No. 92452-0
(Court of Appeals No. 72167-4-I)

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

JORDAN WILSON,

Petitioner.

PETITION FOR REVIEW

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A. IDENTITY OF PETITIONER

Jordan Wilson, defendant and appellant below, seeks review of the Court of Appeals decision designated in Part B.

B. COURT OF APPEALS DECISION

Mr. Wilson seeks review of the Court of Appeals decision affirming his conviction for possession of a controlled substance. State v. Jordan Lee Wilson, No. 72167-4-I. A copy of the decision dated September 28, 2015, is attached as an appendix.

C. ISSUE PRESENTED FOR REVIEW

Article I, section 7 of the Washington Constitution protects citizens from warrantless searches and seizures. An exception to the warrant requirement exists for investigative stops when the officer has a reasonable, articulable suspicion, based upon specific, objective facts, that the person seized has committed or is about to commit a crime. A police detective detained Mr. Wilson because he was standing next to a car that contained bags and backpacks in the parking lot of an extended-stay motel where a man had been residing who the detective suspected had been pawning stolen jewelry. Where Mr. Wilson's innocuous conduct was not logically connected to criminal activity,

was the investigative stop unconstitutional?

D. STATEMENT OF THE CASE

Detective James Massingale went to an Extended Stay motel in Snohomish County looking for a blue Buick he believed was connected to a 50-year-old white man residing in the motel who had been pawning jewelry for several day. 5/29/14 RP 5-7, 17. The detective believed the man was connected to earlier local burglaries in which jewelry had been stolen. Id. at 6-7.

The detective did not find the blue Buick in the motel parking lot, but he noticed a green Monte Carlo. 5/29/14 RP 7. The Monte Carlo's doors and trunk lid were open, a number of bags and other items were visible inside the car, and three men were standing around the car talking. Id. at 9-10. Detective Massingale stopped the three men in order to investigate. Id. at 11-12, 20. The detective did not see any of the men approach the motel or move property in or towards the motel. Id. at 21.

Jordan Wilson was one of the three men in the parking lot standing by the Monte Carlo. 5/29/14 RP 10. The parking lot was on the side of the motel that contained 30 to 40 motel rooms. Id. at 21-22.

Detective Massingale had no information connecting Mr. Wilson with the 50-year-old man or the burglaries. Id. at 19.

After another police officer arrived, he and Detective Massingale obtained the men's identification and patted them down for weapons; no weapons were found. 5/29/14 RP 14; CP 35. After a "computer check" revealed that Mr. Wilson had a warrant for his arrest, Detective Massingale searched Mr. Wilson and seized small amounts of what appeared to be methamphetamine and heroin from Mr. Wilson's pants' pockets. 5/29/14 RP 14-15; CP 35. Field tests were presumptively positive. CP 35-36.

The Snohomish County Prosecutor charged Mr. Wilson with possession of a controlled substance, RCW 69.50.4013. CP 69. Mr. Wilson moved to suppress the items found on his person, arguing the police officer lacked the reasonable suspicion based upon articulable facts necessary to support an investigatory detention. CP 50-61; 5/29/14 RP 28-30. The motion was denied. CP 38-40; 5/29/14 RP 32-34.

Mr. Wilson then waived his right to a jury and was convicted based upon his stipulation to the facts contained in the police report. 7/1/14 RP 2-4; CP 28-37. On appeal, Mr. Wilson argued that the

investigative stop violated his article I, section 7 rights to be free from warrantless searches and seizures.[1] Brief of Appellant at 6-15, 18; Appellant's Reply Brief at 1-10, 14. The Court of Appeals affirmed Mr. Wilson's conviction, finding "Detective Massingale's reasonable and articulate suspicions justified an investigatory detention." Slip Op. at 9.

E. ARGUMENT WHY REVIEW SHOULD BE GRANTED

The Court of Appeals upheld the unconstitutional investigative stop of Mr. Wilson based upon facts not in the record and the decision conflicts with State v. Doughty, 170 Wn.2d 57 (2010).

