68073-1

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NO. 68073-1-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

DARRIN RAVENEL,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE HELEN HALPERT, JUDGE

BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

Table of Cases

Constitutional Provisions

Washington State:

Rules and Regulations

Washington State:

A. ISSUES PRESENTED

1. A person is only seized by law enforcement when an officer uses physical force or a show of authority to restrain the person's movement and a reasonable person in the same situation would not believe he or she was free to leave or decline a request and terminate the encounter. Here, a detective in full uniform approached Ravenel in a public place, hailed him, and asked if he knew he was going back the same way from where he had just come. Did Ravenel meet his burden to establish that this conversation constituted an unconstitutional seizure?

2. A social contact can validly ripen into a Terry[1] stop or result in an arrest if the officer develops articulable suspicion or probable cause. During their very brief conversation, a detective developed probable cause to arrest Ravenel based on the strong odor of marijuana coming from his person; during a search incident to that arrest, the detective discovered a suspected controlled substance in Ravenel's pocket. Did the trial court properly deny Ravenel's motion to suppress that evidence at trial?

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

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

Juvenile respondent Darrin Ravenel was charged by amended information with one count of possession of cocaine, and one count of obstructing a law enforcement officer. CP 5-6. At the CrR 3.6 hearing, the court found that baggies of crack cocaine that King County Detective Gabriel Morris found in Ravenel's pocket were admissible. RP 139-144; CP 22-24. The court found Ravenel guilty of both charges. CP 15.

2. SUBSTANTIVE FACTS

Just before 6:30 p.m. on a Saturday evening, Ravenel entered the Pioneer Street Station (PSS) of the Downtown Seattle Bus Tunnel, by walking down the stairs from the Yesler Way entrance to the mezzanine. RP 14, 19, 21-23; Ex. 6. Ravenel had just exited a car at street level where he and his friends had been smoking marijuana. RP 105-06.

Detective Morris was on duty, in full uniform, patrolling the mezzanine level of the PSS. RP 14-21, 53; Ex. 1; Ex. 2. Morris saw Ravenel walk down the stairs from Yesler Way and across the mezzanine. RP 45; Ex. 6. When Ravenel noticed Morris he

appeared startled. RP 20. Ravenel turned direction and walked towards the elevator and pressed the call button. RP 20-21. Ravenel was standing eight to ten feet away from Morris and not facing Morris. RP 23-24, 55.

The elevator at this location only goes up to street level, not down to the bus traffic in the tunnel. RP 21. Morris found it odd that someone would go up in the elevator after having just come down the stairs. RP 23. Morris walked toward Ravenel to ask him why he was going back up in the elevator. RP 23-24.

According to Ravenel, as Morris walked toward him, Morris was dividing his attention between his cell phone and Ravenel. RP 108. According to Ravenel, Morris asked him something along the lines of, "Wait, why are you getting on the elevator back up when you just came from up?" RP 108-09. Morris remembers using a word to hail Ravenel, although he does not remember what word, and then asking a similar question. RP 24. The trial court made its ruling under the assumption that Morris began his question with the word "wait." RP 151.

Ravenel remained standing in the same place and mumbled to Morris that he was looking for a bus. RP 24. By that time, Morris had approached within two to three feet of Ravenel and could smell

a strong and distinct odor of marijuana coming directly from Ravenel. RP 24-25. Morris commented on the odor, notified Ravenel that he was being placed under arrest, and placed him in handcuffs. RP 25; CP 23. The entire interaction, from when Morris first observed Ravenel to when Morris smelled the odor of marijuana coming from Ravenel, was only a few seconds. CP 23. During that time, the elevator that Ravenel was standing in front of had not yet arrived. RP 114-15.

During Morris's search of Ravenel incident to arrest, Morris located two plastic baggies in the pocket of Ravenel's shorts. CP 23. The baggies contained what Morris believed to be crack cocaine. CP 23. Those baggies were later confirmed to contain crack cocaine by a Washington State Patrol Crime Lab Forensic Scientist. RP 101.

