

**No. 48749-7-II**

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IN THE COURT OF APPEALS, DIVISION II  
OF THE STATE OF WASHINGTON

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CITY OF TACOMA,  
Respondent

v.

ANTONIA RAINWATER,  
Appellant.

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ON PETITION FROM THE SUPERIOR COURT OF THE  
STATE OF WASHINGTON FOR PIERCE COUNTY  
The Honorable Frank Cuthbertson  
No. 15-1-05041-1

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**BRIEF OF RESPONDENT**

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## **I. ASSIGNMENTS OF ERROR**

1. The City of Tacoma presented sufficient evidence to convict Ms. Rainwater of resisting arrest when the officer entered her house to make a lawful arrest
2. The Superior Court did not err in finding exigent circumstances existed which authorized the arrest of Ms. Rainwater for Domestic Violence Assault absent a warrant.
3. The Superior Court did not err when it determined the City had presented sufficient evidence to convict Ms. Rainwater of resisting arrest.

## **II. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR**

1. Did the City present sufficient evidence to convict Ms. Rainwater of resisting arrest when officers lawfully entered her home absent a warrant? (Assignment of Error No.1).
2. Did the Superior Court err in finding exigent circumstances existed which allowed officers entry into Ms. Rainwater's residence absent a warrant resulting in her arrest? (Assignment of Error No's 2 and 3)
3. Did the Superior Court err in find the City of Tacoma presented sufficient evidence to convict Ms. Rainwater of resisting arrest? (Assignment of Error No's 1, 2 and 3).

## **III. STATEMENT OF THE CASE AND PROCEDURAL HISTORY.**

On July 2<sup>nd</sup>, 2015, Ms. Antonia Rainwater, herein referred to as the appellant, was charged by way of a criminal complaint by the City of Tacoma with 1) Domestic Violence Assault in the Fourth Degree and, 2) Resisting Arrest.

On November 17<sup>th</sup>, 2015, the parties proceeded to trial.

The appellant and Mr. Rainwater, the alleged victim, were married in 2001. (Appendix B: RP 33). Mr. Rainwater testified that on July 1<sup>st</sup>, 2015, a conversation about finances turned into an argument. (Appendix B: RP 34). Mr. Rainwater testified that the appellant started hitting him with either a broom or rake from behind. (Appendix B: RP 36). Mr. Rainwater further testified that during the argument, the appellant grabbed his arm and grabbed the back part of his neck. (Appendix B: RP 37). Mr. Rainwater testified that she had grabbed him by her fingernails and dug into him. (Appendix B: RP 37). Mr. Rainwater further testified the appellant was hitting him in the face with her cell phone and chipped one of the few teeth he had left. (Appendix B: RP 39). The photographs of Mr. Rainwater's injuries were presented to the jury and admitted into evidence. (Appendix B: RP 40). Mr. Rainwater left the residence and called 911 from a park one block away from the residence. (Appendix B: RP 44).

Officer Hovey from the Tacoma Police Department testified about his contact with Mr. Rainwater. Officer Hovey testified as to his training and experience. (Appendix B: RP 54). Officer Hovey testified he was dispatched on July 1<sup>st</sup> of 2015 and contacted Mr. Rainwater at the park.

(Appendix B: RP 59). Officer Hovey testified Mr. Rainwater appeared to be frustrated and embarrassed. (Appendix B: RP 60). Officer Hovey testified that during his conversation with Mr. Rainwater, he was able to determine the individual who struck Mr. Rainwater was identified as the appellant. Officer Hovey testified he could see the injuries on Mr. Rainwater at the time including, either two or three scratches running on the inside of his bicep for a couple of inches that were raised and red that appeared really fresh because they were weltd. He also testified Mr. Rainwater showed him a small cut just on the inside of his lip by his teeth. It was not bleeding anymore, but Mr. Rainwater stated it had been bleeding in his mouth. (Appendix B: RP 61).

Officer Hovey testified that after his conversation and observing the physical injuries on Mr. Rainwater, he called forensics to photograph the injuries.