Article I, section 7 succinctly provides, "No person shall be disturbed in his private affairs, or his home invaded, without authority of law." The protections of article I, section 7 are "qualitatively different" than those of the Fourth Amendment. State v. Snapp, 174 Wn.2d 177, 187, 275 P.3d 289 (2012). It is well-settled that the Washington Constitution provides greater protection against warrantless seizures than the federal constitution. State v. Setterstrom, 163 Wn.2d 621, 626, 183 P.3d 1075 (2008); State v. Gatewood, 163

[1] Mr. Wilson also argued that the officer's exceeded the proper scope of an investigative stop by running his name to check for warrants, but he does not include that issue in this petition for review. Brief of Appellant at 16-18; Appellant's Reply Brief at 11-14.

Wn.2d 534, 539, 182 P.3d 426 (2008); see State v. Parker, 139 Wn.2d 486, 493, 987 P.2d 73 (1999) (state constitution "clearly recognizes an individual's right to privacy with no express limitations") (quoting State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982)).

Warrantless searches are per se unreasonable. State v. Ladson, 138 Wn.2d 343, 349, 979 P.2d 833 (1999). The State has the burden of proving one of the narrowly-drawn exceptions to the warrant requirement applies. Ladson, 138 Wn.2d at 349-50. The warrant requirement is especially important for an article I, section 7 analysis because "it is the warrant that provides the 'authority of law'" referenced in the constitution. Id. at 350.

One exception to the warrant requirement is an investigative stop. Gatewood, 163 Wn.2d at 539; see Terry v. Ohio, 392 U.S. 1, 16-19, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). A police officer may briefly detain a citizen if the officer has "a reasonable, articulable suspicion, based upon specific, objective facts, that the person seized has committed or is about to commit a crime." Gatewood, 163 Wn.2d at 539 (emphasis in original) (quoting State v. Duncan, 146 Wn.2d 166, 172, 43 P.3d 513 (2002)); accord Terry, 392 U.S. at 21. The officer's actions must be justified "at their inception." Gatewood, 163 Wn.2d at

539; Ladson, 138 Wn.2d at 350. The State has the burden of demonstrating the legality of a warrantless investigative stop. Gatewood, 163 Wn.2d at 539.

The trial court held that the stop of Mr. Wilson was justified based upon (1) Detective Massingale's investigation at the Extended Stay America eleven days earlier, (2) the detective's belief that a man in Room 123 might be pawning stolen property, (3) the location of the Monte Carlo in the motel parking lot, and (4) the bags and other containers in the car that could be used to transport stolen property. CP 39.

An investigative detention may not be based upon innocuous conduct. State v. Armenta, 134 Wn.2d 1, 13-14, 948 P.2d 1280 (1997). Mr. Wilson was in the parking lot of an extended-stay hotel standing next to a car that was full of bags and other items. The Extended Stay America has amenities, such as kitchens and a fitness room, so that people may comfortably stay for long periods of time.[2] The detective noted that this particular location was frequented by semi-homeless and homeless individuals. 5/29/14 RP 27. This clientele might bring all of their belongings with them, thus making a full car-load. In addition,

[2] www.extendedstayameria.com/suites/hotel-rooms-and-amenities.html. (last viewed 10/26/15).

the detective admitted that people who stay at that hotel frequently transport their belonging in backpacks and other bags rather than traditional luggage. 5/29/14 RP 27.

In addition, an investigative stop may not be justified by a suspect's presence in a high crime area or proximity to people independently suspected of criminal activity. State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). Detective Massingale had no reason to connect Mr. Wilson to the people suspected of committing burglaries eleven days earlier simply because he was in the parking lot of the same hotel. Although he detective believed the hotel was a hotbed of criminal activity, Mr. Wilsons' presence in the motel parking lot also did not justify the stop. 5/29/14 RP 27.

The Court of Appeals affirmed the trial court's decision, but added a new factual basis needed to distinguish Mr. Wilson's case from Doughty. Slip Op. at 8, 9. According to the Court of Appeals, Detective Massingale testified that the property in the Monte Carlo was consistent with the items stolen in the burglaries he was investigating, "as to the kinds of items he viewed, and the way the items were packed in the car." Id. at 8. The Court of Appeals concluded that the detective saw Mr. Wilson next to a car "packed in the same manner" as the car

used in the burglaries he was investigating. Id. at 9. The Court of Appeals is incorrect.

