

No. 44015-6-II

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

STATE OF WASHINGTON,

Respondent,

v.

WILLIAM CRAM

Appellant.

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

The Honorable Carol Murphy, Judge and
The Honorable Gary R. Tabor, Judge
Cause No. 12-1-00799-7

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

A. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR 1

B. STATEMENT OF THE CASE 1

C. ARGUMENT 1

The trial court correctly determined that drug-related evidence was admissible at trial because Mr. Cram was not seized under the Fourth Amendment to the United States Constitution. 1

D. CONCLUSION..... 9

TABLE OF AUTHORITIES

U.S. Supreme Court Decisions

Brower v. County of Inyo,
489 U.S. 593, 109 S.Ct. 1378,
193 L.Ed.2d 628 (1989) 4

United States v. Mendenhall,
446 U.S. 544, 100 S.Ct. 1870,
64 L.Ed. 2d 497 (1980) 7, 9

Federal Court Decisions

Marshall v. United States,
422 F.2d 185, 189 (5th Cir. 1970) 6

United States v. Kim,
25 F.3d 1426, 1430 (9th Cir. 1994) 4

United States v. Washington,
490 F.3d 765, 770 (9th Cir. 2007) 4

Washington Supreme Court Decisions

State v. Armenta,
134 Wn.2d 8, 948 P.2d 1280 (1997) 1, 6

State v. Rankin,
151 Wn.2d 689, 92 P.3d 202 (2004) 2

State v. Thorn,
129 Wn.2d 347, 917 P.2d 108 (1996) 1

State v. Young,
135 Wn.2d 498, 505 P.2d 681 (1998) 1-3, 5, 7-8

Decisions Of The Court Of Appeals

State v. Callahan,
31 Wn. App. 710, 644 P.2d 735 (1982) 1

<u>State v. Craig,</u> 115 Wn. App. 191, 61 P.3d 340 (2002).....	5
<u>State v. Coyne,</u> 99 Wn. App. 566, 995 P.2d 78 (2000).....	8
<u>State v. Hansen,</u> 99 Wn. App. 575, 994 P.2d 855 (2000).....	3
<u>State v. O’Neill,</u> 110 Wn. App. 604, 43 P.3d 522 (2003).....	2, 5-6

Statutes and Rules

Article I, § 7 of the Washington State Constitution	1
Fourth Amendment to the United States Constitution	1-4, 6-8

A. STATEMENT OF THE ISSUE.

Whether Mr. Cram was unlawfully seized under the Fourth Amendment to the United States Constitution.

B. STATEMENT OF THE CASE.

The State accepts Mr. Cram's statement of the substantive and procedural facts of the case.

C. ARGUMENT.

The trial court correctly determined that drug-related evidence was admissible at trial because Mr. Cram was not seized under the Fourth Amendment to the United States Constitution.

Whether a person is seized is a mixed question of law and fact. State v. Armenta, 134 Wn.2d 8, 10, 948 P.2d 1280 (1997) (citing State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996)). Deference is given to the fact finder regarding facts, but whether those facts constitute a seizure is a question of law to be reviewed de novo. Id. Further, "Article I, section 7 of the Washington State Constitution is coextensive with the Fourth Amendment providing no greater or no less protection." State v. Callahan, 31 Wn. App. 710, 714, 644 P.2d 735 (1982).

Mr. Cram was not seized by the officer because the totality of the circumstances would not lead a reasonable person to believe he was not free to leave. "[A] seizure occurs when a person

submits to a show of authority or is physically touched by an officer.” State v. O’Neill, 110 Wn. App. 604, 610, 43 P.3d 522 (2003). In determining if a person has been seized, some courts have used both an objective and subjective standard, looking primarily to the actions of the police officer and the reasonable impact of those actions on the suspect. State v. Young, 135 Wn.2d 498, 499, 505 P.2d 681 (1998). However, Washington courts have not addressed any use of a subjective standard and have focused on the objective reasonable person standard. Id. at 515. A seizure has not occurred unless the actions of the officer displayed such force of threat or authority that a reasonable person would feel he was unable to leave. State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004). Finally, the burden falls on the defendant to show that a seizure occurred based on the totality of the circumstances. O’Neill, 110 Wn. App. at 610.

