

48131-6-II

COURT OF APPEALS, DIVISION II

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STATE OF WASHINGTON,

Appellant,

vs.

BRENTON A. SMITH,

Respondent.

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APPEAL FROM THE SUPERIOR COURT  
FOR MASON COUNTY  
The Honorable Amber L. Finlay, Judge  
Cause No. 15-1-00248-1

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BRIEF OF RESPONDENT

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A. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Whether the trial court erred by concluding that Officer Robert Auderer lacked probable cause to arrest Mr. Smith for disorderly conduct where Mr. Smith appeared to be under the influence of methamphetamine and did not have the intent to obstruct vehicular traffic?

B. STATEMENT OF THE CASE

Unchallenged findings of fact are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). The State did not assign error to any of the undisputed findings of fact. Accordingly, these findings establish the following facts:

1. On May 30, 2015, at approximately midnight, Officer Robert Auderer of the Shelton Police Department was on patrol in his patrol vehicle and turned east bound from Franklin Street from Seventh Street near the Mason Transit Center in the City of Shelton, County of Mason.
2. Officer Auderer observed a male, later identified as Brenton Smith, walking in the middle of the roadway not in the cross walk. Sidewalks are available of both sides of Franklin Street at this location.
3. Officer Auderer stopped his patrol vehicle to avoid colliding with Brenton Smith.
4. Officer Robert Auderer upon stopping his vehicle observed Brenton Smith for at least five seconds remain in the middle of the roadway walking back and forth, moving oddly, and spitting Pringles into the air. Brenton Smith looked at Officer Auderer, but did not leave the middle of the roadway. This behavior was different from the people not using the cross walk that Officer Auderer observes on a nightly basis.

5. Officer Robert Auderer exited his patrol vehicle and contacted Brenton Smith who was still in the middle of the roadway. Upon contact, Brenton Smith told Officer Robert Auderer he was “just walking.” Brenton Smith also interrupted Officer Robert Auderer. Officer Robert Auderer had a difficult time tracking Brenton Smith’s responses to questions. Officer Robert Auderer also observed Brenton Smith “moving like a parakeet.”

6. Based upon his observations, Officer Robert Auderer opined Brenton Smith was showing signs of methamphetamine intoxication.

7. Officer Robert Auderer arrested Brenton Smith for “disorderly conduct.” Based upon that arrest, Officer Auderer searched Brenton Smith and seized a substance that later tested positive for the presence of methamphetamine.

[CP 4-5].

C. ARGUMENT

OFFICER AUDERER LACKED PROBABLE  
CAUSE TO ARREST MR. SMITH FOR  
DISORDERLY CONDUCT.

The trial court’s Conclusions of Law, to which the State assigned error to numbers 2 and 3, read as follows:

1. Disorderly conduct requires an intentional obstructing of vehicular traffic without lawful authority.

2. Officer Robert Auderer did not have probable cause to arrest Mr. Smith for disorderly conduct because Mr. Smith appeared to be under the influence of methamphetamine and therefore did not have the intent to obstruct vehicular traffic.

3. Office Robert Auderer did not have lawful authority to search Mr. Smith incident to the arrest.

[CP 5].

There is little dispute over what happened. The issue is whether what happened was insufficient to support the officer's arrest of Smith for disorderly conduct. That is a question of law this court reviews de novo. State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002).

“[P]robable cause requires the existence of reasonable grounds for suspicion supported by circumstances sufficiently strong to warrant a (person) of ordinary caution to believe the accused is guilty of the indicated crime.” State v. Seagull, 95 Wn.2d 88, 906, 632 P.2d 44 (1981). At the time of arrest, the arresting officer need not have evidence to prove each element of the offense beyond a reasonable doubt. State v. Gaddy, 152 Wn.2d 64, 70, 93 P.3d 872 (2004). It is sufficient if the officer has knowledge of facts sufficient to cause a reasonable person to believe the offense has been committed. State v. Knighten, 109 Wn.2d 896, 903, 748 P.2d 1118 (1988). The resolution of whether probable cause exists turns on the totality of the facts and circumstances within the officer's knowledge at the time of arrest. State v. Rowell, 144 Wn. App. 453, 457, 182 P.3d 1011 (2008), review denied, 165 Wn.2d 1021 (2009). Probable cause is

not negated merely because the officer may imagine an innocent explanation. State v. Fore, 56 Wn. App. 339, 344, 783 P.2d 626 (1989).

Under RCW 9A.84.030(1)(c), a person is guilty of disorderly conduct if the person “[i]ntentionally obstructs vehicular or pedestrian traffic without lawful authority.” The court concluded that Officer Auderer did not have probable cause to arrest Smith for disorderly conduct because he appeared to be under the influence of methamphetamine and without the intent to commit the offense. [CP 5; Conclusion of Law 2].

The State contends that the trial court erred in granting the motion to suppress because evidence of “mere impairment, or the mere probability of impairment to some unspecified degree, does not negate the element of intent.” [Br. of Appellant at 11]. This is so, argues the State, because “there must be evidence from which to reasonably and logically conclude that impairment caused the defendant to be unable to form the requisite intent. [Br. of Appellant at 7]. Correctly citing authority for its position, the State asserts that no such evidence was produced in this case. [Br. of Appellant at 7-8]. This reasoning is misplaced.

