

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 35169-6-III

STATE OF WASHINGTON, Respondent,

v.

COREY KEITH KNUDSVIG, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

A patrol officer ran the license plate of a suspicious parked van in a high crime neighborhood and learned that the registered owner had outstanding warrants. The officer contacted the owner, who was standing outside the van talking to a woman in the driver's seat, and placed him under arrest. While he was patting the owner down, the passenger door of the van slid open and what appeared to be a firearm fell out and landed on the ground. Police immediately detained all of the occupants of the van, including Corey Knudsvig, who had been lying down in the back, removed them from the van, obtained their identification, and checked them for warrants. Knudsvig had an outstanding felony warrant, and was arrested and searched. Police discovered a small amount of drugs in a baggie in his pocket, and he was charged with possessing a controlled substance.

Pretrial, Knudsvig moved to suppress the evidence found during his search, contending that his detention was unlawful. The trial court denied his motion, concluding that the officers' actions were reasonable responses to a legitimate safety concern. Knudsvig was then convicted in a stipulated facts trial. He appeals, and urges the court to reverse the trial court's order denying his motion to suppress and hold that the detention

was unlawful when police had no individualized suspicion that he was dangerous or engaged in criminal activity.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: The trial court erred in denying Knudsvig's motion to suppress.

ASSIGNMENT OF ERROR NO. 2: The trial court erred in concluding that safety concerns justified the intrusive detention conducted in this case.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: When police arrest a vehicle owner on a warrant, and has no independent suspicion that the vehicle's occupants are engaged in any criminal activity, are police justified in detaining all of the vehicles occupants solely because an item believed to be a firearm is present?

ISSUE NO. 2: If police may legitimately detain and frisk the suspicionless occupants of the vehicle to ensure no weapons or safety risks to police are present, do those safety concerns justify further requiring the vehicle occupants to identify themselves and detaining the occupants while they are checked for outstanding warrants?

IV. STATEMENT OF THE CASE

Spokane County Sheriff's Deputy Clay Hilton was on patrol in a high crime neighborhood when he saw a van he had not seen before, parked at a residence associated with criminal activity. RP (1/26/17)¹ at 4-6. He ran the van's plates and learned that the registered owner had outstanding warrants. RP (1/26/17) at 6. Approaching, he identified the owner standing outside the van, talking to somebody in the driver's seat. RP (1/26/17) at 7. Hilton arrested the man and called for backup. RP (1/26/17) at 7-8.

While he was searching the owner, backup arrived and stood on the passenger side of the van. RP (1/26/17) at 8, 18. He heard the van door slide open and a thump. RP (1/26/17) at 8. Looking over, he saw that what appeared to be a firearm was lying on the ground. RP (1/26/17) 8. Hilton did not know how many people were in the van, and there was nothing suspicious happening in the van at that time. RP (1/26/17) at 13, 15. Nevertheless, due to concerns for officer safety, all of the vehicle occupants were immediately detained until everybody could be pat searched. RP (1/26/17) at 28. Hilton immediately retrieved the firearm

¹ The verbatim reports of proceeding in this case consist of two volumes, non-consecutively paginated, containing a hearing on a motion to suppress held on January 26, 2017, and a stipulated facts bench trial and sentencing held on March 7, 2017. For clarity, this brief will refer to each volume by the date of the proceedings transcribed.

and placed it on the hood of his car. RP (1/26/17) at 9, 21. However, he did not, apparently, make any effort to render the firearm safe at that time by removing the magazine or checking to see if a bullet was in the chamber, as it was later determined the firearm was actually a BB gun. RP (1/26/17) at 22.

The officers present on the scene not only immediately removed all of the passengers from the van and frisked them for weapons, but also asked everybody for identification and ran them for warrants. RP (1/26/17) at 10, 19, 28. At least one of the deputies, who was still in training but participating that day without her field training officer, believed she was assisting with an investigative stop. RP (1/26/17) at 30, 39. She ordered Corey Knudsvig, who had been lying down behind the back seat, to exit the van and show his hands. RP (1/26/17) at 14, 33. When she ran his name, she learned he had an active felony warrant. RP (1/26/17) at 33. During his arrest and incident search, she located a baggie on him that contained a small amount of a substance that field tested presumptively positive for heroin. RP (1/26/17) at 34.

