

5475-6

65475

NO. 65475-6-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

STOSH SATKOWSKI,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE CHRISTOPHER WASHINGTON

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

ANGELA M. GIANOLI
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
Norm Maleng Regional Justice Center
401 Fourth Avenue North
Kent, Washington 98032-4429

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A. ISSUES PRESENTED

During a Terry¹ stop, an officer may conduct a protective frisk for weapons if the officer has a reasonable safety concern. This concern exists when an officer can point to facts that create an objectively reasonable belief that a suspect is armed and presently dangerous. Here, when officers responded to an assault call involving juvenile males who had been drinking, were largely outnumbered, where the males who took a fighting stance with the officers, where one of the males possessed a weapon, and, where Satkowski obscures part of his body from the officer prior to frisk, was the officer's patdown for weapons lawful?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Stosh Satkowski was charged in the King County Juvenile Court with count one of Unlawful Possession of a Firearm in the First Degree and count two Possession of Marijuana Less than 40 Grams. CP 1-2. On May 10, 2010, pursuant to CrR 3.6, Satkowski moved to suppress the pistol and marijuana found on his person. After hearing testimony and argument from the parties, the court

¹ Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

denied Satkowski's motion. CP 32-40; RP 141-44. The court then found Satkowski guilty as charged of both counts in a stipulated bench trial. CP 40; RP 149. At sentencing, the court imposed the standard range sentence. CP 24-30; RP 161-68.

2. SUBSTANTIVE FACTS

On December 27, 2009, Federal Way officers were dispatched to the Camelot Square Trailer Park located at 3001 South 288th Street in Federal Way, Washington. RP 23. Dispatch advised of a fight in progress in front of one of the trailers, involving approximately 12 underage males who had been drinking. RP 23-26. As officers were responding, dispatch provided an updated report indicating the juveniles involved in the fight were fleeing the area in a red Honda bearing license plate #095 SCO heading towards the exit at South 288th Street. RP 26, 28, 52, 65, 74, 81.

Shortly thereafter, Federal Way Officer Sheldon Rodriguez entered the trailer park, where he observed the reported vehicle exiting at South 288th Street. The vehicle's description and license plate matched that of the vehicle described in the dispatched call. RP 31. Officer Rodriguez stopped his patrol vehicle and ordered the driver of the Honda to stop. RP 32. The driver followed Officer

Rodriguez's order and stopped in the middle of the roadway. RP 33-34. Officer Rodriguez described this area as a highly-trafficked residential neighborhood. RP 33-34. Officer Rodriguez further described this locale as a high crime area where Federal Way Police receive a large number of assault-based calls. RP 31.

As Officer Rodriguez stopped the vehicle, he noticed a large number of juveniles, perhaps seven or eight, inside the vehicle. RP 34. At this point, Officer Rodriguez identified a number of safety concerns. First, he was greatly outnumbered by the juveniles. RP 36. Second, given the number of occupants in the vehicle, Officer Rodriguez was unable to observe each individual's hands and movements to determine whether they possessed something of concern. RP 34-35. Third, Officer Rodriguez explained that safety concerns were heightened at this particular time given the recent events involving attacks on officers with the Cities of Seattle and Lakewood. RP 35. Fourth, Officer Rodriguez expressed elevated concerns about any situation involving individuals that have been drinking because they can quickly transition from calm to aggressive. RP 30. With these safety concerns in mind, Officer Rodriguez ordered the three males and four females out of the vehicle. RP 35.

The occupants were reluctant to exit the vehicle, but obeyed Officer Rodriguez's request. RP 34. Upon exiting the vehicle, the group was asked to stand at a nearby fence so Officer Rodriguez could maintain visual contact with each juvenile while awaiting the arrival of backup officers. RP 35, 50, 59. As the group gathered near the fence, they were informed that they were being detained until officers could determine whether a crime had occurred. RP 36. The group was not handcuffed and was free to communicate with each other and move about. RP 34, 36.

Officer Robert Guillermo arrived at the Camelot Square Trailer Park approximately 10 minutes after the initial dispatched report. RP 66. Upon arrival, Officer Guillermo reported to the location of the 911 call to provide cover to Officer LuBrant, who was already at the scene of the alleged assault. RP 67. Officer LuBrant had spoken to several witnesses and was informed that the witnesses overheard an altercation, but when they looked outside their trailer the group was dispersing. RP 87-88. Officer LuBrant informed Officer Guillermo that the scene was controlled and that the people he was speaking with were not involved in the assault. RP 67. This information was also conveyed over the radio by

Officer LuBrant. RP 89. Officer Guillermo then returned to the site of the stopped vehicle. RP 68.

