

68004-8

68004-8

NO. 68004-8-I

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION I

STATE OF WASHINGTON,

Appellant,

v.

JUDITH A. MORRIS,

Respondent.

12 SEP 27 PM 2:34
COURT OF APPEALS
STATE OF WASHINGTON

BRIEF OF APPELLANT

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I. ASSIGNMENTS OF ERROR

1. The Superior Court on RALJ appeal erred in concluding that under the circumstances defendant reasonably believed that she was not free to leave when contacted by the officer.

2. The Superior Court erred in concluding that defendant would have enjoyed greater protection than as a pedestrian by entering a vehicle parked in a public place.

3. The Superior Court erred in holding that all evidence obtained after defendant was contacted by the officer should have been suppressed.

4. The Superior Court erred in reversing the District Court.

II. ISSUES RELATED TO ASSIGNMENTS OF ERROR

1. Does an objective reasonable person standard apply in determining whether defendant was seized when contacted by the officer in this particular situation?

2. Is a person returning to a vehicle parked in a public place entitled to greater protection than a pedestrian for purposes of seizure under the Washington Constitution, article 1, section 7?

3. Is a police officer permitted to converse with a person and ask for identification without an articulable suspicion of wrongdoing?

4. Did the officer articulate a reasonable independent basis for requesting defendant to identify herself?

III. STATEMENT OF THE CASE

A. CIRCUMSTANCES OF THE OFFICER'S CONTACT.

The factual findings of the Snohomish County District Court—South Division, are not in dispute. The evidence at the suppression hearing showed the following: On October 9, 2008, the defendant, Judith A. Morris, was a passenger in a vehicle that pulled into a gas station parking lot. Deputy Ravenscraft was already in the parking lot when the vehicle pulled in. He ran the license plate number and learned that the registered owner of the vehicle had outstanding warrants for her arrests and that her license was suspended. Defendant exited the vehicle and entered the gas station store prior to police contacting the driver. While defendant was in the store the driver was contacted and arrested on warrants. Defendant was contacted by Deputy Ravenscraft after she exited the store while walking towards the vehicle. Deputy Ravenscraft asked defendant for her name, date of birth and the last four digits of her social security number. He was attempting to determine if defendant was licensed so that she could move the vehicle rather than having it towed and because she was

a witness to the crime of driving while license suspended. Deputy Ravenscraft's tone was conversational, he did not give defendant any verbal commands and he did not display a weapon. Deputy Ravenscraft ran the information received from defendant and discovered she had a warrant and arrested her. A search of defendant's person incident to her arrest yielded drug paraphernalia. CP 32-33 (district court decision); see also CP 10-27 (officer's testimony), 72 (officer's report, stipulated to by defense, CP 65).

B. SUPPRESSION MOTION AND RULING IN DISTRICT COURT.

Defendant was charged with possession of drug paraphernalia. She filed a motion challenging whether Deputy Ravenscraft had authority to request her identifying information. A testimonial hearing was held December 20, 2010, in the Snohomish County District Court—South Division; Deputy Ravenscraft was the only witness. CP 9-34 (transcript pretrial hearing), 49, 51-53 (court docket). Defendant argued that she was unlawfully seized, that she was stopped because she was a passenger in a vehicle driven by someone with a suspended license; that it was not a social contact; and that there was no independent basis for Deputy Ravenscraft to request that she identify herself. The State argued that defendant

was not seized; that Deputy Ravenscraft did not use a show of force or authority during the contact that would cause a reasonable person to believe she was seized; and that she was not a passenger in the vehicle when Deputy Ravenscraft contacted her. CP 27-32 (transcript of counsels' argument), 65-70 (defendant's motion), 76-85 (response to defendant's motion).

The district court denied defendant's motion to suppress finding that the reasons articulated by Deputy Ravenscraft justified asking defendant to identify herself. The district court ruled that in general there was no obligation for a passenger to provide identification, except when the requesting officer had an independent basis for requesting identification. The district court found that under the facts in the present case Deputy Ravenscraft articulated a logical reason for asking defendant to identify herself; to see if she was licensed to drive so she could move the vehicle rather than having it towed, and because she was a witness to the driving on a suspended license. Additionally, the district court found that Deputy Ravenscraft's manner and tone when contacting defendant did not rise to the level of a show of force. CP 32-33 (district court decision). Defendant timely appealed the district court's denial of the motion to suppress.