Detective Massingale did not testify that the Monte Carlo was packed in the same manner as the Buick. He stated that the Buick contained three boxes that looked like the packaging for silverware as well as other bags of stolen property. 5/29/14 RP at 7-8. He also mentioned that jewelry was taken in the burglaries. Id. at 9. The detective did not testify that he saw containers for silverware or jewelry in the Monte Carlo. Moreover, when the detective mentioned that the Monte Carlo was "over-flowing" with property and bags, he stated that was consistent with similar crimes he had investigated in the past, not the burglaries he was currently investigating. Id. at 9-10. The Court of Appeals conclusion that the stop of Mr. Wilson was justified in part because the Monte Carlo was "packed in the same manner" as the Monte Carlos had been over a week earlier is incorrect. Slip Op. at 9.

The Court of Appeals also upheld the trial court's finding that "Detective Massingale observed property in the vehicle which was of a character associated with transporting stolen property, such as bags, gym bags, and backpacks." Finding of Fact 5 (CP 39). Mr. Wilson challenged this factual finding, pointing out that bags, gym bags, and

backpacks are frequently used by citizens to carry items that are not stolen, especially when staying at a motel. Brief of Appellant at 14-15. Finding of Fact 5 is clear, but the Court of Appeals looked to the trial court's oral ruling and concluded that substantial evidence "supports the material essence of the challenged finding." Slip Op. at 7.

A court's oral ruling is simply a verbal "expression of its informal opinion" and "it has no final or binding effect unless formally incorporated into the findings, conclusions, and judgment." State v. Mallory, 69 Wn.2d 532, 533-34, 419 P.2d 324 (1966); accord State v. Kilburn, 151 Wn.2d 36, 39 n.1, 84 P.2d 1215 (2004); State v. Hescock, 98 Wn. App. 600, 605-06, 989 P.2d 1251 (1999). The reviewing court may look to a trial court's oral ruling only when the written findings are ambiguous. Hescock, 98 Wn. App. at 606. Finding of Fact 5 is not ambiguous. The State did not produce evidence to support Finding of Fact 5's statement that gym backs and backpacks are associated with the transportation of stolen property. The Court of Appeals should have stricken Finding of Act instead of combing the court's oral ruling to find the "material essence" of the finding.

Mr. Wilson was unconstitutionally detained because he was in the parking lot of an extended-stay motel standing by a car loaded with

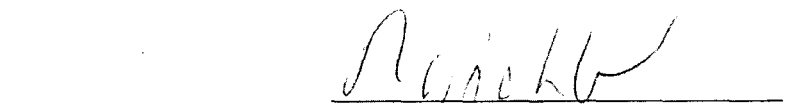
property. The Court of Appeals decision affirmed the stop by adding facts that were not supported by the police detective's testimony and using a factual finding that was not supported by the record. The Court of Appeals decision is incorrect and in conflict with this Court's decision in Doughty. This Court should accept review. RAP 13.4(b)(1).

A Washington resident's right under article I, section 7 to be free from being disturbed in his personal affairs is a constitutional issue of import to our citizens and the participants in our criminal justice system. This Court should also accept review pursuant to RAP 13.4(b)(3) and 13.4(b)(4).

F. CONCLUSION

Jordan Wilson asks this Court to accept review of the Court of Appeals decision finding the investigative stop and subsequent search of his person were constitutional and affirming his conviction for possession of a controlled substance.

Respectfully submitted this 27th day of October 2015.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. JORDAN LEE WILSON, Appellant.	)	No. 72167-4-I DIVISION ONE UNPUBLISHED OPINION FILED: September 28, 2015

TRICKEY, J. — Jordan Wilson appeals his conviction of possession of a controlled substance, contending the trial court erred in denying his motion to suppress based on an unconstitutional investigatory detention. He also argues that police exceeded the proper scope of the stop by running his name through the police department computer to determine his warrant status. But the trial court's findings of fact support the conclusion that the detective's reasonable, articulable suspicion justified the stop, and Wilson fails to demonstrate the officers exceeded the proper scope of the stop. We affirm.