C. ARGUMENT

THE TRIAL COURT PROPERLY CONCLUDED THAT RAVENEL WAS NOT UNCONSTITUTIONALLY SEIZED

Ravenel contends that the trial court improperly denied his motion to suppress evidence because he believed it was discovered as the result of an unlawful seizure. Ravenel is

incorrect. Morris did not seize Ravenel until formally placing him under arrest based on a strong odor of marijuana that Morris could smell coming from Ravenel. The evidence Morris obtained during his subsequent investigation was properly admitted at trial.

Ravenel challenges the trial court's conclusions of law from the hearing on admissibility of physical evidence. Conclusions of law entered following a CrR 3.6 hearing are reviewed de novo for whether they were properly derived from the trial court's factual findings. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999); State v. Solomon, 114 Wn. App. 781, 789, 60 P.3d 1215 (2002) (quoting State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997)). The trial court's unchallenged findings of fact are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

Under Article I, Section 7, of the Washington State Constitution, a person is only seized when a law enforcement officer uses physical force or a show of authority to restrain his or her movement and a reasonable person would not believe he or she is free to leave or decline a request and terminate the encounter. State v. O'Neill, 148 Wn.2d 564, 574, 62 P.3d 489

(2003). This standard is objective and looks only at the actions of the law enforcement officer. Id. The defendant has the burden of proving that an unconstitutional seizure has occurred. Id.

An officer may initiate social contact with an individual in a public place without articulable suspicion to justify a Terry stop. State v. Mote, 129 Wn. App. 276, 282, 120 P.3d 596 (2005). "When a uniformed law enforcement officer, with holstered weapon and official vehicle, approaches [an individual] and asks questions," it does not constitute a sufficient show of force for that individual to be seized. O'Neill, 148 Wn.2d at 581. This holds true even if the law enforcement officer has a subjective suspicion of possible criminal activity or a subjective intention to detain a suspect if he or she tries to leave. Mote, 129 Wn. App. at 282; U.S. v. Mendenhall, 446 U.S. 544, 554, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980). "Police officers must be able to approach citizens and permissively inquire into whether they will answer questions as part of their 'community caretaking' function." Mote, 129 Wn. App. at 282.

Courts have upheld as social contacts even more invasive interactions than an officer approaching an individual in a public place. Constitutionally valid social contacts have been found

when law enforcement officers have shined a bright spotlight on an individual during hours of darkness, specifically requested to have a conversation with an individual, requested that a person come towards the officer for a conversation, and requested that a person keep his hands in sight during a conversation. See State v. Young, 135 Wn.2d 498, 957 P.2d 681 (1998) (officer shined a spotlight on an individual walking along the street); State v. Nettles, 70 Wn. App. 706, 855 P.2d 699 (1993) (officer called out to two suspects, "Gentlemen, I'd like to speak with you, could you come to my car?"; officer instructed a suspect to remove his hands from his pockets); State v. Belanger, 36 Wn. App. 818, 677 P.2d 781 (1984) (officer stepped out of his car and called for individuals to walk back towards him). At the opposite end of the spectrum, circumstances that might indicate that a social contact has escalated to the level of a seizure include: an officer displaying a weapon, an officer making physical contact with the individual, an officer indicating through words or tone that the officer will compel compliance, or if multiple officers arrive on the scene. O'Neill, 148 Wn.2d at 581 (quoting Mendenhall, 446 U.S. at 554-55). An officer who is investigating a specific crime is free to approach any pedestrians

in the area to determine if they have information pertinent to the investigation, and even to request that those individuals produce identification. State v. Crespo Aranguren, 42 Wn. App. 452, 455-56, 711 P.2d 1096 (1985). However, if the officer then takes that identification and walks away from the individual, a reasonable person in the individual's position would not feel free to leave, and a seizure has been made. Id. at 456-57.