C. THE RALJ COURT REVERSED THE DISTRICT COURT.

The RALJ court reversed the district court, holding Deputy Ravenscraft's contact with defendant was an unlawful stop:

But for being stopped by the Deputy after exiting the store, Appellant would have entered the vehicle, where she would have enjoyed greater protection than as a pedestrian. Under the circumstances, including the fact that the driver had been placed under arrest, Appellant reasonably believed that she was not free to leave when she was stopped by the Deputy.

This was not a social contact. There were no grounds for a Terry stop; there was no suspicion that Appellant was currently or had recently engaged in criminal behavior. Therefore, the stop was unlawful and the evidence obtained thereafter should have been suppressed.

CP 38-39 (written decision); see also RP 9-11 (oral ruling).

The State timely sought discretionary review in this Court.

IV. ARGUMENT

A. THE RALJ COURT APPLIED THE WRONG STANDARD IN CONCLUDING THAT DEFENDANT WAS SEIZED WHEN THE OFFICER CONTACTED HER.

1. Standard Of Review.

Whether a warrantless stop is constitutional is a question of law reviewed de novo. State v. Rankin, 151 Wn.2d 689, 694, 92 P.3d 202 (2004). An appellate court reviews de novo conclusions of law following a suppression hearing. State v. Armenta, 134

Wn.2d 1, 9, 948 P.2d 1280 (1997). Where, as in the present case, no error was assigned to the district court's factual findings, the appellate court determines de novo whether those facts constitute a seizure. Armenta, 134 Wn.2d at 9.

2. Defendant Failed To Demonstrate A Seizure Occurred.

"Not every encounter between an officer and an individual amounts to a seizure." Armenta, 134 Wn.2d at 10. "An encounter between a citizen and the police is consensual if a reasonable person under the circumstances would feel free to walk away." State v. Bailey, 154 Wn. App. 295, 300, 224 P.3d 852 (2010). The defendant bears the burden of proving that a seizure occurred in violation of article I, section 7. State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489 (2003); State v. Young, 135 Wn.2d 498, 510, 957 P.2d 681 (1998); State v. Thorn, 129 Wn.2d 347, 354, 917 P.2d 108 (1996) (overruled on other grounds O'Neill, 148 Wn.2d at 571). Whether a seizure has occurred is a mixed question of law and fact. Armenta, 134 Wn.2d at 9; Thorn, 129 Wn.2d at 351. Absent a "seizure," the constitutional protection against unreasonable searches and seizures is simply not implicated. Thorn, 129 Wn.2d at 350.

A seizure occurs when an individual's freedom of movement is restrained and the individual would not believe he or she is free to leave or decline a request due to an officer's use of force or display of authority. Rankin, 151 Wn.2d at 695; Thorn, 129 Wn.2d at 351-352. A police officer's manner and tone are important in determining, objectively, whether a person would feel free to leave in a particular situation. Thorn, 129 Wn.2d at 353-54; O'Neill, 148 Wn.2d at 579. "The relevant inquiry for the court in deciding whether a person has been seized is whether a reasonable person would have felt free to leave or otherwise decline the officer's requests and terminate the encounter." Thorn, 129 Wn.2d at 352. The standard is "a purely objective one, looking to the actions of the law enforcement officer." O'Neill, 148 Wn.2d at 574 (citing Young, 135 Wn.2d at 510-511. "In general, ... no seizure occurs when a police officer merely asks an individual whether he or she will answer questions or when the officer makes some further request that falls short of immobilizing the individual." State v. Nettles, 70 Wn. App. 706, 710, 855 P.2d 699 (1993), review denied, 123 Wn.2d 1010 (1994). Factors that may give rise to a seizure include "the threatening presence of several officers, the display of a weapon, touching the defendant, and commanding language or

tone of voice.” State v. Knox, 86 Wn. App. 831, 839, 939 P.2d 710 (1997) (overruled on other grounds O’Neill, 148 Wn.2d at 571); see United States v. Mendenhall, 446 U.S. 544, 554, 100 S.Ct. 1870, 64 L.Ed.2d 497 (1980).

