

No. 33323-0-III

COURT OF APPEALS, DIVISION III  
OF THE STATE OF WASHINGTON

**FILED**  
**Mar 18, 2016**  
Court of Appeals  
Division III  
State of Washington

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THE STATE OF WASHINGTON,

Respondent

v.

JUSTIN LEVI LORIN LINVILLE,

Appellant

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

NO. 15-1-00053-9

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BRIEF OF RESPONDENT

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## I. RESPONSE TO ASSIGNMENTS OF ERROR

- A. **The trial court properly held that the defendant walking in the middle of the road in the detectives' lane of travel constituted a violation of the law and provided a valid basis to contact the defendant.**

## II. STATEMENT OF FACTS

On January 14, 2015, at approximately 0140 hours, Kennewick Police Department Detectives Ron Salter and Joshua Riley were traveling together in an unmarked police vehicle in the area of Kennewick Avenue and Union Street in Kennewick, Washington, County of Benton. 1RP<sup>1</sup> at 53-55, 72. Detective Riley was driving the vehicle and Detective Salter was the passenger. *Id.* at 55-56, 72. The detectives observed two pedestrians, a male and a female. *Id.* at 54, 73. Based upon the demeanor of the two persons, the detectives believed the two were in a verbal altercation. *Id.* at 56, 82; 2RP at 45.

Detectives observed the male look over his shoulder, then turn back to the female. 1RP at 73. The female began to walk faster in what appeared to the detectives to be an attempt to distance herself from the male. *Id.* The detectives entered the roundabout to travel back to see if the verbal argument escalated. *Id.* at 73-75, 82-83. When they came back around, the male was standing in the middle of the roadway in their lane

of travel, whereas the female had used the designated crosswalk. *Id.* at 74-76.

The detectives parked their vehicle, exited, and made contact with the male. *Id.* at 75-76. The detectives advised the male the basis for their contact was the fact that he was blocking traffic by walking in the middle of the road. *Id.* at 76. Detective Riley asked the male for his identification. *Id.* at 77. The male indicated that he had his identification, but could not locate it, so he provided his name verbally as Justin Linville. *Id.* The defendant's name was run through data by the detectives and it was discovered the defendant had a warrant for his arrest. *Id.* The detectives inquired into their observations regarding a possible argument and both the defendant and the female confirmed they were in a "heated argument." *Id.* at 62, 83.

The defendant was placed into custody on the outstanding warrant and searched incident to arrest. *Id.* at 77-78. During the search, the detectives discovered multiple containers of methamphetamine totaling 29 grams, a glass smoking device, a digital scale, and packaging baggies on the defendant's person. *Id.* at 78.

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<sup>1</sup> There are three volumes of verbatim report of proceedings in this matter, labeled as follows: 1RP – March 18, 2015; 2RP – March 23, 2015; and 3RP – March 24, April 14, and May 5, 2015.

The defendant was charged by information with one count of Possession with Intent to Manufacture/Deliver a Controlled Substance – Methamphetamine. CP 1-3. Prior to trial on said charge, the defendant filed a Motion for Suppression of Evidence. CP 4-5. A hearing was held on March 18, 2015, before the Honorable Judge Cameron Mitchell, wherein the court denied the defendant's Motion to Suppress and held that the evidence found on the defendant's person was admissible at trial. CP 151-53; 1RP at 101.

The matter proceeded to trial on March 23, 2015, and the jury being unable to reach a verdict on the original charge of Possession with Intent to Manufacture/Deliver a Controlled Substance – Methamphetamine, found the defendant guilty of the lesser included offense of Unlawful Possession of a Controlled Substance. CP 66; 3RP at 267. On April 14, 2015, the defendant was sentenced to ten months in prison. CP 106-15; 3RP at 283. The defendant subsequently filed this timely appeal on April 29, 2015. CP 129-30.

