SUPREME COURT NO. 99730-6

NO. 53924-1-II

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

PALLA SUM,

Petitioner.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR PIERCE COUNTY

The Honorable Frank E. Cuthbertson, Judge

PETITION FOR REVIEW

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RULES, STATUTES AND OTHER AUTHORITIES

A. PETITIONER AND COURT OF APPEALS DECISION

Petitioner Palla Sum asks this Court to review the Court of Appeals' unpublished opinion in State v. Sum, 53924-1-II, filed April 13, 2021, affirming the denial of Mr. Sum's suppression motion. The opinion is appended to this petition.

B. ISSUES PRESENTED FOR REVIEW

1. Was Mr. Sum, a person of color, seized, when a police officer, who had just woken Sum as he slept in his car, demanded information from Sum and made it clear Sum was the subject of criminal investigation? In other words, would a reasonable person in Mr. Sum's position have felt free to leave?

2. Did the officer lack reasonable suspicion to seize Mr. Sum?

C. STATEMENT OF THE CASE[1]

1. Suppression hearing

After being charged with three crimes, and before trial, Sum moved to suppress evidence. Sum argued he was illegally seized by the police officer who approached his car and asked for identification under the guise of investigating vehicle theft, even after determining the car was not reported stolen. See CP 7-12 (motion to suppress); CP 13-22 (additional

[1] This petition refers to the verbatim reports chronologically as follows: 1RP – 6/20 and 7/23/19; 2RP – 8/6/19; 3RP – 8/7/19; 4RP – 8/8/19; 5RP – 8/16/19; and 6RP – 8/30/19. Volumes 2-6 are consecutively paginated.

authority submitted by defense); 2RP 44-45 (defense closing argument for suppression hearing).

At the suppression hearing, Pierce County deputy Mark Rickerson testified for the prosecution. 2RP 9. The morning of April 9, 2019, he drove north on East L Street past East 71st Street in Tacoma. He glanced east toward a parking area located outside a fenced parking lot. 2RP 12-13. About four or five months earlier, another deputy sheriff had discovered a stolen car in that parking area and made an arrest. 2RP 13, 17. Also around that time, Rickerson spoke with an individual who said he lived across the street. The individual complained generally about non-residents parking there. 2RP 13, 40. The conversation occurred in the parking lot of the nearby Safeway. 2RP 13.

The day in question, Rickerson noticed a Honda parked just east of the fenced lot's gate. 2RP 16-17. The driver appeared to be asleep in his seat. 2RP 17-18. Rickerson drove past the Honda, made a U-turn at the dead end on 71st Street, and drove west toward the car. 2RP 18. As Rickerson did so, he typed the Honda's Oregon license plate number into his vehicle's mobile data computer and determined the car had not been reported stolen. 2RP 19-20, 41. Instead, there was a record that the vehicle had been sold. 2RP 20-21. But, according to Rickerson, Oregon records of this type do not identify the purchaser or the date of sale. 2RP 20-21, 41.

Rickerson parked east of the Honda and did not block it. 2RP 19, 27. He got out and approached the car on foot. His first action was to check whether the last four digits of the car's visible Vehicle Identification Number (VIN) matched the VIN associated with the license plate. They matched. 2RP 21-22. But, as Rickerson examined the VIN, he noticed another person in the car, who also appeared to be asleep. 2RP 21-22.

Neither occupant woke to Rickerson's presence, so he knocked on the driver's window. 2RP 22-23. The driver, Sum, woke after a few seconds and rolled down the window. 2RP 23. Rickerson asked what Sum was doing in the area. 2RP 23. According to Rickerson, Sum said either that he was visiting a friend, or waiting for a friend, from across the street. 2RP 23. Rickerson thought Sum could be referring to the home of the person he had talked to. 2RP 23.

Rickerson asked Sum if the car was his. Sum said no. 2RP 24-25. Rickerson asked who owned the car. 2RP 25. Sum provided a first name but not a last name. Rickerson did not specifically recall the name Sum provided. 2RP 25.

Rickerson then asked for Sum's identification. 2RP 25. Sum asked why Rickerson was asking. 2RP 25. Rickerson responded to Sum that he was asking, "[b]ecause [you] couldn't tell me exactly who the vehicle belonged to and it was in an area where we've recovered stolen vehicles

before." 2RP 26. Sum then provided an incorrect name and birth date; the passenger provided what turned out to be his true name. 2RP 26-27.