“A person acts with intent or intentionally when he or she acts with the objective or purpose to accomplish a result which constitutes a crime.” RCW 9A.08.010(1)(a). This differs from knowledge, which requires a person (i) to be “aware of a fact, facts, or circumstances or result described

by a statute defining an offense”; or (ii) to have “information which would lead a reasonable person in the same situation to believe that facts exist which facts are described by a statute defining an offense.” RCW 9A.08.010(1)(b)(i) and (ii). “Intent’ exists only if a known or expected result is also the actor’s ‘objective or purpose.’” State v. Caliguri, 99 Wn.2d 501, 506, 664 P.2d 466 (1983) (quoting former RCW 9A.08.010(1)(a)). Thus intent requires more than simply knowledge that a consequence will result. State v. Bea, 162 Wn. App. 570, 579, 254 P.3d 948 (2011).

The above captures what Smith was arguing to the trial court.

... There is zero evidence of intent here, and to the contrary, there’s only evidence of knowledge.

The idea that Mr. Smith observed the vehicle after it stopped and did not leave the roadway shows knowledge however, when asked he was – said he was just walking in the street. Furthermore, he showed signs, according to Officer Auderer, of methamphetamine intoxication. There are pretty clear reasonable inferences and circumstantial evidence that Mr. Smith was in the roadway for reasons that – he may have known that he was obstructing traffic, but that he was walking in the street because he was walking in the street, and that he didn’t understand that that was not something that you’re supposed to be doing because of his intoxication.

[RP 14].

Smith did not argue below that his intoxication prevented him from acting with the requisite intent for disorderly conduct. He did not argue

cause and effect, instead, mentioning the intoxication as a factor observed by Officer Auderer and then connecting it to Smith's knowledge or lack thereof, and not as an impairment negating his intent, which is crucial, for it is in this context that the trial court placed its oral ruling, saying that Smith was arrested

for blocking traffic, and I'll indicate there was no traffic there at all. The Court would find that there's not probable cause, that there's not intent here. The conduct of Mr. Smith appeared to be one who was under the influence, not one who was intending to obstruct traffic, but one who was under the influence. And the only thing proffered to the Court was he was arresting him for obstructing traffic, so I will grant the motion (to suppress).

[RP 19].

The State also argues that the instant case "is substantially similar" to State v. Greene, 97 Wn. App. 473, 478, 983 P.2d 1190 (1999), in that "the facts in Greene involved the question of whether Green acted with the requisite criminal intent when he stepped into the path of a moving vehicle patrol car." [Br. of Appellant at 10]. There, the State convicted Greene of possession of a controlled substance found in his pocket during a search incident to his arrest for the misdemeanor offense of pedestrian interference, contrary to a city ordinance. Greene, 97 Wn. App. at 474. In finding the search lawful, Division One of this court held that substantial evidence supported probable cause to believe that Greene intended to

obstruct traffic where he looked directly at the police when he stepped into the roadway, which caused the oncoming patrol car and several other drivers to swerve to avoid him. “The evidence suggests that Greene intended to require the driver of a vehicle ‘to take evasive action to avoid physical contact.’” Greene, 97 Wn. App. at 478.

The present case lacks the factors relied upon by Division One to find probable cause for the arrest of Greene. Here, as noted by the trial court in its oral finding, “there was no traffic there at all.” [RP 19]. Additionally, there was a lack of evidence of any eye contact between Officer Auderer and Smith before the officer stopped his patrol car. “From what I recall, he looked at me and continued the behavior as I was getting out of my car or as I was – or when I was observing him at some point in time.” [RP 8].

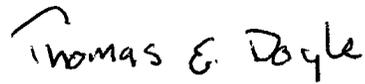
In upholding the constitutionality of an analogous Seattle Pedestrian Interference Ordinance, our Supreme Court has reasoned that “[t]he ordinance does not prohibit innocent intentional acts which merely consequently block traffic or cause others to take evasive action.” City of Seattle v. Webster, 115 Wn.2d 635, 641-42, 802 P.2d 1333 (1990). Much as like what happened here, with the result that the facts and circumstances of the present case were insufficient to support the officer’s

arrest of Smith for disorderly conduct, for a person of ordinary caution would not have believed that Smith had committed the offense.

D. CONCLUSION

Based on the above, Smith respectfully requests this court to affirm the trial court's order of dismissal.

DATED this 26<sup>th</sup> day of April 2016.

Handwritten signature of Thomas E. Doyle in black ink.

THOMAS E. DOYLE  
Attorney for Respondent  
WSBA NO. 10634

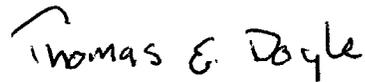
CERTIFICATE

I certify that I served a copy of the above brief on this date as follows:

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DATED this 26<sup>th</sup> day of April 2016.

Handwritten signature of Thomas E. Doyle in black ink.

THOMAS E. DOYLE  
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**DOYLE LAW OFFICE**

**April 26, 2016 - 2:27 PM**

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