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FEB 25, 2013
Court of Appeals
Division III
State of Washington

NO. 309002-III

COURT OF APPEALS, DIVISION III
OF THE STATE OF WASHINGTON

THE STATE OF WASHINGTON, Respondent

v.

CURTIS RICHARD COPSTEAD, Appellant

APPEAL FROM THE SUPERIOR COURT
FOR BENTON COUNTY

NO. 11-1-01139-2

BRIEF OF RESPONDENT

ANDY MILLER
Prosecuting Attorney
for Benton County

MEGAN A. KILLGORE, Deputy
Prosecuting Attorney
BAR NO. 37847
OFFICE ID 91004

7122 West Okanogan Place
Bldg. A
Kennewick WA 99336
(509) 735-3591

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I. STATEMENT OF FACTS

On June 10, 2011, Kennewick Police Department Officer Tony Valdez responded to an apartment complex at the intersection of West 5th Avenue and Kent Street in Kennewick. (RP 2, 3, 9). Dispatch told Officer Valdez that there was a report of a suspicious person who was with some small children in front of an apartment building at 1000 West 5th Avenue. (RP 3). The caller reported that the person did not seem to belong in the area and was unfamiliar to them. (RP 3). The caller further reported that the suspicious person was trying to get some girls to follow him, and that the person was touching the children. (RP 3).

Officer Valdez was nearby when he received the dispatch, and arrived in less than five minutes. (RP 16). When Officer Valdez arrived, he saw a man he identified as the defendant who matched the description provided by dispatch. (RP 4). He saw the defendant with his hand on one child while talking to several children. (RP 4). Officer Valdez got out of his car and asked the defendant what he was doing. (RP 12). The defendant replied that he was not doing anything. (RP 12). The defendant appeared to be intoxicated, smelled strongly from several feet away of both body odor and intoxicating liquor. (RP 5-6). The defendant responded angrily and used obscenities when responding to Officer Valdez's question. (RP 5-6). Officer Valdez asked the defendant several

small questions, such as what he was doing there and if he lived there. (RP 5).

Given the defendant's responses and body language, Officer Valdez told him that it was not going well for either of them, and told the defendant to have a seat on the sidewalk. (RP 5-6). The defendant took off his backpack, held it, then dropped it, all while giving Officer Valdez a stare. (RP 6). Officer Valdez referred to the defendant's stare as a "thousand yard stare." (RP 6). Officer Valdez interpreted the defendant's actions to mean that there was going to be a physical confrontation. (RP 6). The defendant sat slowly down on the curb. (RP 6).

Officer Valdez asked the defendant for his identification, and then ran his information to check for any alerts or warrants. (RP 7). The defendant did not have any warrants for his arrest. (RP 10). When Officer Brown arrived, the defendant said, "That is right. You better have another unit." (RP 7). The defendant began to stand up and clenched one hand into a fist. (RP 7). Officer Valdez did not allow the defendant to stand all the way up, but used an arm bar to take him to the ground where he was handcuffed. (RP 7).

The defendant was arrested and searched incident to his arrest. (CP 16). The defendant then filed a motion to suppress the drugs found

during his arrest. (CP 3). The court denied the motion, and the defendant was found guilty. (CP 12-17). This appeal follows. (CP 30).

II. ARGUMENT

1. WAS THE DEFENDANT LAWFULLY CONTACTED BY POLICE OFFICERS?

A. Standard of Review

The defendant correctly states the standard of review that should be applied in this case. (App. brief, 8).

B. The defendant was lawfully contacted by police.

A seizure occurs when an individual is contacted by the police and the circumstances surrounding the encounter demonstrate that a reasonable person would not feel free to disregard the officer and go about his business. *California v. Hodari D.*, 499 U.S. 621, 111 S. Ct. 1547, 1551, 113 L. Ed. 2d 690 (1991). The relevant inquiry for the court is whether a reasonable person would have felt free to leave or terminate the encounter. *State v. Thorn*, 129 Wn.2d 347, 352, 917 P.2d 108 (1996). See also *State v. Harrington*, 167 Wn.2d 656, 222 P.3d 92 (2009).

Generally, warrantless searches and seizures are per se unreasonable under both the Fourth Amendment to the United States Constitution and Article I § 7 of the Washington State Constitution. *State v. Ross*, 141 Wn.2d 304, 4 P.3d 130 (2000); *State v. Neely*, 113 Wn. App.