Officer Hovey testified that he and Officer Gamble went to the house to speak to the appellant. When they arrived at the residence, it was his opinion that there was an ongoing domestic violence investigation. (Appendix B: RP 64). Officer Hovey also testified that he went to make contact, arrived at the residence and announced his presence by knocking on the door. (Appendix B: RP 64). Officer Hovey testified he was at the

front of the home for a few minutes knocking on the door. He stated he could hear someone was home and was trying to get their attention. (Appendix B: RP 65). Officer Hovey also testified that it was important to make contact with the appellant because they wanted to hear both sides of the story. He also testified that he is legally mandated to attempt to contact someone if he suspects there is probable cause for domestic assault. Officer Hovey stated they are mandated to try to make an arrest in those circumstances by the State. (Appendix B: RP 66).

Officer Hovey testified that before arriving at the residence he had developed probable cause not just on the interview with Mr. Rainwater, but also the physical evidence to include Mr. Rainwater's injuries and his demeanor.

Officer Hovey testified that he was knocking on the door; the appellant did not initially respond and had to knock several more times before there was a response. (Appendix B: RP 67). Officer Hovey testified that after a few moments the appellant came to a side window and while at the window, officers explained they wanted to speak to her and asked her to come outside. (Appendix B: RP 67). The stated nothing happened and did not want to come speak to the officers. (Appendix B: RP 67).

Officer Hovey testified he persisted and told the appellant her husband had called about an argument and asked her to come outside. The appellant shortly after agreed to step over to the door to continue speaking to the officers. Officer Hovey testified he had asked her at least three or four times to open the door. (Appendix B: RP 68). Officer Hovey testified that at some point the appellant opened the door and when she did, the officer again explained why they were present and to get her side of the story. Her demeanor according to Officer Hovey seemed angry and she stated “nothing happened.” (Appendix B: RP 69).

Officer Hovey testified that since there was no information coming from the appellant and based on the probable cause he had developed he told the appellant she was under arrest. (Appendix B: RP 70).

Officer Hovey testified that he first verbally stated, “you’re under arrest” and reached out and took a hold of her wrist. (Appendix B: RP 70). Officer Hovey stated as he tried to grab her wrist, she pulled back, trying to pull her wrist in close to her and lunged back into her house and tried to close the door at the same time, pulling the officer in with her. (Appendix B: RP 70). Officer Hovey stated at some point the appellant lost her balance by pulling back into the house. He testified that when

someone is actively resisting like the appellant, the officer is going to end up on the ground because it's safer. (Appendix B: RP 71).

Officer Hovey testified that his intent was to get her to the ground whether through a clean arm bar or as simple as pushing someone off balance. Officer Hovey testified that at some point the appellant was on the ground, mainly on her stomach, but rolling onto her left side from time to time and was concerned for his own safety. (Appendix B: RP 71).

Officer Hovey testified that he was able to hold onto her wrist but lost the wrist briefly initially when they went down to the ground. Officer Hovey testified he was able to hold on to her wrist and Officer Gamble came to help. The appellant kept tucking, trying to pull her other arm under her and roll from side to side making it difficult to get both hands behind her back for handcuffing. (Appendix B: RP 72).

Officer Hovey testified that the whole process took quite a long time to be wrestling with someone on the ground and the whole time they were instructing the appellant to stop actively resisting. (Appendix B: RP 73).

Officer Hovey testified they were finally able to detain, handcuff and place the appellant in the back of the patrol car. Once in the patrol car, Officer Hovey testified that he could hear noise coming from the back, where he could tell when someone is trying very hard at trying to twist or

pull. Officer Hovey testified that the appellant is a very petite lady with thin wrists and he was concerned that she could have easily slipped out of the handcuffs. (Appendix B: RP 76).

Officer Gamble also testified about his contact with the appellant on July 1<sup>st</sup>, 2015 and his observations about the contact with the appellant and Officer Hovey.

The jury found the appellant guilty of both domestic violence fourth degree assault and resisting arrest.