The State charged Knudsvig with one count of possessing a controlled substance. CP 1. He moved to suppress evidence obtained from his search, arguing that his detention was unlawful and without any

individualized suspicion of criminal activity. CP 4, 12. The State conceded that the officers detained all of the van passengers once the suspected gun fell on the ground, but argued the detention was only to the extent needed to maintain officer safety. RP (1/26/17) at 45-46. The trial court agreed with the State, concluding that the incident was a clear safety stop authorized by *Terry v. Ohio* and denying the motion to dismiss. RP (1/26/17) at 54. It entered findings of fact and conclusions of law in support of its ruling, concluding that the detention arose from a reasonable safety concern and Knudsvig's detention and identification were lawful under *Terry*. CP 35.

After his motion was denied, Knudsvig stipulated to the essential facts of the case and waived his right to a jury trial. CP 46-48, RP (3/7/17) at 13. The trial court found him guilty and proceeded to sentencing. RP (3/7/17) at 13. The parties disputed whether Knudsvig's offender score was a 10 or a 7, with Knudsvig arguing that some of his prior offenses constituted the same criminal conduct. RP (3/7/17) at 15, 22, 24. However, the standard range was the same regardless of the score. RP (3/7/17) at 21-22. The trial court imposed the low end of the standard range, sentencing Knudsvig to 12 months and one day in prison, 12 months of community custody, and mandatory legal financial obligations of \$800. RP (3/17/17) at 30-31; CP 64, 65, 67.

Knudsvig now appeals, and has been found indigent for that purpose. CP 74, 80.

V. ARGUMENT

The sole issue on appeal is whether the trial court erred when it denied Knudsvig's motion to dismiss. Because requiring Knudsvig to identify himself and running his name for warrants was an investigative activity, unrelated and unnecessary to any safety concerns arising from the need to verify he was not armed, the detention was not authorized in the absence of individualized suspicion of criminal activity by Knudsvig. Because the officers had no suspicion of wrongdoing, the detention violated both the Fourth Amendment to the U.S. Constitution and article I, section 7 of the Washington State Constitution. Accordingly, the conviction should be reversed and the case remanded for dismissal.

In reviewing the denial of a defendant's motion to suppress evidence, the Court of Appeals determines whether the factual findings are supported by substantial evidence and reviews de novo the trial court's conclusions of law. *State v. Aase*, 121 Wn. App. 558, 564, 89 P.3d 721 (2004). Unchallenged findings are treated as verities on appeal so long as they are supported by substantial evidence. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Here, Knudsvig does not challenge the trial

court's factual findings, arguing instead that the trial court's findings do not support its legal conclusion that the detention was lawful under *Terry*.

Article I, section 7 of the Washington Constitution and the Fourth Amendment to the U.S. Constitution establish that warrantless searches and seizures are *per se* unreasonable, unless the State proves that the circumstances fall within an exception to the warrant requirement. *State v. Morse*, 156 Wn.2d 1, 7, 123 P.3d 832 (2005). Washington courts have long interpreted article I, section 7 as more protective of privacy interests in vehicles than the Fourth Amendment. *See State v. Parker*, 139 Wn.2d 486, 496, 987 P.2d 73 (1999) (recognizing that vehicle passengers have independent, constitutionally protected privacy interests that they do not lose merely by entering a vehicle with others). Unlike the Fourth Amendment, article 1, section 7 “recognizes an individual’s right to privacy with no express limitations.” *State v. Simpson*, 95 Wn.2d 170, 178, 622 P.2d 1199 (1980). Washington courts have established that the article 1, section 7 analysis is not based on whether the defendant possessed a reasonable expectation of privacy in the area to be searched, but whether the State has intruded into the defendant’s private affairs. *State v. Myrick*, 102 Wn.2d 506, 510-11, 688 P.2d 151 (1984).

Under the Fourth Amendment to the U.S. Constitution, law enforcement officers may not seize an individual unless there is probable cause to believe the person has committed a crime. *Dunaway v. New York*, 442 U.S. 200, 207-08, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979). However, under the U.S. Supreme Court's decision in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), an officer may briefly detain a person whom he reasonably suspects of criminal activity for limited questioning. *State v. White*, 97 Wn.2d 95, 105, 640 P.2d 1061 (1982) (“[T]o justify the initial stop the officer must be able to point to specific and articulable facts that give rise to a reasonable suspicion that there is criminal activity afoot.”); *State v. Hobart*, 94 Wn.2d 437, 441, 617 P.2d 429 (1980); *State v. King*, 89 Wn. App. 612, 618, 949 P.2d 856 (1998) (“[I]t 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.”).