Upon arrival, Officer Guillermo noted the stopped vehicle matched that of the vehicle described in the dispatched call; he also observed a group of juveniles lined along a nearby fence. RP 67-68. Officer Guillermo made contact with another officer on scene, Officer Leitgeb. RP 69. Officer Leitgeb relayed that one of the juvenile males was posturing and had a pepper spray canister and bullet round dangling from his belt. RP 69. Officer Guillermo also saw the pepper spray and bullet round. RP 72. Both officers observed the pepper spray canister and bullet round prior to the decision to frisk. RP 77.

Around this same time, Officer Guillermo also observed all of the juvenile males exhibit a fighting posture. RP 69. Officer Guillermo described this fighting posture as a widening of the stance, while keeping their arms drawn away from their sides and tipping the chin upward while glaring. RP 70. In Officer Guillermo's experience, this is an exhibition of defiant behavior, oftentimes displayed just before a physical confrontation. RP 71. Officer Guillermo observed this fighting stance prior to the weapons frisk. RP 71.

A few moments later, Officer Damien LuBrant joined his fellow officers at the site of the suspect vehicle, after speaking with witnesses at the site of the 911 call. RP 87, 90. As Officer LuBrant arrived, the juveniles were standing along the fence line. RP 91. Officer LuBrant testified that the decision had already been made to pat down the group. RP 91, 102.² Given the nature of the call—the fighting, the allegation of alcohol consumption, the physical demeanor of the subjects, the agitated state of the juveniles, the pepper spray canister and bullet round observed on one of the subjects, the decision was made in the interest of everyone’s safety to pat down the group. RP 37, 72, 91-92.

The juveniles were instructed to face the fence line, turn their backs towards the officers, and place their hands on the fence. RP 72, 92. As Satkowski turned to face the fence, Officer LuBrant observed him turn his lower body at an extreme angle away from

² Officer LuBrant testified on direct that he “was under the impression, I was told at one point that the group—some people in the group were becoming belligerent towards the officers, so for everyone’s safety, given their agitated state, we decided to do a frisk.” RP 91-92. Further, in re-direct when asked “if he [the defense investigator] had asked you that question [whether these boys were belligerent that you recall], would you have answered in the affirmative?” Officer LuBrant replied “yes.” RP 110.

Officer LuBrant, which based upon this officer's training and experience is usually a conscious or unconscious effort to make it difficult for officers to access that part of the body. RP 92-93.

Officer LuBrant began to pat Satkowski down starting with the upper-right side of his body. RP 93. As Officer LuBrant ran his hand along Satkowski's jacket, his outermost clothing, Officer LuBrant felt a large, weighty object in one of the pockets. RP 93. Given the object's weight, size and shape, Officer LuBrant believed it may be a weapon and felt it necessary to extract and identify the object. RP 94. He unzipped the jacket pocket, looked inside, and observed what appeared to be the handle of a pistol. RP 94. Officer LuBrant extracted the pistol and alerted the other officers that he had found a gun. RP 94.

In speaking with Satkowski, Officer LuBrant determined he was 16-years-old and placed him under arrest for unlawful possession of a firearm. RP 94-95. Satkowski was searched incident to arrest. RP 95. During the search, Officer LuBrant discovered a Crown Royal bag located in Satkowski's upper-right

jacket pocket, which contained approximately seven small plastic baggies with marijuana.³ RP 95 and 97.

C. ARGUMENT

1. THE COURT PROPERLY DENIED THE MOTION TO SUPPRESS BECAUSE THE PATDOWN OF SATKOWSKI WAS JUSTIFIED BY LEGITIMATE OFFICER SAFETY CONCERNS.

Satkowski maintains that Officer LuBrant's patdown of his clothing was unlawful because neither Officer LuBrant nor his colleagues articulated specific facts to justify a reasonable belief that Satkowski could be armed and dangerous. This argument should be rejected. The denial of Satkowski's Motion to Suppress was predicated upon legitimate and articulated officer safety concerns when taking into consideration the totality of the circumstances. Accordingly, the trial court acted properly in denying Satkowski's Motion to Suppress.