The appellant appealed to the Superior Court of Pierce County arguing the City presented insufficient evidence to convict the appellant of resisting arrest and also arguing the appellant's arrest was unlawful as it was a warrantless misdemeanor arrest inside her home. (Appendix C). The Superior Court denied the appellant's appeal on the basis that exigent circumstances and the nature of the crime, domestic violence, allowed the officers to enter the appellant's home to make an arrest absent a warrant. (Appendix A: Superior Court Ruling).

Ms. Rainwater filed her motion for discretionary review on April 18, 2016, and this court has accepted review.

#### IV. ARGUMENT

1. Officer Hovey Had Sufficient Probable Cause to Contact Ms. Rainwater and to Place Her Under Arrest for Domestic Violence Assault in the Fourth Degree.

One of the controlling cases relating to probable cause to arrest is *State v. Gluck*, 83 Wn.2d 424 (1974), which states:

For a warrantless arrest, probable cause exists where the facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, are sufficient to permit a person of reasonable caution to believe that an offense has been or is being committed. *State v. Conner*, 58 Wn.App. 90, 98 (1990), citing *State v. Gluck*, 83 Wn.2d 424 (1974). *See Also* *State v. Kirvin*, 37 Wn.App. 452 (1984); *State v. Dorsey*, 40 Wn.App. 459 (1985); *State v. Harrell*, 83 Wn.App. 393 (1996); *State v. Richman*, 85 Wn.App. 568 (1997).

Additional case law sheds light on how probable cause should be determined. *State v. Conner* at 97, citing *Wong Sun v. United States*, 371 U.S. 471 (1963)(An arrest without warrant must stand upon firmer ground than mere suspicion, though the arresting officer need not have in hand evidence which would suffice to convict); *State v. Lidge*, 49 Wn.App. 311 (1987) (Probable cause to arrest is determined by considering all information known to the officer at that time and practical circumstances surrounding the event); *State v. Burgess*, 43 Wn.App. 253 (1986)(An officer has probable cause to make a warrantless arrest of a suspect who

matches a witness' description of the perpetrator and is located in close proximity in both time and distance to the site of the crime); and *State v. Perea*, 85 Wn.App. 339, 343 (1997)(In determining whether a police officer had probable cause to make a misdemeanor arrest, common sense dictates whether information known to the officer at time of arrest was "stale." Such information is not "stale" if the facts indicate that the information is recent and contemporaneous).

Additionally, police officers may briefly detain and question an individual if they have a well-founded suspicion, based on objective facts, that a defendant is connected to actual or potential criminal activity. *State v. Pressley*, 64 Wn.App. 591, 595, 825 P.2d 749 (1992), citing *Terry v. Ohio*, 392 U.S. 1, 25-26, 88 S.Ct. 1686, (1968). A reasonable or well-founded suspicion exists if the officer can "point to specific and articulable facts, which taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.*, citing *Terry*, 392 U.S. at 21. In evaluating the reasonableness of an investigative stop, courts may take into account the totality of the circumstances presented to the investigating officer. *State v. Glover*, 116 Wn.2d 509, 514 806 P.2d 760 (1991), (citing *United States v. Cortez*, 449 U.S. 411, 418, 66 L. Ed. 2d 621, 101 S. Ct. 690 (1981)). While "the circumstances must be more consistent with

criminal than innocent conduct, 'reasonableness is measured not by exactitudes, but by probabilities.'" *State v. Mercer*, 45 Wn.App. 769, 774, 727 P.2d 676 (1986) (quoting *State v. Samsel*, 39 Wn.App. 564, 571, 694 P.2d 670 (1985)).

In reviewing those circumstances, courts may consider such factors as the officer's training and experience, the location of the stop, and the conduct of the person detained. *Glover*, 116 Wn.2d at 514; *Samsel*, 39 Wn.App., at 570-71 ("While an inchoate hunch is insufficient to justify a stop, circumstances which appear innocuous to the average person may appear incriminating to a police officer in light of past experience. The officer is not required to ignore that experience."); *Mercer*, 45 Wn.App., at 774. Other factors that may be considered in the context of determining whether a stop was reasonable include "the purpose of the stop, the amount of physical intrusion upon the suspect's liberty, and the length of time the suspect is detained." *Samsel*, 39 Wn.App., at 572 (quoting *State v. Williams*, 102 Wn.2d 733, 740, 689 P.2d 1065 (1984)).

