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NO. 67147-2-1

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

STATE OF WASHINGTON,

Respondent,

v.

JUAN L. LOZANO,

Appellant.

BRIEF OF RESPONDENT

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I. SUMMARY OF APPEAL

This appeal examines at what point a “seizure” occurred during an eight-minute encounter between a police officer and a pedestrian.

II. COUNTER-ASSIGNMENTS OF ERROR

1. The trial court erred in entering that portion of Finding of Fact # 12 that states: “The officer then asked the Defendant if he could see his identification[.]”

2. The trial court erred in entering Finding of Fact #17: “Within eight to ten minutes, the officer received information from dispatch that confirmation had been received that the warrant was still valid and outstanding.”

III. ISSUES

1. A police officer encountered a person walking past a closed business late at night and engaged him in conversation. The officer recognized the person as having had an outstanding warrant which in the past the issuing jurisdiction had not confirmed, to avoid cost of extradition. Asked if the warrant were still outstanding, the person said he’d have to talk to his lawyer about that. Given this response, the officer said, “Let’s check.” The person continued to engage the officer in conversation as the

officer did so. In fact, he encouraged the conversation, apparently confident that once again the warrant would not be confirmed. To the officer's surprise, this time dispatch confirmed the warrant. He arrested the person pursuant thereto. A search of the person uncovered cocaine.

Was the person "seized" prior to his arrest?

2. If the person was in fact seized when the officer said "Let's check," was detention lawful, given the reasonable and articulable suspicion that this particular warrant was still outstanding?

IV. STATEMENT OF THE CASE

The defendant was convicted of one count of possession of a controlled substance (cocaine) at a stipulated bench trial. 5/6/11 Stip. Bench Trial Hrg RP 5; 5/11/11 Sent'g Hrg RP 8; 1 CP 29-41 (stipulation); 1 CP 13-23 (judgment and sentence) He opted for this resolution after losing a pretrial CrR 3.6 suppression motion that is the substance of this appeal. The finding of guilt at a stipulated trial preserved the pretrial issue. See State v. Smith, 134 Wn.2d 849, 852-54, 953 P.2d 810 (1998).

A. FINDINGS OF FACT AT SUPPRESSION HEARING.

The trial court entered findings of fact and conclusions of law at the pretrial suppression hearing. 1 CP 24-28 (attached to appellant's opening brief). Its findings can be summarized as follows:

Shortly before 3:00 a.m. on February 2, 2011, Snohomish County Sheriff's Deputy James Atwood observed the defendant walking on a sidewalk in front of the Roadhouse Bar and Grill, a restaurant that was closed at the time. It was dark, and there was no one else in vicinity. (Findings of Fact # 1-3.) The defendant testified that he had been at a nearby Wal-Mart and was headed to a video store about a block away, both of which were open at the time. (Finding of Fact # 4.)

Deputy Atwood decided to ask the defendant who he was and what he was doing. The deputy pulled his marked patrol vehicle to a stop in front of the defendant, rolled down his window, and said, "Hey, what's up?" The defendant was wearing headphones or earbuds, and kept walking. (Findings of Fact # 5-7.) The defendant then stopped and Deputy Atwood asked him what he was doing. Within about 30 seconds the deputy recognized the defendant from prior police contacts in December 2010 and

January 2011. He remembered that the defendant had had a warrant out for his arrest on those occasions. (Findings of Fact # 8-9.) The defendant had not been taken into custody on the warrant at that time because police were unable to confirm the warrant's validity with the issuing jurisdiction, Skagit County. (Finding of Fact # 10.)

Deputy Atwood asked if the defendant had cleared up the warrant, and the defendant gave an "equivocal" answer, to the effect that he would need to talk to his lawyer about that. (Finding of Fact # 11.) The deputy then asked to see the defendant's identification and said, "Let's go check." The defendant handed the deputy his ID and Atwood "ran" a check through dispatch. The deputy's practice was to write down the identifying information and return the ID before "running" the check, and no one testified differently as to this occasion. (Findings of Fact # 12-13, 16.)