In Washington, the right to be free from intrusions into private affairs extends to vehicles and their contents. *Parker*, 139 Wn.2d at 494. However, a few “jealously and carefully drawn” exceptions will overcome the warrant requirement when societal interests outweigh the rationale for prior recourse to a neutral magistrate. *State v. Ladson*, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). An exception exists for *Terry* investigative

stops. *State v. Tibbles*, 169 Wn.2d 364, 369, 236 P.3d 885 (2010) (citing *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996)).

Although the scope of a *Terry* detention may be enlarged to investigate unrelated suspicions that arise during the initial inquiry, “the officer must be able to articulate specific facts from which it could reasonably be suspected that the person was engaged in criminal activity.” *State v. Santacruz*, 132 Wn. App. 615, 619, 133 P.3d 434 (2006). An inarticulable hunch is insufficient. *State v. O’Cain*, 108 Wn. App. 542, 549, 31 P.3d 733 (2001). *Terry* stops may not be expanded into generalized, investigative detentions or searches. *State v. Veltri*, 136 Wn. App. 818, 822, 150 P.3d 1178 (2007).

In *State v. Tijerina*, 61 Wn. App. 626, 811 P.2d 241, *review denied*, 118 Wn.2d 1007 (1991), an officer stopped a vehicle for crossing over the fog line, checked the driver’s license and registration, and decided not to issue a citation. However, the officer saw some small bars of motel soap in the glove box and decided to detain the vehicle’s occupants, who were Hispanic, to investigate whether they were involved with reports of drug sales at local motels. The driver consented to a search of the vehicle, the officer discovered controlled substances in the trunk, and the driver was arrested. The court held that the detention was

excessive because the possession of soap was innocuous and did not give rise to a reasonable suspicion of criminal activity, and the fact that some Hispanics may be engaged in drug trade at motels does not show that the Hispanic driver was involved. “The purpose of the stop was satisfied when the sergeant decided not to issue a citation and his subsequent conduct was based on unjustified suspicion.” *Tijerina*, 61 Wn. App. at 630. Consequently, the court suppressed the evidence.

And in *State v. Allen*, 138 Wn. App. 463, 157 P.3d 893 (2007), the Court of Appeals held that it exceeded the scope of the initial detention for a broken license plate light for the officer to question the driver about the identity of the passenger. The *Allen* court observed that the officer’s actions went “well beyond a routine investigation of a traffic violation. This is essentially the fishing expedition that the exclusionary rule seeks to prohibit.” 138 Wn. App. at 471.

In the present case, the deputies readily acknowledged that they had no independent reason to be suspicious that the occupants of the van were engaged in any criminal activity. After the van’s owner was located and identified, the purpose for the initial contact was satisfied and there was no individualized, factual basis to suspect the van occupants were engaged in any wrongdoing. The van’s mere presence at a residence

police believed to be associated with criminal activity is, in itself, insufficient to justify an investigative detention of the van's occupants. *See generally State v. Fuentes*, 183 Wn.2d 149, 352 P.3d 152 (2015). Thus, the detention here cannot be justified as a *Terry* investigative detention based upon reasonable suspicion of criminal activity, as police had no information of criminal activity by the van occupants beyond mere generalized suspicion arising from where the van was parked.

Thus, the warrantless detention and investigation of Knudsvig can only be justified for protective purposes. If the initial stop is legitimate, and a reasonable safety concern exists to justify a protective frisk for weapons, a frisk that is limited in scope to the protective purpose will be allowed under the Fourth Amendment. *State v. Collins*, 121 Wn.2d 168, 173, 847 P.2d 919 (1993) (citing *Adams v. Williams*, 407 U.S. 143, 146, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972)). Under this standard,

A reasonable safety concern exists, and a protective frisk for weapons is justified, when an officer can point to "specific and articulable facts" which create an objectively reasonable belief that a suspect is "armed and presently dangerous."

Id. (quoting *Terry* 392 U.S. at 21-24). *Terry* thus allows police to conduct a limited pat-down of a suspect's outer clothing to try to locate potentially dangerous weapons when specific facts exist to support a safety concern.

State v. Russell, 180 Wn.2d 860, 867, 330 P.3d 151 (2014) (citing *Terry*, 392 U.S. at 30-31).

