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63179-9

NO. 63179-9-I

COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,
Respondent,

v.

RAMAL RICHARDSON,
Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY
THE HONORABLE CHARLES MERTEL

BRIEF OF RESPONDENT

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A. ISSUES

1. An informant's tip can justify a stop of individuals suspected of criminal activity when "indicia of reliability" are shown through circumstances that suggest the informant's reliability or that suggest her information was obtained reliably. In this case, the informant was known to police for accurate and reliable, firsthand information, and she explained the basis for her accusation. Did the officer properly rely on this information in making his stop?

2. A seizure occurs when a reasonable person would first be aware that his freedom was limited by police. Richardson first interacted with police when he was detained at gunpoint. Was this the moment of his seizure?

3. A seizure is lawful if specific facts show an individual is a threat to officer safety when an officer is investigating criminal activity of him or his companion. Here, in a group of five men, four individuals were suspected of criminal activity, and all five were a threat to officer safety during this investigation. Was the seizure of all five men lawful?

B. STATEMENT OF THE CASE

1. PROCEDURAL HISTORY

Defendant Ramal Richardson was charged by information with Violation of the Uniform Controlled Substances Act for possessing Methylendioxyamphetamine (MDMA). CP 1. A CrR 3.6 hearing was held on December 16, 2008, after which, the court denied the motion to suppress. RP 65. The next day, the defendant indicated that he wanted to testify, and the court reopened the CrR 3.6 hearing, heard additional testimony from Richardson and another witness, and then again denied the motion to suppress. RP 74, 142.

The trial court then found Richardson guilty as charged in a stipulated bench trial. CP 36. At trial, the court found that Richardson was seized by police on July 5, 2007, after which, police noticed a handgun lying next to him and found 100 pills of ecstasy (MDMA) in his pocket. CP 35-36. The trial court imposed a standard range sentence. CP 27. Richardson now appeals his conviction. CP 23.

2. CrR 3.6 FACTS

On July 5, 2007, King County Sheriff Deputy Richard Ehlers responded to a 911 call from the management of the Creston Apartments. CP 32; RP 12-14. The Creston Apartments are within Deputy Ehlers' patrol, and he has responded to the apartments about 50 times to address illegal activity at the complex. CP 31-32; RP 9, 13-15. The Creston Apartments are known to him, mostly through personal experience, for the spectrum of violent crime that takes place there, including: homicide, burglary, robbery, vandalism, threats, assault, and rape. RP 13.

Deputy Ehlers is often contacted by the management of the Creston Apartments, which is led by a woman named Valerie. CP 32; RP 14-15. Deputy Ehlers knows that Valerie is respected by the citizens of the apartment complex because she is a fellow resident, has firsthand knowledge of the apartment happenings, and is quick to contact police when criminal issues arise. RP 14-15. He knows that she is the reporting person to police when there are problems at the complex. RP 14. Over the years he has known her, Deputy Ehlers has never received unreliable or false information from Valerie, and he knows her to be a credible person. CP 32; RP 15-16, 18, 46, 65. All of the apartment

managers at the Creston Apartments are known for providing reliable and credible information, which has never been false or misleading. CP 32; RP 49-50, 65.

When Deputy Ehlers responded to Valerie's 911 call on the afternoon of July 5, 2007, he learned, via dispatch, that Valerie saw a man at the complex, who had earlier burglarized an apartment unit there. CP 32; RP 18-19, 21, 37-38, 46; Ex 1. Valerie identified the burglar from surveillance video that showed the suspect in the burglary. RP 18-19. Deputy Ehlers proceeded to the Creston Apartments to investigate. CP 32; RP 21. Dispatch advised that the suspect was an African-American man in his 20s, wearing a white t-shirt with khaki-colored shorts. CP 32; RP 20. As Deputy Ehlers got closer to the complex, he heard an update that a verbal confrontation was heating up between the suspect and the victim of the burglary. CP 32; RP 18-19, 38-39. Deputy Ehlers was informed that these individuals were at the "L Building" of the complex, and that additional friends of the victim or suspect had now joined in the confrontation. CP 32; RP 21-22.

As Deputy Ehlers entered the complex, he could see a group of males in front of the "L Building." CP 32; RP 23. Four of the five people in the group matched the description of the burglar given by

the apartment manager. Id. Each of the four was an African-American male, in his 20s, wearing a white t-shirt. RP 24, 115. Ramal Richardson was one of the men wearing a white shirt. RP 44. Deputy Ehlers would normally first make contact with Valerie, the manager of the complex, but after seeing possible suspects when he arrived, he decided first to detain the individuals. RP 26.