Meanwhile, Deputy Atwood had gotten out of his car. The defendant for his part was cooperative. He and the officer engaged in an ongoing conversation while the check was "run." Deputy Atwood at no point activated his siren or overhead emergency lights, nor ever told the defendant he was not free to go. (Findings of Fact # 14-15.) Within 8 – 10 minutes dispatch confirmed that the

warrant was still valid and outstanding. (Finding of Fact # 17.) A search incident to arrest yielded cocaine on the defendant's person. (Findings of Fact # 18-10.) Based on his equivocal answer to the police onscene and his observed testimony at the suppression hearing, the trial judge found the defendant less credible than the officer. (Finding of Fact # 20.)

B. ADDITIONAL FACTS ELICITED AT THE SUPPRESSION HEARING.

The sidewalk and parking lot were dark, and not a main thoroughfare. 4/21/11 CrR 3.6 Hrg RP 8, 21. Deputy Atwood asked for the defendant's name, and the defendant produced an ID card. Id. at 8, 21. The deputy had inquired about the warrant before asking for the defendant's name. Id. at 21. The defendant's demeanor was friendly and "confident" during the encounter. Id. at 8, 11. Maybe 8 minutes elapsed from first contact to the arrest. Id. at 18. Asked by the court why he wouldn't have assumed a December warrant would have ultimately been taken care of by February, Deputy Atwood responded that NORCOM [regional dispatch], City of Mt. Vernon, Island County, and other jurisdictions further north typically don't confirm their warrants, and had not done so on this one in December. Id. at 25-26.

The defendant testified the officer had blocked his path and commanded him to identify himself and produce identification. He said he had felt not free to leave. Id. at 30-32. He was impeached with two prior theft 2^o convictions. Id. at 33.

C. ADDITIONAL FACTS ELICITED AT A DEFENSE INTERVIEW.

A defense interview of Deputy Atwood was recorded. The recording (on CD) was offered by the defense and admitted at the suppression hearing without objection or limitation and played for the court. 4/21/11 CrR 3.6 Hrg RP 17; Ex. 1. Additional facts elicited during that interview can be summarized as follows:

The earlier contact, in December, had been at “Hot Yoga” on 128th. The business was closing but the defendant was “harassing” clientele, rattling windows and doors. Ex. 1 at 1:30, 3:20.¹ The second contact, in January, was behind the McDonald’s on 128th. It involved a disturbance with a lot of people, not the defendant specifically. Id. at 4:00, 4:50.

On the date in question in February, Atwood had entered the dark parking lot to patrol it before seeing anyone there. Id. at 10:30. Once in, he was surprised to encounter the defendant. Id. at 11:20. Atwood recounted being good with faces, but terrible with

names. Id. at 4:50, 12:20. He recognized the defendant as having had a warrant out without recalling his name. Id. at 12:20 – 12:40. To identify him, Atwood asked for the defendant’s name and how to spell it, and for his date of birth. Id. at 14:50. He ended up being able to identify the defendant with an ID card. Id. Atwood never directed the defendant to produce an ID card. Id. at 22:20.

The deputy stated that Mt. Vernon, Whatcom County, Island, Camano, Whidbey – those jurisdictions typically would not confirm their warrants because they wanted to avoid the cost of transporting the arrestee. Id. at 2:50.

Atwood recalled that, in the course of their conversation, the defendant exhibited a “confident” attitude. If anything, the defendant was encouraging the conversation, because he knew the warrant wouldn’t be confirmed. Id. at 14:10. When it was confirmed after all, Deputy Atwood was very surprised. Id. at 15:40.

D. THE TRIAL COURT’S CONCLUSIONS OF LAW.

The trial court concluded that this had been a social encounter, with the defendant free to leave, until the deputy received confirmation of the warrant from dispatch. 1 CP 27;

¹ The cites are to times on the CD – as in, for example here, 1 minute 30 seconds into the interview, 3 minutes 20 seconds into the interview.

Conclusions of Law # 3-5. The trial court concluded there had been no basis for a Terry stop in the interim, since the defendant did not appear to be engaged in any criminal activity. 1 CP 26;

Conclusion of Law # 1. It did, however, conclude:

The officer did have a reasonable basis to believe a warrant for Defendant's arrest was still outstanding, once he had recognized him after effecting the stop, based upon the earlier police contact with Defendant in December, and particularly after Defendant's equivocal response to the officer's inquiry about whether he had taken care of that warrant.

