

70003-1

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ORIGINAL

NO. 70003-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

MIGUEL BROWN,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE REGINA S. CAHAN

BRIEF OF RESPONDENT

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A. ISSUE PRESENTED

An encounter between a citizen and a police officer is consensual if a reasonable person under the totality of the circumstances would feel free to walk away. Here, Officer Ames approached Brown while he was sitting behind the wheel of a car parked in a public lot and asked to see Brown's identification. Did the trial court correctly conclude that this interaction was a lawful social contact?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Miguel Brown with unlawful possession of a firearm in the second degree. CP 1. Brown moved to suppress the gun that Officer Ames found during his arrest. CP 63-82. Following a CrR 3.5 and 3.6 hearing, the trial court denied the motion. RP 96-97¹; CP 111-14, 115-19. The Honorable Regina Cahan found Brown guilty as charged following a stipulated-facts bench trial. 2RP 13-16. The court later imposed a sentence of

¹ The Verbatim Reports of Proceedings are comprised of three volumes. The State uses the abbreviations RP to refer to the volume covering the proceedings of January 9, 2013, 2RP to refer to the volume covering the proceedings of January 14th, 2013, and 3RP to refer to the volume covering the proceedings of January 23, 2012, March 21, 2012, June 27, 2012, September 27, 2012, October 31, 2013, and March 4, 2013.

25 months in prison. 3RP 21; CP 99-106. Brown timely appealed.
CP 120.

2. SUBSTANTIVE FACTS

On December 19, 2011, Tukwila Officer Donald Ames was on duty working patrol near Tukwila Boulevard. RP 19-20. Officer Ames was in uniform and driving a marked patrol car. PR 33-34. Officer Ames observed a group of males loitering in the parking lot of a gas station located at 14415 Tukwila Boulevard. RP 20. Officer Ames saw one of the males, whom he recognized as Omar Sao, approach a vehicle in the lot driven by a female. RP 20-21. The female then sped out of the parking lot. RP 21. Officer Ames saw Sao get into a green Ford Escort that was parked in front of the gas station. RP 22-23.

Officer Ames conducted a traffic stop on the vehicle that had fled the lot. RP 22. The female driver reported to him that the male who contacted her in the parking lot was panhandling. RP 23.

Officer Ames returned to the gas station and parked his patrol vehicle. RP 23-24. Officer Ames walked to the green Escort and spoke to the occupants, Sao, Richard Mullins, and Robert Hilliard. RP 24. Officer Ames spoke with all three males and could

smell alcohol on their breath. RP 25-26. Believing the three to be intoxicated, Officer Ames told them to leave the car at the gas station or find a sober and licensed driver to drive it away. RP 26. After a brief argument, the three followed Officer Ames' orders and walked to a nearby business, where they sat down on a bench. RP 26-28.

Officer Ames drove to a fast food parking lot just north of the gas station to keep an eye on the vehicle. RP 29-30. Approximately thirty minutes later, Officer Ames saw Mullins, Hilliard, Sao, and another unknown male, later identified as Miguel Brown, walk back to the gas station and get into the green Escort. RP 30-31. Officer Ames could not see who was in the driver's seat, but saw the brake lights activate. RP 31. Officer Ames drove back to the gas station to make sure no one impaired was attempting to drive the car. RP 31-32.

Officer Ames parked his car 10 or 12 feet behind the green Escort, leaving plenty of room for the Escort to get out of the parking space. RP 32-33. He did not activate his lights or siren. RP 32. Officer Ames exited his patrol vehicle and approached the car on foot. RP 33. As soon as he walked up to the car, he recognized that the driver was not one of the three men he initially