Rickerson then asked Sum and the passenger if they had been arrested before. 2RP 27. Rickerson explained he wanted to verify their identities through booking photos. 2RP 27. Rickerson did not recall their responses. 2RP 27. Rickerson returned to his car to look up the names provided using a database that includes booking photos. 2RP 28. Rickerson wasn't able to confirm Sum's identity with the name given. 2RP 28.

Meanwhile, Rickerson heard the Honda's engine start. He thought little of it, assuming the driver only wanted to warm the car on a chilly day. 2RP 28-29. A few seconds later, however, the car backed up at an angle, drove over the corner (including grass and sidewalk), and headed south on East L Street at a high rate of speed. 2RP 29. Disregarding a stop sign, the Honda turned west onto East 72nd Street, sliding into an improper lane as it did so. 2RP 29-30. Rickerson and another deputy sheriff caught up with the car after it skidded onto some landscaping blocks at the intersection of East 72nd Street and South Yakima Avenue. 2RP 32.

2. Trial court's ruling refusing to suppress evidence

The trial court made findings consistent with the facts set forth above, except it found (relevant to Sum's explanation for being in the area) that there was only one residence located across the street from the parking

area. Finding of Fact 8. In fact, the photographic exhibits reveal several homes on the other side of the street. Pretrial Exs. 1, 2. From these findings, the court entered the following conclusions of law:

> 2. Deputy Rickerson's initial contact with [Sum], who was apparently unconscious in the driver's seat of a Honda Civic parked on East 71st Street, was not a seizure, but a reasonable check on health and safety because the public's interest in confirming [Sum's] safety at the time outweighed [his] interest in freedom from police interference.
>
> 3. The fact that [Sum] then told Rickerson that the vehicle in which he was sitting did not belong to him, that he could not fully identify the owner of that vehicle, and, to a lesser extent, the fact that the location in which [Sum] had parked was a high-crime area from which stolen vehicles had been recovered, were specific and articulable facts which would lead one to believe that there was a substantial possibility that criminal conduct had occurred, and hence, justified a [stop under Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)] of [Sum,] which rendered Rickerson's request for [Sum] and his passenger to identify themselves lawful and reasonable.
>
> 4. Because Rickerson did not retain [Sum's] physical identification to conduct his records check, [Sum] was not seized when Rickerson asked him to identify himself, and [Sum's] motion to suppress evidence obtained thereafter as the product of an unlawful seizure is therefore denied, and such evidence is admissible.

CP 88-89.

3. Verdicts, sentence, and appeal

A jury found Sum guilty of making a false or misleading statement to a public servant. He was also convicted of attempt to elude a pursuing

police vehicle and first degree unlawful possession of a firearm, relating to a pistol eventually found under the driver's seat. CP 23-24, 51-53.

Sum timely appealed. CP 77. He argued that he was illegally seized, and that trial court erred in failing to suppress evidence supporting the charge of making a false or misleading statement to a public servant.

In an April 13, 2021 decision, the Court of Appeals said Sum was not seized, primarily because Rickerson's car did not block Sum and Rickerson merely *requested* identification. Thus, the interaction was merely a social contact. Opinion at 7-9. The Court of Appeals, having found that Sum was not seized, did not evaluate whether the seizure was supported by reasonable suspicion.

Mr. Sum now asks this Court to grant review and reverse the Court of Appeals. Mr. Sum was seized.

D. ARGUMENT

This Court should grant review under RAP 13.4(b)(3) and (4) and hold that Sum was illegally seized.

This Court should grant review and provide much-needed clarification regarding whether an individual, and notably, a person of color, is seized when a police officer demands information from that individual, having made it clear the individual is then the subject of criminal investigation. See RAP 13(b)(3) and (4) (grant of review is appropriate

where petition implicates a significant question of law under state or federal constitutions, and if the petition involves an issue of substantial public interest that should be determined by this Court).

A reasonable person in Mr. Sum's position—a person of color who had been woken by an armed Pierce County deputy and told he was under investigation for a crime—would not have felt free to leave, regardless of whether he was physically blocked or restrained. Further, the reasonable person standard merits this Court's reexamination to reflect the realities of policing and individuals' experiences in interacting with police. As is apparent form the Court of Appeals' opinion, our courts continue to employ a reasonableness standard that does not account for changed perceptions of law enforcement and that fails to address issues of race and power.