Even if the possession of a suspected firearm by an individual not suspected of wrongdoing in proximity to the arrest of someone else amounted to a sufficient safety concern to justify a *Terry* frisk of all the van's occupants, *Terry*'s safety rationale does not apply to the investigative actions of identifying the occupants and running their names for warrants. *Terry*'s safety rationale authorizes only a brief pat down of the outer clothing to ensure the occupants were not armed until the police finished their business with the van's owner and could depart safely. By expanding the scope of the detention to identify and run the names of the individuals in the van, the officers expanded the scope of the *Terry* detention from a safety frisk to an investigative detention. As discussed above, they lacked any individualized, reasonable suspicions on which to do so.

Moreover, it is notable that in the present case, the vehicle occupants were not "suspects" of any crime. Americans possess an "individual right to possess and carry firearms in case of confrontation" under the Second Amendment to the U.S. Constitution. *District of Columbia v. Heller*, 554 U.S. 570, 592, 128 S. Ct. 2783, 171 L. Ed. 2d 637

(2008). Here, the police justified the detention and intrusion into the privacy of the van occupants on the presence of a suspected firearm in proximity to an arrest in process, asserting that “where there’s one weapon, there’s two weapons,” and that police assume every person is armed until confirmed otherwise. RP (1/26/17) at 24. Adoption of this standard to allow detentions of armed individuals who happen to be near an ongoing arrest, without any independent reason to believe the individuals are suspected of crime or pose a danger to police, would significantly diminish the privacy rights of Washington citizens for the sole reason that they choose to exercise their individual Second Amendment right to possess and carry firearms.

Even if the Fourth Amendment were interpreted to permit infringement on the Second, Washington’s Constitution provides broader protections of both individual privacy and the right to own firearms for self-defense. *See State v. Jorgenson*, 179 Wn.2d 145, 152-156, 312 P.3d 960 (2013) (applying *Gunwall* analysis to article I, section 24 of the Washington Constitution). While the right to possess firearms under the Washington Constitution is subject to reasonable regulation, those regulations must be “reasonably necessary to protect public safety or welfare, and substantially related to legitimate ends sought.” *Id.* at 156 (quoting *City of Seattle v. Montana*, 129 Wn.2d 583, 594, 919 P.2d 1218

(1996)). Even if concerns for officer safety justify temporarily disarming law-abiding citizens of their firearms to secure the immediate scene of an arrest, those safety concerns do not rationally relate to detaining those citizens, demanding their identification, and running their information through warrant databases without any individualized suspicion of wrongdoing or danger.

Because the deputies lacked individualized suspicion to believe that Knudsvig was either committing a crime or potentially dangerous to police, *Terry* does not justify his detention. Moreover, even if legitimate safety concerns would permit removing Knudsvig from the van and frisking him to ensure he was unarmed, the deputies impermissibly escalated the contact into an investigative detention when they demanded Knudsvig's name and ran it for warrants. Because police lacked any individualized suspicion of criminal activity, an investigative detention exceeded the scope of any legitimate safety concern Knudsvig presented. Accordingly, the trial court erred when it concluded that Knudsvig's detention was permissible under *Terry* for officer safety reasons. The order denying the motion should be reversed and the case remanded for dismissal.

In the event Knudsvig does not prevail on appeal, the court should decline to impose appellate costs due to Knudsvig's indigency. He was found indigent for purposes of appeal, and that presumption continues throughout the appeal process. CP 80; RAP 14.2, RAP 15.2(f); *State v. Sinclair*, 192 Wn. App. 380, 393, 367 P.3d 612, *review denied*, 185 Wn.2d 1034 (2016). There is no evidence in the record of a substantial change in his financial circumstances. Further, he has complied with this court's general order issued June 10, 2016 concerning inability to pay cost awards, and his report as to continued indigency shows that he lacks assets and income from which to pay an assessment, while carrying substantial outstanding LFO debt. Accordingly, a cost award is not allowed under RAP 14.2.

VI. CONCLUSION

For the foregoing reasons, Knudsvig respectfully requests that the court REVERSE the order denying his motion to dismiss, REVERSE and VACATE his conviction, and REMAND the case for dismissal.

RESPECTFULLY SUBMITTED this 17 day of October, 2017.



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CERTIFICATE OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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And, pursuant to prior agreement of the parties, via e-mail to the following:

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

Signed and sworn this 17 day of October, 2017 in Walla Walla, Washington.



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