³ Prior to the 3.6 hearing the parties stipulated that the green, leafy substance found on Satkowski was marijuana. Further, the parties stipulated that Satkowski had previously been convicted of residential burglary, which qualifies as a serious offense under RCW 9.41.010. Finally, the parties stipulated to the operability of the firearm. RP 18-19.

When reviewing the denial of a suppression motion, an appellate court determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Evidence is substantial when it is enough “to persuade a fair-minded, rational person of the truth of the finding.” Id. Conclusions of law pertaining to the suppression of evidence are reviewed *de novo*. Id. (citing State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996)).

In Terry v. Ohio, the United States Supreme Court held that the seizure of a person, prior to arrest, which accompanies a brief frisk of an individual’s outer clothing to search for weapons, is subject only to the Fourth Amendment’s requirement that searches and seizures be reasonable, not to the warrant and probable cause requirements. State v. Collins, 121 Wn.2d 168, 172, 847 P.2d 919 (1993) (citing Terry v. Ohio, 392 U.S. 1, 20 (1968)).

The lesser Fourth Amendment burden imposed in the protective frisk context is justified by the strong government interest in police officer safety . . . the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that

police officers take unnecessary risks in the performance of their duties.

Id. at 172-73 (citing Terry, 392 U.S. at 23). The Constitution does not require an officer to wager his physical safety against the odds that a suspect assailant is actually unarmed or not otherwise dangerous. State v. Belieu, 112 Wn.2d 587, 602 n.3, 773 P.2d 46 (1989) (citing State v. Serrano, 14 Wn. App. 462, 469-70, 544 P.2d 101 (1975)).

When an officer is justified in believing that the individual whose suspicious behavior he is investigating at close range is armed and presently dangerous to the officer or to others, it would appear to be clearly unreasonable to deny the officer the power to take necessary measures to determine whether the person is in fact carrying a weapon and to neutralize the threat of physical harm.

Terry, 392 U.S. at 24.

As part of a Terry stop, an officer may conduct a protective frisk for weapons if the officer has a reasonable safety concern. State v. Bailey, 109 Wn. App. 1, 5, 34 P.3d 239 (2000) (citing State v. Collins, 121 Wn.2d 168, 173, 847 P.2d 919 (1993)). A reasonable safety concern exists when an officer can point to specific and articulable facts that create an objectively reasonable belief that a suspect is armed and presently dangerous. Collins, 121 Wn.2d at 173. An officer does not need to be absolutely

certain that the suspect is armed. Id.; State v. Harper, 33 Wn. App. 507, 511, 655 P.2d 1199 (1982). Rather, the test is whether a reasonably prudent person in those circumstances would be warranted in the belief that someone's safety was in danger. Id. (citing Terry, 392 U.S. at 27).

Courts are reluctant to substitute their judgment for that of police officers in the field. Bailey, 109 Wn. App. at 6. "Because American criminals have a long tradition of armed violence and every year many police officers are killed or wounded in the line of duty," it would be unreasonable to require that officers take unnecessary risks in the performance of their duties. Collins, 121 Wn.2d at 173 (quoting Terry, 392 U.S. at 23). Therefore, an officer needs only a founded suspicion from which the court can determine that the search was not arbitrary and harassing. Bailey, 109 Wn. App. at 6 (citing State v. Belieu, 112 Wn.2d 587, 601-02, 773 P.2d 46 (1989); Collins, 121 Wn.2d at 173-74, 84). Once a valid weapons frisk during a Terry stop is justified, its scope is limited to a patdown search of the outer clothing to discover weapons that might be used to assault the officer. Bailey, 109 Wn. App. at 6; State v. Hudson, 124 Wn.2d 107, 112, 874 P.2d 160 (1994).

In Terry, the Court acknowledged that there is “no ready test for determining reasonableness other than by balancing the need to search against the invasion which the search entails.” Terry, 392 U.S. at 21, 88 S. Ct. 1868 (quoting Camara v. Mun. Court, 387 U.S. 523, 536-37, 87 S. Ct. 1727 (1967)). This is a case-by-case inquiry in which we evaluate the totality of the circumstances presented to the officer, including the nature of the crime being investigated. State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991).

Here, the uncontroverted evidence, when evaluated under the totality of the circumstances, establishes that there were multiple articulated basis to support the reasonableness of Officer LuBrant’s frisk of Satkowski.