1. Mr. Sum was seized when the police officer demanded information from him, having made it clear that Mr. Sum was the subject of criminal investigation.

Article I, section 7 provides that "[n]o person shall be disturbed in [their] private affairs, or [their] home invaded, without authority of law." This provision is different from the Fourth Amendment and provides greater protections. State v. Mayfield, 192 Wn.2d 871, 878, 434 P.3d 58 (2019) (citing State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)). Article I, section 7 "is grounded in a broad right to privacy" and protects from

governmental intrusion into private affairs without authority of law. State v. Chacon Arreola, 176 Wn.2d 284, 291, 290 P.3d 983 (2012).

Whether police "seized" a person is a mixed question of law and fact. State v. Armenta, 134 Wn.2d 1, 9, 948 P.2d 1280 (1997); State v. Carriero, 8 Wn. App. 2d 641, 654, 439 P.3d 679 (2019). The ultimate determination of whether contact constitutes a seizure is reviewed de novo. State v. Harrington, 167 Wn.2d 656, 662, 222 P.3d 92 (2009) (quoting State v. Thorn, 129 Wn.2d 347, 351, 917 P.2d 108 (1996), overruled on other grounds by State v. O'Neill, 148 Wn.2d 564, 62 P.3d 489 (2003)).

An accused person "bears the burden of proving a seizure occurred." State v. Johnson, 8 Wn. App. 2d 728, 738, 440 P.3d 1032 (2019) (citing Harrington, 167 Wn.2d at 664). But, if a seizure did occur, warrantless seizures are per se unconstitutional, and a heavy burden falls to the State to demonstrate that a warrantless seizure falls into a narrow exception to that general rule. State v. Boisselle, 194 Wn.2d 1, 10, 448 P.3d 19 (2019). An investigatory seizure, commonly referred to as a Terry stop, is one such exception to the warrant requirement, under both State and federal jurisprudence. Terry, 392 U.S. 1. Under this exception, a police officer may, without a warrant, briefly detain an individual for questioning if they have reasonable and articulable suspicion the individual is or is about to be

engaged in criminal activity. State v. Fuentes, 183 Wn.2d 149, 158, 352 P.3d 152 (2015); Carriero, 8 Wn. App. 2d at 663.

The Court of Appeals' decision characterizes Deputy Rickerson's post-safety check interaction with Sum as a routine social contact. Opinion at 7. This is incorrect. The record shows Mr. Sum was seized. Rickerson demanded information from Sum. Rickerson's "request" is properly characterized as a demand because the deputy made it clear that the desired information related to an ongoing criminal investigation. Moreover, notification of criminal investigation is considered a significant factor in determining whether a person has been seized by police—or whether they may simply walk away without consequence.

Police contact constitutes a seizure where "due to an officer's use of physical force *or display of authority*, a reasonable person would not feel free to leave, terminate the encounter, refuse to answer the officer's question, decline a request, or otherwise go about his business." Carriero, 8 Wn. App. 2d at 655 (emphasis added) (reciting test from United States v. Mendenhall, 446 U.S. 543-54, 554, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980)). "[T]he officer seizes the citizen not only when the citizen feels compelled to remain still but also when the citizen deems himself obliged to respond to the officer's requests." Carriero, 8 Wn. App. 2d at 655.

Put another way, under Article I, Section 7, a seizure occurs when an individual's freedom of movement is restrained, and they would not believe they are (1) free to leave or (2) free to decline an officer's request and end the encounter. Johnson, 8 Wn. App. 2d at 737. This standard is objective, looking to "the officer's actual conduct and whether the conduct appears coercive." Harrington, 167 Wn.2d at 662. As such, "[t]he relevant question is whether a reasonable person in the individual's position would feel [they were] being detained." Id.

Washington courts have indicated that "police activities such as engaging a citizen in conversation, identifying themselves as officers, or simply requesting identification do not convert a casual encounter into a seizure." Carriero, 8 Wn. App. 2d. at 658 (citing State v. Knox, 86 Wn. App. 831, 838, 939 P.2d 710 (1997), overruled on other grounds by O'Neill, 148 Wn.2d 564). But, even so, a seizure occurs when an officer "demands information from the person." Carriero, 8 Wn. App. 2d at 655 (citing O'Neill, 148 Wn.2d at 581).

