92139-3

Supreme Court of Washington
Justice Temple, Olympia, WA

STATE OF WASHINGTON, Respondent/Plaintiffs, vs. LAVELLE X. MITCHELL, Appellant/Defendant.	**CA No. 72222-1-I** APPELLANT MITCHELL'S MOTION FOR DISCRETIONARY REVIEW TO THE SUPREME COURT OF WASHINGTON STATE (Petition for Review)

1. IDENTITY OF MOVING PARTY

LAVELLE X. MITCHELL, Appellant, asks for the relief designated in Part 2.

2. STATEMENT OF RELIEF SOUGHT

Granting review and reversing Court of Appeals affirmation that constitutional rights must yield to court rules with regard to how the Court perceives evidence when it comes from the government and reversing trial court conviction on the basis that the acts admitted to describe a clear violation of the constitutional prohibition and restriction on depriving citizens without due process of law and remanding to trial court for the appropriate corrections to the record that reflects that the constitution and the laws of the United States of America are indeed "supreme" and inviolate, nor can any branch of government

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authorize the chilling of the rights conferred thereby or make of non-effect the prohibitions and restrictions imposed on all three branches of government.

This motion is based on the motion, affidavit of pro se counsel Lavelle X. Mitchell, and the record of the purposes of the Constitutional prohibitions and restrictions applicability with regard to the judicial branch of government to have the power to make exceptions to the protections guarantees of the laws and constitutions, such that the Judicial branch of government is not authorized to usurp the rights of the people by virtue of offering their opining of what the right means in fact and what, therefore, the limitations of the constitutions do not mean within the meaning as expressed by the common man rationale and not some acceptable standard created to ease the serious burdens imposed by the law to limit authority and power of government and their servants.

3. **FACTS RELEVANT TO MOTION**

In the State of Washington the appellant was accosted by a uniformed police officer and questioned as to where he was going and did he know another person. The officer, though allegedly looking to serve a warrant on someone at the private location on private property without a warrant. The encounter lead the officer to conduct a **4th amendment** protected search with regard to the appellant. The officer claimed that it was social contact and therefore did not invoke the power of law with regard to the prohibitions and restriction imposed on his ability to search, seize and arrest, 4th amendment of the federal constitution and Article 1, section 7 of the Washington State Constitution.

The officer, after conducting a search for Darnell Brown, the name given by the appellant, he searched, questioned without Mirandizing appellant with regard to the admission of any crimes committed by him. The officer subsequently arrested and charged appellant with a Violation of the Uniformed Control Substance Act, **RCW 69.50 et seq**. The statute places serious limitations on the ability of government to move forward with a prosecution under this section without counsel for the defense first making application to challenge the authority used to conduct such searches and seizures.

Affidavit of Appellant Pro Se

I was encouraged to withdraw my not guilty plea and take a plea agreement even though I told my attorney that I did not want to plea to any other charges and I told him that I wanted to go forward with trial on the original charges. The fact is that he became very upset and instead of doing what I had insisted, go to trial on the original charges, he coerced me into taking a deal by lying to me. He told me that they had proof that I had been in possession of the illegal substance that was found in the car after it was abandoned by its owner. I am not the owner. I was not accused of ever even driving the car. So, I asked the attorney for the case, why should I plea guilty and I don't have anything to do with it. His response was that a jury would find me guilty of a VUCSA even if I wasn't in the car because I would more than likely get an all White jury and they always go along with the police. He said, that there is a police officer that is going to testify that I had the illegal substances and that would be all and that there was nothing he could do to overcome the historical mindset of White Americans when a Black person is accused of a drug crime. I felt that under the circumstances that I had no recourse except to lie and say that I and my brother were both in possession of the illegal substance found in the car.

It is also problematic that my attorney did not know what the effect of the charges would be because the state had never written any information detailing exactly what I was being charged with nor why they would be charging me with something they found in someone else's car. But, as I have said, my attorney got angry that I didn't want to take the plea deal offered by the state on the day of trial. In fact, what the attorney had found out was that the state would not be able to produce any witnesses to the alleged offense and had no witnesses present and ready to testify with regard to the original charges, which was not a VUCSA.