Officers were dispatched to a reported fight involving a large group of individuals—approximately 12. RP 23-26. The location in which officers were dispatched is a high crime area where officers are frequently called to respond to assaults. RP 31. State v. Sweet, 44 Wn. App. 226, 721 P.2d 560 (1986) (court considered location of defendant in a high crime area where violent crimes were numerous as persuasive factor in justifying frisk). Dispatch provided an updated report indicating the males involved in the fight had been drinking causing further concern for officer safety.

RP 23-26. An officer through his training and experience is aware that people under the influence have a propensity to exhibit aggression and change their behaviors rapidly. RP 29-30.

Once Officer Rodriguez stopped the vehicle described in detail by dispatch as being involved in the fight, he observed seven juveniles inside a Honda passenger car. RP 26, 34. Officer Rodriguez was not able to see the occupants' hands or movements to determine whether any of the occupants possessed a weapon or could easily gain access to a weapon. RP 34-35. Given these various safety concerns, Officer Rodriguez ordered the juveniles to exit the vehicle so he could maintain visual contact with each of them while awaiting the arrival of backup officers. Although the occupants complied with Officer Rodriguez's commands, they were initially reluctant to do so. RP 34. State v. Adams, 144 Wn. App. 100, 181 P.3d 37 (2008) (court found frisk of passenger unreasonable and in doing so indicated a guiding factor in determining whether a frisk was lawful could be found in whether a passenger "hesitated" to get out of the vehicle).

Furthermore, throughout the duration of this incident, the responding officers were greatly outnumbered. Initially Officer Rodriguez was outnumbered seven to one. Once backup officers

arrived on scene, the officers were still outnumbered, seven to four. State v. Bailey, 109 Wn. App. 1, 34 P.3d 239 (2001) (court found frisk reasonable, indicating a persuasive factor was officers in the area were outnumbered). This evidence weighs heavily in favor of patting down the vehicle occupants to assure officers' safety.

As this incident progressed and backup officers arrived at the scene of the stopped vehicle, both Officer Leitgeb and Officer Guillermo observed, in plain view, a pepper spray canister and bullet hanging from one of the juvenile male's belts. RP 69, 72. State v. Laskowski, 88 Wn. App. 858, 950 P.2d 950 (1997) (court held that a protective search for weapons is justified by any reasonable basis supporting an inference that the investigatee or a companion is armed). Further, all the males in the group began to display a fighting stance, which Officer Guillermo recognized as an exhibition of defiance, oftentimes leading to aggression or physical confrontation.⁴ RP 71. Also, the juveniles were not handcuffed and

⁴ Officers in the field must routinely look at the potential criminal roles of individuals in context, not in isolation. State v. Horrace, 144 Wn.2d 386, 28 P.3d 753 (2001) (citing Terry, 392 U.S. at 5-7, 30, 88 S. Ct. 1868 (stop-and-frisk predicated on officer's observation of three men casing store); Belieu, 112 Wn.2d at 588-92, 773 P.2d. 46 (investigative stop based on observations of interrelated actions of two men on foot and two passengers); Laskowski, 88 Wn. App. 858, 950 P.2d. 950 (1997) (pat-down of juvenile's backpack justified by suspicious group activity, despite juvenile's nervousness being sole individualized observation), *review denied*, 135 Wn.2d 1002, 959 P.2d 127 (1998)).

were free to move about. RP 34, 36. At this point in the interaction, the officers were confronted with a number of officer safety concerns. These concerns support the officers' decision to conduct a patdown search of the juveniles for weapons.

A parallel can be drawn from this case to that of State v. Bailey where the court examined the concept of officer safety in relation to a group of individuals. Officers observed several bottles of liquor near four individuals and approached the group believing a liquor violation had occurred. Bailey, 109 Wn. App. 1, 34 P.3d 239 (2001). The court held the frisk was valid because the officers were outnumbered and even if the suspects had no connection to the liquor bottles, those bottles were close in hand to the suspects and could have been used as weapons. Id. at 5. Similarly, the officers in this case were greatly outnumbered and one of the males possessed a canister of pepper spray which was in plain view and hanging from his belt. This canister was easily accessible to all of the other juveniles who were unsecured.