Here, objectively viewed, Deputy Rickerson demanded information from Mr. Sum. A reasonable person in Sum's position would not have felt free to decline Rickerson's request that Sum identify himself. Rickerson did not just casually, out of the blue, ask Sum to identify himself. Rickerson asked Sum for identification. 2RP 25. Sum asked why Rickerson was

asking. 2RP 25. Rickerson responded to Sum that he was asking, "[b]ecause [Sum] couldn't tell me exactly who the vehicle belonged to and it was in an area where we've recovered stolen vehicles before." 2RP 26.

A reasonable person approached by an armed sheriff's deputy who is investigating the person for criminal activity feels that "compliance with the officer's request might be compelled." See Mendenhall, 446 U.S. at 554. Moreover, to acknowledge how race affects perceptions towards, and contacts with, police, scholars have called for courts to consider how a person's race might have influenced their attitude toward a police encounter. See, e.g., Mia Carpiniello, Striking a Sincere Balance: A Reasonable Black Person Standard for "Location Plus Evasion" Terry Stops, 6 MICH. J. RACE & L. 355, 377-78 (2001) ("The mythical reasonable person standard ignores . . . feelings of fear and distrust toward police[.]"); Kristin Henning, The Reasonable Black Child: Race, Adolescence, and the Fourth Amendment, 67 AM. U. L. REV. 1513, 1520-21 (2018) ("The reasonable person is a fictitious character, likely an adult white male—if for no other reason than he has been penned over time by judges and lawmakers who are predominately white and male."); cf. Lindsey Webb, Legal Consciousness As Race Consciousness: Expansion of the Fourth Amendment Seizure Analysis Through Objective Knowledge of Police Impunity, 48 SETON HALL L. REV. 403, 443 (2018) ("Under the objective

reasonable person test, knowledge of the law governing police accountability constrains the freedom of all reasonable people to terminate a police encounter.").

To reiterate, sheriff's deputy Rickerson told Sum, a person of color whom he had just woken by appearing at Sum's car window, that the car was in an area known for stolen cars and that Sum's answer regarding ownership of the car was unsatisfactory. 2RP 25-27; CP 86-87 (Findings of Fact 10, 12). With this questioning, Rickerson informed Sum he was under investigation related to vehicle theft. Rickerson's suspicion was not confined to his own thoughts; it was objectively apparent.

Even putting aside issues of race and power, however, Washington courts recognize that notification of criminal investigation is a critical factor in determining whether an individual has been seized by police. See Armenta, 134 Wn.2d at 11 ("[A] police officer's . . . asking for identification does not, alone, raise the encounter to an investigative detention. We find this reasoning particularly appropriate to the circumstances here, where the police officer requested the identification *for some purpose other than investigating criminal activity*." (Emphasis added.)); Johnson, 8 Wn. App. 2d at 743 ("[I]nquiries into Johnson's name, whether Johnson had a driver's license, and whether Johnson would prove his identity by

presenting his identification document . . . further advanced the impression that a police investigation was ongoing and that Johnson was a suspect.").

Indeed, such notification "indicat[es] that compliance with the officer's request might be compelled." Harrington, 167 Wn.2d at 662. Considering what Rickerson told Sum about his vehicle theft investigation, a reasonable person in Sum's position would not have felt free to start the car and drive away without first answering Deputy Rickerson's questions. See State v. Young, 167 Wn. App. 922, 931, 275 P.3d 1150 (2012) (detainee would not have felt free to walk away from officers). This is true whether or not Sum was blocked in. Rickerson demanded information from Sum and his questioning notified Sum this demand was part of a criminal investigation. Regardless of how Rickerson parked his car, Mr. Sum was not free to go. Mr. Sum was seized.

As the trial court correctly noted, Deputy Rickerson did not retain Sum's identification. But this is not dispositive. Retaining identification is one factor that often leads courts to find seizure. But it is not the end of the inquiry. Rickerson's request for information is best characterized a "demand" because he let Sum know that Sum was under suspicion of a crime. This situation was analogous to cases in which identification (or property) was retained. This is because, objectively viewed, a reasonable person *in Sum's position* would not have felt free to simply decline to

answer and drive away in light of the pending criminal investigation—no less so than if Rickerson was retaining Sum's identification card.