I later learned that my attorney was not working with my best interest in mind, but rather to assure that the public defender's budget isn't cut because had he done his job and properly informed me of my rights and remedies it would have included a challenge to the arrest and subsequent prosecution costs and my ability to be protected in the future from such government intrusions by seeking monetary compensation

as there are no laws currently that requires police or law enforcement to be punished if they fail to obey the laws.

4. **GROUNDS FOR RELIEF AND ARGUMENT**

The grounds for granting the motion are found in the constitutions and application of the restrictions and prohibitions it places on government. This is especially troubling in light of all the information now being made available as to the unfair and disparaging treatment of African American citizens or persons when they are encountered by the police. The major problem involves officers that clearly have acted without authority of law. Under Article III and VI of the Constitution for the United States of America we find the establishment of the judicial branch of government, which states, in pertinent part, that the power is "*The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.*" And "*This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land[emphasis added here]; and the Judges in every State shall be bound thereby[emphasis], any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.*" Clearly the power extends as a job and this the job description. One Court, many branches, however, the notion that somehow this section confers upon the court the "Power" to deny access for review is not found and unsupported at law. The 4th Amendment, which states, in pertinent part, that "*The right of the people[do not need to even be a citizen for this protection] to be secure in their persons, houses, papers[police checking police data base for information about a subject can only be done under the authority of law and no officer has the lawful power to conduct such a search absent a warrant that specifies the reasons for the search and then the reason must be reasonable, not to the government, but to the average person of understanding of rights], and effects,*

against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." Indeed, the law provided that "*No person [including appellant] shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."* Yet, the courts own admission is that the process due is now somehow vested in the police officer on the streets because it is the courts that have said that "if the officer swears that he was being social, then he is freed from the prohibitions and restrictions of the laws. That is seriously flawed rationale but without which this case would not be before this court.

I believe that the usurpation of the rights conferred by the constitutions and laws of the United States is clearly described in the accounts of the arrest and prosecution without regard for the rights of African American citizens or persons. I have had to act as my own counsel as the 6th Amendment is now filtered through the judicial branch of government as to whether the counsel provided "effective assistance of counsel" not the person who was to receive the services of the counsel. This was absurd to me and thus because of the failures of two attorneys in this matter. My original trial attorney, whose name I do not remember, and Mitch Harrison. Both of whom failed me in material ways but not compelling the court to make a record of where in the constitution the authority is conferred that even suggests that the judicial branch is free from the prohibitions and restriction of the laws of the united states, and certainly they are not authorized to extend their "judicial power" to exonerate one not formally charged with a crime, the officer was not defending against the charge of violating appellant's rights, he was merely testifying as to why the law should be ignored or declared not triggered by the government encounter.

After Mitch Harrison conducted the 4.2(f) hearing he informed me and my family that he would be filing a notice of appeal in the matter decided on August 29, 2014. Since I was in custody, and the court refused to issue an appeal bond, there was no way for me to do any follow up on the process of the appeal. It turns out that Mr. Harrison failed to file a timely notice of appeal and that failure was imputed to me, though I have witnesses that I said I wanted to appeal the court's decision denying me the right to withdraw my plea of guilty to my attorney Mitch Harrison. Mr. Harrison assured me and my family that not only would he file the notice of appeal but that he would take on the costs of the appeal.

In essence, I am asking this court to consider that I am in custody. I have three other matters pending in the court of appeals such that it would be apparent that I intend to appeal the decisions of the courts denying me, what I believe is the due process and fair and equal treatment with regard to protections the laws offers citizens charged like myself. In addition, to Mitch Harrison, my trial attorney, never seeing any information for a VUCSA, still is required under RCW 69.52 to challenge the charge first, that is before recommending that a client simply plead guilty, and his failure to do so constitutes proof that I could not have made an informed decision before entering into the plea agreement with the state. And indeed, you have a rule that requires effective assistance of counsel at every stage in the "process" due.