Factors constituting a seizure are not present here. Deputy Ravenscraft never displayed his weapon, never commanded defendant to do anything, and prior to learning of the outstanding warrant, he never touched her. To the contrary, Deputy Ravenscraft merely asked defendant to identify herself and then ran the information provided by defendant. CP 13-22, 33. The district court found that Deputy Ravenscraft’s manner and tone did not rise to the level of a show of authority or force. CP 33. Since defendant did not challenge this finding it is a verity on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Police questioning relating to one’s identity, or a request for identification by the police, without more, is unlikely to result in a seizure. Armenta, 134 Wn.2d at 11. In the present case Deputy Ravenscraft’s did not take any action that would lead a reasonable person to conclude she was not free to leave; he did not order the defendant to do anything, draw his weapon, or restrain defendant in any way. Clearly Deputy Ravenscraft’s action did not manifest a

show of authority or restraint by means of physical force sufficient that a reasonable person would not have felt free to leave or otherwise decline the officer's requests and terminate the encounter.

The RALJ court concluded to the contrary; that defendant "reasonably believed that she was not free to leave." In reaching this conclusion the RALJ court relied on the following factors: that but for being stopped by Deputy Ravenscraft defendant would have entered the vehicle where she would have enjoyed greater protection than as a pedestrian; that the driver of the vehicle had been arrested; and that there were insufficient grounds for a Terry¹ stop. CP 39. The factors the RALJ court relied on do not establish a seizure (see IV, B, C. and D below). Armenta, 134 Wn.2d at 11; Knox, 86 Wn. App. at 839. Defendant's subjective belief² regarding whether she was not free to leave is irrelevant. State v. Mote, 129 Wn. App. 276, 292-293, 120 P.3d 596 (2005) (defendant's subjective understanding of the situation is not relevant in determining whether or not there was a seizure).

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

² Since defendant did not testify at the suppression hearing the court would have had to have implicitly found what she subjectively believed.

The RALJ court implicitly found that defendant had been seized when it concluded that Deputy Ravenscraft's contact with defendant was "not a social contact." This court cannot consider an "implied" factual finding. See Armenta, 134 Wn.2d at 14 (in absence of factual finding, reviewing court must presume party with burden failed to establish fact). Defendant failed to meet her burden to prove that a seizure occurred.

3. Officer's Subjective Belief Is Immaterial.

An officer's subjective belief is immaterial on the issue of whether a reasonable person would feel free to leave, unless the officer communicated that information to the defendant. State v. Barnes, 96 Wn. App. 217, 224, 978 P.2d 1131 (1999). It is also irrelevant whether the officer subjectively intended to detain defendant with or without her consent, again except to the extent this was communicated to the defendant. Barnes, 96 Wn. App. at 224 (citing Mendenhall, 446 U.S. at 554, n. 6, 100 S.Ct. 2785); Knox, 86 Wn. App. at 839. No evidence was presented that Deputy Ravenscraft communicated his subjective belief to defendant that she was not free to leave. To the extent the RALJ court relied on Deputy Ravenscraft's subjective belief that defendant was not free to leave the RALJ court erred.

4. The District Court Used The Objective Reasonable Person Standard To Determine Whether Defendant Felt Free To Leave.

The district court correctly applied an objective standard in determining whether a reasonable person would feel free to leave in the particular situation. The district court found that Deputy Ravenscraft's manner and tone did not rise to the level of a show of force sufficient to cause a reasonable person to feel she was not free to leave. CP 33. The district court's findings were not challenged; thus they are verities on appeal. State v. Lorenz, 152 Wn.2d 22, 36, 93 P.3d 133 (2004); State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997). The district court's factual findings support the conclusion that a reasonable person would have felt free to leave or decline Deputy Ravenscraft's request under the circumstances in the present case.

B. THE RALJ COURT ERRED IN CONCLUDING THAT A PERSON RETURNING TO A VEHICLE PARKED IN A PUBLIC PLACE WAS ENTITLED TO GREATER PROTECTION.

The RALJ court erred in concluding that because defendant was headed towards the vehicle she was entitled to greater protection than as a pedestrian. In State v. O'Neill, the Court stated that "where a vehicle is parked in a public place, the distinction between a pedestrian and the occupant of a vehicle dissipates." O'Neill, 148 Wn.2d at 579. O'Neill involved a conversation between

police and a citizen in a vehicle, but did not follow either a parking or a traffic violation. The Court in O'Neill held that when a car is parked in a public place, occupants of the car should be treated as pedestrians for search and seizure purposes. O'Neill, 148 Wn.2d at 579; see also Mote, 129 Wn. App. at 292 (holding it was not a seizure when the officer approached a car to ask what the occupants were doing and asked for identification from the driver, and for the name and date of birth of the passenger). In the present case, even if defendant had entered the vehicle, under O'Neill and Mote she would not have been entitled to greater protection than a pedestrian.