### III. ARGUMENT

**A. The trial court properly held that the defendant walking in the middle of the road in the detectives' lane of travel constituted a violation of the law and provided a valid basis to contact the defendant.**

When reviewing a trial court's denial of a CrR 3.6 suppression motion, a determination as to whether substantial evidence supports the challenged findings of fact and whether the findings of fact support the conclusions of law is made. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). "Evidence is substantial when it is enough 'to persuade a fair-minded person of the truth of the stated premise.'" *Id.* at 249 (quoting *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999)).

Unchallenged findings of fact are considered verities on appeal. *State v. Lohr*, 164 Wn. App. 414, 418, 263 P.3d 1287 (2011). A trial court's conclusions of law pertaining to the suppression of evidence are reviewed de novo. *Garvin*, 166 Wn.2d at 249.

A police officer can conduct an investigative or *Terry* stop based on less than probable cause to arrest. *Terry v. Ohio*, 392 U.S. 1, 25, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). "When police officers have a 'well-founded suspicion not amounting to probable cause' to arrest, they may nonetheless stop a suspected person, identify themselves, and ask that person for identification and an explanation of his or her activities." *State*

*v. White*, 97 Wn.2d 92, 105, 640 P.2d 1061 (1982) (quoting *State v. Gluck*, 83 Wn.2d 424, 426, 518 P.2d 703 (1974)). A *Terry* stop is justified if the officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21; *White*, 97 Wn.2d at 105. When reviewing the merits of an investigatory stop, a court must evaluate the totality of circumstances presented to the investigating officer. *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981). The court takes into account an officer's training and experience when determining the reasonableness of a *Terry* stop. *State v. Mercer*, 45 Wn. App. 769, 774, 727 P.2d 676 (1986); *State v. Samsel*, 39 Wn. App. 564, 570–71, 694 P.2d 670 (1985).

RCW 46.61.250 provides that pedestrians shall not walk in the roadway whenever there are sidewalks provided (unless they are disabled, in which case they are allowed to use the roadway for sufficiently long to reach a wheelchair access point). “Where sidewalks are provided it is unlawful for any pedestrian to walk or otherwise move along and upon an adjacent roadway.” RCW 46.61.250. “Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian

offenses, is designated as a traffic infraction.” RCW 46.63.020. These two statutes make it clear that failure to use a sidewalk, when possible, is a traffic infraction.

Additionally, the City of Kennewick Municipal Code Section 10.08.020 provides as follows:

**10.08.020: Disorderly Conduct:**

(1) A person is guilty of disorderly conduct under this section, if he:

- (a) Uses abusive language, and thereby intentionally creates a risk of assault; or
  - (b) Intentionally disrupts any lawful assembly or meeting of persons, without legal authority; or
  - (c) Intentionally obstructs vehicular or pedestrian traffic, without legal authority.
- (2) Disorderly conduct is a misdemeanor.

The defendant here failed to use a sidewalk despite the fact that one was readily available for use, which was evidenced by the fact that his female companion used it correctly. 1RP at 57, 74. Not only did he fail to use the sidewalk, he was walking in the middle of the road directly in the path of Detectives Salter and Riley’s vehicle so that if they had continued their path of travel, they would have struck the defendant with the patrol vehicle. *Id.* at 75. Although theirs was possibly the only vehicle on the roadway at that time, the defendant was certainly in their path of travel.

Both Detective Salter and Detective Riley testified that the defendant had committed a traffic infraction as well as a possible

misdemeanor for his aforementioned actions. 1RP at 57-58, 85-86. Detective Riley quoted the Kennewick Municipal Code regarding disorderly conduct and referenced the infraction of failing to use a crosswalk as did Detective Salter during the suppression hearing, but he was unable to cite the specific RCW without any reference material available. *Id.* at 66, 85-86. An officer who observes a traffic infraction is justified in stopping the individual who has violated the law. *State v. Wayman-Burks*, 114 Wn. App. 109, 112, 56 P.3d 598 (2002). Detectives Salter and Riley observed the defendant commit a traffic infraction as well as the misdemeanor offense of disorderly conduct. That alone would justify a brief detention even if the court determines that the contact constituted a seizure prior to the discovery of the misdemeanor warrant. Detectives Salter and Riley were justified in contacting the defendant based upon a *Terry* detention as well as a community caretaking function.