Finally, the manifest injustice has to have occurred where I am innocent and never got a meaningful opportunity to make that claim of innocence a part of the record because I had 1) no money to pay for a private attorney (meaning, historically, public defenders are overwhelmed just by the sheer number of case they have a year and they have extremely limited resources, 2) the economy took a turn for the worst that had an impact on government looking to save money and trial being more costly, are encouraged to seek "cheap" remedies and getting someone to plead guilty where there is no evidence is clearly "cheap" but it is however very unfair to such criminal defendants as are considered minimally and whose race has been marginalized when it comes to being treated as the majority race is treated within the Judicial branch of government, primarily because of the hard task for public defenders to achieve. They

must work with whomsoever they are assigned and the zealousness with which they are required to pursue a client's issues are ignored to the hurt and harm of everyone. I am in jail now not because I am guilty of any offense, rather because my attorney was effective and the state needs to show victories in order to continue getting funded for just causes.

So, for all the reasons stated and in the record I believe that I should be entitled to have a court review of whether or not, 1)where a state does not charge by information has a criminal proceeding legally been commenced, 2) where the state fails to turn up any evidence of crime can they simply state that they will reduce the charges, however, they don't reduce the charges they actually make up a completely new charged and one that is not a species of the original charge nor does it resemble in any form the original charge, and 3) whether an attorney that advices his/her client to plead guilty to a charge that has not been filed amounts to ineffective assistance of counsel, where when looking at the case from the perspective of "if not for this attorney's decision to negotiate with prosecuting attorney, then there would have been a different outcome. In this case, according to the trial judge, several problems existed for the state no matter what they had charged me with. So, I believe, that this case is one that needs to be reviewed de novo and because of the failures of my counsels I am being denied due process of law within the meaning of doing substantive justice and assuring the operation of the laws within the meaning of our two constitutions, and because justice so demands.

It is the job of the judicial branch of government to give effect to the laws. They are not hired to waive rights through opining exceptions that "could" exist, if they were the police officers of America. The ruling abrogates the job of protecting citizens and persons from the exercise of authority by police officers, prosecutors and other judges, which make up the branch of government known as the Judicial branch of government and the ruling should be reviewed for strict compliance with the rights conferred and not find ways to justify their clear violation in order to "arm the police with additional tools" other than the law itself. I am confident that the strict compliance of the law will result in the reversal of both courts ruling and decisions in this matter.

August 4, 2015

Respectfully submitted,

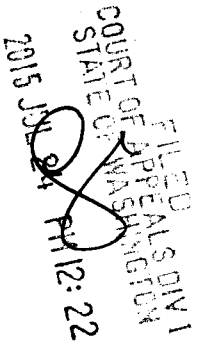
Signature

Lavelle X. Mitchell, Pro Se Appellant, In Custody
DOC #375920/BN# 214023613
Washington Corrections Center, P.O. Box 900
Shelton, Washington 98584

Certificate of Service

I, Lavelle X. Mitchell, pro se appellant, declare under the penalty of perjury for the State of Washington that I caused to be delivered to the State of Washington, King County Prosecuting Attorney, Dan Satterberg, 516 Third Avenue S., W-554, Seattle, Washington 98104, a true copy of the above and this certificate of service on the 4th day of August, 2015 by hand delivering through my grandmother, Mary Mitchell. And I will send a copy via regular prison mail system via the U.S. Postal Services to the plaintiffs at the address listed herein.

The Court of Appeals, Division One, Seattle, WA



NOTICE FOR DISCRETIONARY REVIEW

STATE OF WASHINGTON, Plaintiff,	)	**Case No. 72222-1-I**
v.	)	No. 13-1-13531-7 SEA
LAVELLE X. MITCHELL, Appellant.	)	Notice of Discretionary Review to Supreme Court

Lavelle X. Mitchell, appellant/defendant, seeks review by the designated appellate court of the Court of Appeals decision affirming criminal conviction based on the so-called "social contact" exception decision, "Finding of No compulsion through words or tone . . . never activated emergency equipment, never drew or displayed his weapon" because "Substantial evidence is evidence sufficient to convince a rational person of the truth of the finding." And "[A]ll reasonable inferences from the evidence must be drawn in favor of the State and the interpreted most strongly against the defendant" and finally, the Court relies in its decision on the self-serving statements of Officer Yagi as "more" true, then even the truth and thereby denying appellant's 4th, 5th, 6th, 8th, and 14th Amendment rights of the Constitution for the United States of America, as well as Washington State Constitution at the clauses, phrases, paragraphs and

sections that prohibit and restricts the use of the powers of all three branches of government to "chill" the Bill of Rights protections and makes warrants meaningless and of non-effect which was entered on June 29, 2015.

