

66139-6

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NO. 66139-6-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

GREGORY BIANCHI,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA CAHAN

BRIEF OF RESPONDENT

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COURT OF APPEALS OF THE STATE OF WASHINGTON
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A. ISSUES PRESENTED

1. Officers may arrest a suspect when they are aware of facts and circumstances sufficient to cause a reasonable person to believe a crime has been committed. Would police officers be reasonable in believing a suspect had committed a crime when 1) police observed the suspect running from a Nordstrom loss prevention officer in an apparent attempt to avoid capture, 2) the loss prevention officer identified himself to police and requested police help in detaining the suspect, 3) the loss prevention officer explained to police that he had just been an eyewitness to a theft by the suspect, 4) the loss prevention officer informed police that he had observed the entirety of the theft and relayed specific details of the theft to police, 5) the loss prevention officer showed police the merchandise the suspect had attempted to steal, and 6) the loss prevention officer positively identified the suspect to police?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS.

Defendant Gregory Bianchi was charged by information with Theft in the Second Degree; specifically, the State alleged that on

June 26, 2009, Bianchi shoplifted merchandise from a Nordstrom department store. CP 1.

Trial occurred in September 2010. Bianchi elected to represent himself and waive jury trial. Bianchi did not raise a formal CrR 3.6 motion to suppress, but orally moved to dismiss citing a lack of probable cause to arrest because officers had not seen him commit any theft. RP 23-24, 31, 51, 96, 98.¹ The court denied Bianchi's motion to dismiss. RP 124. The court found Bianchi guilty as charged.

Bianchi now assigns error to the trial court's denial of his motion to dismiss for lack of probable cause.

2. SUBSTANTIVE FACTS.

On June 26, 2009, while working as a Nordstrom loss prevention officer, Zachery Prichett observed Bianchi enter a Nordstrom department store at 500 Pine St. in Seattle. RP 44, 81. Prichett witnessed Bianchi select an expensive white purse, conceal it, and then exit the store with it. RP 75. Bianchi passed all points of sale and made no effort to pay. RP 44. When Prichett

¹ As with Appellant's opening brief, the consecutively paginated transcripts dated September 7 and 8, 2010 are referred to as "RP." The other transcripts are not cited here.

attempted to detain Bianchi outside the store, Bianchi fled. RP 38. Prichett recovered the white purse and continued to chase Bianchi down the street. RP 75.

Seattle Police Officer Kerry Zieger was on routine patrol at the intersection of 4th Avenue and Pine St., approximately 1 ½ blocks from the Nordstrom store. RP 33-34. Officer Zieger's attention was drawn to a man, later identified as Bianchi, running into traffic while being chased by another man, later identified as Prichett, who was carrying a white purse. RP 34. At one point, Bianchi darted out in front of a bus, forcing it to stop to avoid colliding with Bianchi. RP 38. As the two men neared Officer Zieger, Prichett identified himself to Officer Zieger as a Nordstrom loss prevention officer, pointed at Bianchi, and asked for Officer Zieger's assistance. RP 37-38. Suspecting a theft had just occurred, Officer Zieger detained Bianchi. RP 39.

As Bianchi was being detained, Seattle Police Officer Raul Vaca responded to the scene and interviewed Prichett. RP 75. Prichett said that he was currently employed as a Nordstrom loss prevention officer. Id. Prichett said that he and other loss prevention officers had personally witnessed Bianchi enter Nordstrom, browse the merchandise, select a white \$1460 purse

from the shelf, then secret the purse from the store without paying. Id. Prichett explained that he had chased Bianchi to the current location, and the white purse Prichett was holding was the one Bianchi had tried to steal. RP 75.

Officer Vaca relayed these details to Officer Zieger. RP 40, 76. Both officers noted that Prichett appeared to be a credible witness. RP 49, 87. Bianchi was then handcuffed and placed under arrest for theft. RP 76.

C. ARGUMENT

1. THE TRIAL COURT WAS CORRECT IN DENYING BIANCHI'S MOTION TO DISMISS BECAUSE THE OFFICERS HERE HAD PROBABLE CAUSE TO ARREST.

Ample facts and circumstances in this case support a finding of probable cause to arrest. For this reason, the trial court was correct in denying Bianchi's motion to dismiss and this Court should affirm Bianchi's conviction.

The determination of whether probable cause exists is a question of law reviewed de novo. State v. Chamberlin, 161 Wn.2d 30, 40-41, 162 P.3d 389 (2007). Probable cause exists where facts and circumstances within the arresting officer's knowledge and of

which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed. State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996). It is a reasonableness test, considering time, place, and circumstances, and the officer's special expertise in identifying criminal behavior. State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986), *cert. denied*, 499 U.S. 979, 111 S. Ct. 1631, 113 L. Ed. 2d 726 (1991). The determination of probable cause "boils down, in criminal situations, to a simple determination of whether the relevant official, police or judicial, could reasonably believe that the person to be arrested has committed the crime." State v. Fisher, 145 Wn.2d 209, 220 n.47, 35 P.3d 366 (2001).