FACTS

The State charged Jordan Wilson with possession of heroin and methamphetamine. Wilson filed a CrR 3.6 motion to suppress evidence, claiming that Detective James Massingale of the City of Everett Police Department violated his constitutional rights by detaining him for investigation without reasonable particularized suspicion of criminal activity.

At the CrR 3.6 hearing, Detective Massingale testified about his investigation of the theft of jewelry, firearms, sterling silverware, and other

property in a burglary that occurred in Everett on the morning of March 20, 2014. That afternoon, police officers located a vehicle used in the burglary in the parking lot of an Extended Stay America. Massingale went to the hotel to investigate the vehicle and "numerous people associated with" it.[1] Massingale found the vehicle in the parking lot on the west side of the hotel. Police discovered bags of property, as well as three boxes consistent with the storage of sterling silverware, in the vehicle. Massingale noted that the vehicle was located near a door providing a more direct route to rooms involved in his investigation than that of the main entrance to the hotel.

Based on the burglary report, Detective Massingale believed that at least four people were involved. At the hotel, Massingale also discovered that the resident of Room 123 had a high level of "pawn activity."[2] Although the man in Room 123 "was not apprehended" that night, police arrested one suspect associated with the vehicle used in the burglary on the evening of March 20 at the hotel.[3] Police also recovered property from the suspect's hotel room. Massingale determined that the recovered property included items stolen in the March 20 burglary, in another Everett burglary that occurred on the morning of March 19, and in three other burglaries in Snohomish County. Massingale believed that the burglars had been using the vehicle to transport stolen property from one hotel to another. Based on his review of the burglary reports, Massingale determined that stolen property, including firearms, was still missing.

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[1] Verbatim Report of Proceedings (VRP) (May 29, 2014) at 6.
[2] VRP (May 29, 2014) at 6.
[3] VRP (May 29, 2014) at 6, 13, 15.

During the course of his investigation, Massingale learned that the man in Room 123 continued to pawn items, such as jewelry, consistent with the missing property.

On March 31, after receiving a call from a hotel manager, Detective Massingale went to the Extended Stay America to look for a blue Buick associated with Room 123. While driving through the parking lot on the west side of the hotel, Massingale saw three men engaged in "light-hearted" conversation around a green Chevrolet Monte Carlo with both doors and the trunk open, and "overflowing with property" in "bags, backpacks, shoulder-carry bags, gym bags," in a manner "consistent with similar crimes" he had investigated.[4] Massingale continued driving around the hotel but he did not find the Buick. On his second pass around the hotel, he stopped his unmarked vehicle "within about two car lengths" of the Monte Carlo, approached the men "at a fast walk," identified himself "as the police," and told them he had recovered stolen property repeatedly at the hotel.[5] As he came near the car, Massingale could see car parts, power tools, "an air-soft gun or a paint-ball gun," as well as compact discs (CDs) or digital video discs (DVDs), "five or six cellphones," and "clothing all throughout the car."[6] Based on the fact that three of the burglary suspects had not yet been arrested, that the man in Room 123 was "still actively pawning," and that the car was overflowing with property "consistent with the

[4] VRP (May 29, 2014) at 9, 10, 26.
[5] VRP (May 29, 2014) at 10-11.
[6] VRP (May 29, 2014) at 26.

other investigation," Massingale testified that he "reasoned" that the men could be bringing "stolen property" "to Room 123 to be pawned."[7]

As he approached, the men stopped talking and focused on Massingale. Because he knew that stolen firearms were still missing, his view of the two men on the passenger side of the car was "obscured a little bit," and one man's hand dropped out of view to his waistband, Massingale drew his gun and held it down by his side while ordering the men to put their hands on the car.[8] Massingale informed them that "a second officer was en route" and asked them about their connection to the car and to the hotel.

When Officer Loucks arrived, he and Detective Massingale requested identification from the three men. Loucks requested a computer check on all three and discovered an outstanding felony warrant for Jordan Wilson. They arrested Wilson and found heroin and methamphetamine during a search incident to the arrest.

Based on this testimony, Wilson argued that his detention was unlawful because Massingale did not articulate any reasonable basis to suspect that he was particularly involved in criminal activity given his mere presence in a place where crimes had occurred in the past and near a car full of innocuous items. The trial court denied the motion to suppress and filed written findings of fact and conclusions of law. After a bench trial on stipulated evidence, the court found Wilson guilty of possession of controlled substances.