Further, the Court of Appeals' opinion emphasizes cases in which appellate courts, including this Court, found no seizure occurred even though police *requested* identification. Opinion at 7 (citing O'Neill, 148 Wn.2d 564; Armenta, 134 Wn.2d at 11; and State v. Mote, 129 Wn. App. 276, 120 P.3d 596 (2005)). In those cases, appellate courts analyzed the totality of the facts in each case and found no seizure occurred. But what is significant about those cases is what is absent. The police officer, when requesting information, did not inform the individual he was then under investigation for a specific crime.[2]

[2] In O'Neill, a police officer asked an occupant of a car in the parking lot of a closed store to roll down his window, then asked what he was doing there. The occupant said the car had broken down. The police officer asked him to start the car, which would not start. The officer then asked for identification. At that point, the occupant volunteered that his driver's license had been revoked. O'Neill, 148 Wn.2d at 172. In contrast to this case, the occupant was not informed he was under investigation for a specific crime. See Id.

In Mote, a Division One decision that relied on O'Neill, a police officer saw two people in sitting in a car in a residential neighborhood late at night. The car's dome light was on. The police officer asked the occupants of the car for identification. But he did not tell them they were under investigation for a specific crime. Mote, 129 Wn. App. at 279-81. Also significant, the appellate court specifically found the police officer "did not demand Mote's identification." Id. at 292.

In Armenta, discussed above, this Court specifically found the initial request for identification was *not* related to investigation of criminal activity. Armenta, 134 Wn.2d at 11. This Court found, however, that Armenta and his companion were seized later in the encounter. Id. at 12

In summary, Mr. Sum was seized because Deputy Rickerson demanded information from him. As explained, such a "request" is properly characterized as a demand because it was clear the desired information related to an ongoing criminal investigation. Courts have, moreover, considered notification of criminal investigation (or its absence) to be an important factor in determining whether a person has been seized by police officers. And, although identification was not taken and retained, Sum was no less seized than individuals whose identification was retained. Mr. Sum was seized.

Finally, though he would welcome it, Sum does not firmly request that this Court adopt a reasonable "person of color" standard in this case. It is not necessary for him to prevail in this case. But there is no justification—aside from unacceptably ignoring the issue of race altogether—for courts considering the totality of the circumstances to disregard the effect of race as one of the circumstances affecting evaluation of police contact.

2. The officer lacked reasonable suspicion to seize Mr. Sum.

As demonstrated, Sum was seized. But Deputy Rickerson lacked reasonable suspicion to seize Sum. Rather, Rickerson acted on a hunch.

"The Supreme Court embraced the Terry rule to stop police from acting on mere hunches." State v. Doughty, 170 Wn.2d 57, 63, 239 P.3d

573 (2010). To evaluate the reasonableness of an officer's suspicion, this Court looks at the totality of the circumstances known to the officer including the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, and the amount of physical intrusion on the suspect's liberty. State v. Weyand, 188 Wn.2d 804, 811-12, 399 P.3d 530 (2017). The circumstances at the stop must suggest a substantial possibility that the person has committed a specific crime or is about to do so. State v. Martinez, 135 Wn. App. 174, 180, 143 P.3d 855 (2006). "Anything less would invite intrusions upon constitutionally guaranteed rights based on nothing more substantial than inarticulate hunches, a result this Court has consistently refused to sanction." Terry, 392 U.S. at 22.

A person's presence in a high-crime area (even late at night) does not, by itself, give rise to a reasonable suspicion to detain that person. E.g., Fuentes, 183 Wn.2d at 161; Doughty, 170 Wn.2d at 62. This Court's decision Weyand indicates that Rickerson lacked a reasonable suspicion. There, during the wee hours of the morning, a police officer saw, near a home in Richland with an extensive drug history, a car parked that had not been there 20 minutes earlier. Weyand, 188 Wn.2d at 807. The officer ran the license plate and it revealed nothing. The officer parked his car and saw Weyand and a friend leave the home. As the men walked quickly toward

the car, they looked up and down the street. The driver looked around a second time before getting into the car. Weyand got into the passenger seat. Based on these observations and the officer's knowledge of the extensive drug history of the home, the officer conducted an investigative detention. Id. This Court held that the even late hour, the men's short stay at the house with "extensive drug history," and their glances up and down the street did not justify investigative detention. Id. at 812.