1 CP 27; Conclusion of Law # 2.

V. STATE'S EXCEPTIONS TO FINDINGS OF FACT

Findings of fact were drafted and entered by the trial court when the litigants were unable to agree on its wording. 5/6/11 Stip. Bench Trial RP 2-3; see 1 CP 24-28. The State has cross-appealed here. 2 CP 54. While these exceptions are not dispositive to the outcome, after review of the record the State as respondent takes exception to two Findings of Fact entered by the trial court.

Finding of Fact # 12. "The officer then asked the Defendant if he could see his identification[.]" The officer actually testified that he asked for the defendant's *name*, and the defendant *in response* produced an ID card. 4/21/11 CrR 3.6 Hrg. RP 8, 21; Ex. 1 at

14:50, 22:20. While the defense sought, through cross-examination, to portray the officer as having initially asked for ID, this is not borne out by substantial evidence in the record. Compare 4/21/11 CrR 3.6 Hrg RP at 21 with id. at 8, and Ex. 1 at 14:50 and 22:20.

Finding of Fact # 17. “Within eight to ten minutes, the officer received information from dispatch that confirmation had been received that the warrant was still valid and outstanding.” This is not supported by substantial evidence. Atwood’s testimony actually was that eight minutes elapsed *from initial contact* to arrest. 4/21/11 CrR 3.6 Hrg RP at 18.

VI. ARGUMENT

A. STANDARD OF REVIEW.

An appellate court reviews a trial court's conclusions of law following a suppression hearing de novo. State v. Bailey, 154 Wn. App. 295, 299, 224 P.3d 852, review denied, 169 Wn.2d 1004 (2010) (similar facts); State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997). Whether police have “seized” a person is a mixed question of law and fact. Id. What the police said and did, and what the defendant said and did, are questions of fact. State v. Montague, 73 Wash.2d 381, 389, 438 P.2d 571 (1968). What legal

consequences flow from those facts – whether an encounter with police is permissive, or a “seizure” – is a question of law. State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996); Bailey, 154 Wn. App. at 299; State v. Lee, 147 Wn. App. 912, 916, 199 P.3d 445 (2008), review denied, 166 Wn.2d 1016 (2009). And whether a warrantless seizure or a Terry stop passes constitutional muster is a question of law reviewed de novo. Bailey, Wn. App. at 299; State v. Rankin, 151 Wn.2d 689, 694, 92 P.3d 202 (2004).

B. THE DEFENDANT WAS NOT “SEIZED” UNTIL THE OUTSTANDING WARRANT WAS CONFIRMED AND HE WAS ARRESTED.

The Fourth Amendment to the United States Constitution and Art. I, Section 7 of the Washington Constitution protect individuals against unwarranted searches and seizures. Bailey, 154 Wn. App. at 299-300. A seizure occurs when “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.” Rankin, 151 Wn.2d at 695. On the other hand, “an encounter between a citizen and the police is consensual if a reasonable person under the circumstances would feel free to walk away.” State v. Harrington, 167 Wn.2d 656, 661–62, 222 P.3d 92, 94 (2009).

“[A] police officer who, as part of his community caretaking function, approaches a citizen and asks questions limited to eliciting that information necessary to perform that function has not ‘seized’ the citizen.” State v. Gleason, 70 Wn. App. 13, 16, 851 P.2d 731 (1993). And an officer may ask for an individual's identification in the course of a casual conversation. State v. Young, 135 Wn.2d 498, 511, 957 P.2d 681 (1998); Armenta, 134 Wn.2d at 11, 948 P.2d 1280. A seizure does not automatically occur simply because an officer is in uniform or carrying a gun. State v. Belanger, 36 Wn. App. 818, 820-21, 677 P.2d 781 (1984). The key inquiry, rather, is whether the officer either uses force or displays authority in a way that would cause a reasonable person to feel compelled to continue the contact. Rankin, 151 Wn.2d at 695.

Here, the testimony was that Deputy Atwood never ordered the defendant to do anything; never told Mr. Lozano he was not free to leave (until the arrest); and never activated his siren or emergency overhead lights. See Findings of Fact 14-15. The trial court concluded that no seizure occurred. See Conclusion of Law 3-5. Closer analysis bears this out.