contacted. RP 33. Officer Ames asked the driver, Brown, for his driver's license, since the other three were intoxicated. RP 34. Brown informed Officer Ames that he did not have a license. RP 34. As Brown spoke, Officer Ames smelled alcohol on his breath. RP 34. Believing that Brown was also intoxicated, Officer Ames ordered Brown to turn off the car, remove the keys from the ignition, and step out of the vehicle. RP 35. As he exited, Brown immediately put his hands in his pockets. RP 35. Officer Ames told Brown to take his hands out and asked for his name and date of birth. RP 35-37. A records check revealed that Brown had an active arrest warrant. RP 37-38. Officer Ames asked Brown to put his hands behind his back. RP 38. Brown did not comply. RP 38. Officer Ames grabbed Brown's hands and attempted to arrest him. Id. As Officer Ames lifted Brown's sleeve to handcuff him, Brown's jacket lifted up, exposing a gun in his right front pants pocket. Id. Officer Ames finished handcuffing Brown and then took the gun from his pocket. RP 38-39.

Officer Ames put Brown in his patrol car and read him his Miranda rights. RP 39-40. In response, Brown said that he had found the gun a week earlier in Seattle and picked it up. RP 42.

Brown then said he did not want to speak any further and Officer Ames ended their conversation. RP 43.

Brown was previously convicted in King County Superior Court of theft of a motor vehicle in September, 2008. This conviction resulted in the defendant's ineligibility to possess a firearm. CP 95.

C. ARGUMENT

1. OFFICER AMES' INTERACTION WITH BROWN WAS A LAWFUL SOCIAL CONTACT.

Brown contends that the trial court erred by denying his motion to suppress because "[t]he warrantless search of Mr. Brown was a seizure[.]" Brief of Appellant at 7. Brown's argument fails because, as the trial court correctly determined, Officer Ames' initial interaction with Brown was a lawful social contact. This Court should reject Brown's claim.

In reviewing the denial of a motion to suppress, this Court reviews factual findings for substantial evidence and reviews conclusions of law de novo. State v. Hopkins, 128 Wn. App. 855, 862, 117 P.3d 377 (2005) (citing State v. Duncan, 146 Wn.2d 166, 171, 43 P.3d 513 (2002); State v. Mendez, 137 Wn.2d 208, 214,

970 P.2d 722 (1999)). Unchallenged findings are verities on appeal. State v. Luther, 157 Wn.2d 63, 78, 134 P.3d 2015 (2006).

Under the Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution, warrantless seizures are per se unreasonable, unless they fall under one of the “jealously and carefully drawn exceptions” to the warrant requirement. State v. Doughty, 170 Wn.2d 57, 61, 239 P.3d 573 (2010) (quoting Arkansas v. Sanders, 442 U.S. 753, 759, 99 S. Ct. 2586, 62 L. Ed. 2d 235 (1979)).

Not every encounter between a citizen and a police officer rises to the level of a seizure. State v. Harrington, 167 Wn.2d 656, 222 P.3d 92 (2009). An encounter between a citizen and an officer is consensual or permissive if a reasonable person under the totality of the circumstances would feel free to walk away. United States v. Mendenhall, 446 U.S. 544, 554, 100 S. Ct. 1870, 64 L. Ed.2d 497 (1980); State v. Mennegar, 114 Wn.2d 304, 310, 787 P.2d 1347 (1990). When a citizen freely converses with a police officer, the encounter is permissive. State v. Barnes, 96 Wn. App. 217, 222, 978 P.2d 1131 (1999). A consensual encounter is not a seizure, and therefore the Fourth Amendment is not implicated. Id. If a person freely consents to stop and talk, the

officer's asking questions or requesting identification does not necessarily elevate a consensual encounter into a seizure. Id.

Police officers are expected to do more than react to crimes that have already occurred; they are also expected to investigate suspicious circumstances and interact with citizens to keep informed about what is happening. State v. O'Neill, 148 Wn.2d 564, 576, 62 P.3d 489, 496 (2003). Law-enforcement personnel are permitted to approach individuals in public places and ask questions, including requesting identification. Florida v. Bostick, 501 U.S. 429, 111 S. Ct. 2382, 2386, 115 L. Ed. 2d 389 (1991); State v. Young, 135 Wn.2d 498, 511, 957 P.2d 681 (1998); State v. Vanderpool, 145 Wn. App. 81, 85, 184 P.3d 1282, 1283 (2008). “[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.” State v. Armenta, 134 Wn.2d 1, 11, 948 P.2d 1280, 1285 (1997). A request for identification does not become a seizure simply because the officer subjectively suspects criminal activity. O'Neill, 148 Wn.2d at 577. Nor do police effect a seizure merely by contacting an occupant of a vehicle and requesting identification. Id. at 581; State v. Johnson,

