

FILED
3-7-16
Court of Appeals
Division I
State of Washington

No. 73294-3-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

MAHADI SHIRE,

Appellant.

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

OPENING BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR.

1. Mr. Shire was unlawfully seized, searched, and subjected to a prolonged detention in violation of the Fourth Amendment and article I, section 7.

2. Mr. Shire was seized and searched without individualized suspicion of his involvement in criminal activity.

3. The court erred in entering CrR 3.6 finding of fact 1(b), regarding whether Officer Escalante observed Mr. Shire drinking an Ice House beer. CP 25 (attached as Appendix).

4. The court erred in entering CrR 3.6 finding of fact 1(f), regarding whether Mr. Shire was almost hit by two vehicles. CP 26.

5. The court erred in entering CrR 3.6 finding of fact 1(g), as to whether Mr. Shire apologized for running. CP 26.

6. The court erred in entering CrR 3.6 finding of fact 1(m), to the degree that the “multiple” warrants were actually “two” warrants. CP 26.

7. To the extent it is construed as an undisputed finding of fact, the court erred in entering CrR 3.6 finding of fact 1(q), to the degree that Mr. Shire does not concede the credibility of the State’s witnesses,

nor does he concede his seizure was justified by sufficient evidence.

CP 27.

8. The court erred in entering CrR 3.6 conclusion of law 1, because the seizure was not justified by sufficient evidence. CP 27.

9. The court erred in entering CrR 3.6 conclusion of law 3, because the officers extended the detention excessively. CP 27.

10. The court erred in entering CrR 3.6 conclusion of law 6, incorrectly concluding the controlled substance seizure stemmed from a valid and lawful arrest, rather than a lengthy on-the-street detention.

CP 27.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR.

A person may be seized only if police have individualized suspicion of his involvement in criminal activity. Mr. Shire was suspected only of a class 3 civil infraction – far short of criminal activity justifying a seizure. Was Mr. Shire seized for a prolonged period of time, and then searched, absent reasonable suspicion of criminal activity?

C. STATEMENT OF THE CASE.

On the afternoon of October 1, 2013, Mahadi Shire was sitting on a corner near a gas station on Lake City Way. RP 137. Seattle

Police Officers Brian Escalante and Adam Beatty would later state they saw Mr. Shire consuming an alcoholic beverage from a can; however, Officer Escalante admitted that he could not see any particular label on the can from his patrol car. RP 34-35, 48.

The two police officers gave differing accounts of what they saw that afternoon; Officer Escalante testified that he saw Mr. Shire drinking from a 24-ounce can, but Officer Beatty recalled Mr. Shire drinking from a can within a paper bag. RP 137, 143. Despite these differing accounts, both officers agreed that when Mr. Shire was eventually stopped, he no longer was holding a can, nor a paper bag. RP 146-47. No beverage can was admitted into evidence at trial.

After the two officers saw Mr. Shire on the corner of Lake City Way, the patrol car made a U-turn and followed him. RP 35. Mr. Shire began walking away from the officers toward a parking lot, and according to Officer Escalante, Mr. Shire turned to ask the officer whether this was about the beer. Id. When the officer said that it was, Mr. Shire ran across Lake City Way. Id.

On the other side of the street, Officer Escalante grabbed Mr. Shire and forced him to sit down. RP 36. After initially giving his brother's first name, Mr. Shire provided his own name to the officers.

Id. When the officers ran Mr. Shire’s correct name, they found two warrants for his arrest, which they ascertained were active. RP 38.

Officer Beatty searched Mr. Shire, following his arrest on the warrants. RP 40. Approximately three grams of crack cocaine was found in Mr. Shire’s jacket pocket.¹

Mr. Shire was charged with a violation of the Controlled Substances Act. CP 1-6. The trial court denied Mr. Shire’s motion to suppress the fruits of the illegal search and seizure, pursuant to CrR 3.5 and 3.6. CP 25-28; 29-32.

A jury convicted Mr. Shire as charged. CP 33.

D. ARGUMENT.

The officers unlawfully detained Mr. Shire for an unjustified duration without individualized suspicion of criminal activity.

- a. The state and federal constitutions prohibit unjustified seizures.