At the point officers decided to pat down the group, it was reasonable to suspect that any one of the members of the group could possess a weapon. As such, it was reasonable for the officers to suspect that Satkowski could possess a weapon. The

individuals in the group had been reported drinking and fighting in a high crime area. The group was reluctant to respond to Officer Rodriguez's initial commands. The officers were greatly outnumbered. One of the individuals did in fact have a weapon in the form of a pepper spray canister on his person. The three males in the group assumed a fighting stance as the officers began to contact them. These facts formed the basis for the officers' reasonable belief that each juvenile may possess a weapon. Finally, corroborating this suspicion, as Officer LuBrant approached Satkowski to complete the patdown, Satkowski contorted his hips in an extreme manner in an effort to keep his hip as far away from the officer as possible. RP 92-92. This individualized action taken by Satkowski, prior to the frisk, gives further credence to the officers' reasonable belief that Satkowski may be armed and dangerous.

Satkowski contends that these circumstances did not support an objectively reasonable belief that he could have been armed and dangerous. To the extent that this evidence could be viewed in isolation, Satkowski's argument may be valid. However, when examining this evidence under the totality of the circumstances, it is apparent that there existed reasonable officer safety concerns that formed the basis for the officers' decision to

frisk Satkowski for weapons. This case is not akin to the cases cited by Satkowski where an individual is frisked merely because he is present in an area or vehicle associated with a crime.⁵ Here, officers articulated several specific reasons giving rise to their frisk of Satkowski.

2. THE TRIAL COURT DID NOT ERR IN FINDING THAT "OFFICER LUBRANT RECOLLECTED SOME OF THE OCCUPANTS [OF THE STOPPED VEHICLE IN WHICH THE APPELLANT WAS ONE OF THE PASSENGERS] WERE ACTING AGGRESSIVE AND BELLIGERENT."

A trial court's findings of fact are reviewed under a clearly erroneous standard, and will be reversed if not supported by substantial evidence. State v. Grewe, 117 Wn.2d 211, 218, 813 P.2d 1238 (1991). Evidence is substantial when it is enough "to persuade a fair-minded, rational person of the truth of the

⁵ Satkowski relies upon State v. Adams, 144 Wn. App. 100, 181 P.3d 37 (2008) (court held frisk unconstitutional where defendant merely a passenger in a stolen vehicle); State v. Terrazas, 71 Wn. App. 873, 863 P.2d 75 (1993) (court found trooper did not have articulable suspicion to frisk a vehicle passenger where driver suspected of driving under the influence and defendant had blanket over his lap); State v. Gaubert, 70 Wn. App. 721, 855 P.2d 310 (1993) (where defendant was found in home where search warrant for narcotics was executed, court held that second frisk of defendant was unreasonable as defendant was handcuffed and could not gain access to weapons).

finding. Hill, 123 Wn.2d at 644. On appeal, great deference is given to the trial court's factual findings. State v. Cord, 103 Wn.2d 361, 367, 693 P.2d 81 (1985).

Officer LuBrant testified on direct that he “was under the impression, I was told at one point that the group—some people in the group were becoming belligerent towards the officers, so for everyone’s safety, given their agitated state, we decided to do a frisk.” RP 91-92. During re-direct when Officer LuBrant was asked whether he recalled if these boys were belligerent, he replied “yes.” RP 110. This evidence is sufficient for the court to make such a finding. However, even if this court should find that there is not substantial evidence to support this finding, the error is harmless in light of the above arguments and the trial court’s ruling should be affirmed.

D. CONCLUSION

For the foregoing reasons, the State respectfully asks this Court to affirm Satkowski’s conviction for count one unlawful

possession of a firearm in the first degree and count two
possession of marijuana less than 40 grams.

DATED this 17 day of December, 2010.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
ANGELA M. GIANOLI, WSBA #40327
Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

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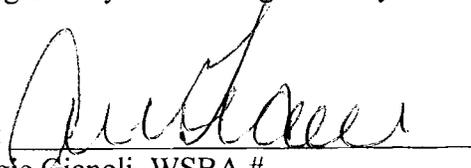
SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

I certify that copies of the following pleadings were served on plaintiffs counsel of record in the above-captioned case on December 17th, 2010, by hand delivering copies thereof to ABC-Legal Messengers, Inc. to be served on plaintiff[s] counsel and filed in King County Superior Court of Appeals:

BRIEF OF RESPONDENT

DATED this 17th day of December, 2010.

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: 
Angie Gianoli, WSBA #
Deputy Prosecuting Attorney
Attorneys for King County Prosecuting Attorney

2010 DEC 17 PM 6:20

