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Division III
State of Washington
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NO. 36295-7-III

COURT OF APPEALS

STATE OF WASHINGTON

DIVISION III

STATE OF WASHINGTON,

Plaintiff/Respondent,

V.

CHRISTOPHER LEE MURPHY,

Defendant/Appellant.

BRIEF OF APPELLANT

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ASSIGNMENTS OF ERROR

1. Christopher Lee Murphy was unlawfully seized in violation of the Fourth Amendment to the United States Constitution and Const. art. I, § 7 when officers contacted him on January 9, 2018 in a parking lot across the street from a Motel 6 following receipt of a complaint from the desk clerk.

2. Findings of Fact 6 and 13 are contradictory and do not support the trial court's Conclusions of Law entered in its ruling on Mr. Murphy's CrR 3.6 motion. (CP 51; Appendix "A")

3. Finding of Fact 12 is indicative of the fact that the officers exceeded the scope of the investigative stop and were conducting a general warrantless search in contravention of Mr. Murphy's constitutional rights.

4. Conclusions of Law 3, 4, 5, 6 and 7 are in contravention of the Fourth Amendment to the United States Constitution, Const. art. I, § 7 and the current state of the law in the State of Washington.

ISSUES RELATING TO ASSIGNMENTS OF ERROR

1. Do the trial court's Findings of Fact and Conclusions of Law support its determination denying Mr. Murphy's CrR 3.6 motion?

2. Were Mr. Murphy's constitutional rights under the Fourth Amendment to the United States Constitution and Const. art. I, § 7 violated by the officers' actions in seizing and detaining him for a period of nineteen (19) minutes when they failed to contact the

clerk at the Motel 6 to ascertain what exactly occurred and how long Mr. Murphy actually stayed in the Motel 6 parking area?

3. Did a criminal trespass occur at the Motel 6?

STATEMENT OF THE CASE

Officers Noren, Richman, Kane and Berger responded to a suspicious person/suspicious vehicle call from the desk clerk at Motel 6 on January 9, 2018. The desk clerk indicated that a truck and trailer were blocking the door. (08/02/18 RP 34, ll. 8-19; RP 45, ll. 21-24; RP 49, ll. 14-18; ll. 23-25; RP 61, ll. 10-18; RP 62, ll. 11-19; ll. 20-23; RP 101, ll. 22-23; RP 107, l. 22 to RP 108, l. 1; Munoz 9-1-1 RP 6, ll. 8-17; RP 7, l. 19 to RP 8, l. 1)

Mr. Murphy was driving a Dodge Ram pickup with a trailer loaded with multiple items. Officers Richman and Noren observed the pickup parked across the street from the Motel 6. Mr. Murphy and his passenger, Andrea Slocum, were walking toward Zip's. (08/02/18 RP 9, ll. 6-16; RP 12, l. 19 to RP 13, l. 10; RP 16, ll. 5-12; RP 17, ll. 3-19; RP 62, ll. 14-19; RP 64, ll. 4-9)

The Motel 6 desk clerk made a second call to 9-1-1 advising that the individual had moved the truck. The call was prior to the contact by the officers. (Munoz 9-1-1 RP 10, ll. 3-4; ll. 10-12)

The officers initially contacted Mr. Murphy. He admitted that he had been at the Motel 6. The officers claim that he gave an inconsistent story about what occurred at Motel 6. No details were provided. (08/02/18 RP 77, ll. 4-18; RP 106, ll. 20-25)

The officers initially believed they were responding to a complaint of criminal trespass. After observing the items on the trailer they became suspicious that the vehicle had been involved in a call from the previous night. They began to investigate whether or not the vehicle and the items on the trailer were stolen. (08/02/18 RP 68, ll. 9-24; RP 69, ll. 3-23; RP 75, l. 19 to RP 76, l. 25; RP 77, ll. 21-25; RP 78, l. 3; RP 112, ll. 6-22; RP 116, ll. 1-18; RP 130, ll. 2-19)