Article I, section 7 of the Washington Constitution provides that “[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law.” The protection of privacy and

¹ The substance was seized and later tested and weighed at the Washington State Crime Lab. RP 171.

individual rights afforded by article I, section 7 is greater than that guaranteed by the Fourth Amendment and “recognizes a person’s right to privacy with no express limitations.” State v. O’Neill, 148 Wn.2d 564, 584, 62 P.2d 489 (2003) (citing State v. White, 97 Wn.2d 92, 108, 110, 640 P.2d 1061 (1982); State v. Ferrier, 136 Wn.2d 103, 111, 960 P.2d 927 (1998)); U.S. Const. amend IV.²

An officer may conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion of criminal activity. Terry v. Ohio, 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). When evaluating a Terry investigatory stop, a court must make two inquiries: “First, was the initial interference with the suspect’s freedom of movement justified at its inception? Second, was it reasonably related in scope to the circumstances which justified the interference in the first place?” State v. Williams, 102 Wn.2d 733, 739, 689 P.2d 1065 (1984). Here, the answer to both inquiries is ‘no.’

² The Fourth Amendment provides: “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”

- b. The officers seized Mr. Shire when detaining and questioning him, searching him, and directing his movements for several minutes.

“[A] seizure occurs, under article I, section 7, 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). It is “elementary that all investigatory detentions constitute a seizure.” State v. Armenta, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997). Whether the facts may be characterized as a seizure “is a legal question this court reviews de novo.” State v. Beito, 147 Wn. App. 504, 508-09, 195 P.3d 1023 (2008).

Commanding a person to halt or demanding information from the person generally indicates a seizure has occurred. O’Neill, 148 Wn.2d at 577. The arrival of multiple police officers, physical touching of the person, or using words or a tone of voice “indicating that compliance with the officer's request might be compelled” are factors that “likely” result in a seizure. State v. Harrington, 167 Wn.2d 656, 664, 222 P.3d 92 (2009). Demanding someone show her hands or directing her to wait under circumstances in which a reasonable person

would not feel free to decline constitutes a seizure. State v. Carney, 142 Wn. App. 197, 202, 174 P.3d 142 (2007); Beito, 147 Wn. App. at 509. “It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.” Terry, 392 U.S. at 16.

Here, Mr. Shire was seized because of one officer’s belief that he was drinking a beer from a can, partially hidden within a paper bag. RP 61, 158-59 (Officer Beatty). The other officer, Officer Escalante, could not recollect seeing a bag or even a beer label on the can. RP 69-70, 137, 143.

The officers began to follow Mr. Shire in their patrol car, making a U-turn to indicate that Mr. Shire should stop. RP 35. On the other side of Lake City Way, Officer Escalante “held” Mr. Shire and forcibly sat him down on the curb. RP 36. Officer Escalante testified that he placed Mr. Shire in this position specifically because it is “a position of disadvantage.” RP 153 (stating a suspect is less likely to run when placed in this position). At this moment, Mr. Shire had been seized by law enforcement.

The officers requested Mr. Shire’s identification card, and when he did not have it, the officers began to research Mr. Shire on their law

enforcement data base. RP 73-74, 154. Mr. Shire was being “held” at this time, according to Officer Escalante, and the group was joined by two additional officers, Degales and McCullough. RP 73-74, 147.

The officers continued to detain and question Mr. Shire, gathering information about his past, about his warrants, and ultimately, his clothing was searched by Officer Beatty. RP 66. Mr. Shire was “seized” as that term was intended under article I, section 7 and the Fourth Amendment.

- c. The Terry stop was unlawful at its inception because the police did not have individualized suspicion of Mr. Shire’s involvement in a crime.

This seizure is lawful only if the officer had specific and articulable facts giving rise to a reasonable suspicion that Mr. Shire was involved in criminal activity. State v. Bray, 143 Wn. App. 148, 150, 177 P.3d 154 (2008).

Even in the most prosecution-friendly light, Mr. Shire was seen committing a class-3 civil infraction. RCW 66.44.100.

Opening or consuming liquor in public place—Penalty.

Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a class 3 civil infraction under chapter 7.80 RCW.

Even if the police were justified in stopping Mr. Shire for a civil infraction, which is not conceded, the search which resulted fails under Terry. See State v. Duncan, 146 Wn.2d 166, 174, 43 P.3d 513 (2002). When a person is stopped for a civil infraction, “an officer may briefly detain a person long enough to check his or her identification.” Id.; RCW 7.80.060.

In Duncan, our Supreme Court specifically distinguished traffic violations from other types of civil infractions, such as the one presented here. 146 Wn.2d at 175. Duncan also involved an open container infraction, and the Court specifically declined to extend what it referred to as the Terry stop exception in that case. Id. In so doing, the Court stated the following:

[S]ociety will tolerate a higher level of intrusion for a greater risk and higher crime than it would for a lesser crime. By logical extension this reasoning applies when a civil infraction is committed, as in this case. When investigating a civil infraction an officer is not seeking to arrest an individual, but rather to issue a citation. In light of the lower risk to society involved with civil infractions, the common law principle recognized in *Hornaday* suggests that a less intrusive procedure would be more acceptable than with the commission of a felony or even a misdemeanor.