Deputy Ehlers was alone on-scene, as other units had yet to arrive. RP 25. He did not activate his car's emergency equipment but did get out of his car to make contact with the group. Id. As he pulled up, the group stopped talking and appeared to walk away from Deputy Ehlers. RP 25, 43-44. They were about 75 feet away from him. RP 50. He told the group to stop, but they kept walking. RP 26. Richardson, who was in this group, did not hear the request to stop. RP 125-26. However, it appeared to Deputy Ehlers that the group was deliberately ignoring him. RP 26. He found this to be an unusual response. RP 50. Deputy Ehlers yelled to the guys wearing the white shirts to stop. Id. Again Richardson did not hear this command to stop. RP 125-26. Deputy Ehlers saw some of the men in the group turn around and look in his direction and keep moving away from him. RP 28. He thought this was unusual,

because if they were victims to the burglary, they normally would want to make contact with the police. RP 54. The men appeared at this point to be fleeing the scene. RP 66.

At this point, Deputy Ehlers believed the men in the group knew he was there, and he believed the scene was becoming dangerous. RP 28-29. He was alarmed because the group of five men began to move their hands around, out of sight, in a way that Ehlers thought they may be carrying a weapon. RP 28-29, 45. This raised his "red flag" of concern. RP 29. Deputy Ehlers was still alone, had no backup, and had suspicious circumstances involving burglary suspects who were not complying with any of the orders he was now giving. RP 29.

Deputy Ehlers took out his firearm and ordered the men to stop and go to their knees. Id. This is the moment Richardson realized that a police officer was in the area. RP 128-29. All of the men in the group, including Richardson, eventually complied with this command. RP 29, 30. A few minutes later, Deputy Ehlers' partners arrived on scene and relieved him of his detention of the individuals. RP 40-41. During Richardson's detention, these other

officers discovered drugs on Richardson and a gun lying near him.¹
RP 30, 41, 50, 132-33.

C. OVERVIEW

Richardson challenges his seizure for a lack of individualized reasonable suspicion of criminal activity. Deputy Ehlers had reasonable suspicion to seize four of the five members of the group, since they matched the description of the burglar and had other suspicious behavior. During the detention of these four men, officer safety concerns justified the detention of all five men in the group. Thus, the seizure of Richardson, as a member of this group, was lawful.

D. ARGUMENT

1. THERE ARE SUFFICIENT "INDICIA OF RELIABILITY" IN THE INFORMANT'S TIP.

Richardson claims that Deputy Ehlers should not have relied on the information he used to detain Richardson. Specifically, he argues that there were not sufficient "indicia of reliability" in the

¹ The only issue being raised by Richardson on appeal is whether the initial seizure of him was lawful.

information provided by the apartment management when they reported a burglar was at their complex. Because the informant was credible and the information was obtained reliably, Ehlers thus appropriately relied on this information, and Richardson's claim fails.

Even when there is not probable cause for an arrest, an officer may detain and question someone if the officer has a well-founded suspicion based on objective facts that the suspect is connected to criminal activity. State v. Sieler, 95 Wn.2d 43, 46, 621 P.2d 1272 (1980).

An informant's report may provide the necessary reasonable suspicion for police to conduct an investigatory stop. Sieler, 95 Wn.2d at 47. In the context of an investigating stop, a "totality of the circumstances" standard applies. Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). This "totality of the circumstances" standard means that, "[t]he reasonableness of the officer's suspicion is determined by the totality of the circumstances known to the officer at the inception of the stop." State v. Rowe, 63 Wn. App. 750, 753, 822 P.2d 290 (1991); see also State v. Lee, 147 Wn. App. 912, 917, 199 P.3d 445 (2008).

An informant's tip provides the reasonable suspicion necessary to justify an investigatory stop when the tip has sufficient "indicia of reliability." State v. Marcum, 149 Wn. App. 894, 903-04, 205 P.3d 969 (2009). Those indicia include: "[1] ... circumstances suggesting the informant's reliability, or some corroborative observation which suggests either [2] the presence of criminal activity or [3] that the informer's information was obtained in a reliable fashion." Sieler, 95 Wn.2d at 47 (quoting State v. Lesnick, 84 Wn.2d 940, 944, 530 P.2d 243 (1975)).