In the present case, while defendant had been a passenger in the vehicle, the vehicle was not stopped by Deputy Ravenscraft and defendant was not in the vehicle when she was contacted. When the vehicle pulled up to the gas pump, defendant got out of the vehicle on her own volition and entered the store. Deputy Ravenscraft contacted defendant after she exited the store and was walking towards the vehicle. Since defendant was not in the vehicle when Deputy Ravenscraft contacted her, she was not entitled to the freedom from disturbance afforded to passengers in Washington by article 1, section 7. Rankin, 151 Wn.2d at 699. It

was permissible for Deputy Ravenscraft to request her identification. Id. The RALJ court erred when it concluded that defendant was entitled to greater protection than a pedestrian.

C. THE RALJ COURT ERRED IN CONCLUDING THAT POLICE OFFICERS ARE NOT PERMITTED TO CONVERSE WITH A PERSON AND ASK FOR IDENTIFICATION WITHOUT AN ARTICULABLE SUSPICION OF WRONGDOING.

Underlying the RALJ court's decision is the erroneous premise that an officer cannot approach citizens or engage in investigation unless the officer has suspicions of possible criminal activity and the suspicion rises to the level justifying a Terry stop.

That premise is contrary to this court's decision in Young, and contrary to the principle that a seizure depends upon whether a reasonable person would believe, in light of all the circumstances, that he or she was free to go or otherwise end the encounter. Whether a seizure occurs does not turn upon the officer's suspicions. Whether a person has been restrained by a police officer must be determined based upon the interaction between the person and the officer.

O'Neill, 148 Wn.2d at 575. Police officers can contact and converse with citizens by means of non-coercive questioning. Nettles, 70 Wn. App. at 710. Such tactics do not constitute an unconstitutional seizure. Armenta, 134 Wn.2d at 11.

"[A] police officer's conduct in engaging a defendant in conversation in a public place and asking for identification does not,

alone, raise the encounter to an investigative detention.” Armenta, 134 Wn.2d at 11 (asking for identification during a casual conversation did not constitute a seizure because the officer's request for identification was not accompanied by force or a display of authority, such that the citizens did not feel free to leave); Young, 135 Wn.2d at 511 (police are permitted to converse and ask for identification even without an articulable suspicion of wrongdoing); O'Neill, 148 Wn.2d at 579; Mote, 129 Wn. App. at 290 (“police officers may engage citizens in conversation in public places even when there is not enough suspicion to justify a Terry stop”). The RALJ court erred as a matter of law when it concluded that Deputy Ravenscraft could not ask defendant to identify herself without an articulable suspicion of wrongdoing.

D. THE RALJ COURT ERRED IN DECLINING TO AFFIRM THE DISTRICT COURT’S RULING THAT THE OFFICER ARTICULATED A REASONABLE INDEPENDENT BASIS FOR REQUESTING IDENTIFICATION.

The district court found that Deputy Ravenscraft’s articulated logical reasons justified asking defendant to identify herself. The Court in Rankin held that officers are prohibited from requesting identification from passengers for investigative purposes *unless* “there is an independent reason that justifies the request.” Rankin,

151 Wn.2d at 699. Deputy Ravenscraft's articulated basis for requesting identification is precisely the kind of independent basis recognized in Rankin, 151 Wn.2d at 705-706 (Fairhurst, J., concurring). Deputy Ravenscraft had just arrested the driver of a vehicle that was parked obstructing the use of a gas pump and would have to be moved; defendant was associated with the vehicle. Deputy Ravenscraft wanted to see if defendant was licensed so she could move the vehicle rather than having the vehicle towed. Additionally, the driver of the vehicle had a suspended license and defendant was a witness to her driving. Asking defendant for identification and running a check to see if she had a valid license to determine if she could drive the vehicle away from the scene of the arrest is lawful pursuant to an officer's community caretaking function. State v. Mennegar, 114 Wn.2d 304, 787 P.2d 1347 (1990). The RALJ court erred in declining to affirm the district court's ruling that Deputy Ravenscraft articulated a reasonable independent basis for requesting identification from defendant.

V. CONCLUSION

For the reasons stated above the decision of the RALJ court should be *reversed* and the matter remanded.

Respectfully submitted on September 26, 2012.

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