Duncan, 146 Wn.2d at 177.

Here, as in Duncan, officers merely sought to issue a citation to Mr. Shire. Id. at 182. Also as in Duncan, there is no evidence in the record that Mr. Shire was intoxicated, or that he had the smell of alcohol on his breath or on his clothing. Id. Testimony from the officers was conflicting as to what Mr. Shire was purportedly holding or drinking when they passed him on the corner. RP 137, 143, 146-47 (no beer can was recovered or admitted as evidence). As the Duncan Court noted, mere temporary handling may be insufficient to establish constructive possession. 146 Wn.2d at 182 (citing State v. Callahan, 77 Wn.2d 27, 31, 459 P.2d 400 (1969)).

d. The seizure of Mr. Shire was unlawfully extended.

“If the results of the initial stop dispel an officer's suspicions, then the officer must end the investigative stop.” State v. Acrey, 148 Wn.2d 738, 747, 64 P.3d 594, 599 (2003); Bray, 143 Wn. App. at 154. In considering the scope of the intrusion, the court must consider: (1) the purpose of the stop; (2) the amount of physical intrusion upon the suspect’s liberty; and (3) the length of time the suspect is detained. Williams, 102 Wn.2d 733. If police actions exceed the proper scope of a valid Terry stop, they can be justified only if supported by probable cause to arrest. Id. at 740.

Even if the initial detention was permitted based on the officers' observation of Mr. Shire on the corner – which is not conceded – Mr. Shire should have been released once he was identified. Duncan, 146 Wn.2d at 182.

Instead of releasing Mr. Shire, the officers increased the custodial and intrusive nature of the detention. They administered Miranda warnings and searched Mr. Shire, indicating that he was now in custody. RP 141-42.

There was no reasonable basis to continue the seizure of Mr. Shire, based upon the initial allegation of a civil infraction. By continuing to detain Mr. Shire, subjecting him to questioning, as well as a physical search, after the police had lost their authority to detain him, the officers violated Mr. Shire's right to be free from unjustified invasion of his private affairs. Duncan, 146 Wn.2d at 182.

- e. All fruits of the unconstitutional Terry stop should be suppressed.

All evidence obtained directly or indirectly through the exploitation of an illegal seizure must be suppressed. State v. Buelna Valdez, 167 Wn.2d 761, 224 P.3d 751 (2009); Rankin, 151 Wn.2d at 700; Wong Sun v. United States, 371 U.S. 471, 485, 83 S.Ct. 407, 9

L.Ed.2d 441 (1963). The improperly gathered evidence resulting from the unauthorized detention and search must be suppressed.

E. CONCLUSION.

Mahadi Shire's conviction should be reversed and dismissed due to the lack of admissible evidence, arising from the unauthorized search and seizure.

DATED this 7th day of March, 2016.

Respectfully submitted,

s/Jan Trasen

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APPENDIX

FILED
KING COUNTY WASHINGTON

FEB 09 2015

SUPERIOR COURT CLERK
BY Theresa Graham
DEPUTY

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON,

Plaintiff,

vs.

MAHADI ABDULLAHI SHIRE,

Defendant.

No. 14-1-02697-4 SEA

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.6
MOTION TO SUPPRESS EVIDENCE
OF CRACK-COCAINE

On February 4, 2015, the Honorable Judge John Chun held a hearing on defendant's motion to suppress evidence of cocaine.

After considering the evidence submitted by the parties and hearing argument, to wit: testimony of Officer Brien Escalante and Officer Adam Beatty, the Court enters the following findings of fact and conclusions of law as required by CrR 3.6.

1. THE UNDISPUTED FACTS:

- a. On October 1, 2013, at approximately 2:40 pm, Seattle Police Officers Brien Escalante and Adam Beatty were patrolling the area of 13000 Lake City Way.
- b. Officer Escalante observed a male drinking a 24 oz Ice House beer at the Chevron gas station as they passed by in their patrol vehicle.
- c. The officers turned around the patrol car to contact the male, later identified as the defendant Mahadi Shire.