1. Asking for Identification does not constitute a seizure under the Fourth Amendment.

When an individual is in a public place, an officer does not seize that individual by asking for any form of identification. Therefore, Mr. Cram was not seized when the officer asked him for his name and date of birth. “[A] police officer’s conduct in engaging

a defendant in conversation in a public place and asking for identification does not, alone, raise the encounter to an investigative detention.” Young, 135 Wn.2d at 511. In some circumstances a defendant may be able to show a seizure occurred when a police officer demands the suspect’s identification card, which thereby forces the suspect to remain at the scene until his card is returned. State v. Hansen, 99 Wn. App. 575, 578, 994 P.2d 855 (2000). In this case however, Mr. Cram’s identification card was never taken; rather he was merely approached in public and asked his name and date of birth. RP 6, CP 23. “Police questioning relating to one’s identity, or a request for identification by the police, without more, is unlikely to result in a seizure.” Id. at 578. A seizure under the Fourth Amendment did not occur in this case because the request for identification would not make a reasonable person feel that he was unable to leave the scene.

2. The patrol car was not positioned in such a way that a reasonable person would feel unable to leave the scene.

The officer did not use his vehicle in a way as to make a reasonable person feel he was unable to leave the scene by parking his patrol car behind the suspect vehicle. If the vehicle is used as a roadblock or some other means of restriction on the

suspect's movement, such an action may be enough to constitute a seizure under the Fourth Amendment. Brower v. County of Inyo, 489 U.S. 593, 596, 109 S.Ct. 1378, 193 L.Ed.2d 628 (1989). However, in order for an officer to use his patrol car to seize an individual, the restriction of the suspect's movement must be so complete so as to detain the suspect. United States v. Washington, 490 F.3d 765, 770 (9th Cir. 2007). Moreover, the use of a patrol car to only partially restrict the suspect's movement is still not enough to support a seizure under the Fourth Amendment. United States v. Kim, 25 F.3d 1426, 1430 (9th Cir.1994).¹

When the officer arrived at the scene he parked his patrol car behind the vehicle containing Mr. Cram. RP 6, 10, CP 23. The patrol car was not positioned in such a way that it blocked the vehicle from leaving the scene. Id. Further, there was a distance of between five and ten feet between the patrol car and the suspect vehicle. RP 22. Because the officer did not use his patrol car to completely restrict the movement of the suspect and further maintained a distance between the vehicles, a seizure under the Fourth Amendment did not occur.

¹ See State v. Gant, 163 Wn. App. 133, 140, 257 P.3d 682 (2011) (where the court held that a seizure does not occur unless a police officer has his/her emergency lights engaged while pulling up behind the suspect vehicle).

3. The use of a spotlight to illuminate a vehicle at night is not sufficient to show an unlawful seizure has occurred.

An officer's use of a spotlight on a publicly parked vehicle does not constitute a seizure. O'Neill, 110 Wn. App. at 610 (where a spotlight was used on the suspect vehicle and the court found that no seizure had occurred at that point). A person is "seized" when he is restrained by physical force or is subjected to a sufficient show of authority. State v. Craig, 115 Wn. App. 191, 197, 61 P.3d 340 (2002).

It follows that in order for Mr. Cram to establish that the use of the spotlight constituted a seizure he must demonstrate that it would be considered a sufficient show of authority. A spotlight must be accompanied by a much stronger threat of force for its use to constitute such a display of authority. Young, 135 Wn.2d at 511. Such threats of force may include but are not limited to instances when an officer has his emergency lights and siren engaged and/or his weapon drawn. Id. These factors would support a showing of a greater display of authority that would make a suspect feel that his departure from the scene was not an option.

In this case, the officer's lights and siren were not engaged, nor was his weapon drawn. RP 10-11. He made no showing of

authority while using his spotlight such that a reasonable person would believe he is not free to leave. Id. Because this case lacks circumstances that would otherwise show the spotlight as a threat of force or a sufficient display of authority, Mr. Cram was not unlawfully seized.

