defendant,

STATE OF WASHINGTON )  
COUNTY OF WHITMAN )

AMANDA PELISSIER , being first duly sworn, deposes and says as follows: That on the 15th day of September, 2017, I caused to be delivered a full, true and correct copy(ies) of the original **Brief of Respondent** on file herein to the following named person(s) using the following indicated method:

- Mailed to Andrea Burkhart at PO Box 946, Walla Walla, WA 99362
- Emailed to Andrea Burkhart at Andrea@2arrows.net

DATED this 15th day of September, 2017.

*Amanda Pelissier*

AMANDA PELISSIER

SIGNED before me on the 15th day of September, 2017



*Sean E. Weale*

NOTARY PUBLIC in and for the State of  
Washington, residing at: *Colfax*  
My Appointment Expires: *October 1 2018*

**WHITMAN COUNTY PROSECUTOR'S OFFICE**

**September 15, 2017 - 1:17 PM**

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