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.6 MOTION TO
SUPPRESS EVIDENCE OF COCAINE - 1

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- 1
- 2 d. Shire walked away from Officer Escalante. Officer Escalante told Shire that he
- 3 wanted to talk to him and Shire responded along the lines of "about the beer?"
- 4 and Officer Escalante replied yes.
- 5 e. Shire then looked as if he was going to flee across traffic. Officer Escalante told
- 6 him not to run, which Shire ignored.
- 7 f. Shire ran across six lanes of traffic and was almost hit by two vehicles.
- 8 Throughout this time, Officer Escalante yelled at Shire to stop and watch out.
- 9 g. Shire eventually stopped running. Officer Escalante took hold of Shire by his arm
- 10 and had him sit down on the sidewalk. Shire apologized for running.
- 11 h. Neither Officer Escalante nor Officer Beatty drew any weapons at any point or
- 12 made any threats towards Shire.
- 13 i. Officers Escalante and Beatty then asked Shire for his name. Shire gave the name
- 14 "Liban Shire," which was later discovered to be his brother's name.
- 15 j. The officers believed Shire was lying about his name because the physical
- 16 observations did not match the description provided for his brother.
- 17 k. Officer Escalante was able to locate Shire's real name in a previous police report
- 18 that also named Liban Shire, and it became apparent that the physical descriptions
- 19 listed in the report, including a scar on Mahadi Shire's face from a recent assault,
- 20 matched those of the subject with whom Officer Escalante was speaking.
- 21 l. Officer Escalante told Shire he knew he was lying about his name, prompting
- 22 Shire to apologize and give his real name.
- 23 m. At the time that Officers Escalante and Beatty verified Shire's identity, the
- 24 records check simultaneously revealed that Shire had multiple outstanding
- warrants.
- n. Shire was placed under arrest for the outstanding warrants, and Officer Escalante
- properly read his Miranda warnings from a department issued card. Shire
- acknowledged he understood his rights by replying that he understood.
- o. Upon searching Shire incident to arrest on his warrants, Officer Beatty located
- approximately 3 grams of what he believed in his training and experience to be
- crack cocaine. The suspected cocaine was later tested by Washington State Patrol
- Lab Technician Martin McDermot. The substance tested positive for cocaine.
- p. Upon transport to the precinct, Shire admitted he uses drugs and has been using
- them for some time.

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.6 MOTION TO
SUPPRESS EVIDENCE OF COCAINE - 2

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1
2 q. The testimony of the officers was credible.

3 2. THE DISPUTED FACTS:

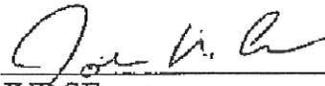
4 There are no disputed facts.

5 3. CONCLUSIONS OF LAW AS TO THE ADMISSIBILITY OF THE EVIDENCE
SOUGHT TO BE SUPPRESSED:

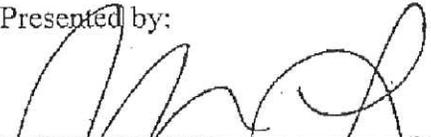
- 6 1. Officers Escalante and Beatty observed Shire publicly consuming an open
7 container of beer, which constitutes a civil infraction.
8 2. The officers were justified in detaining Shire to check for his identification.
9 3. The officers did not extend the detention beyond what was reasonably
10 necessary to identify him.
11 4. At the time officers verified Shire's identity, they also simultaneously learned
12 that he had outstanding warrants.
13 5. Officers had just cause to arrest Shire for his outstanding warrants.
14 6. The cocaine on Shire was discovered during a valid search incident to an
15 actual, lawful arrest.

16 In addition to the above written findings and conclusions, the court incorporates by
17 reference its oral findings and conclusions.

18 Signed this 9th day of February, 2015.

19
20 
21 _____
22 JUDGE JOHN H. CHUN

23 Presented by:

24 

Michelle Larson, WSBA #42252

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.6 MOTION TO
SUPPRESS EVIDENCE OF COCAINE - 3

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As per Form only

WRITTEN FINDINGS OF FACT AND
CONCLUSIONS OF LAW ON CrR 3.6 MOTION TO
SUPPRESS EVIDENCE OF COCAINE - 4

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

STATE OF WASHINGTON,)	
)	
Respondent,)	
)	
v.)	NO. 73294-3-I
)	
MAHADI SHIRE,)	
)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ARRANZA RILEY, STATE THAT ON THE 7TH DAY OF MARCH, 2016, I CAUSED THE ORIGINAL **OPENING BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS – DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

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SIGNED IN SEATTLE, WASHINGTON THIS 7TH DAY OF MARCH, 2016.

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