Here, as demonstrated, Sum was seized when Rickerson appeared at Sum's window and asked for his identification while making it clear to Sum he was under investigation for stealing the Honda. But the seizure was based on a mere hunch. Further, it was not even designed to investigate the crime Rickerson identified. Rickerson said the area was known for stolen cars, though he was only able to provide a single example. But even before contacting Sum, Rickerson determined the Honda had not been reported stolen and that the plates matched the VIN. 2RP 19-21.

Although Rickerson initially found Sum asleep in the car, 2RP 17-18, 21-22, the officer's testimony did not draw any association between that activity (or lack thereof) and criminal activity. Nor would it have been appropriate to do so. See State v. Harris, 9 Wn. App. 2d 625, 634, 444 P.3d 1252 (2019) (sleeping in a parked car should not be considered unusual; many people live in their cars, and many people nap in their cars).

After Rickerson woke Sum and started asking questions, Sum said he did not own the car but provided the first name of the owner. 2RP 25. Deputy Rickerson seemed to find a first name less reassuring than a full name. But Rickerson did not clarify for the trial court whether (1) he had asked for a full name in the first instance or (2) whether his training and experience indicated that failure to provide a full name when asked suggests the presence of a stolen vehicle. 2RP 25. Cf. Weyand, 188 Wn.2d at 811 (totality of circumstances to be considered by reviewing court includes officer's relevant training and experience).

Considering that the car was not reported stolen, the fact that Sum provided a first name may have led to a hunch. But the record supports no more than this. Relatedly, the Oregon sales report did not provide an owner's name, so Sum's identity would provide no more than an opportunity to fish for information—not on the car or its status—but on Sum. But even if Rickerson was suspicious of Sum generally, that is not enough. See Martinez, 135 Wn. App. at 182-83 ("The problem here is not with the officer's suspicion; the problem is with the absence of a particularized suspicion . . . [T]here must be some suspicion of a particular crime or a particular person, and some connection between the two."). Of

course, Sum did not know this; he was told he needed to give his name because Rickerson was investigating vehicle theft.[3]

Deputy Rickerson seized Sum on a hunch. The remedy is suppression of the fruit of the seizure, Sum's statement misidentifying himself. State v. Larson, 93 Wn.2d 638, 645, 611 P.2d 771 (1980).

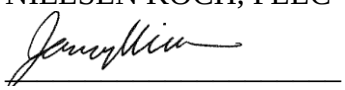
E. CONCLUSION

Review is appropriate under RAP 13.4(b)(3) and (4). This Court should grant review and hold that a reasonable person in Sum's position would not have believed he was free to leave, and that the seizure was illegal.

DATED this 3rd day of May, 2021.

Respectfully submitted,

NIELSEN KOCH, PLLC



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[3] Among its findings of fact, the trial court also listed Sum's claim that he was visiting someone who lived across the street. Finding of Fact 7. The court further indicated there was a single house across the street and the owner had complained about unknown cars. Finding of Fact 8. But Finding 8 is not supported by substantial evidence because the record reveals there are several houses located across the street. Pretrial Exs. 1, 2. The effect of this finding is somewhat opaque, considering that it is not mentioned in Conclusion of Law 3, where it might be expected to appear.

APPENDIX

Filed
Washington State
Court of Appeals
Division Two

April 13, 2021

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON, Respondent, v. PALLA SUM, Appellant.	No. 53924-1-II UNPUBLISHED OPINION

CRUSER, J. – Palla Sum appeals his conviction of making a false or misleading statement to a public servant.[1] Sum argues that the trial court erred when it denied his CrR 3.6 motion to suppress statements wherein he provided a false name to an officer because he was seized when he made the statement and because the seizure was not justified by reasonable suspicion.

We hold that Sum was not seized at the time he made the false statement, and the trial court properly denied Sum's motion to suppress.

Accordingly, we affirm.

[1] Sum was also convicted of attempting to elude a police vehicle and first degree unlawful possession of a firearm. Sum challenges only his conviction for making a false or misleading statement to a public servant.

FACTS

I. FACTS LEADING TO SUM'S ARREST

Pierce County Sheriff's Deputy Mark Rickerson was on patrol at 9:15 in the morning when he noticed a car that was parked in front of a church. Stolen vehicles had previously been recovered from that location, which was considered a "high-crime" area. Clerk's Papers (CP) at 86. And about four or five months prior, a resident of a house across the street from the church had informed Rickerson that he had noticed suspicious vehicles parking in the same location.