100, 52 P.3d 539 (2002). “Consent and certain exigent circumstances may...justify a warrantless search and seizure.” *State v. Day*, 161 Wn.2d 889, 894, 168 P.3d 1265 (2007), citing Charles W. Johnson, *Survey of Washington Search and Seizure Law: 2005 Update*, 28 Seattle U.L.Rev. 467, 633, 650 (2005); see also *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996).

Exceptions to the warrant requirement fall into a “few specifically established and well-delineated exceptions.” *Arizona v. Gant*, 556 U.S. 332, 338, 129 S. Ct. 1710, 1716, 173 L. Ed. 2d 485 (2009) (citing *Katz v. United States*, 389 U.S. 347, 357, 88 S. Ct. 507, 19 L.Ed.2d 576 (1967)). The exceptions to the requirement of a warrant have fallen into several broad categories: consent, exigent circumstances, searches incident to a valid arrest, inventory searches, plain view, and *Terry* investigative stops. *State v. Hendrickson*, 129 Wn.2d 61, 71, 917 P.2d 563 (1996).

It is a well settled point of law that an individual may be detained for investigative purposes when an officer has “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); *State v. Armenta*, 134 Wn.2d 1, 20, 948 P.2d 1280 (1997). There must be “a substantial possibility that criminal conduct has occurred or is about to occur.” *State v. Kennedy*, 107 Wn.2d

1, 6, 726 P.2d 445 (1986). When reviewing the merits of an investigatory stop, a court must evaluate the totality of circumstances presented to the investigating officer. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). The scope of an investigatory stop is determined by considering (1) the purpose of the stop, (2) the amount of physical intrusion on the suspect's liberty, and (3) the length of time of the seizure. See *State v. Laskowski*, 88 Wn. App. 858, 950 P.2d 950 (1997), review denied, 135 Wn.2d 1002 (1998). A *Terry* stop is also not rendered unreasonable solely because the officer did not rule out all possibilities of innocent behavior before initiating the stop. *State v. Anderson*, 51 Wn. App. 775, 780, 755 P.2d 191 (1988).

In this case, Officer Valdez had specific information provided by dispatch that a suspicious man was touching children and attempting to have some girls follow him. (CP 15). When Officer Valdez arrived on the scene, he saw the defendant with his hand on one child. (CP 16). Clearly, he had enough suspicion that contacting the defendant was appropriate. When he contacted the defendant, the defendant's behavior escalated the situation. By asking the defendant to sit on the sidewalk for a few moments, Officer Valdez was using the least amount of restraint necessary to protect himself and to allow him to investigate the situation. Only after the defendant clenched his fist and started to stand up did Officer Valdez

place him into an arm bar and take him to the ground. (CP 16). The full interaction with the defendant lasted only a few minutes.

III. CONCLUSION

The defendant was not unlawfully seized. Officer Valdez clearly had information which necessitated investigation, which arose from the dispatch call and was confirmed by his own observations. He contacted the defendant, whose angry response meant that Officer Valdez asked him to sit on the sidewalk. Officer Valdez did not exceed the scope of the investigatory stop, given the short length of time and the minimal restraint used. Only after the defendant took aggressive action did Officer Valdez respond in kind.

This Court should affirm the defendant's conviction for Unlawful Possession of a Controlled Substance.

RESPECTFULLY SUBMITTED this 26th day of February
2013.

ANDY MILLER
Prosecutor

Megan Killgore

MEGAN A. KILLGORE, Deputy
Prosecuting Attorney
Bar No. 37847
OFC ID NO. 91004

CERTIFICATE OF SERVICE

I certify under penalty of perjury under the laws of the State of Washington that on this day I served, in the manner indicated below, a true and correct copy of the foregoing document as follows:

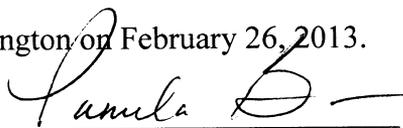
David N. Gasch
Gasch Law Office
PO Box 30339
Spokane, WA 99223-3005

E-mail service by agreement
was made to the following
parties: gaschlaw@msn.com

Curtis Richard Copstead
#299890
1313 N. 13th Avenue
Walla Walla, WA 99362

U.S. Regular Mail, Postage
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Signed at Kennewick, Washington on February 26, 2013.



Pamela Bradshaw
Legal Assistant