Richardson argues that the Aguilar/Spinelli² test for reliability of an informant's tip should apply. However, that two-prong test is used in the context of determining whether the police acted with *probable cause*, which then requires two showings: (1) that the informant had a sufficient basis of knowledge, and (2) the informant's veracity. State v. Duncan, 81 Wn. App. 70, 76, 912 P.2d 1090 (1996). While this two-prong standard does not apply to mere investigatory stops, under both the "totality of the circumstances" and Aguilar/Spinelli tests, Valerie and her information were reliable.

² Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964); Spinelli v. United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).

In this case there is no dispute that Valerie was reliable, thereby satisfying the first prong to establish "indicia of reliability." Indeed, the trial court found that the management staff at the Creston Apartments was always accurate and reliable. CP 32. These individuals were known to Ehlers through prior contacts and they never provided false or misleading information. CP 32. These factual findings are unchallenged. Unchallenged findings of fact are verities on appeal. State v. Luther, 157 Wn.2d 63, 78, 134 P.3d 205 (2006). Accordingly, the fact that the reporting party in this case was known to be always accurate and reliable provides sufficient "indicia of reliability" to the information relied upon by Ehlers.

Richardson claims that despite this reliability, there needs to be additional objective facts to show that the information is also accurate. He argues that Ehlers should have independently reviewed the video before concluding that the information relayed was reliable. Richardson asserts that "good police work" required that Ehlers first do more investigation and clarification before simply relying on the information to detain the suspect. Appellant's Brief at 29-30. However, he misapplies this standard. This is because the information provided in this case was not a bare conclusion that

a crime occurred, nor was it an anonymous call. Instead, Valerie was known for providing credible, firsthand information, and gave objective facts that revealed her information was obtained in a reliable fashion.

Specifically, Valerie was an apartment manager, who lived at the complex, and was known to provide quick, accurate information following criminal activity. This case was no different. Instead of simply being told that the suspect was a burglar, Ehlers received additional facts that the suspect was identified based on being in a video that showed he was the one who broke into a unit at the complex. These objective facts would be consistent with an apartment manager's ability to identify a burglary suspect.

Valerie explained that the burglary suspect was now at the "L Building" at the complex. Ehlers knew that she has firsthand knowledge of the problems there. She added more facts that he was in a verbal confrontation with the burglary victim and the victim's friends. The location of this verbal confrontation was at the specific building where Ehlers was told the group of men would be, further confirming Valerie's report. There was no need for Ehlers independently to verify the video to substantiate the reliability of the information he received, nor would it be prudent given the

immediate need to detain the suspects. The informant's tip already had sufficient "indicia of reliability" to justify a stop of the suspect.

2. RICHARDSON WAS NOT SEIZED UNTIL HE WAS DETAINED AT GUNPOINT.

Even though he did not know police were present until he was detained at gunpoint, Richardson argues that he was technically seized when Ehlers was earlier trying to stop his group. This counters reason. A seizure cannot occur until a reasonable person felt their movement was restrained by police, which, in this case, was when Richardson was detained at gunpoint.

A stop is a Fourth Amendment seizure of the person which occurs whenever a police officer accosts an individual and restrains his freedom to walk away. Terry v. Ohio, 392 U.S. 1, 16, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). When analyzing police-citizen interactions, this Court must first determine whether a warrantless seizure occurred. State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003). A seizure occurs when, considering all the circumstances, an individual's freedom of movement is restrained and a reasonable person in this circumstance would not believe that she is free to leave or decline a request due to an officer's use

of force or display of authority. O'Neill, 148 Wn.2d at 574; see State v. Rankin, 151 Wn.2d 689, 695, 92 P.3d 202 (2004); 12 Royce A. Ferguson, Jr., *Washington Practice: Criminal Practice & Procedure* § 2602, at 592-93 (3d ed. 2004) ("If a reasonable person would have believed that he was not free to go during a police-citizen interaction, a seizure has occurred."). A seizure remains an investigatory stop even if a gun is drawn as a part of the stop. State v. Thompson, 41 Wn. App. 506, 512-13, 705 P.2d 271 (1985).

Here, the first police-citizen interaction between Richardson and Ehlers occurred when Richardson saw Ehlers directing him to the ground at gunpoint. Richardson was not aware of any police presence prior to this point. RP 128-29. Indeed, this is the first moment Richardson even realized that a police officer was in the area. Id. Accordingly, a reasonable person would not have felt their freedom was limited in anyway until this point. Therefore, this was the moment of seizure.