Rickerson parked to the east of the car, careful to leave substantial room between them. Rickerson then ran the car's license plate through a database to see who the registration belonged to and to check whether it had been reported stolen. The car had not been reported stolen, and its bill of sale was filed in Oregon, matching the Oregon license plate.

Rickerson ran a check on the license plate on the car and identified the vehicle identification number (VIN), after which he approached the car to confirm that his records matched the number displayed on the dash. It was at that moment that Rickerson saw that both Sum, who was in the driver's seat, and Sum's passenger, were "slumped over" and appeared unconscious. 1 Verbatim Report of Proceedings (VRP) at 21. Rickerson knocked on the driver's side window until Sum roused several seconds later.

Sum rolled his window down slightly, and Rickerson asked what Sum and his passenger were doing in the area. Sum responded that they were visiting a friend who lived across the street. Rickerson asked Sum to whom the car Sum was sitting in belonged. Although the car actually belonged to Sum, Sum answered with the first name of someone else. Sum did not provide a last name.

Rickerson then asked whether Sum and his passenger "had I.D. on them," and Sum inquired why Rickerson wanted this information. *Id.* at 25. Rickerson told Sum that he requested Sum's identification because Sum and his passenger "were sitting in an area known for stolen vehicles," and Sum "did not appear to know to whom the vehicle he was sitting in belonged." CP at 87. Sum then provided Rickerson with a false name and date of birth.

Rickerson returned to his patrol car to enter the information he was given into his computer. While Rickerson was in his patrol car, Sum started his engine, reversed quickly, and drove off at a high rate of speed. Rickerson turned his emergency lights on and began to pursue Sum. Sum drove past a stop sign without stopping and ran several red lights before eventually crashing his car into the front yard of a home. Sum then attempted to flee on foot until he was apprehended. An officer discovered a firearm on the floor of Sum's car, which Rickerson later determined had been stolen in Oregon.

II. PROCEDURAL FACTS

The State charged Sum with attempting to elude a pursuing police vehicle, first degree unlawful possession of a firearm, and making a false or misleading statement to a public servant.

Sum moved to suppress his statement that formed the basis of the making a false statement charge, arguing that he was unlawfully seized at the moment when Rickerson explained to Sum that he requested Sum's identification because he suspected Sum of possible vehicle theft.[2] At the hearing on the motion to suppress, Rickerson testified consistently with the facts as stated above.

[2] Sum's motion to suppress encompassed all the evidence obtained following the seizure, however, on appeal, Sum only challenges the trial court's admission of his statement to Rickerson in which he gave Rickerson a false name and date of birth.

The State argued that Sum was not seized until Rickerson illuminated his emergency lights. It further argued that by that time, Rickerson had reasonable suspicion sufficient to justify detaining Sum because (1) Sum was parked in a high-crime area, (2) stolen cars had been recovered from that same location in the past, (3) Sum told Rickerson that the vehicle he was sitting in did not belong to him, (4) when asked who the car belonged to, Sum provided only a first name, and (5) after Rickerson returned to his car to run Sum's identification information, Sum drove off at a high rate of speed.

Following the hearing on the Sum's suppression motion, the trial court denied Sum's motion and entered written findings of fact and conclusions of law. Relevant here, the trial court entered the following conclusions of law:

> 3. The facts that Defendant then told Rickerson that the vehicle in which he was sitting did not belong to him, that he could not fully identify the owner of that vehicle, and, to a lesser extent, the fact that the location in which Defendant had parked was a high-crime area from which stolen vehicles had been recovered, were specific and articulable facts which would lead one to believe that there was a substantial possibility that criminal conduct had occurred, and hence, justified a *Terry* stop of Defendant which rendered Rickerson's request for Defendant and his passenger to identify themselves lawful and reasonable
>
> 4. Because Rickerson did not retain Defendant's physical identification to conduct his records check, Defendant was not seized when Rickerson asked him to identify himself, and Defendant's present motion to suppress evidence obtained thereafter as the product of an unlawful seizure is therefore denied, and such evidence is admissible.

Id. at 88-89 (citation omitted).