If an officer has probable cause to believe a suspect has committed a felony, the officer is authorized to make a warrantless arrest. RCW 10.31.100. If an officer has probable cause to believe a suspect has committed a misdemeanor or gross misdemeanor involving the unlawful taking of property, the officer is authorized to make a warrantless arrest regardless of whether the taking of property occurred in the officer's presence. RCW 10.31.100(1). In

short, the “degree” of a suspected theft does not affect an officer’s ability to arrest for the theft.

The relevant question in this case is whether the officers, at the time they handcuffed and arrested Bianchi, reasonably believed Bianchi had committed theft. They did.

Officer Zieger’s suspicions were first raised by an unusual sight: a man (Prichett), carrying a white purse while running down the street after another man (Bianchi). RP 34-35, 38. The two men did not have a clear trajectory; they changed directions and crossed back and forth across the city streets. RP 38. At one point, Bianchi darted from the sidewalk into traffic in an apparent attempt to evade capture by Prichett. RP 38. It became clear that Prichett was earnest in his pursuit when he identified himself as a loss prevention officer and made efforts to enlist Officer Zieger’s help in detaining Bianchi. RP 37-38. Officer Zieger was aware that loss prevention officers are employed by stores to combat retail theft. RP 37, 62. Once Bianchi was detained, Prichett provided numerous details to officers. RP 40, 75-76. Prichett provided his name and job description. RP 75. Prichett explained that he had personally witnessed the crime occur. RP 80-81. Prichett explained why he was chasing Bianchi, he reported what Bianchi

had done, he described what the merchandise in question looked like and cost, and he positively identified Bianchi as the thief. RP 75, 80-81. Together, these observations were more than sufficient to lead a reasonable officer to conclude that Bianchi had just committed a theft.

In arguing that probable cause was lacking, Bianchi mischaracterizes the facts and holding in State v. Neth, 165 Wn.2d 177, 196 P.3d 658 (2008). In Neth, a state trooper obtained a search warrant for Neth's car based on numerous clues he had observed indicating the presence of drugs inside. Neth, at 181. Among these clues was the fact that a trained, drug-sniffing K-9 dog had thrice alerted police to the presence of drugs in the car. Id. at 180. For evidentiary reasons, the trial court found that the K-9 evidence should not have been included in the original probable cause determination. Id. at 184. The remaining evidence to support the probable cause determination amounted to "plastic baggies, a relatively large sum of money in the car, and [Neth's] criminal history." Id. The trial court found that the search warrant was justified even without the K-9 evidence. Id.

The Supreme Court found that “absent the evidence from the dog, there was not probable cause to issue the warrant.” Id. at 179. The Court noted that plastic baggies, large sums of money, and prior criminal history are “innocuous,” not incriminating. Id. at 185. What was missing from the probable cause determination was evidence tending to incriminate Neth. Id. The Court strongly suggested that their decision would have been different had the K-9 evidence not been excluded. Id. at 179. In this case, as previously outlined, there was ample evidence tending to incriminate Bianchi, including Prichett’s credible description of the crime and Bianchi’s attempts to evade capture. As such, Neth is inapposite here.

Bianchi would have this Court find that probable cause is lacking even where an eyewitness observed the entirety of a crime, promptly identified themselves and relayed specifics of the crime to police, positively identified the suspect to police, and the suspect was observed by police exhibiting incriminating behavior. Such a finding would not accord with the reasonableness standard outlined in Graham and Terrovona, and would defy common sense.

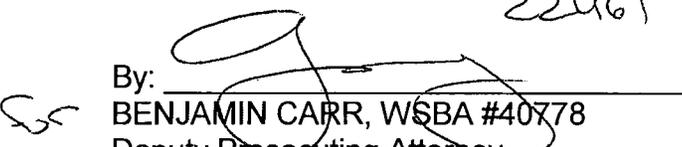
D. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to find that probable cause to arrest existed, and affirm Bianchi's conviction.

DATED this 24 day of June, 2011.

Respectfully submitted,

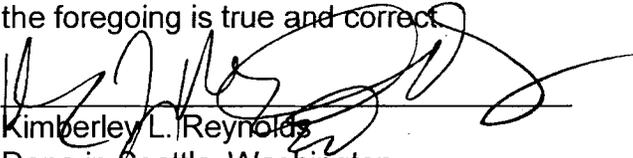
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Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Marla Zink, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. GREGORY BIANCHI, Cause No. 66139-6-I, 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.



Kimberley L. Reynolds
Done in Seattle, Washington

10/24/11

Date