Richardson incorrectly relies on State v. Gatewood to claim that an officer's attempt to stop him constitutes a seizure. 163 Wn.2d 534, 539-40, 182 P.3d 426 (2008). Gatewood involves a suspect who was told to stop, a command he heard, thereby

resulting in his seizure. Id. at 539. This was based on the similar case of State v. Friederick, 24 Wn. App. 537, 541-42, 663 P.2d 122 (1983), where a lone suspect was commanded to stop by police, after which, the suspect responded by running. The same thing happened with Gatewood when he was commanded to stop; he immediately looked at police, and eventually ran. Id. at 539.

Gatewood does not involve a case where the defendant did not hear the officer's attempt to stop him. To the contrary, it shows that a seizure occurs when a reasonable person would first realize that they are being commanded to stop. In our case, this moment was when Richardson first saw police, as he was being detained at gunpoint.

3. THIS SEIZURE OF RICHARDSON WAS LAWFUL.

“All seizures of the person, even those involving only brief detentions, must be tested against the Fourth Amendment guaranty of freedom from unreasonable searches and seizures.” State v. Thompson, 93 Wn.2d 838, 840, 613 P.2d 525 (1980); see also Florida v. Royer, 460 U.S. 491, 498, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983); State v. Richardson, 64 Wn. App. 693, 697, 825 P.2d 754 (1992). An investigatory stop or seizure may be made on less

than probable cause. Thompson, 93 Wn.2d at 840. When police make such a stop they must have a reasonable suspicion, based on objective facts, that the individual was involved in criminal conduct or is a safety threat. Thompson, 93 Wn.2d at 840-41, 613 P.2d 525; see also State v. Madrigal, 65 Wn. App. 279, 281-83, 827 P.2d 1105 (1992); State v. Howard, 7 Wn. App. 668, 673, 502 P.2d 1043 (1972). This detention is only lawful if these specific and articulable facts, taken together with rational inferences from those facts, show that the individual seized was involved in criminal conduct or was a potential safety threat. State v. Adams, 144 Wn. App. 100, 103-04, 181 P.3d 37 (2008).

There is no clear test for determining the reasonableness of a stop based on officer safety or suspected criminal conduct. Id.; 12 Royce A. Ferguson, Jr., *Washington Practice: Criminal Practice & Procedure* § 2602, at 592-93 (3d ed. 2004). Ultimately, this Court must balance the governmental interests involved against the defendant's privacy interests. Id. The State has the burden to show that the particular seizure based on officer safety or on criminal conduct is valid. State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984) (citing State v. Houser, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980)). The legal issue of whether reasonable

suspicion exists is reviewed de novo by this Court. State v. Bray, 143 Wn. App. 148, 152, 177 P.3d 154 (2008).

- a. There Was Reasonable Suspicion That Members Of The Group Were Engaged In Criminal Activity.

Richardson argues that the trial court erred in its factual finding "that four of that group [of five individuals outside the L Building] were wearing clothing that matched the description of the suspected burglar." CP 32. Because the record substantiates this finding and the trial court's other factual findings further show that members of the group were engaged in criminal activity, there was a basis to lawfully seize these four men.

A finding of fact supported by substantial evidence will not be overturned on appeal. Thorndike v. Hesperian Orchards, 54 Wn.2d 570, 575, 343 P.2d 183 (1959). This Court only reviews de novo whether the findings of fact support the trial court's conclusions of law. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999).

The record establishes that Ehlers was told that the suspect was an African-American man in his 20s, wearing a white t-shirt with khaki-colored shorts. CP 32; RP 20. It further establishes that

as Deputy Ehlers arrived at and entered the complex, he could see a group of five males in front of the "L Building," four of whom matched similarly to the description of the burglar given by the apartment manager. RP 23. Ehlers further explained how he could see that each of the four was wearing a white t-shirt. RP 24, 115. Thus, the record substantiates the court's factual finding that "four of that group [of five individuals outside the L Building] were wearing clothing that matched the description of the suspected burglar."³ CP 32.

