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Dec 30, 2015  
Court of Appeals  
Division I  
State of Washington

NO. 73711-2-I

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

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STATE OF WASHINGTON,

Respondent,

v.

AARON M. THOMAS,

Appellant.

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BRIEF OF RESPONDENT

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## **I. ISSUES**

Police detained the defendant as he came out of a house, wearing a motorcycle jacket, and accompanied by a female companion. A stolen van was parked directly outside the house. Was the detention reasonable when the house known to have a history of association with stolen vehicles; the stolen van was packed with personal possessions including men and women's clothing, two motorcycle helmets, and motorcycle gear; there were only two places to sit in the van; there were no motorcycles parked nearby; and the defendant was wearing a motorcycle jacket?

## **II. STATEMENT OF THE CASE**

Officer Bennett is a nine-year veteran of the Everett Police Department who has investigated over 100 reports of stolen vehicles. RP 5, 8. On March 3, 2015, he was patrolling the 2200 block of Hoyt Avenue in Everett. He was very familiar with a house at 2212 Hoyt that generated many calls to police including calls for gunfire, drugs, stolen property, and stolen vehicles. RP 9.

Officer Bennett ran the plates of the vehicles cars parked on the block and discovered that two had been reported stolen, Subaru parked about 10 cars down and a white van parked right in front of 2212. RP 9. Officer Bennett had dispatch contact the van's

registered owner to come by to pick up the van. Meanwhile, he looked inside. RP 11, 13.

The van's ignition was severely damaged. The van was so full of property that it "almost looked like someone had emptied out a storage unit into it." Most items were stacked so high they were virtually inaccessible. RP 16-17.

Only the front driver and passenger seats were clear of property. Near the front seat, Officer Bennett found two backpacks, one containing women's clothing, the other men's. He found motorcycle gloves and gear, two motorcycle helmets, and court documents with the name "Shyla Gypin". A computer check showed that Shyla had a history of felony convictions and police contacts. RP 16-17.

When the registered owner arrived, he told Officer Bennett that the only items in the van that belonged to him were the hiking and fishing equipment. RP 19.

Officers Bennett and another officer, Officer Stewart, walked to the front door of 2212 hoping to get information on the stolen van. Before they could knock, the defendant and a woman came out. RP 21-22. The defendant was wearing what Officer Bennett recognized as a motorcycle jacket of heavy-duty nylon with pads, a

belt, and a long skirt. There were no motorcycles parked on the block. RP 23. He immediately suspected, based on what he had already observed, that the defendant was associated with the stolen van. RP 27.

Officer Bennett asked them how they were doing and asked the woman her name. She said she was Shyla. RP 52. Officer Stewart took her away from the door to talk further. RP 58. Officer Bennett asked the defendant his name and learned he had outstanding warrants. The defendant was arrested a minute later when the warrants were confirmed. RP 52-53. In a search incident to arrest on the warrants, Officer Stewart found methamphetamine in the defendant's pocket. RP 55-56.

The State charged the defendant with possession of methamphetamine. CP 113-14. A defense motion to suppress was heard on June 25, 2015. RP. Both officers testified and the defendant testified. The defendant said he had walked out of the door of 2212, seen the officers, asked to leave to use the toilet, and been told no. He said he never felt free to leave. RP 63.

The court denied his motion to suppress because the totality of the circumstances known to the officers supported their reasonable belief that the defendant was engaged in criminal

activity. RP 83-90. The stolen van was parked right in front of 2212 Hoyt, a house with a history of stolen property reports. There was room for only two people in the van. The motorcycle gear and clothing were associated with a man and a woman. The paperwork was in Shyla Gypin's name. A reasonably prudent person would have suspected the stolen van had been driven by two people, likely a man and a woman, likely associated with motorcycles or motorcycle gear. When police saw the defendant and Shyla coming out of 2212, it was reasonable to suspect them of a connection to the stolen van, even before Shyla was identified. RP 85-87. Discussing the totality of the circumstances, the court said,

These were not matters the police could ignore, nor was this a stretch of the imagination to think that these people might have been involved in criminal activity. They were details observed by police officers who, in this case, just happened to have some experience, not just training and experience investigating crimes, but also some experience with motorcycles, details that might have been missed by other people but were not missed here and could not be ignored and were not ignored.

RP 88-89. The stop was justified, even before Shyla identified herself. RP 90.