Wilson appeals.

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[7] VRP (May 29, 2014) at 13, 16.
[8] VRP (May 29, 2014) at 11-12.

ANALYSIS

We review a trial court's order following a motion to suppress evidence to determine if substantial evidence supports the trial court's factual findings. State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). Unchallenged findings of fact are verities on appeal. State v. Bonds, 174 Wn. App. 553, 562, 299 P.3d 663, review denied, 178 Wn.2d 1011, 311 P.3d 26 (2013). Credibility determinations are the prerogative of the trial court and are not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). We review the trial court's legal conclusions de novo. State v. Carneh, 153 Wn.2d 274, 281, 103 P.3d 743 (2004).

"[A] stop, although less intrusive than an arrest, is nevertheless a seizure and therefore must be reasonable under the Fourth Amendment and article 1, section 7 of the Washington Constitution." State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). An investigatory Terry[9] stop is permissible if the investigating officer has "a reasonable and articulable suspicion that the individual is involved in criminal activity." State v. Walker, 66 Wn. App. 622, 626, 834 P.2d 41 (1992). A reasonable suspicion is the "substantial possibility that criminal conduct has occurred or is about to occur." Kennedy, 107 Wn.2d at 6. "When the activity is consistent with criminal activity, although also consistent with noncriminal activity, it may justify a brief detention." Kennedy, 107 Wn.2d at 6. We review the reasonableness of the police action in light of the particular

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

circumstances of each case. State v. Lesnick, 84 Wn.2d 940, 944, 530 P.2d 243 (1975).

Wilson assigns error to the following findings of fact:

> 2. Detective Massingale had been at that location previously on March 20, 2014, at which time he found a vehicle associated with rooms at the hotel where criminal activity was taking place.
> . . . .
>
> 5. Detective Massingale observed property in the vehicle which was of a character associated with transporting stolen property, such as bags, gym bags, and backpacks.[10]

Wilson argues that finding of fact 2 is not supported by substantial evidence because the March 20 investigation revealed criminal activity in only one room, rather than rooms, at the hotel. But he fails to explain how the difference in the number of rooms is material to the court's ruling on the reasonableness of Massingale's suspicions.

As to finding of fact 5, Wilson argues that the finding is illogical and that "Massingale testified that the property in the car appeared consistent with crimes he was investigating, not that backpacks, bags, and gym bags are characteristically used to transport stolen property."[11] But Wilson's claim of error appears to be a distinction without a difference. And to the extent the language of the finding is less than artful, we may look to the court's oral ruling to interpret the finding, as long as no inconsistency exists. State v. Bynum, 76 Wn. App. 262, 266, 884 P.2d 10 (1994). In its oral ruling, the court stated:

> [Detective Massingale] observed, as he approached, property in the vehicle that was of a character and in bags, gym bags, backpacks,

[10] Clerk's Papers at 39.
[11] Br. of Appellant at 14.

> et cetera, associated with property that is stolen, that is transported from burglaries, and observed other things in the car, such as a large number of telephones and CDs in the front of the car.[12]

Substantial evidence in the record supports the material essence of the challenged finding. As Wilson admits, Massingale testified that he suspected that the burglars were moving stolen property packed in various bags between hotels based on the evidence gathered at the hotel on March 20, and that he initially noticed the Monte Carlo, in part, because it was overflowing with property of a character and packed in a manner consistent with his investigation.

Relying on State v. Doughty, 170 Wn.2d 57, 239 P.3d 57 (2010), and State v. Martinez, 135 Wn. App. 174, 143 P.3d 855 (2006), Wilson also challenges the trial court's conclusions of law regarding the reasonableness of the initial detention. In Doughty, an officer stopped the defendant after watching him stop for two minutes around 3:20 a.m. at a house the police suspected was a drug house based on complaints from the neighbors of constant "short stay traffic." 170 Wn.2d at 60, 62. In concluding that these facts amounted to a mere hunch that was insufficient to justify a Terry stop, the court noted the lack of supporting information, such as an informant's tip regarding particular drugs, observations of the defendant's activities at the house, or observations of suspicious behavior or furtive movements. Doughty, 170 Wn.2d at 63-65.

