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Court of Appeals
Division I
State of Washington

NO. 73294-3-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MAHADI SHIRE,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE JOHN H. CHUN

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
1. PROCEDURAL HISTORY.....	1
2. SUBSTANTIVE FACTS.....	1
C. <u>ARGUMENT</u>	4
THE TRIAL COURT PROPERLY DENIED THE MOTION TO SUPPRESS.....	4
1. Standard Of Review.....	5
2. The Trial Court's Determination That Officer Escalante Observed Shire Drinking A Beer Is Supported By Substantial Evidence.....	5
3. Officers Had Probable Cause To Detain Shire For Committing A Civil Infraction.....	7
4. Officers Also Had Reasonable Suspicion To Detain Shire For Committing Two Crimes In The Officers' Presence	8
D. <u>CONCLUSION</u>	9

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Brown v. Texas, 443 U.S. 47,
99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979)..... 9

Terry v. Ohio, 392 U.S. 1,
88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)..... 8

Washington State:

State v. Armenta, 134 Wn.2d 1,
948 P.2d 1280 (1997) 8

State v. Duncan, 146 Wn.2d 166,
43 P.3d 513 (2002) 7

State v. Hill, 123 Wn.2d 641,
870 P.2d 313 (1994) 5

State v. Johnson, 128 Wn.2d 431,
909 P.2d 293 (1996) 5

State v. Kennedy, 107 Wn.2d 1,
726 P.2d 445 (1986) 9

Constitutional Provisions

Federal:

U. S. CONST. amend IV 4, 8

Washington State:

CONST. art. I, § 7 4, 8

Statutes

Washington State:

RCW 7.80.050 7
RCW 7.80.060 7
RCW 7.84.030 7
RCW 9A.76.020 9
RCW 9A.76.177 9
SMC 12A.24.025 7
SMC 12A.245.150 7

Rules and Regulations

Washington State:

CrR 3.6 1

A. ISSUES PRESENTED

1. Whether there is substantial evidence in the record supporting the trial court's finding that Officer Escalante observed Shire drinking a beer?

2. Whether the police had probable cause to detain Shire?

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

Mahadi Shire was charged with violation of the Uniform Controlled Substances Act – possession of cocaine. CP 1. Prior to trial, a CrR 3.6 hearing was held before the Honorable Judge John Chun. Shire asserted that he was unlawfully seized by Officer Escalante and that the following search of his person should be suppressed. CP 7-12. Shire's motion was denied. CP 25-28. Shire was convicted by a jury of the crime of violation of the Uniform Controlled Substances Act – possession of cocaine. CP 33.

2. SUBSTANTIVE FACTS

Officer Escalante of the Seattle Police Department was patrolling his assigned area with his partner Officer Beatty in the

evening hours of October 1, 2013. 1RP 32-33¹. Officer Escalante was driving north on Lake City Way Northeast when he observed Mahadi Shire sitting in a gas station parking lot drinking an alcohol beverage. 1RP 33-34. This area of Lake City Way is a high crime area. 1RP 45. Officer Escalante was looking in the direction of the gas station because in his experience as a patrol officer in the area, people tend to buy alcoholic beverages at this location and drink them near the gas station. 1RP 34. He therefore regularly patrols that area. *Id.*

Officer Escalante observed Shire was drinking from a 24 oz. "high tops" can. 1RP 34. Officer Beatty observed that Shire was drinking a beer. 1RP 61. Officer Beatty was able to recognize the can. *Id.* Officer Escalante believed the can was not in a bag. 1RP 48. Officer Beatty believed the can was in a bag or partially in a bag. 1RP 61. Officer Escalante could not read the label from where he was located. 1RP 48. Officer Beatty also could not read the label from where he was located. 1RP 70. Officer Beatty clarified that he believed the can contained beer because, based on his training and experience, a can of that size and shape, along

¹ There are five volumes of the Report of Proceedings which will be cited to as follows: 1RP (Volume 1, 2/4/15); 2RP (Volume 2, 2/5/15); 3RP (Volume 3, 2/9/15); 3aRP (Volume 3a, 2/9/15); 4RP (Volume 4, 2/10/15, 2/23/15, 3/2/15).

with it being covered by a brown bag, most likely contains alcohol.