The officers continually directed Mr. Murphy to remove his hands from his pockets. Eventually, because he continued to put his hands into his pockets, he was handcuffed and a pat-down search conducted. Nineteen (19) minutes elapsed between the initial contact and the pat-down search. A firearm was found in his right front coat pocket. (08/02/18 RP 66, ll. 13-20; RP 79, l. 12 to RP 80, l. 4; RP 90, ll. 3-8; RP 94, l. 9 to RP 95, l. 2; RP 121, ll. 7-15)

An Information was filed on January 12, 2018 charging Mr. Murphy with unlawful possession of a firearm second degree. (CP 1)

A CrR 3.6 motion was filed on March 29, 2018 asserting that the officers did not have an articulable suspicion that a crime had been committed. (CP 9)

The suppression hearing was commenced on August 2, 2018 and concluded on August 9, 2018. During the course of that hearing the State conceded that Mr. Murphy was not free to leave once the officers made contact with him. (King RP 24, ll. 16-23)

The trial court did not enter its Findings of Fact and Conclusions of Law until December 6, 2018. (CP 51)

A stipulated facts trial was conducted on August 27, 2018 following Mr. Murphy's waiver of a jury trial and a colloquy by the Court. Judgment and Sentence was entered that date. (CP 32; Buldis RP 6, l. 8 to RP 8, l. 20)

The stipulated facts themselves were not entered until November 30, 2018. (CP 48)

Mr. Murphy filed his Notice of Appeal on August 27, 2018. An order of indigency was entered. (CP 45; CP 46)

SUMMARY OF ARGUMENT

The trial court's Findings of Fact and Conclusions of Law entered following the suppression hearing do not support its determination that Mr. Murphy's constitutional rights were not violated.

The officers' contact with Mr. Murphy was based upon a telephone call from a desk clerk at Motel 6. The officers did not make any independent determination prior to contacting Mr. Murphy to support their seizure of him.

The officers lacked sufficient information to support any type of conclusion that a criminal trespass had occurred at the Motel 6.

Mr. Murphy was unlawfully detained and unlawfully seized. The warrantless seizure and detention violated his rights under the Fourth Amendment and Const. art. I, § 7.

ARGUMENT

I. OFFICER AUTHORITY

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Const. art. I, § 7 provides: "No person shall be disturbed in his private affairs, or his home invaded, without authority of law."

RCW 10.31.100 provides, in part:

> … A police officer may arrest a person without a warrant for committing a misdemeanor or a gross misdemeanor only when the offense is committed in the presence of an officer, except as provided in subsections (1) through (11) of this section.
>
> (1) Any police officer having probable cause to believe that a person has committed or is committing a misdemeanor or gross misdemeanor … involving criminal trespass under RCW 9A.52.070 or 9A.52.080, shall have the authority to arrest the person.

Officers were investigating a complaint from a Motel 6 desk clerk that an individual who had tried to rent a room did not have sufficient identification and was refusing to leave. The refusal to leave appeared to encompass the alleged fact that his truck and trailer were in the motel parking lot potentially blocking other motel traffic.

Initially, a question arises as to whether or not a criminal trespass occurred. If a criminal trespass occurred then officers had the statutory right to make contact with Mr. Murphy in order to investigate the complaint from the desk clerk.

RCW 9A.52.070(1) states: "A person is guilty of criminal trespass in the first degree if he or she **knowingly** enters or **remains unlawfully in a building**." (Emphasis supplied.)

There is nothing in the record to indicate that Mr. Murphy unlawfully entered Motel 6. Motel 6 is a business catering to the public by renting rooms to them on a daily basis.

There is nothing in the record to indicate that Mr. Murphy unlawfully remained in the Motel 6. The record reflects that the complaint concerned the fact that he had not immediately left the parking lot area.