For example, how an officer handles identification documents is one factor in answering the question of whether an

officer has used force or displayed authority in a way that would cause a reasonable person to feel compelled to continue the contact. An encounter may ripen into a seizure in circumstances where the police officer *retains* the identification such that a defendant is not free to leave or becomes immobilized. In Thomas, a seizure occurred when an officer, while retaining the defendant's identification, took three steps back to conduct a warrants check on his hand-held radio. State v. Thomas, 91 Wn. App. 195, 200–01, 955 P.2d 420 (1998). Similarly, in Dudas, a seizure occurred when the deputy took the defendant's identification card and returned to the patrol car to “run” it. State v. Dudas, 52 Wn. App. 832, 834, 764 P.2d 1012 (1988). In Crane, an officer, without stepping back, nonetheless retained identification while “running” two individuals; this was likewise held there to be a seizure. State v. Crane, 105 Wn. App. 301, 310-11, 19 P.3d 1100 (2001), overruled on other grounds, State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003). On the other hand, in Smith, the same court later held that police did not “seize” a person by asking him for ID and holding onto the ID card while making a radio check in the person’s presence. State v. Smith, 154 Wn. App. 695, 226 P.3d 195, review denied, 169 Wn.2d 1013 (2010). In Hansen no seizure was found when a pedestrian

handed over his license upon request to one officer, that officer handed it to a second, who recorded the information and then returned the license to the individual before then “running” for warrants. State v. Hansen, 99 Wn. App. 575, 576, 579, 994 P.2d 855 (2000). Here, Deputy Atwood took down the information, handed the ID back to the defendant, and only then “ran” the name. See Findings of Fact # 12-13, 16. Like the situation in Hansen, this was not a seizure.

The presence of multiple officers can also be factor in determining if an encounter is, or becomes, a seizure. Bailey, 154 Wn. App. at 302, quoting United States v. Mendenhall, 446 U.S. 544, 554, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980) (“threatening presence of several officers” more likely to result in seizure). Here, there was only the lone officer, which militates against any finding there was a coercive atmosphere.

An officer's tone of voice or the language used can be instructive in determining whether an individual is seized. Examples of permissive language include: “Gentlemen, I'd like to speak with you, could you come to my car?” (State v. Nettles, 70 Wn. App. 706, 708, 855 P.2d 699 (1993)), and, “Can I talk to you guys for a minute?” (State v. Aranguren, 42 Wn. App. 452, 455–56, 711 P.2d

1096 (1985); accord, State v. Fortun-Cebada, 158 Wn. App. 158, 162, 169-70, 241 P.3d 800 (2000); State v. Richardson, 64 Wn. App. 693, 695, 825 P.2d 754 (1992)). Asking if someone “had a minute,” and if they “had business there,” is not coercive either. Bailey, 154 Wn. App. at 298, 301-02. “Wait right here,” on the other hand, was characterized as coercive and constituted a seizure. State v. Ellwood, 52 Wn. App. 70, 73, 757 P.2d 547 (1988). “Would [defendant] be willing to stick around while I check on it [a possibly outstanding warrant]” has likewise been held to be coercive. State v. Barnes, 96 Wn. App. 217, 223-24, 978 P.2d 1131 (1999). And when an officer commands a person to halt or demands information, a seizure occurs as well. O’Neill, 148 Wn.2d at 577.

Consistent with this standard, Deputy Atwood’s saying “Hey, what’s up” (Finding of Fact # 6) was not a seizure; nor was the deputy’s inquiry about the possibly outstanding warrant (Finding of Fact # 11), nor was his asking the defendant for his name or identification (Finding of Fact #12; 4/21/11 CrR 3.6 Hrg RP at 8, 21; Ex. 1 at 14:50). The defendant has not argued otherwise. Instead, on appeal the defendant focuses on the deputy’s saying, “Let’s go ahead and check on that warrant” (Finding of Fact #12), arguing that this was a seizure, the same as “wait right here” in Elwood and

“would [you] be willing to stick around” in Barnes. BOA 8-10, 11-12.