1RP 77.

Officer Escalante turned his vehicle around, exited his vehicle, and attempted to contact Shire. 1RP 35. Shire turned around and asked Officer Escalante if he was contacting him about the beer. *Id.* Officer Beatty also heard Shire ask if it was about the beer. 1RP 71. It appeared to Officer Escalante that Shire was about to run, so he told Shire not to run. 1RP 35. Shire began to run away and ran across six lanes of traffic and was almost struck by a vehicle. *Id.*

Officer Escalante detained Shire a few blocks away. 1RP 36. He asked Shire for his name. *Id.* Shire gave the name "Liban Shire." *Id.* Shire did not have any identification on him to verify the name he had given. *Id.* The information Shire provided did not match the information in the police database. 1RP 36-37. Officer Escalante and Officer Beatty were able to identify Shire by a visible scar on Shire's face. 1RP 37. At that point, Shire admitted to lying about his name. *Id.* Officer Escalante ran Shire's true name and located two warrants for his arrest. *Id.* Shire was placed under arrest and read his *Miranda* rights. 1RP 38. During a search incident to arrest, Officer Beatty located crack cocaine on Shire's

person. *Id.* Officer Beatty estimated that the length of contact from the initial observation of Shire to the point of his arrest was close to half an hour. 1RP 77.

C. ARGUMENT

THE TRIAL COURT PROPERLY DENIED THE MOTION TO SUPPRESS.

Shire asserts that the trial court erred in concluding that he was legally seized by police under the Fourth Amendment and article I, section 7. Brief of Appellant, 1. Shire designates an assignment of error to the trial court's finding of fact that Officer Escalante observed an "Ice House" beer. Brief of Appellant, 1; CP 25. Shire asserts that the trial court erred in failing to suppress the cocaine located on his person and as the fruits of an unlawful seizure. *Id.*

Shire's claims should be denied. Officers were legally justified in detaining Shire for a civil infraction. There is substantial evidence supporting the trial court's finding that Shire was drinking a beer at the gas station. Shire then ran from police. When Shire was detained, police attempted to identify him, which is necessary to issue a civil infraction. Shire lied about his name. When officers

discovered Shire's true identity, two warrants were located for his arrest. He was then placed under arrest for the warrants. Thus, the trial court properly denied Shire's motion to suppress the cocaine located on Shire's person.

1. Standard Of Review.

A trial court's conclusions of law in an order pertaining to suppression of evidence are reviewed de novo. *State v. Johnson*, 128 Wn.2d 431, 443, 909 P.2d 293 (1996). A trial court's findings of fact on a motion to suppress are reviewed under the substantial evidence standard. *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *Id.* at 644, 870 P.2d 313. A trial court's findings of fact not challenged by the defendant are considered verities on appeal. *Id.* at 644.

2. The Trial Court's Determination That Officer Escalante Observed Shire Drinking A Beer Is Supported By Substantial Evidence.

Shire asserts that there was conflicting evidence as to whether Officer Escalante observed him drinking a beer. Brief of Appellant, 10. However, there is substantial evidence that the

officers observed Shire possessing and drinking a beer based upon the officers' testimony. This Court should defer to the trial court's factual finding, which was based on an assessment of the officers' credibility.

The observations made by both Officer Escalante and Officer Beatty are outlined above, but summarized again here. Officer Escalante testified that he looked in the area of the gas station because, based upon his experience as a patrol officer in the area, it is a regular problem that people drink alcohol after purchasing in that location. 1RP 34. When he looked in the direction of the gas station, he observed Shire drinking from a 24 oz. high tops can. *Id.* Officer Beatty also testified that he saw Shire drinking from a beer can, possibly mostly covered or partially covered by a brown paper bag. 1RP 61. Furthermore, both officers testified that Shire asked them if he was being contacted about the beer, which confirmed the officers' belief that he possessed a can of beer. 1RP 35, 71. Based on the totality of the testimony, the evidence before is sufficient to persuade a fair-minded, rational person of the truth of the finding.