A copy of the decision is attached to this notice.

July 25, 2015

Signature

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Attorney for Lavelle X. Mitchell, Pro Se Appellant

Lavelle X. Mitchell, Shelton Corrections Center, DOC #375920, Post Office Box 900, Shelton, Washington, 98584, Pro Se, not a member of the Washington State Bar Association, attorney for petitioner. And for the Plaintiff, State of Washington, King County Prosecuting Attorney Dan Satterberg, 516 Third Avenue S, W-554, Seattle, Washington 98104.

Certificate of Service

I, Lavelle X. Mitchell, Pro Se appellant, hereby certify that a true copy of this document, Notice of Discretionary Review, has been served on the State of Washington, plaintiff/respondent, on this 25th day of July 2015 by delivering a true copy to the Plaintiff or their attorney, King County Prosecuting Attorney Dan Satterberg, 516 3rd Avenue South, W-554, Seattle, Washington 98104 via hand delivery of the same.

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Lavelle X. Mitchell, Pro Se Appellant

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

STATE OF WASHINGTON, Respondent, v. LAVELLE XAVIER MITCHELL, Appellant.	)	No. 72222-1-I UNPUBLISHED OPINION FILED: June 29, 2015

VERELLEN, A.C.J. — Lavelle Mitchell was convicted of one count of possession of a controlled substance. On appeal, Mitchell challenges the finding that Officer Yagi "did not indicate compulsion through words or tone"[1] and the trial court's conclusion that Officer Yagi did not unlawfully seize Mitchell before his arrest. We conclude sufficient evidence supports the trial court's finding. In addition, the totality of the circumstances and undisputed findings support the trial court's conclusion that Mitchell was not unlawfully seized before his arrest. We affirm.

FACTS

While on patrol and in uniform one evening shortly after midnight, Officer Daniel Yagi saw Mitchell walking down a motel's exterior breezeway. Officer Yagi drove past Mitchell and parked his car 10 to 20 feet from him in the motel parking lot. Officer Yagi's patrol car did not block Mitchell's access to the adjoining street.

[1] Clerk's Papers (CP) at 79 (Finding of Fact (FF) 15).

Officer Yagi "asked" Mitchell "what was going on."[2] Mitchell responded that he was coming from his uncle's motel room. When Officer Yagi "asked" Mitchell his name, Mitchell responded "Darnell Brown."[3] Officer Yagi did not doubt or disbelieve Mitchell's response because "it was a very fluid contact."[4] Mitchell spoke to Officer Yagi "in a smooth manner."[5] Officer Yagi returned to his patrol car to run the name that Mitchell had given him. Officer Yagi did not tell Mitchell that "he was free to go or that he had to stay."[6]

When Officer Yagi ran "Darnell Brown" through his computer's database, he learned Brown had a prior felony conviction for possession of a controlled substance. Officer Yagi "asked" Mitchell "whether he was still using."[7] In a "very cordial, laid back" manner, Mitchell responded that "he was using."[8] Officer Yagi then asked if he "was holding."[9] Mitchell responded that "he had about 2 grams in the car."[10] Mitchell appeared "laid back and calm" and "didn't seem nervous at all" during the encounter.[11]

After Mitchell admitted that he was "holding," Officer Yagi read Mitchell his Miranda[12] rights. Mitchell signed a form consenting to a search of his car. Officer Yagi

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[2] Report of Proceedings (RP) (June 5, 2014) at 8.

[3] Id. at 9.

[4] Id. at 23.

[5] CP at 77 (FF 6).

[6] RP (June 5, 2014) at 9.

[7] Id. at 11.

[8] Id.

[9] Id.

[10] Id.

[11] Id. at 11-12.

[12] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

searched Mitchell incident to arrest and found crack cocaine in Mitchell's coat pocket. Officer Yagi also searched Mitchell's car and found crack cocaine. Mitchell admitted the drugs belonged to him.

During this encounter, Officer Yagi "was unaccompanied by other officers," "never activated his emergency equipment," "never drew or displayed his weapon," "never physically touched Mitchell," "did not take possession of Mitchell's identification" before Mitchell admitted to "holding cocaine," and never told Mitchell that he had to stay.[13] The encounter lasted approximately five minutes. After the arrest, Officer Yagi told Mitchell to leave the area.