Further, in an uncontested finding by the trial court, Ehlers saw the group of five men, with four "of [the] individuals matching the description [of the burglar] given by dispatch." Id.; RP 66. The four men were all African-American men in their 20s, wearing white t-shirts. The fact that four of these five individuals matched the description of the burglary suspect provides a reasonable suspicion

³ Richardson contends that the record is insufficient to support this finding because there is no evidence that four of the men were wearing khaki shorts. While there is nothing in the record establishing "khaki shorts" specifically, Richardson's friend, Anthony Baker, testified that at least one of the individuals in the group was wearing shorts. RP 90, 139. Regardless, the court's finding that these four men were "wearing clothing that matched the description" was consistent with and substantiated by the fact that they were all wearing the same colored shirts as the burglar.

to seize these four individuals based on the report from apartment management.⁴

However, the record provides further factual basis to reasonably suspect that individuals in this group had been engaged in the criminal activity. The trial court factually found in its oral ruling⁵, and it is unchallenged, that when first contacted by Ehlers the members of this group fled the scene and disobeyed Ehlers' orders. RP 66. These actions are not only additional evidence of criminal activity, but also establish probable cause for the crime of obstructing a public servant.⁶ State v. Little, 116 Wn.2d 488, 496, 806 P.2d 749 (1991).

Accordingly, there was a lawful basis to seize members of the group because there was reasonable suspicion of their criminal activity. Ehlers was justified in seizing these four individuals matching the description of the burglar.

⁴ See supra D.1.

⁵ The trial court incorporated its oral findings with its written factual findings. CP33.

⁶ Our Supreme Court distinguished Little in State v. Gatewood, where the Court found that it would not conclude from case facts that a suspect "walked away" from police to mean that he was "fleeing" from police. Gatewood, 163 Wn.2d 534, 540. However, our case involves an unchallenged factual finding by the trial court that the members of the group appeared objectively to actually be "fleeing the scene." RP 66.

b. Officer Safety Necessitated The Seizure Of All Five Members Of The Group.

Richardson argues that the court's findings are insufficient to establish that he was one of the four men in the group who looked similar to the burglary suspect, and thus the criminal suspicion was not individualized to him.⁷ Accordingly, he contends, there was no lawful basis to seize all five of those in the group. However, because officer safety necessitated the seizure of the entire group, his claim fails.

Generally, neither close proximity to others suspected of criminal activities nor presence in a high crime area, *without more*, will justify a seizure. Ybarra v. Illinois, 444 U.S. 85, 90-91, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979) (holding that although a warrant gave the police authority to search a tavern and the bartender for narcotics, it did not give them the authority to search a

⁷ The record establishes that Richardson was identified by Ehlers as one of the men in a white shirt. RP 44. However, the trial court did not make this express finding. See State v. Armenta, 134 Wn.2d 1, 14, 948 P.2d 1280 (1997) (holding that in the absence of a finding on a factual issue we must indulge the presumption that State in a suppression hearing has failed to sustain their burden on this issue). The State contends that the finding is implicit in the trial court's denial of motion to suppress. Additionally, any missing finding would simply need to be remanded to the trial court to determine if necessary. State v. Alvarez, 128 Wn.2d 1, 904 P.2d 754 (1995). This remand does not have to occur here, however, since other findings by the court establish a basis for Richardson's seizure. As a member of the group seized, Richardson's seizure was lawful for officer safety as discussed in this section.

patron without a reasonable belief that the patron either was involved in criminal activity or was armed or dangerous); Thompson, 93 Wn.2d at 841-42; State v. Richardson, 64 Wn. App. 693, 697, 825 P.2d 754 (1992); State v. Ellwood, 52 Wn. App. 70, 74, 757 P.2d 547 (1988); State v. Dudas, 52 Wn. App. 832, 835, 764 P.2d 1012 (1988).

When an individual is simply in proximity to a suspect in a crime, a seizure of the individual is only justified if that individual seized may be a threat to safety or may be armed. Adams, 144 Wn. App. at 106-07 (citing State v. Horrace, 144 Wn.2d 386, 393-96, 28 P.3d 753 (2001)). Even if this individual seized is not the criminal suspect of the crime, an officer may search this companion of a criminal suspect if that companion provides a safety concern to the officer. Horrace, 144 Wn.2d at 393-94 (holding that an auto passenger's seizure and pat-down was lawful without individualized criminal suspicion when the arrested driver made unexplained movements toward the passenger, who could have been concealing a weapon, and raised officer safety concerns).

"Officers in the field must routinely look at the potentially criminal roles of individuals in context, not in isolation." Horrace,

144 Wn.2d at 397. To implicate the need to search a suspect's companion an officer need not be absolutely certain that the individual seized was armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. Horrace, 144 Wn.2d at 396 (citing State v. Belieu, 112 Wn.2d 587, 602, 773 P.2d 46 (1989)).