RCW 9A.52.090(2) provides:

> In any prosecution under RCW 9A.52.070 and 9A.52.8080, it is a defense that:
>
> (1) …;
> (2) The premises were at the time open to members of the public and the actor complied with all lawful conditions imposed on access **to** or **remaining in the premises**. …

(Emphasis supplied.)

Mr. Murphy contends that there was no evidence produced at the suppression hearing to indicate that a criminal trespass occurred. He further contends that the information from the desk clerk did not support the inference of a first degree criminal trespass. He did not remain inside the motel.

RCW 9A.52.080(1) states:

> A person is guilty of criminal trespass in the second degree if he or she **knowingly** enters or **remains unlawfully** in or **upon premises of another** under circumstances not constituting criminal trespass in the first degree.

(Emphasis supplied.)

The desk clerk, in the 9-1-1 call, did not indicate that Mr. Murphy was told to leave. She indicated that his lack of identification precluded her from renting him a room. He apparently left the premises and eventually drove from the Motel 6 parking lot to a parking lot across the street.

There is no indication in the record as to how long he actually remained in the Motel 6 parking lot. By the time the officers arrived he had already left Motel 6, parked his vehicle, and was walking toward Zip's to get something to eat. The time elapsed between the 9-1-1 call and the officers arrival was approximately three (3) to four (4) minutes. (8/02/18 RP 83, ll. 1-23).

II. FINDINGS OF FACT

Findings of Fact 6, 12 and 13 are indicative of the officers' exceeding the scope of their initial contact with Mr. Murphy. They did not make any contact with the desk clerk at the Motel 6. They immediately observed the vehicle described by the desk clerk and contacted Mr. Murphy and his passenger.

Instead of limiting the contact with Mr. Murphy to an investigation of what occurred at Motel 6 the officers soon extended their inquiries based upon speculation as to whether or not Mr. Murphy's vehicle and the contents of the trailer were stolen property. It is obvious from the record that Mr. Murphy was seized and was not free to leave.

Over the course of a nineteen (19) minute period the officers determined that neither the vehicle nor the items on the trailer were stolen property. They did determine that Mr. Murphy was a convicted felon.

> … [I]nvestigative stops are carefully circumscribed - the officer's suspicion must be based on specific, objective facts, *State v. White* [97 Wn.2d 92, 640 P.2d 1061 (1982)] at 97;

> … and the more significant the intrusion, the more cause they must have to justify their suspicion. *State v. Byers,* 85 Wn.2d 783, 787, 549 P.2d (1975), *rev'd on reh'g on other grounds,* 88 Wn.2d 1, 559 P.2d 1334 (1977). The totality of the circumstances must be taken into account in balancing the degree to which the intrusion advances public concern, and the severity of the interference with individual liberty. [Citations omitted.]

State v. Tocki, 32 Wn. App. 457, 460-61, 648 P.2d 99 (1982).

The officers had no specific objective facts that any criminal offense had occurred. They did not corroborate anything that was conveyed by the Motel 6 desk clerk with the exception of the description of the vehicle and trailer.

In *State v. Sieler,* 95 Wn.2d 43, 621 P.2d 1272 (1980) a student's father observed what he believed to be a drug transaction in a vehicle parked in the school parking lot. He informed the school secretary by means of a telephone call. The school secretary contacted law enforcement. Officers later contacted the passengers in the vehicle and located drugs. The *Sieler* court reversed the convictions.

Relying upon *State v. Lesnick,* 84 Wn.2d 940, 530 P.2d 243 (1975), the *Sieler* court discussed the need for corroboration of an informant's tip as follows:

> It is difficult to conceive of a tip more "completely lacking in indicia of reliability" than one provided by a completely anonymous and unidentifiable informer, containing no more than a conclusionary assertion that a certain individual is engaged in criminal activity. While the police may have a duty to investigate tips which sound reasonable, [1] absent circumstances suggesting the informant's reliability, or some corroborative observation which suggests either [2] the presence of criminal activity or [3] that the informer's information was obtained in a reliable fashion, a forcible stop based solely upon such information is not permissible.