156 Wn. App. 82, 92, 231 P.3d 225, 229 (2010), review granted², 172 Wn. 2d 1001, 257 P.3d 1112 (2011). “The occupant of a car does not have the same expectation of privacy in a vehicle parked in a public place as he or she might have in a vehicle in a private location—he or she is visible and accessible to anyone approaching.” O’Neill, 148 Wn.2d at 579.

In Johnson, an officer parked 10 to 15 feet behind a vehicle parked in a disabled spot; the officer did not activate his emergency lights or siren. 156 Wn. App. at 86-87. The officer then contacted the driver and the passenger, Johnson, and asked for their identifications. The officer ran Johnson’s name, determined that he had active warrants, and arrested him. Id. at 87-88. The officer did not ask Johnson to step out of the vehicle, or tell him that he was not free to leave, until after the officer learned of Johnson’s outstanding arrest warrants. Id. at 92. Finding the interaction permissible as a social contact, the court stated that “a reasonable person would have felt free to leave under the circumstances.”

Johnson, 156 Wn. App. 82, 92.

² Review was granted only as on the issue of the legality of the search of the vehicle that occurred subsequent to Johnson’s arrest and the case was remanded to the Court of Appeals for reconsidering in light of State of Washington v. Robinson, 171 Wn.2d 292, 253 P.3d 84 (2011). Review not granted on the issue of the officer’s initial social contact with Johnson, which is the same issue in our present case.

The facts in the present case are similar to those in Johnson. Officer Ames parked 10 to 12 feet behind the green Escort and did not activate his emergency lights or siren. RP 32-33. Officer Ames approached the driver on foot. RP 33. He contacted Brown and asked for identification. RP 34. Officer Ames did not tell Brown that he could not leave or in any way restrict his movement. A reasonable person in this situation would have felt free to leave.

The Court in Harrington listed several factors that, if present, could escalate a request for identification into a seizure. 167 Wn.2d at 667-68. These include the arrival of additional police officers; the request to remove hands from one's pockets; the display of a weapon; and the request to perform a frisk. Id. Appellate relies heavily on Harrington in support of his contention. Brief of Appellant 7-9. However, he fails to mention that none of these additional factors are present here. Officer Ames was alone, made no request to search the vehicle or Brown's person, and did not display his weapon. Further, Officer Ames did not ask Brown to exit the vehicle or remove his hands from his pocket until after he had smelled alcohol on Brown's breath. RP 34-37.

Appellant does not dispute that Officer Ames had reasonable suspicion to detain Brown after detecting the odor of intoxicants coming from his person. Prior to that, the only contact between the two was Officer Ames approaching on foot and asking for Brown's identification. RP 34. This interaction was a lawful social contact, as a reasonable person would have felt free to leave. This Court should affirm the trial court's denial of Brown's suppression motion.

2. BROWN'S HANDGUN AND STATEMENTS WERE PROPERLY ADMITTED.

Brown contends that the handgun found on his person and his admission to possessing the gun were tainted by his illegal detention, so the fruits of the search should therefore have been suppressed. As argued above, the interaction between Officer Ames and Brown was a lawful social contact, the scope of which was not exceeded. Accordingly, there is no fruit of the poisonous tree to suppress. And as Brown identifies no other basis to exclude the evidence, this Court should conclude that Brown's handgun and statement were properly admitted.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Brown's conviction for unlawful possession of a firearm in the second degree.

DATED this 11th day of February, 2014.

Respectfully submitted,

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ORIGINAL

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 Jan Trasen, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. MIGUEL BROWN, Cause No. 70003-1-I, 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.

Kristen Anderson
Kristen Anderson
Done in Seattle, Washington

2/11/2014
Date

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