In Martinez, an officer stopped a defendant who was walking alone briskly and looking around nervously late at night in a high crime neighborhood where car prowls had been reported. 135 Wn. App. at 177. But the officer was

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[12] VRP (May 29, 2014) at 33-34.

patrolling the parking lot "because of past problems, not in response to a crime in progress report," and he "had no description or other information linking [the defendant] to any prowling that evening or, for that matter, at any time." Martinez, 135 Wn. App. at 181. The officer's general suspicion that the defendant "may have been up to no good" was not enough to warrant a Terry stop. Martinez, 135 Wn. App. at 182.

Wilson argues that his mere proximity to other people independently suspected of criminal activity and the innocuous circumstances surrounding his presence in the parking lot do not support an investigatory detention. He highlights the differences in his physical description from that of the occupant of Room 123, the innocuous nature of a car filled with small bags in the parking lot of an extended stay hotel, and the fact that Detective Massingale ultimately determined that the occupant of Room 123 was not connected with the burglaries.

But Massingale did not testify that he based his suspicions on the physical attributes of any particular suspect. Instead, he noted that three burglary suspects had not yet been arrested and three men stood around the Monte Carlo. And, while acknowledging that cars full of property in small bags may be common and innocuous at such hotels, Massingale also testified that the property in the Monte Carlo appeared to be consistent with his ongoing burglary investigation, as to the kinds of items he viewed, and the way the items were packed in the car. Finally, at the time of the detention, Massingale had not yet determined that the occupant of Room 123 was not connected to the burglaries.

The record and the trial court's findings support the conclusion that Detective Massingale's reasonable and articulable suspicions justified an investigatory detention. In particular, while Massingale was on his way to contact a person he suspected of pawning stolen property related to an ongoing investigation of a series of burglaries, in which three individuals and stolen property were still at large, he observed three people next to a car filled with property in the same hotel parking lot where he had recently apprehended another suspect and the vehicle used in one of the burglaries and packed in the same manner. These facts justified the initial detention.

Finally, relying on State v. Williams, 102 Wn.2d 733, 689 P.2d 1065 (1984), and for the first time on appeal, Wilson argues that the officers exceeded the permissible scope of the investigatory detention by running his name through the police department computer to determine his warrant status. In particular, he claims that Detective Massingale failed to sufficiently explain how "learning Mr. Wilson's warrant status would be relevant to his investigation of whether Mr. Wilson was involved in transporting stolen property."[13]

In Williams, an officer responding to a burglar alarm found the defendant in a car in front of the house with the alarm sounding. 102 Wn.2d at 734. The officer detained the driver, checked him for weapons, and placed him in handcuffs in the back of a patrol car. Williams, 102 Wn.2d at 734-35. The police then investigated the house burglary, returned to ask the defendant's business in the area, inventoried, sealed, and transported the defendant's car, and then took

[13] Br. of Appellant at 17.

the defendant to the police station, where they inquired for the first time about his name and address. Williams, 102 Wn.2d at 735, 740. Our Supreme Court determined that the "intensity and scope of the intrusion" upon the suspect's liberty was improper because (1) the police did not question him as to his presence in the area or connection to the crime or even his name and address until after an extensive investigation of the crime; (2) the police did not articulate a reason for the significant intrusion into the suspect's freedom during the detention; (3) the detention was not related to an investigation focused on the suspect; and (4) the time involved appeared "to approach excessiveness." Williams, 102 Wn.2d at 739-41.

Williams did not involve a computer check for warrants and does not support Wilson's claim. In Williams, the police exceeded the proper scope of an investigative detention by intruding significantly into the suspect's freedom and then focusing their investigation on the crime rather than the suspect. Nothing in Williams suggests that a police officer questioning a suspect detained in a Terry stop must offer an individualized justification for requesting a police department computer check of that person's warrant status. Wilson fails to demonstrate that Detective Massingale exceeded the proper scope of an investigatory detention.

Affirmed.

Trickey, J

WE CONCUR:

Appelwick, J

Becker, J.

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Washington Appellate Project

Date: October 27, 2015

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