9-1-1 knew that the desk clerk's first name was Gina. The officers did not know that. The officers were advised by dispatch of either a suspicious person or a suspicious vehicle. A vehicle description was provided.

The *Sieler* Court went on to note at 48:

> The reliability of an anonymous telephone informant is not significantly different from the reliability of a named but unknown telephone informant. …
>
> Even assuming that an unknown but named telephone informant was adequately reliable, thereby distinguishing this case from *Lesnick*, this reliability by itself generally does not justify an investigatory detention. … [T]he State generally should not be allowed to detain and question an individual based on a reliable informant's tip which is merely a bare conclusion unsupported by a sufficient factual basis which is disclosed to the police prior to the detention. … Some underlying factual justification for the informant's conclusion must be revealed so that an assessment of the probable accuracy of the informant's conclusion can be made. … This additional requirement helps prevent investigatory detentions made on the basis of a tip provided by an honest informant who misconstrued innocent conduct.

The officers lack of contact with Motel 6 equates to a lack of corroboration of the information provided by the desk clerk. The only information that the officers had was either a suspicious person or a suspicious vehicle and the vehicle description.

Officers arrived within two (2) to three (3) minutes of the call from the desk clerk. Upon observing Mr. Murphy's truck and trailer they made immediate contact with him in a parking lot across the street from the Motel 6. They did not corroborate any other information from the clerk. (08/02/18 RP 70, ll. 8-17; RP 109, l. 12 to RP 110, l. 9)

The *Sieler* Court stated at 49-50:

> … [P]olice observation of a vehicle which substantially conforms to the description given by an unknown informant

> does not constitute sufficient corroboration to indicate that the informant obtained his information in a reliable fashion.

III. CONCLUSIONS OF LAW

The trial court's Conclusions of Law 3 and 4 rely entirely upon the original 9-1-1 call.

It does not take nineteen (19) minutes to determine whether or not a criminal trespass occurred.

It does not take six (6) to eight (8) officers to investigate a criminal trespass.

The absence of any contact with the desk clerk negates the extent of the interference with Mr. Murphy's liberty. Conclusions of Law 5, 6, and 7 derive from the fact that the officers far exceeded the scope of an investigatory detention.

The officers' seizure and detention of Mr. Murphy was unreasonable under the facts and circumstances.

> A person is seized when "considering all the circumstances, an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer's use of force or display of authority." *State v. Rankin,* 151 Wn.2d 689, 695, 92 P.3d 202 (2004). Police actions likely to amount to a seizure include "'the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person or the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.'" *State v. Young,* 135 Wn.2d 498, 512, 957 P.2d 681 (1998) (*quoting United States v. Mendenhall,* 446 U.S. 544, 554-55, 100 S. Ct. 1870, 64 L. Ed.2d 497 (1980)).

State v. Ibarra-Guevara, 172 Wn. App. 184, 188, 288 P.3d 1167 (2012)

Mr. Murphy contends that the recent case of *State v. Carriero, slip opinion* 35560-8-III (April 25, 2019) fully supports his position both from a factual and legal standpoint.

Mr. Carriero and his girlfriend were parked in a dead end alley. An unidentified citizen made a call to 9-1-1. Two (2) officers arrived in the narrow alley and parked their vehicles without activating their emergency equipment. They left their headlights shining on Mr. Carriero's vehicle.

While the officers were talking to the occupants they were shining their flashlights into the car. One officer observed a gun on the rear floorboard. Mr. Carriero was a convicted felon. He was arrested.

The *Carriero* Court reversed the conviction ruling that not only was Mr. Carriero seized, but also that the officers lacked a reasonable articulable suspicion at that time that a crime had occurred or was occurring . The Court stated in *Carriero, slip opinion*, at 21: "… warrantless seizures are *per se* unconstitutional, and the burden falls on the State to demonstrate that a warrantless seizure falls into a narrow exception to the rule."