There is a government interest in ensuring the safety of police officers as they perform their duties. Terry, 392 U.S. at 23. "American criminals have a long tradition of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded." Id. "Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives." Id. Where an officer's conduct is connected to safety concerns rather than investigatory goals, a court is particularly reluctant to substitute its own judgment for that of the officer in determining whether a seizure was justified. Adams, 144 Wn. App. at 104 (citing State v. Collins, 121 Wn.2d 168, 173, 847 P.2d 919 (1993)).

In this case, before Richardson was seized, Ehlers had many reasons to be concerned that each member of the group

might be armed or be a threat to his safety. These concerns necessitated the seizure of the entire group of five, not just the four he was investigating.

Ehlers knew at the outset that at least one of those in the group was a suspect in a burglary at the location, and thus would not want to be taken into custody. Ehlers was aware that when responding to a call "a lot of times we don't know exactly what we're going into." RP 17. This constantly changing environment adds much uncertainty to what an officer would face when they arrive. This case was no different, as Ehlers was being updated with new information that the group of men containing the suspect was getting larger, and a verbal confrontation was getting heated between the suspect and a group that may potentially include the burglary victim and his friends.

Ehlers knew the apartment complex well, visiting it about 50 times. He was aware firsthand of its reputation for violence. With the assaults, robberies, burglaries, homicide, and other serious crimes taking place there, he would reasonably expect that many individuals would carry firearms and other weapons. Despite these inherent dangers, Ehlers responded alone to the location of the "L Building" in order to detain the person suspected of

burglarizing one of the residents, so he could better investigate the situation. As he arrived on scene, he saw an even larger group than expected. The men he faced almost all matched the shirt color, age, sex, and race of the suspect. He exited his car alone and went toward the group. He attempted to make contact with them, but he was ignored. They stopped talking to each other and fled in the opposite direction. Ehlers' concerns for his safety would be growing at this point, as he knew it was unusual for supposed victims of a burglary to avoid contact with police. It would be even less clear now as to who was with whom and what threat each individual was to Ehlers.

Ehlers commanded the four in the white shirts to stop. They did not. Instead, some from the group looked at him and they all continued to show their backs toward Ehlers and go in the opposite direction. Ehlers believed at this point that the group knew he was there. The potential dangers of the scene were developing. He would have every reason to believe that they would not comply with any commands by him. In a split second, his attention focused from the four suspects in the white shirts to all five men.

He was worried that the scene was becoming dangerous. The group of men began to move their hands around, and Ehlers could not see their hands. A "red flag" went off for Ehlers. RP 29. Ehlers believed the members of this group that outnumbered him five-to-one were armed with a weapon. Still alone, in an open apartment complex, without backup, the dangers were escalating in this area known for violence. Everything he observed demonstrated that any one of these five men could shoot him or others at moment's notice. Accordingly, Ehlers seized all five individuals to secure his safety. He accomplished this by detaining all five men at gunpoint.

Deputy Ehlers was no different from any other reasonably prudent person in these circumstances in believing that his safety was in danger. As such, he needed to seize the fifth companion for safety reasons while performing his valid criminal investigation of the other four men. Richardson's seizure was lawful.

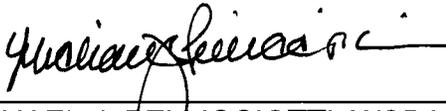
E. CONCLUSION

For all of the foregoing reasons, the State respectfully asks this Court to affirm Richardson's conviction.

DATED this 8th day of January, 2010.

Respectfully submitted,

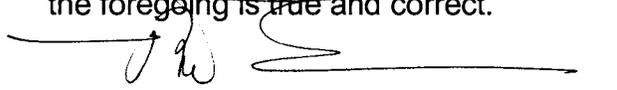
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Deputy Prosecuting Attorney
Attorneys for Respondent
Office WSBA #91002

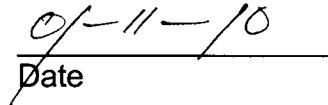
Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to James Dixon, the attorney for the appellant, at Dixon & Cannon, 216 First Avenue S., Suite 202, Seattle, WA 98104, containing a copy of the Respondent's Brief, in STATE V. RAMAL RICHARDSON, Cause No. 63179-9-1, in the Court of Appeals, Division I, for 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.

A handwritten signature in black ink, appearing to be "J. W. S.", written over a horizontal line.

Name
Done in Seattle, Washington

A handwritten date "07-11-10" written over a horizontal line.

Date