3. Officers Had Probable Cause To Detain Shire For Committing A Civil Infraction.

It is a civil infraction for a person to possess an open can containing liquor or to consume liquor in a public place under Seattle Municipal Code 12A.24.025; 12A.245.150. An officer, who has probable cause to believe that a non-traffic infraction was committed in his presence, may detain the person receiving the infraction for a reasonable period of time necessary to identify the person and to complete the notice of infraction. *See generally* RCW 7.80.050(2); RCW 7.80.060; RCW 7.84.030(2)(a); *State v. Duncan*, 146 Wn.2d 166, 174, 43 P.3d 513 (2002). If the person is unable or unwilling to reasonably identify himself, then the officer may continue to detain that person "for a period of time not longer than is reasonably necessary to identify the person for purposes of issuing a civil infraction." RCW 7.80.060.

Here, as discussed above, Officer Escalante and Officer Beatty observed Shire both possessing a can of beer and drinking from it. 1RP 33-34, 61. Accordingly, the officers had probable cause to detain Shire for the civil infraction of possessing and/or consuming alcohol in public. SMC 12A.24.025; RCW 7.80.050. Shire was detained after he ran from the officers and asked to

identify himself. He provided the name "Liban Shire" which did not match his physical descriptors provided in the police database. 1RP 36-37. Thus, the extended detention in this case occurred because Shire was unable to provide proper identification to police. 1RP 37. Thus, officers had legal authority to continue to detain Shire for a reasonable period of time to identify him. When they confirmed his true identity, they also discovered warrants for his arrest.

4. Officers Also Had Reasonable Suspicion To Detain Shire For Committing Two Crimes In The Officers' Presence.

Although any extended detention was justified based upon the officers' need to identify Shire, the detention was also justified because the officers had reasonable suspicion that Shire committed two crimes in their presence. To justify a *Terry* stop under the Fourth Amendment and art. I, § 7, a police officer must be able to "point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *State v. Armenta*, 134 Wn.2d 1, 20, 948 P.2d 1280 (1997). The level of articulable suspicion necessary

to support an investigative detention is "a substantial possibility that criminal conduct has occurred or is about to occur." *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). Probable cause is not required for a *Terry* stop because a stop is significantly less intrusive than an arrest. *Id.*; *Brown v. Texas*, 443 U.S. 47, 50, 99 S. Ct. 2637, 61 L. Ed. 2d 357 (1979).

It is a gross misdemeanor to willfully hinder, delay, or obstruct any law enforcement officer in the discharge of his or her official duties. RCW 9A.76.020. It is also a gross misdemeanor to knowingly make a false or misleading material statement to a public servant. RCW 9A.76.177. Police had reasonable suspicion to detain Shire for both of these crimes as he both ran from police after being told not to run, and because he knowingly lied about his name. 1RP 35, 37. Thus, even without considering the reasonableness of the length of the detention based upon the civil infraction, officers had a legal basis to detain Shire for investigation of crimes committed in their presence.

D. CONCLUSION

There was substantial evidence to support the trial court's finding of fact that Officer Escalante observed Shire drinking a can

of beer. The officers had probable cause to detain Shire for a civil infraction, and he was detained as reasonably necessary to confirm his identity after he obstructed the officers and made false statements. Once his true identity was ascertained, warrants were discovered, and he was properly placed under arrest for those warrants. Thus, Shire's claim otherwise should be denied.

DATED this 19th day of April, 2016.

Respectfully submitted,

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Certificate of Service by Electronic Mail

Today I directed electronic mail addressed to Jan Trasen, the attorney for the appellant, at Jan@washapp.org, containing a copy of the Brief of Respondent, in State v. Mahadi Abdullahi Shire, Cause No. 73294-3, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 19 day of April, 2016.

Name: Bora Ly
Done in Seattle, Washington