On July 1, 2015, the court entered written findings and conclusions and later conducted a stipulated trial on documentary

evidence. CP 91-94; 63-79. The court found the defendant guilty of possessing methamphetamine. CP 14.

### **III. ARGUMENT**

#### **A. THE TERRY STOP WAS LAWFUL BECAUSE IT WAS BASED ON SPECIFIC AND ARTICULATED FACTS THAT LED POLICE REASONABLY TO BELIEVE THE DEFENDANT WAS LINKED TO THE STOLEN VAN.**

A Terry stop is a warrantless investigative stop during which police may briefly detain a person to investigate whether he is engaged in or is about to engage in criminal activity. State v. Fuentes, 183 Wn.2d 149, 158, 352 P.3d 152 (2015); State v. Doughty, 170 Wn.2d 57, 62, 239 P.3d 573 (2010). A Terry<sup>1</sup> stop is lawful when an officer has a reasonable suspicion of criminal activity based on specific and articulable facts known to him at the stop's inception. Fuentes, at Id. The totality of circumstances includes the officers' training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, the amount of intrusion and length of the detention. Id.

Reasonable suspicion means there is "substantial possibility" that a crime has or is about to occur. State v. Marcum, 149 Wn. App. 894, 906, 205 P.3d 969 (2009). It is based on the totality of the circumstances. A "divide-and-conquer" approach is an

incorrect application of the totality of the circumstances test. Id. at 907.

[T]he United States Supreme Court has specifically criticized viewing incriminating police observations, one by one, in a manner divorced from their context as a 'divide-and-conquer' approach that is inconsistent with the totality of the circumstances test.

Id.

A court should not discount an officer's observations simply because they are susceptible to an innocent explanation. Marcum, 149 Wn. App. at 907. Indeed, some circumstances are consistent with both criminal and noncriminal activity and may still justify a Terry stop. Id.

**1. The Stop Was Lawful Because It Was Based Not On Any One Innocuous Fact But On The Totality Of The Circumstances.**

The totality of the circumstances in the present case supported the officer's reasonable belief that crime was being committed. Officer Bennett was familiar with 2212 Hoyt, a location associated with stolen vehicles. He had just located two stolen vehicles parked in that 2200 block, the van with a broken ignition directly in front of 2212. The van was crammed full of property belonging to a man and a woman including clothing and motorcycle

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

helmets and gear, Shyla Gypin's court paperwork included. There were no motorcycles parked nearby.

Armed with that information, Officer Bennett saw a woman and the defendant, wearing a motorcycle jacket, coming from 2212. He suspected that the two were connected to the stolen van because 2212 was associated with stolen vehicles; the stolen van had room for only two people; property found in the van suggested that the two were a man and a woman; there was motorcycle gear in the van, the defendant was wearing a motorcycle jacket, and there were no motorcycles parked nearby. A reasonable inference from those facts was that the defendant and Shyla were the man and woman associated with the van and the motorcycle gear.

Police may not lawfully detain a person based on innocuous facts alone. See State v. Armenta, 134 Wn.2d 1, 13-14, 948 P.2d 1280 (1997) (suspects inability to explain large sums of cash is suspicious but innocuous); State v. Tijerina, 61 Wn. App. 26, 811 P.2d 241 review denied, 118 Wn.2d 1007 (1991) (Hispanic man's possession of bars of hotel soap innocuous). However, innocuous facts taken with other circumstances may lead to a reasonable suspicion.

In Fuentes, the Supreme Court found a lawful Terry stop after officers watched Fuentes go into a known drug house carrying a bag and exit five minutes later with the same bag only less full. 183 Wn.2d at 158-59. Although there might have been an innocent explanation for what had occurred in the house, officers were not required to rule out innocent explanations before making a stop. Id.

Here, the officer's observations could have had an innocent explanation but facts but were also are consistent with criminal activity, particularly when taken as a whole. The defendant was not stopped for any one or two innocuous facts alone.

Wearing a motorcycle jacket and being with a woman are, certainly, innocuous facts. But those facts combined with others articulated by Officer Bennett: a house linked to stolen cars; a stolen van parked out front; two seats free in the van indicating that two people had been using it; clothing for a man and a woman; motorcycle gear and helmets in the van; no motorcycle parked nearby. While no one specific fact was enough to form a reasonable suspicion, the totality of the circumstances created a suspicion that should not have been ignored.