In State v. Ellwood, the officer began with a social contact when he stopped two pedestrians, in what the officer considered a high-crime area, to ask what they were doing. 52 Wn. App. 70, 71-72, 757 P.2d 547 (1988). Once the pedestrians had verbally provided their names and dates of birth, the officer ordered them to wait where they were while he walked back to his patrol car to conduct a warrant check. Id. Even though the officer did not physically take property from the pedestrians in that case, the court found that the contact had escalated into a seizure because the officer had commanded the pedestrians not to leave the scene. Id. at 73-74. In State v. Harrington, it was not a seizure for a single officer to stop his patrol car, approach a pedestrian, initiate a conversation ("Hey, can I talk to you?" or "Mind if I talk to you for a minute?"), ask multiple questions, and

make observations about the pedestrian. 167 Wn.2d 656, 660-61, 665, 222 P.3d 92 (2009). However, when combined with the arrival of a second officer on the scene, the officer's requests that the pedestrian remove his hands from his pockets, and requests that the pedestrian allow a physical frisk for weapons, the line was crossed into an investigative seizure. Id. at 661-62, 666-70.

In this case, after observing Ravenel change paths in a way that was suspicious, Morris walked up to Ravenel, hailed him, and asked Ravenel why he changed paths. This was a social contact, nothing more. Morris was in uniform, but he did not draw his weapon, he did not make any commands or requests, he did not intentionally block or divert Ravenel's path, and he did not have any physical contact with Ravenel. In fact, Morris exerted no force or authority in his words or actions that restrained Ravenel in any way.

Even assuming, as the trial court did, that the first word out of Morris's mouth as he approached was "wait," it was not uttered as a command. Under these circumstances, the word "wait" would have been nothing more than a hailing word, the equivalent of a "hey," a "hello," or a "sir." The word did not stand

on its own as an order, but rather prefaced the question that Morris wanted to ask. This was the single-word equivalent of a request to have a conversation.

This is a far cry from an officer ordering a pedestrian – midway through a social contact – to "wait here while I go back to my patrol car and check you for warrants." In Ellwood, the suspects would have otherwise been free to proceed on their path, had the officer not given them that command. The command converted the social contact to a seizure and required the pedestrian to stay in that spot. But here, whatever word Morris started with did nothing to change Ravenel's course of action.

Ravenel did not walk away during the few seconds that Morris engaged him in conversation, but that cannot be taken as circumstantial evidence that Ravenel was not free to leave. As the trial court made clear, Ravenel was standing in front of an unopened elevator door, waiting for the elevator to respond to his call. Regardless of the first word out of Morris's mouth, Ravenel would have continued standing right where he was until the elevator arrived.

There is nothing in the record that indicates that when Morris spoke to Ravenel and approached him from the side, Ravenel turned toward Morris, or in any way submitted himself to Morris. In fact, Ravenel's mumbled response that failed to answer Morris' question indicates that even he felt free to discontinue the contact and resume waiting for the elevator.

Whether Ravenel felt particularly alarmed at the sight of a uniformed detective and whether Morris had an expectation that Ravenel would have a conversation with him are not relevant to the Court's inquiry here. The standard this court must consider is, based on Morris's words and actions, and regardless of any subjective consciousness of guilt in Ravenel's mind, or any subjective suspicion in Morris's mind, whether a reasonable person would have felt free to simply decline the conversation. Given the totality of these circumstances, there is no reason why a reasonable person would not have felt free to refuse a casual conversation with Detective Morris about directions in the Bus Tunnel. Morris's initial contact with Ravenel does not rise to the level of seizure.

Ravenel bears the burden of establishing that he was unlawfully seized or that a social contact with Morris ripened into

an unlawful seizure. He has not met that burden. The trial court properly denied his motion to suppress evidence on that basis.

D. CONCLUSION

For all the foregoing reasons, the State asks this Court to affirm the trial court's denial of Ravenel's motion to suppress.

DATED this 28th day of August, 2012.

Respectfully submitted,

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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 Christopher H. Gibson, the attorney for the appellant, at Nielsen Broman & Koch, P.L.L.C., 1908 E. Madison Street, Seattle, WA 98122, containing a copy of the Brief of Respondent, in STATE V. DARRIN RAVENEL, Cause No. 68073-1-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.

Betty A. Huddleston
Name

8/28/12
Date

Done in Seattle, Washington