Next, the use of a spotlight to illuminate the interior of the passenger compartment and the other passengers is not enough to show a seizure occurred. When an officer uses a light to illuminate what otherwise would have been visible during the day, his search does not constitute a seizure under the Fourth Amendment. Young, 135 Wn.2d at 511 (citing Marshall v. United States, 422 F.2d 185, 189 (5th Cir. 1970)). As a passenger in the car, Mr. Cram would have been clearly visible in the light of day, and the use of the spotlight to illuminate passengers in the vehicle is insufficient to support a claim that the suspect was wrongfully seized.

Because the vehicle was parked in a public place, the use of a spotlight is insufficient to show that a seizure occurred. O'Neill, 110 Wn. App. at 610 (2003). “[A] police officer's conduct in engaging a defendant...in a public place... does not raise the encounter to [a seizure].” Armenta, 134 Wn.2d at 11. A reasonable person parked in a public place does not have the same

expectation of privacy as someone parked in a private location. Id. Mr. Cram was in a vehicle parked on the side of a public road at the time he was approached by the officer. CP 23. Because Mr. Cram was sitting in a publicly parked car, he had given up a certain level of privacy. Id. The spotlight was not used in such a way that would make a reasonable person in his situation feel unable to leave.

4. Two officers present at the scene are not a sufficient display of authority so as to constitute a seizure under the Fourth Amendment.

Two officers conducting an investigation of the scene are not enough to show a threat of force or authority such that a reasonable person would feel unable to leave. Young, 135 Wn.2d at 511. Although the number of officers can be a factor to consider in determining if a seizure occurred, it follows that, to constitute a seizure, several officers must be exhibiting a threatening disposition towards the suspect. United States v. Mendenhall, 446 U.S. 544, 553, 100 S.Ct. 1870, 64 L.Ed. 2d 497 (1980). In this case however, there were only two officers at the scene which, under the circumstances of this case, is not a strong enough display of authority so as to violate an individual's Fourth Amendment rights. CP 23, 24. The second officer at the scene did not engage the passengers of the car at any time. RP 13. A seizure did not occur

here. Only two officers were at the scene and neither exerted sufficient control to constitute a seizure.

Mr. Cram also never attempted or asked to leave the scene during the investigation; rather, he chose to stay in the car and speak willingly with the officer. RP 15.

“When a citizen freely converses with a police officer, the encounter is permissive. It is not a seizure; and therefore the Fourth Amendment is not implicated. If a person does freely consent to stop and talk, the officer's merely asking questions ... does not necessarily elevate a consensual encounter into a seizure.” State v. Coyne, 99 Wn. App. 566, 577, 995 P.2d 78 (2000).

The fact that Mr. Cram made no attempt to leave and willingly gave the officer information supports the conclusion that he was not seized under the Fourth Amendment.

5. The totality of the circumstances in this case do not support Crams's claim that a seizure occurred.

Finally, the totality of the circumstances must be considered when analyzing the evidence supporting a seizure claim. Young, 135 Wn.2d at 512. Courts will only consider the combination of non-threatening police activities when there is strong enough evidence pointing to a threat of force or display of authority. Id at 514. “In the absence of some such evidence, otherwise inoffensive contact between a member of the public and the police cannot, as a matter

of law, amount to a seizure of that person.” Id. at 512 (citing United States v. Mendenhall, 446 U.S. at 553).

In this case an officer parked his patrol car behind the suspect, leaving distance between the two vehicles. RP 22. When the second officer arrived, he identified the suspects in the car in order to utilize dispatch services more efficiently. RP 13, 14. There was no team-interrogation or any other strategy employed that would cause a reasonable person to feel as though he was unable to leave. Id. The use of the spotlight was also unthreatening in that it was used solely for the purpose of illuminating the scene as opposed to a tool of suppression or threat. RP 10.

D. CONCLUSION.

A seizure did not occur in this case; therefore, the evidence in question was not the fruit of an unlawful seizure. The state respectfully submits that the trial court correctly denied the defendant’s motion to suppress evidence, and asks this court to affirm Cram’s conviction.

Respectfully submitted this 30th day of May, 2013.



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THURSTON COUNTY PROSECUTOR

May 31, 2013 - 7:53 AM

Transmittal Letter

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