In this case, Officer Hovey had more than a mere suspicion that the appellant was engaged in criminal activity when the decision was made to place her under arrest for Domestic Violence Assault Fourth Degree. Additionally, Officer Hovey with his training and experience had

information at the time to include; Mr. Rainwater's statements, Mr. Rainwater's physical injuries and his demeanor in determining probable cause to make an arrest.

Additionally, as noted in *State v. Perea*, in determining whether Officer Hovey had probable cause to make an arrest of the appellant, absent a warrant, the information known to the officer must not be stale, as was not the case in the present matter. Officer Hovey had information from Mr. Rainwater that was recent and contemporaneous to include the proximity of time and location as to where the assault occurred, the fresh, slightly raised injuries sustained and the Mr. Rainwater's demeanor that led Officer Hovey to believe a crime had just occurred. Thus, it was not unreasonable for Officer Hovey during an ongoing domestic violence situation to attempt to make contact with the other identifying party, the appellant. Officer Hovey had sufficient evidence to support a probable cause arrest and the entry into the appellant's residence was not unlawful.

Therefore, based on the legal authority provided above consistent with Officer Hovey's decision to lawfully place the appellant under arrest absent a warrant, the decision of the Superior Court is not in conflict with the Court of Appeals or the Supreme Court and moreover, is not a significant question of law or a decision involving public interest.

2. Exigent Circumstances Existed That Authorized the Warrantless Arrest of the Appellant in Her Residence.

The appellant's argument that absent some exigent circumstance or warrant, the officers could not have entered the residence to make an arrest is without merit. The officers testified that they had knocked and announced their presence outside the appellant's residence numerous times in an attempt to fully investigate and to give the appellant an opportunity to provide a statement. After several attempts, the appellant came to the front door where officers once again announced their presence and again provided her an opportunity to explain her version of events. Hearing no explanation from the appellant, the decision was made to place her under arrest for domestic violence assault. At this time, Officer Hovey was at the threshold of the appellant's residence and had not entered the residence. It was only when Officer Hovey informed the appellant she was under arrest and took hold of her wrist that Officer Hovey entered the residence. Officer Hovey explained during trial that as he grabbed a hold of the appellant's wrist, she pulled her arm backwards while trying to shut the door, thus pulling him into the residence with her. While inside, Officer Hovey attempted to take control of the situation and attempted to place the appellant under arrest while she was still actively resisting throughout her arrest and while being escorted to the patrol vehicle.

The appellant presumes officers in this case entered into the appellant's residence without warning or any verbal exchange prior to placing the appellant under arrest, which is contrary to the evidence presented at trial. Thus, the appellant's own actions resulted in the officer's entry into the residence.

In the alternative, even if the court were to find Officer Hovey entered the appellant's residence absent a warrant, there existed many factors which would be considered exigent circumstances and thus warrant the officer's lawful entry into the appellant's home .

In, *State v. Cardenas*, 146 Wash.2d 400 (2002), the court stated that a "although ordinarily warrantless entries are presumptively unreasonable, warrant requirements must yield when exigent circumstances demand police act immediately." The court used six factors as a guide in determine whether exigent circumstances justify a warrantless entry and search: 1) the gravity or violent nature of the offense with which the suspect is to be charged; 2) whether the suspect is reasonably believed to be armed; 3) whether there is reasonably trustworthy information that the suspect is guilty; 4) there is a strong reason to believe the suspect is on the premises; 5) a likelihood that the suspect will escape if not swiftly apprehended; 6) the entry is made peaceably.

The court further stated, that although it is not necessary that every factor be met and only that the factors are sufficient to show the officers need to act quickly.

In this case, a number of factors existed that would warrant the officers need to act quickly. First, the gravity or violent nature of the crime itself is Domestic Violence Assault where the victim had visible injuries. Second, there was reasonably trustworthy information given the officers observation of the victim, the victim's account of what transpired that was consistent with his injuries, that led the police to believe there was probable cause to make an arrest for Domestic Violence Assault. Third there was strong reason to believe the appellant was on the premises as the victim was contacted in close proximity to the location and furthermore told officers the appellant was at the residence. Fourth, as an ongoing domestic violence incident, there is always a possibility of the appellant fleeing if not apprehended. Fifth, the entry made by the officer was peaceful until the appellant resisted.

