

63236-1

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NO. 63236-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

LEVI WILLIAMS,

Appellant.

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STATE OF WASHINGTON  
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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LAURA C. INVEEN

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**BRIEF OF RESPONDENT**

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**A. ISSUES PRESENTED**

1. The police may lawfully detain an individual for further investigation if they have a reasonable suspicion that the person is engaged in criminal activity. Here, Williams was seen conducting a hand to hand transaction in an area known for high drug activity (SODA Zone) with a known drug user. Did the officer have a reasonable suspicion that Williams was involved in criminal activity?

2. Whether consent to search is voluntary is a question of fact to be determined from the totality of the circumstances. Here, Williams showed no signs of impairment or diminished capacity and gave both verbal and non-verbal consent for Officer Poblocki to search his person. Was the search of Williams' person a valid consensual search?

**B. STATEMENT OF THE CASE**

**1. PROCEDURAL FACTS.**

The State charged Levi Williams in King County Superior Court with Violation of the Uniform Controlled Substances Act ("VUCSA"), possession of cocaine. CP 39-56. At the suppression hearing, Williams moved to suppress the cocaine as the product of

an illegal seizure. 1RP 38-40.<sup>1</sup> The trial court denied Williams' motion to suppress, finding that the officer had a reasonable, articulable suspicion that he had observed the defendant selling drugs, sufficient to briefly detain Williams to further investigate. 1RP 44-47. The trial court also found that the search of Williams was a valid consensual search and the evidence derived therefrom was admissible. 1RP 46-47. Following the suppression hearing, Williams was convicted by a jury. CP 32-37. The trial court entered written findings of fact and conclusions of law incorporating its oral findings of fact and conclusions of law.<sup>2</sup> CP 37-40. Williams timely appeals.

## **2. SUBSTANTIVE FACTS FROM CrR 3.6 HEARING.**

On May 12, 2008 shortly after 2:00 p.m., Seattle Police Department Officers Poblocki and Willoughby were conducting surveillance of the 400 block of Second Avenue Extension South in Seattle from a fixed elevated monitoring post. 1RP 10-12. They were in this area because it is a highly active illegal drug area,

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<sup>1</sup> The Verbatim Report of Proceedings consists of two volumes of transcript ("RP"), which will be referred to as follows: 1RP – February 4, 2009; 2RP – February 5, 2009.

<sup>2</sup> It appears that the trial court incorporated the CrR 3.6 findings and the CrR 6.1(d) findings of fact and conclusions of law into the same document.

there are many citizen complaints about drug activity in this area, and it is designated as SODA Zone #2. 1RP 11.

Officers Poblocki and Willoughby saw a white male come up to a black male in front of the Lazarus Center at 416 Second Avenue Extension South. From prior contacts, Officer Willoughby recognized the white male as Charles H. Moore. Officer Willoughby has arrested Moore in the past for buying crack cocaine. 1RP 12-13. Officer Willoughby told Officer Poblocki this information. The black male was wearing a dark ball cap with the tag still attached, a puffy blue coat, and jeans. 1RP 16. He was later identified as the defendant in this matter, Levi Williams. Watching through a 10x50 monocular, Officer Poblocki saw the defendant hand Moore a small object, which Moore inspected in his hand. Officer Poblocki could not see the object itself. Officer Poblocki then observed Moore give Williams some paper money and walked off heading north. Williams then walked off to the south. 1RP 13-15.

About twenty minutes later, Officer Poblocki and Willoughby had left their monitoring post and were in Occidental Park in the process of arresting two suspects in an unrelated matter. Officer Poblocki heard someone close to him ask if anyone had a light. He

looked at the person and recognized it to be Williams, the same person he had just seen sell the drugs. 1RP 17-18. Officer Poblocki told Williams to "hold on" because he wanted to talk to him. Williams asked, "Why?" Officer Poblocki told him that he believed he was just selling drugs nearby. Williams waited, sitting on the cement ledge of the bocce ball court, for a short time while Officer Poblocki finished with the persons he was arresting. 1RP 18-19.

When Officer Poblocki was able to turn his attention back to Williams, he asked him, "Do you have any drugs on you?" Williams said, "No, of course not." Officer Poblocki then replied, "I would like to search you for drugs. Can I search you for drugs?" Williams stood up, took a step toward Officer Poblocki, threw both of his hands out and up in the air, and said "Go ahead." 1RP 20-21. Officer Poblocki asked Williams to put his hands on his head. Williams did so, and the motion of his arms pulled up his jacket and made its front pockets gap open. Officer Poblocki could see inside the pocket and saw two white chunks, which, based on his training and experience, he believed to be crack cocaine. Officer Poblocki immediately moved to place Williams under arrest. 1RP 22-25.