“The community caretaking function exception recognizes that a person may encounter police officers in situations involving . . . a routine check on health and safety.” *State v. Kinzy*, 141 Wn.2d 373, 387, 5 P.3d 668 (2000). Whether an encounter based on a community caretaking purpose is reasonable depends on a balancing of the individual's interest in freedom from police interference against the public's interest in the performance of the community caretaking function. *Id.* (quoting *Kalmas v.*

*Wagner*, 133 Wn.2d 210, 216–17, 943 P.2d 1369 (1997)). If the person has been seized, balancing the two interests does not necessarily favor an encounter by police. *Kinzy*, 141 Wn.2d at 388. A court must cautiously apply the community caretaking exception because of the risk of abuse. *Id.* “Once the exception does apply, police officers may conduct a noncriminal investigation so long as it is necessary and strictly relevant to performance of the community caretaking function.” *Id.*

“[R]endering aid or assistance through a health and safety check is a hallmark of the community caretaking function exception.” *Id.* at 389. It is in the public interest to allow police officers to approach citizens and permissively inquire as to whether they will answer questions. *Id.* at 388. When considering the applicability of the community caretaking provision, the proper inquiry is “whether totality of the circumstances indicate ‘a reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter.’” *Id.*

In the instant matter, the detectives believed based upon their training and experience that the defendant and his female companion were in an argument. The detectives had a valid basis, and in fact a duty, under the community caretaking function to ascertain the wellbeing of both the defendant and the female and determine if they needed assistance. The two were walking after 1:00 a.m. with the female wrapped in a blanket in 38

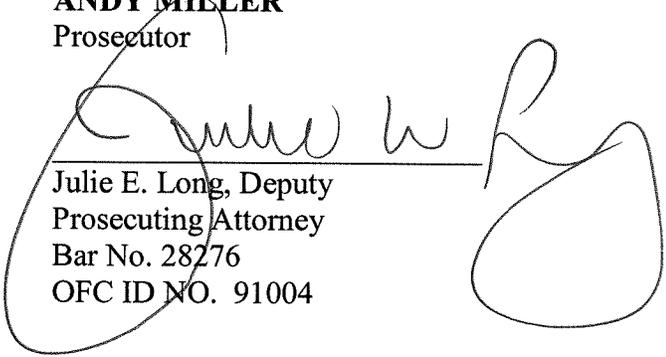
degree weather in a verbal altercation. To not stop and check on their welfare would have been a dereliction of the very nature of the detectives' duty; i.e. protect and serve the community. The verbal altercation was in fact confirmed by both parties when contacted by the detectives. However, once it was determined it was only an argument and the parties were not in need of assistance, the female was allowed to leave the scene. However, the defendant was found to have an outstanding warrant and thus was required to remain and submit to arrest on said warrant. Therefore, the detention of the defendant was valid on two bases: a *Terry* detention based upon his commission of a traffic infraction and/or misdemeanor traffic offense and under the community caretaking function.

#### IV. CONCLUSION

Based upon the aforementioned rationale, the defendant's appeal should be denied and the conviction affirmed.

**RESPECTFULLY SUBMITTED** this 18th day of March, 2016.

**ANDY MILLER**  
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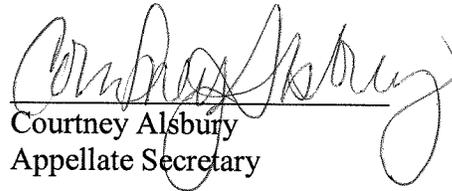
**CERTIFICATE OF SERVICE**

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:

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Signed at Kennewick, Washington on March 18, 2016.

  
Courtney Alsbury  
Appellate Secretary