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Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 33323-0-III

STATE OF WASHINGTON, Respondent,

v.

JUSTIN LINVILLE, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

A jury convicted Justin Linville of possessing methamphetamine. Before trial, he moved to suppress evidence obtained during a search incident to arrest, arguing that police lacked legal cause to detain him when he crossed a street outside a marked crosswalk but did not actually disrupt any traffic. The trial court denied the motion, and Linville now appeals.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR 1: The trial court erred in denying Linville's motion to suppress.

ASSIGNMENT OF ERROR 2: The trial court erred in concluding that Linville's travel violated the law.

ASSIGNMENT OF ERROR 3: The trial court erred in concluding that *Terry* justified Linville's detention.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE 1: In the absence of evidence that Linville obstructed any vehicular traffic, did he violate Washington law so as to justify his detention by law enforcement? NO.

ISSUE 2: Are the arresting officers' observations that Linville and a female companion appeared to be in a verbal dispute sufficient to establish a reasonable suspicion of criminal activity justifying a *Terry* detention? NO.

IV. STATEMENT OF THE CASE

Shortly before 2:00 a.m. on Union Avenue in Kennewick, patrol officers observed Justin Linville and a female that appeared to be having a verbal disagreement. RP (3.5/3.6) at 54, 72-73. Linville was standing in the road at the traffic circle while his female companion was inside the crosswalk. RP (3.5/3.6) at 57, 74-75. He was not impeding any traffic at the time. RP (3.5/3.6) at 100.

Police contacted Linville and advised that the reason for the detention was that he was standing in the middle of the road. RP (3.5/3.6) at 59, 76. After obtaining his verbal identification, the responding officers discovered Linville had an outstanding warrant. RP (3.5/3.6) at 62, 77. He was arrested and searched incident to that arrest, at which point the officers discovered methamphetamine inside the jacket he was wearing. RP (3.5/3.6) at 62, 78. In total, about 29 grams of methamphetamine was taken from the jacket, as well as a digital scale, baggies and a pipe. I RP (Trial/Motion Hearing/Sentencing) 50-51, 53, 55, 56, 58-59.

The State charged Linville with possessing methamphetamine with intent to distribute it. CP 1. Following a hearing on Linville's motion to suppress evidence, the trial court concluded that Linville's crossing outside the crosswalk and stopping in the middle of the road, although it impeded no traffic, constituted a violation justifying the police contact. RP (3.5/3.6) 100; CP 152-53. The trial court further concluded that a *Terry* detention was justified in light of the officers' observation that Linville and the female appeared to be in a verbal dispute. CP 152. Accordingly, it denied the motion to suppress. CP 153.

Following trial, the jury did not reach a verdict on the charge but convicted Linville of the lesser included offense of possessing methamphetamine. CP 66, RP (Trial/Motion Hearing/Sentencing) 267. The court sentenced Linville to 10 months' incarceration, and he now appeals. CP 111, 129.

V. ARGUMENT

The sole issue on appeal is the trial court's ruling on Linville's motion to suppress evidence. In considering the appeal, this court reviews only those facts to which error has been assigned to determine whether they are supported by substantial evidence. *State v. Kinzy*, 141 Wn.2d 373, 382, 5 P.3d 668 (2000); *State v. Rankin*, 151 Wn.2d 689, 709, 92

P.3d 202 (2004). Unchallenged findings of fact are verities on appeal. *Kinzy*, 141 Wn.2d at 382. The court then evaluates whether the findings support the trial court's conclusions of law *de novo*. *State v. Bliss*, 153 Wn. App. 197, 203, 222 P.3d 107 (2009) (*citing State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), *overruled on other grounds in Brendlin v. California*, 551 U.S. 249, 127 S. Ct. 2400, 168 L.Ed.2d 132 (2007)). For purposes of this appeal, the trial court's factual findings are unchallenged, and Linville argues that they do not support the trial court's conclusions of law that his actions in crossing the street violated the law or that a *Terry* stop was justified in light of the detectives' belief that Linville was arguing with his female companion.