The totality of the circumstances supported Officer Bennett's reasonable suspicion that these two people could have been the

people in possession of the stolen van. As the trial court said, the belief was not only reasonable but "...could not be ignored..." RP 89.

## **2. The Stop Was Lawful Because It Was Not Based On Proximity Alone.**

The present case is very different from cases in which the stops were unlawful because they were based on mere proximity. In State v. Doughty, police stopped a defendant who had entered a suspected drug house at 2:30 am, stayed for two minutes, and left. 170 Wn.2d 57, 239 P.3d 573 (2010). The Supreme Court said that merely seeing a person enter and leave a suspected drug house did not rise to the level of reasonable suspicion. Id. at 64. The police observations were "incomplete". Id.; see also State v. Gleason, 70 Wn. App. 13, 18, 851 P.2d 731 (1993) (observation of suspect coming from drug house not enough for a Terry stop).

In the present case, it was not merely the defendant's proximity to 2212, a house known for its association with stolen vehicles, that led to the Terry stop. His proximity was one of the many reasons police suspected he was linked to the stolen van.

In Fuentes, police stopped Fuentes after they saw her go into a known drug house with a bag and leave five minutes later

with the same bag, now less full. 183 Wn.2d at 155. The Terry stop was lawful. Id. at 162-63. Officers observed more than proximity to the known drug house. They observed her short stay, her bag, and the bag's altered shape. Id. at 158. Police were not required to rule out innocent conduct before making a lawful stop. Id.

The same is true in the present case. Officers did not stop the defendant merely because he was coming out of a house associated with stolen vehicles. They stopped him for all for the reasons discussed above, for the totality of the circumstances that led to a reasonable suspicion that the defendant was associated with the stolen van.

While none of the officer's individual observations may sufficient to support a Terry stop, the totality of circumstances, including proximity to the house known for stolen vehicles, proximity to the stolen van, the motorcycle clothing and gear in the van and on the defendant, the evidence of a man and woman using the van, the defendant being part of a couple, and no motorcycle on the street, supported the officer's reasonable belief that criminal activity was afoot. The trial court did not err when it found the stop lawful.

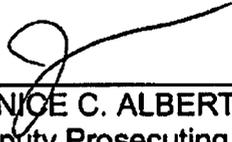
**IV. CONCLUSION**

Based on the foregoing, the conviction should be affirmed.

Respectfully submitted on December 23, 2015.

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By:

  
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**Re: STATE v. AARON M. THOMAS  
COURT OF APPEALS NO. 73711-2-I**

Dear Mr. Johnson:

The respondent's brief does not contain any counter-assignments of error. Accordingly, the State is withdrawing its cross-appeal.

Sincerely yours,

JANICE C. ALBERT, #19865  
Deputy Prosecuting Attorney

cc: Nielsen, Broman & Koch  
Attorney(s) for Appellant

*Sent via e-mail*

~~I hereby certify that I am a duly qualified member of the bar of the State of Washington and that I am duly qualified to practice law in this State. I am not a member of the bar of the State of Washington and I am not qualified to practice law in this State. I am not a member of the bar of the State of Washington and I am not qualified to practice law in this State. I am not a member of the bar of the State of Washington and I am not qualified to practice law in this State.~~

30th Dec 20 15  
Snohomish County Prosecutor's Office

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

THE STATE OF WASHINGTON,

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AARON M. THOMAS,

Appellant.

No. 73711-2-1

DECLARATION OF DOCUMENT  
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AFFIDAVIT BY CERTIFICATION:

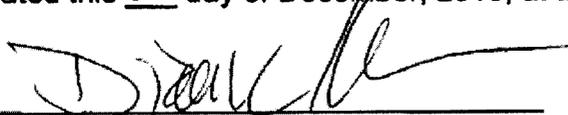
The undersigned certifies that on the 30<sup>th</sup> day of December, 2015, affiant sent via e-mail as an attachment the following document(s) in the above-referenced cause:

BRIEF OF RESPONDENT

I certify that I sent via e-mail a copy of the foregoing document to: The Court of Appeals via Electronic Filing and Jennifer Winkler, Nielsen, Broman & Koch, [winklerj@nwattorney.net](mailto:winklerj@nwattorney.net); and [Sloanej@nwattorney.net](mailto:Sloanej@nwattorney.net).

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

Dated this 30<sup>th</sup> day of December, 2015, at the Snohomish County Office.



Diane K. Kremenich  
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Snohomish County Prosecutor's Office