Thus, as stated in *State v. Cardenas*, although not all present, there existed a number of factors that were sufficient for Officer Hovey to make entry into the appellant's residence absent a warrant.

Therefore, because the appellant's own actions justified the officer's entry into her residence as supported by their testimony during the course of trial, and further a number of exigent factors existed which allowed entry into the appellant's home, the decision of the Superior Court is not in conflict with the Court of Appeals or the Supreme Court and moreover, is not a significant question of law or a decision involving public interest.

3. The Superior Court Did Not Err In Finding That The City Presented Sufficient Evidence To Support a Guilty Finding on the Charge of Resisting Arrest.

Evidence is sufficient to support a conviction if, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Green*, 94 Wn.2d 216 (1980). A claim of insufficiency admits the truth of the state's evidence and all inferences that reasonably can be drawn therefrom. *State v. Sanchez*, 60 Wn. App. 687 (1991).

The court must give deference to the trier of fact who resolves conflicting testimony, evaluates the credibility of witnesses, and generally weighs the persuasiveness of the evidence. *State v. Walton*, 64 Wn. App. 410, 416, *review denied*, 119 Wn.2d 1011 (1992). Credibility

determinations are for the trier of fact and are not subject to review. *State v. Camarillo*, 115 Wn.2d 60, 71 (1990).

Circumstantial evidence is accorded equal weight with direct evidence. *State v. Delmarter*, 94 Wn.2d 634, 638 (1980). The City has the burden of proving all of the elements of a crime beyond a reasonable doubt. *State v. McCullum*, 98 Wn.2d 484, 494 (1983).

In order to convict the defendant of a Resisting Arrest, the City had to prove beyond a reasonable doubt that on or about July 1<sup>st</sup>, 2015, in the City of Tacoma, the appellant did prevent or actively attempted to prevent a peace officer from arresting her. Officer Hovey testified that he had developed probable cause based on his contact with Mr. Rainwater to include; questions about the incident, observing visible injuries consistent with Mr. Rainwater's account of what transpired and his demeanor. Based on the officer's probable cause to arrest the appellant on Domestic Violence Assault Fourth Degree, Officer Hovey and Gamble attempted to make contact with the appellant and was unsuccessful on numerous occasions.

Despite Officer Hovey's repeated attempts to gather information as to what happened, the appellant refused to cooperate and Officer Hovey informed her she was under arrest. What transpired shortly after was the

appellant actively resisting to include; rolling on her stomach from side to side, keeping her wrist under her stomach, refusing to stand up and walk to the patrol car and continuing such behavior in the patrol car as she actively tried to get her handcuffs off. Thus, it is clear from Officer Hovey's testimony that the City would have met its burden of proof beyond a reasonable doubt that the appellant was guilty of resisting arrest.

Any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt; therefore, there was sufficient evidence presented to meet this burden when the evidence is viewed in the light most favorable to the City, including all of the reasonable inferences therefrom.

Thus, the Superior Court did not err when it determined there was sufficient evidence to convict the appellant on one count of Resisting Arrest based on the evidence produced at trial to include the testimony of both Officer Hovey and Gamble. Therefore, based on the evidence submitted and the legal authority provided above, the decision was not in conflict with the Court of Appeals or Supreme Court and was not a significant question of law or an issue of public interest.

## V. CONCLUSION

In conclusion, the City respectfully requests Ms. Rainwater's motion to vacate her conviction and remand for a new trial be denied for the reasons stated above. The Superior Court's findings were not contrary to established case law, does not raise significant constitutional issues nor does it involve issues of public interest to be decided by an appellate court.

Respectfully submitted this 20th day of October, 2016.

*/s/ Polly A. Peshtaz 36652*  
Polly A. Peshtaz, WSBA#36652  
Attorney for Respondent

# TACOMA MUNICIPAL COURT

**October 20, 2016 - 3:50 PM**

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