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65074-2

NO. 65074-2-1

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

BOBANICA HAULCY,

Appellant.

REC'D
JAN 10 2011
King County Prosecutor
Appellate Unit

FILED
JAN 10 2011
16

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable William L. Downing, Judge

REPLY BRIEF OF APPELLANT

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TABLE OF CONTENTS

	Page
<u>A.</u> <u>ARGUMENT IN REPLY</u>	1
POLICE DID NOT HAVE PROBABLE CAUSE AT THE TIME OF HAULCY'S ARREST	1
1. <u>Haulcy Did Not Run From Lee</u>	1
2. <u>There Was No Probable Cause To Arrest Haulcy Before She Dropped Cocaine</u>	2
3. <u>Whether Officers Had Reasonable Suspicion Justifying A Seizure Is Irrelevant</u>	4
4. <u>Counsel Was Ineffective</u>	5
<u>B.</u> <u>CONCLUSION</u>	5

TABLE OF AUTHORITIES

Page

WASHINGTON CASES

State v. Bynum

76 Wn. App. 262, 884 P.2d 10 (1994),
review denied, 126 Wn.2d 1012 (1995) 2

State v. Fore

58 Wn. App. 339, 783 P.2d 626 (1989),
review denied, 114 Wn.2d 1011 (1990) 3

FEDERAL CASES

Terry v. Ohio

392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)..... 4

A. ARGUMENT IN REPLY

POLICE DID NOT HAVE PROBABLE CAUSE AT THE TIME OF HAULCY'S ARREST.

1. Haulcy Did Not Run From Lee

In arguing probable cause for Haulcy's arrest, the State repeatedly indicates that Haulcy and Hendricks *both* ran from Officer Lee after Officer Pasquan pulled in front of them in the SUV. See Brief of Respondent at 4, 6, 11-12. This is incorrect.

According to three of four witnesses, only Hendricks ran when confronted by Lee. Officer Pasquan testified that when Officer Lee ordered the women to stop, Hendricks ran away, Officer Lee chased Hendricks, and Haulcy then followed Officer Lee. 2RP 47. Thus, rather than running from Officer Lee, Haulcy was trying to stay with him. Similarly, both Hendricks and Haulcy testified that only Hendricks fled when confronted by Officer Lee. And once Haulcy saw that Lee was chasing her sister, she followed them. RP 145-146, 158-160, 174-175, 180.

Officer Lee was the only individual of the four who provided a different version of events, claiming that both sisters ran away and he then gave chase. 2RP 9-10, 26-27.

Notably, Judge Downing chose not to resolve this dispute. Instead, in his oral ruling, he simply found that when confronted by Officer Lee, “[a]t the very least, Ms. Hendricks began running northbound.” 2RP 57. And in his written findings, under the heading “undisputed facts,” Judge Downing indicated that “[t]he women ran northbound” – without indicating sequence – and that Officer Lee gave pursuit as Officer Pasquan drove around the block. CP 44.

The written finding is not, as the State assumes, a finding that Haulcy ran away from Officer Lee. Given the conflicting testimony on the subject, such a finding could never be included in the “undisputed facts.” Indeed, defense counsel specifically argued this factual issue. See 2RP 54. Moreover, the written finding must be interpreted with the court’s oral ruling in mind. See State v. Bynum, 76 Wn. App. 262, 266, 884 P.2d 10 (1994), review denied, 126 Wn.2d 1012 (1995). And in his oral ruling, Judge Downing could only say for certain that Hendricks fled from Lee.

2. There Was No Probable Cause To Arrest Haulcy Before She Dropped Cocaine

In arguing there was probable cause to arrest Haulcy, the State includes the fact Haulcy initially ran from Officer Lee. See

Brief of Respondent, at 6 n.3, 10-11. As just explained, that fact does not exist. The State then argues that this case is analogous to State v. Fore, 56 Wn. App. 339, 783 P.2d 626 (1989), review denied, 114 Wn.2d 1011 (1990). Brief of Respondent, at 8-9. For the reasons discussed in Haulcy's opening brief, there are key distinctions between this case and Fore. See Brief of Appellant, at 12-13.

Alternatively, the State argues that officers had probable cause to arrest Haulcy for Obstructing a Law Enforcement Officer. Specifically, the State argues that Haulcy twice committed this offense: once when she ran from Officer Lee and a second time when she approached Lee as he was placing Hendricks under arrest. See Brief of Respondent, at 11-12.

The State briefly made a similar argument below, but Judge Downing apparently did not agree, as he did not enter a finding in this regard. See 2RP 53-59. There was good reason for Judge Downing not to enter such a finding because nothing Haulcy did provided probable cause to arrest for Obstructing.

“A person is guilty of obstructing a law enforcement officer if the person willfully hinders, delays, or obstructs any law enforcement officer in the discharge of his or her official powers or

duties.” RCW 9A.76.020(1). There was no willful hindrance, delay, or obstruction.

Regarding the first supposed act of obstruction, again, there has been no finding that Haulcy ran from Officer Lee. And regarding the second supposed act, Haulcy was quite concerned about her sister’s arrest. She approached Officer Lee and yelled at him. But she always backed away when told to do so. 2RP 12, 39, 49. And when Officer Pasquan arrived shortly thereafter, Haulcy was compliant. 2RP 39-40. Not surprisingly, neither officer ever claimed probable cause to arrest Haulcy for Obstructing. See 2RP 5-49. There was no factual or legal basis to arrest her for that offense.

3. Whether Officers Had Reasonable Suspicion Justifying A Seizure Is Irrelevant

The State argues that officers had reasonable suspicion to believe that Haulcy was involved in the sale of narcotics, thereby justifying an investigative detention under Terry v. Ohio, 392 U.S 1, 10, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). See Brief of Respondent, at 12-15.

This may be true. But for the reasons discussed in Haulcy’s opening brief, Haulcy was not merely detained for investigation.

Rather, she was under custodial arrest prior to being handcuffed. Therefore, the State's burden was probable cause. See Brief of Appellant, at 8-10.

4. Counsel Was Ineffective

The State's argument against ineffective assistance of counsel turns on this Court finding (1) that Haulcy was not arrested until handcuffed (thereby supporting counsel's decision not to challenge evidence of the cocaine) and (2) that there was probable cause to arrest her. See Brief of Respondent, at 15-18. For the reasons already discussed at length, this Court should find to the contrary.

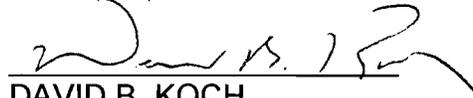
B. CONCLUSION

For the reasons discussed in Haulcy's opening brief and above, her conviction should be reversed.

DATED this 10th day of January, 2011.

Respectfully submitted,

NIELSEN, BROMAN & KOCH



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v.)	COA NO. 65074-2-1
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BOBANICA HAULCY,)	
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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 10TH DAY OF JANUARY, 2011, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

[X] BOBANICA HAULCY
3405 S. 176TH, APT. 220
SEATAC, WA 98188

SIGNED IN SEATTLE WASHINGTON, THIS 10TH DAY OF JANUARY, 2011.

x Patrick Mayovsky

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JAN 11 2011
CLERK OF COURT
B