**C. ARGUMENT**

**THE TRIAL COURT PROPERLY DENIED WILLIAMS' MOTION TO SUPPRESS THE COCAINE DISCOVERED PURSUANT TO AN INVESTIGATIVE STOP.**

Williams argues that the officer did not have a reasonable suspicion that he was involved in criminal activity, specifically a drug deal, to warrant the Terry Stop. Additionally, Williams argues that his consent to search his person was tainted by his prior illegal seizure. Williams contends, therefore, that the trial court should have suppressed the cocaine discovered as a result of the invalid stop.

Williams' arguments are without merit. The officer was able to point to specific and articulable facts, which, taken together with rational inferences from those facts, warranted the stop for investigative purposes. The trial court's decision to deny Williams' motion to suppress the evidence was sound.

- a. The Officer Had A Reasonable Suspicion That Williams Was Involved In Criminal Activity.

A police officer with a reasonable, articulable suspicion of criminal activity, based upon objective facts, may briefly detain an

individual for investigative purposes. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 10 L. Ed. 2d 889 (1968); State v. Glover, 116 Wn.2d 509, 513, 890 P.2d 760 (1991). A reasonable or well-founded suspicion exists if the officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” Terry, 392 U.S. at 21; Glover, 116 Wn.2d at 514.

In evaluating the reasonableness of an investigative stop, courts consider the totality of the circumstances, including the officer’s training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, the amount of physical intrusion upon the suspect’s liberty, and the length of time the suspect is detained. State v. Acrey, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

“Circumstances that might appear innocuous to the average person may appear incriminating to a police officer in light of past experience, and the officer may bring that experience to bear on a situation.” State v. Thierry, 60 Wn. App. 445, 448, 803 P.2d 844 (1990). Even though the circumstances must be more consistent with criminal conduct than innocent conduct, the reasonableness of

the stop is not an exact science, but rather is based upon probabilities. State v. Mercer, 45 Wn. App. 769, 774, 727 P.2d 675 (1986).

If challenged on appeal, a trial court's factual findings will not be disturbed if there is substantial evidence in the record to support them. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003). This standard is met if sufficient evidence exists in the record to persuade a fair-minded, rational person of the truth of the factual finding. State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002). The party challenging a finding of fact bears the burden of demonstrating that the finding is not supported by substantial evidence. Vickers, 148 Wn.2d at 116. The court reviews conclusions of law entered pursuant to a suppression hearing de novo. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999).

Here, Officer Poblocki testified that he saw Williams have a brief contact with Moore (someone that Officer Willoughby knew from previous contacts to be a crack cocaine user) in a high drug area. 1RP 11-13. He saw the two men have a short conversation, then saw Williams hand a small item to Moore, which Moore inspected. After inspection, Moore gave Williams paper money. 1RP 13-14. After the exchange, the two men parted in opposite

directions. 1RP 15. Based on his training and experience and the arrests he had made, especially in that area, Officer Poblocki believed that it was probably a narcotics transaction. 1RP 16.

Williams relies on State v. Pressley, 64 Wn. App. 591, 825 P.2d 749 (1992). The State would argue that this case actually supports the State's position that there was reasonable suspicion that Williams was involved in drug activity. In Pressley, an officer saw two girls in an area of high narcotics activity, huddled together examining an item in one of the girl's hands. 64 Wn. App. at 597. The officer thought he was seeing a drug transaction. Id. The court stated that these observations alone were insufficient to justify a Terry stop. Id. (The court upheld the officer's stop of the girls because when they saw the officer approach, one of them said "oh shit" and then they walked away from each other. Id. at 597.) In Williams' case, Officer Poblocki saw much more than just two girls looking at an item in a high drug area. First, he knew from Officer Willoughby that the man that Williams was contacting (Moore) was a crack cocaine user. Second, Officer Poblocki saw a hand-to-hand transaction, rather than just two people looking at an item.

Third, he saw Moore give Williams money in exchange for the item. And lastly, he saw the two men immediately walk off in opposite directions after the exchange.

Williams seems to suggest that because Officer Poblocki did not see what was exchanged, that reasonable suspicion did not exist sufficient to justify a Terry stop. However, the fact that Officer Poblocki did not see the drugs exchanged in the transaction is not dispositive. For example, in State v. Kennedy, 107 Wn.2d 1, 726 P.2d 445 (1986), the officer learned from an informant that the defendant regularly bought drugs from Rob Smith and drove a light green pick-up truck or a maroon Oldsmobile belonging to Sue Sison. Id at 3. The officer saw a maroon Oldsmobile, registered to Sue Sison, parked near Smith's house. He then saw the defendant come out of Smith's house and get in the car and drive off. Id. The court held that these facts created a reasonable suspicion justifying the officer's subsequent stop of the defendant. Id at 8. The officer in Kennedy had not seen drugs and yet the Terry stop was found valid.