In Barnes, an officer encountered the defendant, whom he knew, and inquired if a recent warrant, which he also knew about, had been cleared. The defendant said it had. The officer told (or asked) the defendant to “stick around” while he checked. (The warrant ultimately came back clear, but only later.) Meanwhile, the officer patted Barnes down, because he was fidgeting. Barnes, 96 Wn. App. at 221. The court concluded Barnes was seized when asked to “stick around,” finding germane to this analysis that the officer and Barnes knew each other, and the officer had arrested Barnes before. Id. at 223-24.

Here, however, the officer never asked the defendant to “wait” or “stick around.” On appeal, the defendant argues that “let’s go check” means the same thing. BOA 8-10. But the testimony before the trial court here was that the defendant had a “confident” attitude. 4/21/11 CrR 3.6 Hrg RP at 8, 11; Ex. 1 at 14:10. In fact, Atwood recounted that the defendant had *encouraged* the conversation, confident that the warrant would once again not be confirmed. Ex. 1 at 14:10. A reasonable person in the defendant’s position thus would *not* have felt compelled to stay. Like in Barnes,

Mr. Lozano's past relationship with the officer, and how the warrant had been previously handled (that is, twice before he had not been arrested on it) are "objective circumstances" that are "germane" to the inquiry. See Barnes at 223-24. The trial court did not err in concluding that no seizure occurred until the warrant was confirmed and the officer arrested the defendant.

C. ALTERNATIVELY, KNOWLEDGE OF THE WARRANT JUSTIFIED A BRIEF TERRY STOP TO INQUIRE IF IT WAS STILL OUTSTANDING.

Assuming, for the purpose of argument, that the defendant was "seized" at the time Deputy Atwood said, "Let's go check" for warrants, the seizure was lawful as a "Terry stop."

Both the Fourth Amendment and article I, section 7 of the Washington Constitution prohibit unreasonable searches and seizures. State v. Davis, 86 Wn. App. 414, 420, 937 P.2d 1110, review denied, 133 Wn.2d 1028 (1997). Generally, warrantless searches and seizures are per se unreasonable. Wash. Const. art. I, § 7; State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002). There are, however, certain well-established exceptions. One of them is a "Terry stop."

Even in the absence of probable cause to arrest, a police officer may conduct a brief investigative detention of a suspect if he

or she has “a reasonable, articulable suspicion, based on specific, objective facts, that the person seized has committed or is about to commit a crime.” Duncan, 146 Wn.2d at 172; Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). The officer must be able to point to specific and articulable facts giving rise to a reasonable suspicion that criminal conduct has occurred or is about to occur. State v. Duncan, 146 Wn.2d at 171; State v. Mendez, 137 Wn.2d 208, 223, 970 P.2d 722 (1999); Terry v. Ohio, 392 U.S. at 21. 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.” Mendez, 137 Wn.2d at 223 (quoting Terry, 392 U.S. at 21).

A reviewing court examines the reasonableness of an officer's suspicion under the totality of the circumstances known to the officer at the time of the initial detention, taking into account an officer's training and experience when determining the reasonableness of the stop. State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). This includes information given the officer, observations the officer makes, and inferences and deductions drawn from his or her training and experience. United States v.

Cortez, 449 U.S. 411, 417-18, 101 S. Ct. 690, 694-95, 66 L. Ed. 2d 621 (1981). Circumstances must be more consistent with criminal than innocent conduct, but the officer need not have a specific crime in mind, for "reasonableness is measured not by exactitudes but by probabilities." State v. Mercer, 45 Wn. App. 769, 774, 727 P.2d 676 (1986) (quoting State v. Samsel, 39 Wn. App. 564, 571, 694 P.2d 670 (1985)).

The inquiry is the same under both constitutions. The level of articulable suspicion necessary to support an investigative detention under both the federal and state constitutions is a "substantial possibility that criminal conduct has occurred or is about to occur." State v. Kennedy, 107 Wn. 2d 1, 4, 10-11, 726 P.2d 445 (1986). This test as "the preferred definition" which reasonably safeguards "private affairs" as required by Washington Constitution article 1, section 7. Id.; accord, State v. Glossbrener, 146 Wn.2d 670, 680, 49 P.3d 128 (2002) (context of Terry pat-downs). The burden of proof is on the State to show that a particular search or seizure falls within the Terry exception. State v. Duncan, 146 Wn.2d at 172.