Mr. Murphy contends that the officers lacked a well-founded, reasonable suspicion of any criminal activity. They did not have specific and articulable facts to support the seizure. No corroboration of the facts occurred prior to the seizure. The *Terry*[1] stop exception is inapplicable under the facts and circumstances as enunciated by the trial court.

[1] *Terry v. Ohio*, 92 US 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1969).

CONCLUSION

Mr. Murphy was seized by the officers on January 9, 2018. The seizure was unconstitutional.

The trial court's challenged Findings of Fact and Conclusions of Law are contrary to existing precedent and are not supported by the record.

Mr. Murphy's CrR 3.6 motion should have been granted. The trial court's ruling must be reversed and the evidence suppressed.

DATED this 16th day of May, 2019.

Respectfully submitted,

s/ Dennis W. Morgan_____
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APPENDIX “A”

ORIGINAL
JOSIE DERVIN
BENTON COUNTY CLERK
DEC 06 2018
FILED

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF BENTON

STATE OF WASHINGTON, Plaintiff, vs. CHRISTOPHER LEE MURPHY, Defendant.	NO. 18-1-00063-1 FINDINGS OF FACT & CONCLUSIONS OF LAW ON CrR 3.6 MOTION TO SUPPRESS (PROPOSED CHANGES AND OBJECTIONS BY DEFENDANT)

THIS MATTER, having come duly and regularly before the Court for hearing pursuant to the Defendant's Motion to Suppress and Dismiss, on the 9th day of August, 2018, the defendant being personally present and represented by Kevin Holt, and the State of Washington being represented by Emily Sullivan, Deputy Prosecuting Attorney for Benton County. After consideration of the briefs filed, testimony, and argument by counsel, the Court now makes the following:

FINDINGS OF FACT

1. On January 9, 2018 there was a report of a suspicious person at the Motel 6 located at 1751 Fowler Street in Richland, WA.
2. The reporting party, the clerk at the Motel 6, advised dispatch that a male and female subject in a white Dodge pickup were attempting to rent a room and after being refused for lack of identification they had not left the premises. Dispatch advised the responding officers that the subject was refusing to leave the premises.
3. Officers Richman and Noren arrived on scene and located a vehicle matching the description provided by Dispatch (the reporting party) legally parked across the street form the motel.

4. Upon contacting the vehicle, Officer Richman testified that he observed a male, later identified as the Defendant, quickly approach the driver's side door of Officer Noren's patrol vehicle.
5. Officer Richman The Defendant was advised to remove his hands from pockets and Officer Richman observed he was wearing baggy and bulky clothing.
6. Officer Richman testified that he began questioning the Defendant about where they had been and began investigating possible criminal activity to include theft or possession of stolen property, he did not contact Motel 6.
7. Officer Richman testified that he observed the Defendant begin digging his hands into all of his pants pockets.
8. Officer Richman testified that he became nervous for his safety, not knowing if the Defendant had an weapons and asked him to verbally identify himself, which he did.
9. Officer Richman ran the Defendant's name through dispatch and confirmed that he had no warrants, a suspended license and was a convicted felon.
10. Officer Richman testified that while he continued to speak to the Defendant, the Defendant continued to put his hands in his pockets several times. Officer Richmond observed that the Defendant's front pockets were bulky and appeared to not be empty. Each time the Defendant placed his hands in his pocket, Officer Richmond asked him to remove them. The Defendant would comply each time, but then quickly place his hands back in his pockets or place his thumbs in his pockets.
11. Officer Richman testified that he was attempting to question the Defendant and the Defendant was hesitant to answer questions. **(Defendant objects - this was disputed by the testimony of Andrea Sollcum and the Court found Ms. Sollcum's testimony credible.)**
12. Officer Richman testified that due to the Defendant's furtive behavior, Officer Richman instructed the Defendant to sit down on a nearby curb. The Defendant was detained and was not free to leave, Officers testified that this was to conduct an investigation into possible criminal activity. This was supported by both the Defendant and Ms. Sollcum.
13. While investigating the Motel 6 incident further, Officer Noren contacted the Defendant and questioned him further. The Defendant again placed his hands in his pocket in a furtive manner. **(This is disputed by the Defendant. Defendant contends that The officers never investigated the Motel 6 allegation they simply used the contact to hold the defendant who was not free to leave while they determined if there was some other criminal activity going on. The officers contacted the owner of the vehicle and confirmed that it was not stolen. The preceding should be deleted).**
14. Officer Richman testified that he again instructed the Defendant to remove his hands from his pockets and was instructed to sit down on his trailer where they were standing. The defendant leaned against the trailer for a moment and then went back to standing.
15. Officer Noren then walked towards the Defendant's vehicle at which time the Defendant again placed his hands in his pocket.
16. Officer Richman testified that he placed the Defendant in handcuffs and conducted a pat down. During the pat down, Officer Richmond felt a hard, bulky object in the Defendant's front pants pocket.
17. Based on his experience and training, Officer Richman believed the object to be a firearm.

