

62062-2

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NO. 62062-2-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DENNIS BLOWERS,

Appellant.

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2009 AUG -7 PM 4:46

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MARY YU

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

	Page
A. <u>ISSUES</u>	1
B. <u>STATEMENT OF THE CASE</u>	1
C. <u>ARGUMENT</u>	3
1. BLOWERS FAILS TO SHOW THAT HIS OBSTRUCTION CONVICTION WOULD VIOLATE HIS CONSTITUTIONAL RIGHTS.....	3
D. <u>CONCLUSION</u>	8

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Terry v. Ohio, 392 U.S. 1,
88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)..... 5

Washington State:

City of Pasco v. Shaw, 161 Wn.2d 450,
166 P.3d 1157 (2007)..... 4

State v. Bessette, 105 Wn. App. 793,
21 P.3d 318 (2001)..... 3, 5, 7

State v. Mote, 129 Wn. App. 276,
120 P.3d 596 (2005)..... 3

Other Jurisdictions:

People v. Hilgenberg,
223 Ill.App.3d 286 (1991) 6

Constitutional Provisions

Federal:

U.S. Const. amend. IV 3, 4, 5, 6, 7

Washington State:

Const. art. 1, § 7 3, 4

A. ISSUES

Were the defendant's constitutional rights violated when he was convicted for obstructing a law enforcement officer because he prevented officers from arresting him by refusing to exit his house?

B. STATEMENT OF THE CASE

Around 3:00 a.m. on June 23, 2007, Seattle Police Officer Werner was on patrol when he observed defendant Dennis Blowers driving 60-70 miles per hour in a posted 30 mile per hour zone. 4RP 16-17. Werner then activated his lights and sirens in an effort to get Blowers to pull over. 4RP 19.

In response, Blowers fled, traveling at an excessive rate of speed, running multiple red lights, and running through stop signs in an effort to avoid patrol cars. 4RP 20-34. A King County Sheriff's Office helicopter assisted in tracking Blowers. 4RP 112-13.

Blowers finally stopped in front of his residence and ran inside. 4RP 34, 119-21. Officers arrived a few moments later, looked into Blowers's car and observed a handgun and several spent shell casings. 4RP 133-34. The officers also received information that young children were inside the house with Blowers. 4RP 138, 168; 5RP 18-19. Due to safety concerns for the officers, Blowers, and the four young children, the

officers did not want to storm the house and arrest Blowers. 4RP 130, 135, 155; 5RP 7-8. Instead, the officers attempted to arrest Blowers by asking him to exit his house. Special negotiators arrived on the scene and spoke with Blowers through a bullhorn and on the telephone. 4RP 141. The SWAT team also arrived. 5RP 9. Despite repeated requests to exit his house, Blowers refused. 4RP 141; 5RP 22-24.

A standoff between Blowers and the officers ensued. The SWAT team finally deployed gas canisters into the residence, eleven hours after the initial pursuit began. 4RP 97-98, 167. Blowers then finally came out the front door and was taken into custody. 5RP 27.

By amended information, the State charged Blowers with four crimes: (Count 1) Attempt to Elude; (Count 2) Unlawful Possession of a Firearm in The First Degree; (Count 3) Driving While License Suspended in the First Degree; and (Count 4) Obstructing a Law Enforcement Officer. CP 42-43. The jury found Blowers guilty on all counts. CP 70-73. At sentencing, the trial court imposed a standard range sentence. CP 100. On the obstruction conviction, the trial court sentenced him to 12 months suspended sentence, with zero days in confinement, to run consecutive to the other charges. CP 107. Blowers appealed. CP 108.

C. **ARGUMENT**

Blowers, without citing any authority, contends that the evidence was insufficient for his conviction for obstruction. He claims that this conviction should be overturned because he had a constitutional right *not to leave his house* on command of the officers. This is incorrect.

Although a defendant cannot be convicted for obstruction based on his exercise of a constitutional right, Blowers, in this case, did not have a constitutional right to remain in his house. Accordingly, Blowers obstructed the officers' ability to arrest him, and his conviction stands.

1. **BLOWERS FAILS TO SHOW THAT HIS OBSTRUCTION CONVICTION WOULD VIOLATE HIS CONSTITUTIONAL RIGHTS.**

A defendant cannot be convicted for obstruction for exercising a constitutional right, including his rights under the Fourth Amendment of the United States Constitution and article 1, section 7 of the State constitution. State v. Bessette, 105 Wn. App. 793, 796-97, 21 P.3d 318 (2001). If, however, a defendant is charged with conduct that is *not* a proper exercise of a constitutional right, an obstruction conviction will stand. The defendant has the burden of proof to show that his constitutional rights were violated. State v. Mote, 129 Wn. App. 276, 282,

120 P.3d 596 (2005) (defendant has burden of proof to show seizure in violation of his constitutional rights).

In this case, Blowers contends that he had a constitutional right to not leave his home. The central assumption in Blowers's argument — that entering a home is the same as demanding a person exit his home — is incorrect. It is clear that a person has a constitutional right to be free from government intrusion *into his home* absent the officer having a warrant or relying on an exception to the warrant requirement. City of Pasco v. Shaw, 161 Wn.2d 450, 459, 166 P.3d 1157 (2007) (“Both the Fourth Amendment and article 1, section 7 provide strict privacy protections where invasion of a person's home is involved.”). This is based on the fact that the constitution protects the privacy of one's home. WASH. CONST. ART. 1, SECTION 7 (“No person shall be disturbed in his private affairs, or his home *invaded*, without authority of law.”) (emphasis added).