Here, the trial court concluded there was no basis for a Terry stop prior to the arrest. Conclusion of Law # 1. But the reviewing

court can affirm the trial court's decision to deny a suppression motion on any ground supported by the record, even if the trial court made an erroneous legal conclusion. State v. Avery, 103 Wn. App. 527, 537, 13 P.3d 226 (2000); State v. Bryant, 97 Wn. App. 479, 490-91, 983 P.2d 1181 (1999) (citing State v. Norlin, 134 Wn.2d 570, 582, 951 P.2d 1131 (1998)), review denied, 140 Wn.2d 1026 (2000). "It is a general rule of appellate practice that the judgment of the trial court will not be reversed when it can be sustained on any theory, although different from that indicated in the decision of the trial judge." State v. Norlin, 134 Wn.2d at 582.

Nor is the State enjoined from raising this alternate argument. As the prevailing party, respondent need not cross-appeal a trial court ruling if it seeks no further affirmative relief. It may argue any ground to support a court's order which is supported by the record. State v. Kindsvogel, 149 Wn.2d 477, 480-81, 69 P.3d 870 (2003); State v. Bobic, 140 Wn.2d 250, 257-58, 996 P.2d 610 (2000). And in any case, to the extent it may have been necessary to preserve this alternate argument, the State has cross-appealed. 2 CP 54.

Assuming, again, that the defendant was seized when Deputy Atwood said, "Let's go check," it is true that there was, at

that time, no indication that the defendant was at the time engaged or potentially engaged in committing a new crime. And it is also true that a Terry detention to merely “run” for warrants that one doesn’t know about, or that one has no reasonable suspicion remain outstanding, cannot be upheld. In Ellwood the defendant was told to “wait right here” while officers ran his name for warrants, yet officers had no reason to believe there actually were any warrants, and the defendant and his companion were not otherwise engaged in what looked like criminal activity. Ellwood, 52 Wn. App. at 73-74. And in Barnes the officer had no basis to believe Barnes’ warrant was still outstanding, because Barnes said it had been cleared, and the officer had no information to the contrary.

Here, the facts were markedly different. Deputy Atwood knew of the possibility of an outstanding warrant, and knew that it could still be outstanding, since the issuing jurisdiction typically would not confirm it and thereby incur the expense of transport. Atwood’s asking about it drew the evasive response from the defendant that he’d have to talk to his lawyer about that. The officer’s own knowledge, now coupled with the defendant’s response, provided reasonable and articulable suspicion that *this particular warrant* was still outstanding.

There is no reason why this cannot afford a basis for a brief Terry detention to inquire further. Bailey, 154 Wn. App. at 302 (defendant's admission that warrant likely outstanding affords reasonable suspicion); see Klauke v. Daly, 595 F.3d 20, 26 (1st Cir. 2010) (suspect's non-cooperation or evasive behavior can give rise to reasonable suspicion of an outstanding warrant to justify Terry stop); People v. Archuleta, 980 P.2d 509, 510, 516 (Colo. 1999) (flight and admission of outstanding warrants justify Terry stop)

In Bailey, an officer asked the defendant, walking along an otherwise deserted street, "if he had a minute." He asked the defendant where he was headed and what his business was there. The defendant said he was headed to a friend's house, and produced identification upon request. Bailey, 154 Wn. App. at 298. None of this was a seizure. Id. at 302. As he handed his identification over, the defendant admitted he may have had an outstanding warrant out. Id. at 298. The officer verified this was true and arrested the defendant. Id. Division III held that when the defendant said he may have had a warrant out, "[a]t that point, the officer had the reasonable suspicion necessary to seize Mr. Bailey." Id. at 301 (citing Terry). The same result obtains here. A reasonable and articulable suspicion that a *particular* warrant is still

outstanding is a lawful basis for a brief detention to confirm or dispel that suspicion. Id. This is not like Ellwood, where there was no particularized knowledge of any warrants at all, nor like Barnes, where any suspicion was dispelled, and the officer had no contrary information. Here inquiry only led to greater suspicion, not less. A brief Terry stop or detention to resolve the particular warrant's status was lawful. Bailey, 154 Wn. App. at 302. The trial court can be affirmed on this alternate basis as well.

VII. CONCLUSION

The judgment and sentence should be *affirmed*.

Respectfully submitted on October 27, 2011.

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