With respect to the pedestrian violation, neither the court nor the detectives who conducted the stop identified a statute or ordinance that Linville violated, merely stating in conclusory fashion that crossing outside of a crosswalk violates the law. RP (3.5/3.6) 58, 76, 99; CP 152. But RCW 46.61.240(1) permits crossing a road "at any point other than within a marked crosswalk" so long as the pedestrian yields the right-of-way to vehicles on the road. Similarly, the disorderly conduct statute, cited by one of the investigating officers as the crime committed, requires an intentional obstruction of vehicular or pedestrian traffic without lawful authority. RCW 9A.84.030(1)(c).

Here, Detective Ron Salter testified only that Linville was standing in the middle of the roadway, not that he failed to yield the right of way to any vehicle. RP (3.5/3.6) 53, 57. Although Detective Joshua Riley opined that Linville had committed the crime of disorderly conduct, he further testified that he would have had to brake or strike Linville if he had continued straight instead of going around the roundabout, but did not testify at any point that he intended to or attempted to go straight and was impeded by Linville. RP (3.5/3.6) 71, 75. As such, there is no evidence from which the trial court could conclude that Linville failed to yield the right of way to any vehicle because he did not actually obstruct any vehicular travel, which the trial court expressly acknowledged. RP (3.5/3.6) 100. Moreover, there was a complete absence of evidence that Linville intentionally obstructed any traffic as would be required to support a conclusion that he engaged in disorderly conduct. There being no violation of the law, grounds did not exist to justify Linville's detention and subsequent arrest and search.

Alternatively, the trial court concluded that a *Terry* detention provided grounds for the detention of Linville, based upon the observation that Linville and his female companion appeared to be arguing. CP 153. While *Terry* permits brief intrusions to respond to situations lacking probable cause to arrest but warranting further investigation, the totality of

the circumstances "must suggest a substantial possibility that the particular person has committed a specific crime or is about to do so." *State v. Moreno*, 173 Wn. App. 479, 492, 294 P.3d 812 (2013) (*quoting State v. Martinez*, 135 Wn. App. 174, 180, 143 P.3d 855 (2006)). And innocuous facts alone do not support a stop, absent evidence that a particular crime had been committed. *Id.* at 492.

Here, Detective Riley testified that it appeared to him that Linville and his companion were in an argument, but conceded that was not against the law. RP (3.5/3.6) 82. He stated that the parties' facial expressions and the way they were walking to create distance between themselves "gave me an inclination that something was wrong." RP (3.5/3.6) at 82-83. While Detective Riley was able to articulate the nature of his hunch, by his own admission, he identified no crime that was being or about to be committed nor any non-innocuous facts to warrant the intrusion of the detention. A hunch does not warrant intrusion into private affairs. *Moreno*, 173 Wn. App. at 492 (*citing State v. Doughty*, 170 Wn.2d 57, 63, 239 P.3d 573 (2010)). The burden is on the State to show by clear and convincing evidence that a *Terry* stop is justified. *Doughty*, 170 Wn.2d at 62. It has failed to do so here.

Because the facts do not support the trial court's conclusions that Linville violated the law by crossing the street outside of a marked crosswalk and that observing an apparent argument justified a *Terry* detention, its determination that Linville was lawfully detained is erroneous and should be reversed. Accordingly, the conviction should be reversed and the cause dismissed, as the State lacks sufficient evidence to convict Linville of a crime without the fruits of the unlawful detention and arrest.

VI. CONCLUSION

For the foregoing reasons, Linville respectfully requests that the court REVERSE his conviction and DISMISS the cause.

RESPECTFULLY SUBMITTED this 16 day of December, 2015.

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DECLARATION OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of Appellant's Brief upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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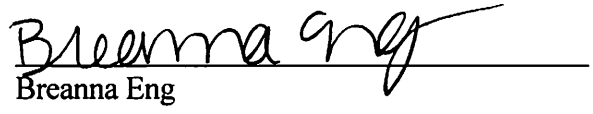
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 16th day of December, 2015 in Walla Walla, Washington.



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