70123-1

70123-1

No. 70123-1-I

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION ONE

STATE OF WASHINGTON,

Respondent,

v.

T.G.
(D.O.B. 3/12/97),

Appellant.

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

APPELLANT'S REPLY BRIEF

NANCY P. COLLINS
Attorney for Appellant

WASHINGTON APPELLATE PROJECT
1511 Third Avenue, Suite 701
Seattle, Washington 98101
(206) 587-2711

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Washington Supreme Court Decisions

Washington Court of Appeals Decisions

Court Rules

Other Authorities

A. ARGUMENT.

The unreasonable extension of T.G.'s detention, because of a generic description and while police conduct suggested to the complainant that they had detained the actual perpetrators undermines his arrest and conviction

In its Response Brief, the State paints an unreasonably rosy view of the facts known to the police at the time they seized, detained and arrested T.G. Part of the confusion is the fault of the trial court, which insisted that the CrR 3.5 and CrR 3.6 hearings would be subsumed within the fact-finding adjudication and it simultaneously conducted the preliminary suppression hearings and the trial on the allegations. 1RP 11. Defense counsel objected to the bifurcation of the pretrial and trial proceedings because it would be unduly confusing and difficult to separate the testimony relevant only to certain issues, or hearsay only admissible for some purposes. 1RP 10-11. During the joint hearings, defense counsel repeatedly objected to certain testimony, trying to cabin the testimony being offered for suppression purposes from that admissible in the trial itself. *See e.g.*, 1RP 23, 36, 63, 99-100. The State rests much of its claims in its Response Brief on after-the-fact information that should not be used to justify the detention and arrest.

The State also makes the irrelevant claim based on facts not in evidence that, because at the disposition hearing there was a mention of T.G. having received a prior deferred disposition, this Court should consider his purported prior "run in with the law" in its analysis of the lawfulness of T.G.'s search and seizure. Response Brief at 17. This claim was never presented to the trial court during the joint suppression and trial hearing. It should be stricken and disregarded as an improper effort to disparage T.G. or paint him as having a sophisticated legal knowledge based on facts not in evidence.

The State's exaggeration of the facts supporting T.G.'s extended detention should be disregarded. There is no dispute that the complainant saw two people outside her window while looking through slatted blinds for three seconds, and in that three seconds, she focused on the person who was not T.G. 1RP 37, 39, 78. The prosecutor's belief that the window "framed" the boys is incorrect, because the blinds went across the window and broke up the view through it. Ex. 3. She gave a generic description of two boys without distinctive features, including the claim that both boys were "very thin" but the photographs show neither was extremely skinny and in fact were average-looking teenage boys. Ex. 8.

The prosecution glances over what happened during the extended detention. The police knew they lacked grounds to continue the detention, or keep the complainant at the scene, yet they did not let anyone leave.2RP 276. The police kept the complainant sitting in a police car while they demonstrated their belief that the boys were responsible for the crime by reading *Miranda* warnings, questioning them separately, taking their photographs to document their appearance for the investigation, all while the complainant watched. It was only after the complainant saw the two boys being further detained that she changed her identification to being positive they were both the people she saw outside her window for three seconds through her slatted blinds.

The State's claim that the search of the backpack is not part of the appeal is belied by the record. The trial court expressly, and incorrectly, entered a finding that Officer Ross's search of the backpack was voluntary and this finding may be challenged on appeal. CP 97 (Finding of Fact 17). Officer Ross did not seek T.G.'s permission to search his backpack, he requested that T.G. do so, which did not give him an option to refuse. 2RP 132; *see also* Appellant's Opening Brief at

20-23. A search of a closed backpack is not authorized by the *Terry* stop. *State v. Garvin*, 166 Wn.2d 242, 250, 207 P.3d 1266 (2009).

Once the investigation yielded insufficient evidence to arrest, the police lacked authority to continue the detention in the hopes that someone confessed or other evidence developed. *See State v. White*, 97 Wn.2d 92, 106, 640 P.2d 1061 (1982).

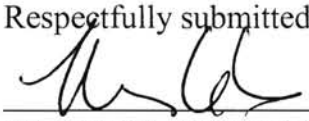
The extended custodial detention, demand to search T.G.'s backpack, and suggestion to the complainant that she change her identification by signaling the boys were responsible for the crime were unlawful and unfair. The joint show-up identification was obtained as the product of an unlawful search and impermissible police conduct. *State v. Ramires*, 109 Wn.App. 749, 761, 37 P.3d 343, *rev. denied*, 146 Wn.2d 1022 (2002); *see State v. Herrera*, 902 A.2d 177, 183 (N.J. 2006). As this Court has noted, "the practice of showing suspects singly to persons for the purpose of identification has been widely condemned." *State v. Rogers*, 44 Wn.App. 510, 516, 722 P.2d 1349 (1986). The unlawfully extended detention and identification should be suppressed.

B. CONCLUSION.

For the foregoing reasons as well as those argued in Appellant's Opening Brief, T.G. respectfully requests this Court reverse his adjudication and order the suppression of the improperly obtained evidence.

DATED this 5th day of February 2014.

Respectfully submitted,



NANCY P. COLLINS (28806)
Washington Appellate Project (91052)
Attorneys for Appellant

DECLARATION OF FILING AND MAILING OR DELIVERY

The undersigned certifies under penalty of perjury under the laws of the State of Washington that on the below date, the original of the document to which this declaration is affixed/attached, was filed in the **Court of Appeals – Division One** under **Case No. 70123-1**, and a true copy was mailed with first-class postage prepaid or otherwise caused to be delivered to the following attorney(s) or party/parties of record at their regular office or residence address as listed on ACORDS:

☒ respondent King County Prosecuting Attorney-Appellate Unit

☒ appellant, Todd Gauthan, Jr.
418 Kennewick Ave. N.
Kent WA 989032

☐ Attorney for other party

MARIA ANA ARRANZA RILEY, Legal Assistant
Washington Appellate Project

Date: February 5, 2014