The trial court denied Mitchell's motion to suppress evidence obtained by Officer Yagi. After a stipulated facts trial, the court found Mitchell guilty of one count of possession of a controlled substance.

Mitchell appeals.

ANALYSIS

Finding of No Compulsion through Words or Tone

Mitchell contends insufficient evidence supports the trial court's finding that Officer Yagi "did not indicate compulsion through words or tone."[14] We disagree.

We review a trial court's challenged findings in a suppression hearing for substantial evidence.[15] "'Substantial evidence is evidence sufficient to convince a

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[13] CP at 79 (FF 15).

[14] Id.

[15] State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994).

rational person of the truth of the finding.'"[16] "'[A]ll reasonable inferences from the evidence must be drawn in favor of the State and interpreted most strongly against the defendant.'"[17] Unchallenged findings are verities on appeal.[18] We must defer to the fact finder's credibility determinations.[19]

The trial court found that Officer Yagi "did not indicate compulsion through words or tone."[20] Sufficient evidence in the record supports this finding.

Direct evidence supports the finding that Officer Yagi did not use adversarial or confrontational "words." Officer Yagi expressly testified to the "words" he used during the encounter with Mitchell. For example, when Officer Yagi arrived at the motel, he "asked" Mitchell "what's up, where you coming from."[21] He "asked" Mitchell "for his name."[22] Officer Yagi "didn't tell him that he was free to go or that he had to stay."[23] He "asked" Mitchell if "he was still using."[24] In a "very cordial, laid back" manner, Mitchell "said that he was using."[25] Then, Officer Yagi "asked" if Mitchell was "holding," and

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[16] State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002) (quoting State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999)).

[17] State v. Goodman, 150 Wn.2d 774, 781, 83 P.3d 410 (2004) (quoting State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992)).

[18] State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003).

[19] State v. Barnes, 158 Wn. App. 602, 609, 243 P.3d 165 (2010).

[20] CP at 79 (FF 15).

[21] RP (June 5, 2014) at 7.

[22] Id. at 8.

[23] Id. at 9.

[24] Id. at 10.

[25] Id. at 11.

Mitchell responded "yes."[26] No evidence suggests Officer Yagi gave orders, commands, or directions to Mitchell.

Additionally, sufficient evidence supports a reasonable inference that Officer Yagi did not use an adversarial or confrontational "tone." For example, Officer Yagi described himself as "a pretty smooth talker on the street."[27] He also testified that "it was a very fluid contact"[28] and "a fluid quick exchange."[29] Mitchell appeared "laid back and calm," "very cordial," and "just kind of matter of fact" during the encounter.[30] Mitchell spoke to Officer Yagi "in a smooth manner."[31] Further, Mitchell did not mention Officer Yagi's "tone" when testifying why he believed he had to cooperate with Officer Yagi.

Therefore, when viewed in a light most favorable to the State, sufficient evidence supports the trial court's finding that Officer Yagi "did not indicate compulsion through words or tone."[32]

No Unlawful Seizure.

Mitchell contends he was unlawfully seized before his arrest. We disagree.

We review a trial court's conclusions following a suppression hearing de novo.[33] Although the determination of whether a seizure occurs is a mixed question of law and

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[26] Id.

[27] Id.

[28] Id. at 23.

[29] Id. at 30.

[30] Id. at 11-12.

[31] CP at 77 (FF 6).

[32] Id. at 79 (FF 15).

[33] State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002).

fact, "'the ultimate determination of whether those facts constitute a seizure is one of law and is reviewed de novo.'"[34]

Under article 1, section 7 of our state constitution, a seizure occurs 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.'"[35] This is an objective standard based upon the police officer's actions and asks whether a reasonable person in the individual's position would "feel compelled to continue the contact."[36] If a reasonable person under the circumstances would not feel free to walk away, the encounter is not consensual.[37]

Not every contact that a police officer makes with individuals constitutes a seizure.[38] For example, a "social contact" is not a seizure.[39] A social contact is an interaction that "occupies an amorphous area in our jurisprudence, resting someplace between an officer's saying 'hello' to a stranger on the street and . . . an investigative detention."[40] Engaging a pedestrian in conversation in a public place does not, in itself,

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[34] State v. Harrington, 167 Wn.2d 656, 662, 222 P.3d 92 (2009) (quoting State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997)).