This does not mean, however, that a defendant has a constitutional right — state or federal — *not to leave his home*. Blowers, who has the burden, fails to cite one single case that recognizes a specific constitutional right *not to leave a home* (as opposed to officers entering the home). By asking Blowers to exit the home, the officers were not invading the privacy of his home. Accordingly, requiring Blowers to leave his home did not infringe on any of his constitutional rights.

By demanding that Blowers leave his home, the officers arguably “seized” him, and this Court should analyze this case under a Terry¹ stop analysis. Under this analysis, the officers here clearly had reasonable and articulable suspicion to require that Blowers exit his home and talk with the officers.

Moreover, even if entering a home without a warrant was the same as requiring a defendant to exit a home, Blowers’s argument would still fail. Where a defendant has appealed his obstruction conviction for failing to allow officers *into his* home, the courts have generally resolved the issue based on whether the defendant had a constitutional right to be free from government intrusion. For example, in Bessette, an officer saw a juvenile with a beer can run into Bessette’s house. 105 Wn. App. at 795. The officer contacted Bessette and demanded that he be allowed inside the house. Id. Bessette refused to let the officer inside the house, and, for this, Bessette was later convicted of obstructing a police officer. Id.

On appeal, Bessette argued that he could not be convicted for obstruction because he was exercising his Fourth Amendment constitutional right by refusing to allow the officers into his home absent a warrant. Id. at 796-97. This Court stated that the issue was whether the

¹ Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

officer had exigent circumstances to obviate the need for a warrant to enter the home:

And the question is not whether Mr. Besette obstructed [the officer] -- of course he did. The question is whether he legally obstructed Officer Bucsko in reliance upon his constitutional (state and federal) right to insist on a judicial warrant as a condition of entry into his home. In other words, were there exigent circumstances here to sufficient to dispense with the requirement of a warrant?

Id. at 797.

If exigent circumstances existed, then Besette's actions were not the "lawful insistence of his Fourth Amendment rights, but rather the illegal obstruction of a police officer." Id. at 796. If, on the other hand, the officer did not have exigent circumstances, then the officer had no legal right to enter, and Besette's mere insistence on his constitutional rights could not satisfy an obstruction conviction. Id. at 796-97.

After framing the issue, the trial court concluded that exigent circumstances, or any other exception to the warrant requirement, did not exist and, thus, the conviction for obstructing could not stand. Id. at 800. Courts from other jurisdiction have also framed the issue in a similar manner. People v. Hilgenberg, 223 Ill.App.3d 286 (1991) ("[I]f an officer has a legal right to enter a house, an owner's refusal to obey the officer's command would constitute obstruction").

In this case, Blowers did *not* have a constitutional right to be free from government intrusion inside his home. To the contrary, as Blowers concedes, the officers had the legal right to forcibly enter his house and arrest him, based on the exigent circumstances. Blowers Br. at 3-4.

Accordingly, since Blowers did not have a constitutional right to prohibit the officers from entering and arresting him, his refusal to leave the house was “not the lawful insistence of his Fourth Amendment rights, but rather the illegal obstruction of a police officer.” Bessette, 105 Wn. App. at 796.

Any other conclusion would severely compromise officers’ ability to safely apprehend suspects. Blowers contends that although the State could forcibly enter and arrest Blowers, it could not require Blowers to step outside his house. This is misguided. In this case, the officers did not want to forcibly enter the home and arrest Blowers, due to safety concerns of the officers, other young children, and Blowers himself. If Blowers’s argument, however, were correct, this would mean that a suspect, who was armed and had just engaged in a dangerous felony, could barricade himself in their house and require the officers to forcibly enter, risking the life of all parties involved. Neither the federal nor the State constitution requires

this unnecessary risk, and Blowers has failed to cite any authority suggesting otherwise.²

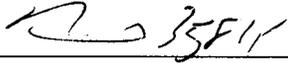
D. CONCLUSION

For the foregoing reasons, the State respectfully asks that this Court affirm Blowers's conviction for Obstructing a Law Enforcement Officer.

DATED this 7th day of August, 2009.

Respectfully submitted,

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² Blowers further contends that Blowers' failure to leave his house did not "obstruct" the officers. This is also wrong. The defendant willfully obstructed the officers from arresting him, a duty that they had considering that they had witnessed the defendant commit a felony. 4RP 146-47.

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gregory Link, attorney for the appellant, at Nielsen, Broman, & Koch, PLLC, 1908 East Madison, Seattle, WA 98122, containing a copy of the BRIEF OF RESPONDENT, in State v. Dennis Blowers, Cause No. 62062-2-I, in the Court of Appeals, Division I. of the State of Washington.

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

CC Brame

Name

Done in Seattle, Washington

8/7/09

Date

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