Also, in State v. Doughty, 148 Wn. App. 585, 201 P.3d 342 (2009), the officer was watching a house which had been identified as a drug house by informants. At 3:20 a.m., the officer observed

Doughty stop at the house, enter for only two minutes, and then leave. Id at 588-589. Based on those facts alone, the court determined that this scenario was “legally sufficient to support with substantial probability the officer’s reasonable suspicion that criminal conduct had occurred.” Id at 590. Just as in Kennedy, the officer did not see any drugs or any type of exchange, but the court still upheld the validity of the Terry Stop. In contrast to both Kennedy and Doughty, Officer Polblocki actually saw a hand-to-hand exchange occur between Williams and Moore which involved exchanging something for cash. In addition, the exchange occurred in an area of high drug activity and the officer knew that Moore was a crack cocaine user. Under the case law presented in Kennedy and Doughty, these observations are more than sufficient to create a reasonable suspicion that a crime had occurred given the training and experience of the officer with both narcotics activity and the particular area involved.

b. The Search Of The Defendant Was A Valid Consensual Search.

When Officer Polblocki later came in contact with Williams, he immediately recognized him due to the unique clothing that Williams was wearing. At that point, Officer Poblocki told Williams

to “hold on,” and Williams then sat on the curb and waited for a brief period while the officer secured another person that he was arresting. 1RP16-19. Officer Poblocki then asked Williams if he had any drugs on him, to which Williams responded, “No, of course not.” 1RP 20-21. Officer Poblocki then responded, “I would like to check you for drugs. Can I search you for drugs?” 1RP 21.

Williams then stood up from the curb and gave both verbal and non-verbal consent. He held both hands up in a submissive manner and said “go ahead.” 1RP 21. Officer Poblocki then asked Williams to put his hands on his head so that he could conduct the search. As Williams did this, Officer Poblocki could see into Williams’ jacket pocket and saw what appeared to be two white chunks of crack cocaine. 1RP 23.

To determine whether consent is valid, courts ask three questions, whether (1) the consent was voluntary, (2) the person giving consent had the authority to consent, and (3) the search exceeded the scope of the consent. State v. Reichenbach, 153 Wn.2d 126, 131, 101 P.3d 80 (2004). Williams only argues the voluntariness of the consent.

Whether consent to search is voluntary is a question of fact to be determined by the totality of the circumstances, including (1)

whether Miranda warnings were given prior to consent, (2) the education and intelligence of the consenting person, and (3) whether the consenting person was advised that she could refuse consent.<sup>3</sup> Reichenbach, 153 Wn.2d at 132. With respect to the first factor, Miranda warnings are not required when a suspect has been stopped on a reasonable suspicion for an investigation. State v. Heritage, 152 Wn.2d 210, 95 P.3d 345 (2004). In the present case, Officer Poblocki conducted a valid Terry stop on Williams and thus, Miranda warnings were not required. With respect to the second factor, Williams testified at the suppression hearing that he had graduated from high school and attended six months of college and that he understood what was being asked of him by Officer Poblocki. Additionally, Williams testified that he had past experiences with the police and prior arrests and this was not his first encounter. 1RP 37-38. Although officers are not required to advise that consent may be refused when searching a person, Williams had had multiple interactions with law enforcement and therefore likely knew of his right to refuse consent.

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<sup>3</sup> Officers are only specifically required to advise that consent may be refused when searching a home using a "knock and talk" procedure. State v. Ferrier, 136 Wn.2d 103, 118-119, 960 P.2d 927 (1998).

In considering all three factors looked at by the court, Williams gave voluntary consent to search his person by both verbal and non-verbal means. He testified that he fully understood what was being asked of him by Officer Poblocki and the officer acted within the law in the manner in which he requested and conducted the search of Williams.

Based on the validity of the Terry stop and the consensual nature of the search of Williams' person, the trial court's findings should be affirmed.

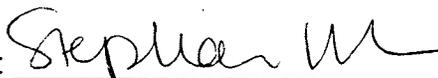
**D. CONCLUSION**

For the foregoing reasons, the State asks this Court to affirm Williams' conviction for possession of cocaine.

DATED this 26 day of October, 2009.

Respectfully submitted,

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Certificate of Service by Mail

Today I deposited in the mails of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Dana Lind, attorney for the appellant, of the Washington Appellate Project, at the following address: 1908 East Madison, Seattle, Washington 98122 containing a copy of BRIEF OF RESPONDENT, in State v. Levi Williams, Cause No. 63236-1-I, in the Court of Appeals for the State of Washington, Division I.

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

  
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Pete DeSanto  
Done in Kent, Washington

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