[35] Id. at 663 (quoting State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004)).

[36] State v. Bailey, 154 Wn. App. 295, 300, 224 P.3d 852 (2010).

[37] Harrington, 167 Wn.2d at 663.

[38] Rankin, 151 Wn.2d at 695; State v. Gantt, 163 Wn. App. 133, 139, 257 P.3d 682 (2011); State v. Mote, 129 Wn. App. 276, 282, 120 P.3d 596 (2005).

[39] Harrington, 167 Wn.2d at 664-65.

[40] Id. at 664.

raise the encounter to an investigatory detention requiring an articulable suspicion of wrongdoing.[41]

If an officer commands a person to halt or demands information from that person, a seizure occurs.[42] An unconstitutional seizure results in the suppression of all evidence flowing from the seizure.[43] "'But no seizure occurs where an officer approaches an individual in public and *requests* to talk to him or her, engages in conversation, or *requests* identification, so long as the person involved need not answer and may walk away.'"[44]

The Washington Supreme Court in State v. Young embraced a nonexclusive list of police actions likely resulting in seizure.[45] Circumstances that could indicate a seizure, even where the person did not attempt to leave, include "'the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.'"[46] A seizure normally involves at least some of these factors, but the ultimate determination of whether a seizure occurs is based on the totality of the circumstances.[47]

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[41] State v. Young, 135 Wn.2d 498, 511, 957 P.2d 681 (1998); State v. Ellwood, 52 Wn. App. 70, 73, 757 P.2d 547 (1988).

[42] O'Neill, 148 Wn.2d at 577.

[43] Harrington, 167 Wn.2d at 664.

[44] O'Neill, 148 Wn.2d at 577-78 (quoting State v. Cormier, 100 Wn. App. 457, 460-61, 997 P.2d 950 (2000)).

[45] 135 Wn.2d 498, 957 P.2d 681 (1998).

[46] Id. at 512 (quoting United States v. Mendenhall, 446 U.S. 544, 554-55, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980)).

[47] Mendenhall, 446 U.S. at 554-55.

We note that a trial court need not enter a finding regarding "words or tone." The Young factors, based on United States v. Mendenhall,[48] include "language or tone of voice." But the Young factors are not absolute. Rather, we consider the Young factors as part of the totality of the circumstances to determine if a seizure occurs. Even absent a finding about "words or tone," ample findings support the trial court's conclusion that Mitchell was not unlawfully seized before his arrest:

- Officer Yagi "was unaccompanied by other officers";[49]
- Officer Yagi "never drew or displayed his weapon";[50]
- Officer Yagi "never activated his emergency equipment";[51]
- Officer Yagi "never physically touched Mitchell" until after his arrest;[52]
- Officer Yagi "did not take possession of Mitchell's identification";[53]
- Officer Yagi never told Mitchell that he had to stay; and
- Officer Yagi did not block Mitchell's access to the adjoining public street.

And as previously noted, when asked on cross-examination why Mitchell believed he had to cooperate with Officer Yagi, none of his reasons involved Officer Yagi's words or tone of voice. No evidence suggests that Officer Yagi used adversarial words or a confrontational tone during the encounter. The undisputed findings for the other Young factors are consistent with no seizure. Therefore, the trial court properly concluded Mitchell was not unlawfully seized before his arrest.

Finally, in Mitchell's pro se statement of additional grounds, his arguments appear to relate to a plea agreement in an entirely unrelated case. Issues that involve

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[48] 446 U.S. 544, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980).

[49] CP at 79.

[50] Id.

[51] Id.

[52] Id.

[53] Id.

facts or evidence outside the record on appeal may not be raised through a statement of additional grounds, and the unrelated plea agreement has no bearing on Mitchell's conviction.[54] Therefore, Mitchell fails to identify any reversible error.

We affirm.

WE CONCUR:

COX, J.

[54] State v. Alvarado, 164 Wn.2d 556, 569, 192 P.3d 345 (2008).