18. Officer Richman reached in the Defendant's pocket and removed a small .32 caliber firearm from the Defendant's person.

CONCLUSIONS OF LAW

1. The defendant was detained and was not free to leave within seconds of the initial contact.
2. The court finds that Andrea Solcum offered truthful and credible testimony, disputing the testimony of the officers, however, based on the dispatcher advising the responding officers that the subject was refusing to leave the premises, Officer Richmond and Officer Noren had reasonable suspicion to investigate a past misdemeanor even though it had not been committed in the officer presence, and therefore could contact the Defendant to investigate a possible criminal trespass.
3. Although responding officers had not observed any illegal activity the detention of the defendant which lasted 19 minutes involving the presence of 6 to 8 officers and failed to detect any illegal activity the detention was reasonable based on the original dispatch report of a possible trespass.
4. Although the responding officer never contacted the reporting party or went to the site of the alleged incident to interview witness of investigate the original report to the officer by dispatch was sufficient to detain the defendant.
5. Officer Richmond was reasonable in concluding there was a potential officer safety issue based on the Defendant's refusal to comply with instruction to keep his hands out of his pockets, the Defendant not being forthcoming about the events at the Motel 6, the Defendant turning toward Officer Noren as he was looking in the back of his truck with his hands in his pockets and the multiple layers of clothing worn by the Defendant. **(Defendant objects to this being supported by the facts/testimony from the hearing. The** defendant contends that **police failed to investigate what had happened at Motel 6, they were investigating other possible crimes. The Defendant answered the questions he was asked, he requested an attorney, provided the name of his attorney and request to make a telephone call for an attorney which was denied).**
6. Based on the facts and what a reasonable officer would determine in light of what they knew and saw, the totality of the report, and the officers' reasonable desire to remain safe, the detention and pat-down of the Defendant was reasonable.
7. The motion to suppress is denied.

DATED 12/6/18

Honorable Bruce Spanner
Benton County Superior Court

Presented by:

Taylor Clark, WSBA# 49565
Deputy Prosecuting Attorney

Defendant objects to the findings as proposed. I have emphasized the inaccuracy and areas of dispute by underlining and bolding. My signature is as to form only.

Approved as to form:

Kevin Holt, WSBA# 16672
Attorney for the defendant

NO. 36295-7-III

COURT OF APPEALS

DIVISION III

STATE OF WASHINGTON

STATE OF WASHINGTON, Plaintiff, Respondent, v. CHRISTOPHER LEE MURPHY, Defendant, Appellant.	)))))))))))))	BENTON COUNTY NO. 18 1 00063 1 **CERTIFICATE OF SERVICE**

I certify under penalty of perjury under the laws of the State of Washington that on this 16th day of May, 2019, I caused a true and correct copy of the *BRIEF OF APPELLANT* to be served on:

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Transmittal Information

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