At trial, the State argued that Sum was guilty of making a false or misleading statement to a public servant based on the false identity information he provided to Rickerson. A jury found Sum guilty of all charges. Sum appeals his conviction of making a false or misleading statement to a public servant.

STANDARD OF REVIEW

When reviewing the denial of a motion to suppress, we review conclusions of law de novo and findings of facts supporting the conclusions for substantial evidence. *State v. Weyand*, 188 Wn.2d 804, 811, 399 P.3d 530 (2017). Unchallenged findings are verities on appeal. *State v. Betancourth*, 190 Wn.2d 357, 363, 413 P.3d 566 (2018).[3]

DISCUSSION

I. SEIZURE

Sum argues that he was seized when Deputy Rickerson informed Sum that he suspected Sum of vehicle theft in response to Sum's question regarding the reason Rickerson wished to see Sum's identification. We disagree. Under the totality of the circumstances, Sum was not seized when he provided false identification information to Rickerson.

A. LEGAL PRINCIPLES

Under the Washington Constitution, "[n]o person shall be disturbed in his private affairs, or his home invaded, without authority of law." Const. art. I, § 7.[4] When a seizure is conducted without a warrant, it necessarily violates the Washington constitution unless one of the carefully

[3] As to the factual findings, Sum assigns error only to finding of fact 8, pertaining to the number of houses located across the street from the church where he was encountered by Rickerson. Sum challenges the finding as part of his argument that Rickerson lacked sufficient reasonable suspicion to justify his detention. However, because we hold that Sum was not seized, even if Sum's contention regarding finding of fact 8 has merit, it does not alter our decision. All other factual findings will be treated as verities. *See Betancourth*, 190 Wn.2d at 363.

[4] The Fourth Amendment to the United States Constitution also protects an individual's right to be free from an unreasonable search and seizure. *State v. Doughty*, 170 Wn.2d 57, 61, 239 P.3d 573 (2010). It has been well established that article I, section 7 provides greater protection to individual privacy rights than the Fourth Amendment. *State v. Harrington*, 167 Wn.2d 656, 663, 222 P.3d 92 (2009); *State v. Rankin*, 151 Wn.2d 689, 694, 92 P.3d 202 (2004).

drawn exceptions to the warrant requirement applies. *State v. Rankin*, 151 Wn.2d 689, 695, 92 P.3d 202 (2004). We thus begin our analysis by determining whether a warrantless seizure has occurred. *Id.* Sum bears the burden of proving that he was seized. *Id.*

A seizure takes place 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." *Id.* An officer's subjective suspicions are irrelevant to determining whether a seizure has occurred. *State v. O'Neill*, 148 Wn.2d 564, 575, 62 P.3d 489 (2003). Rather, whether a seizure has occurred is an objective inquiry involving considerations of the actions of law enforcement and the totality of the circumstances. *Rankin*, 151 Wn.2d at 695. The circumstances are viewed from the perspective of a reasonable person to determine whether that individual would feel he or she was being detained. *State v. Harrington*, 167 Wn.2d 656, 663, 222 P.3d 92 (2009).

Washington courts have identified a nonexclusive list of police actions that are indicative of a seizure: "'the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.'" *Id.* at 664 (internal quotation marks omitted) (quoting *State v. Young*, 135 Wn.2d 498, 512, 957 P.2d 681 (1998)). Without evidence of this nature, "'otherwise inoffensive contact between a member of the public and the police cannot, as a matter of law, amount to a seizure of that person.'" *Young*, 135 Wn.2d at 512 (quoting *U.S. v. Mendenhall*, 446 U.S. 544, 555, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980)).

Not every interaction between a police officer and an individual rises to the level of a seizure such that the individual's rights under article I, section 7 become implicated. *Rankin*, 151

Wn.2d at 695. For example, article I, section 7 does not prohibit mere "social contacts" between police and individuals. *Young*, 135 Wn.2d at 511.

A social contact exists "someplace between an officer's saying 'hello' to a stranger on the street and, at the other end of the spectrum, an investigative detention." *Harrington*, 167 Wn.2d at 664. An officer who suspects the possibility of criminal activity may engage an individual in conversation and request identification without exceeding the scope of a social contact. *State v. Mote*, 129 Wn. App. 276, 282, 120 P.3d 596 (2005); *O'Neill*, 148 Wn.2d at 577; *see also State v. Armenta*, 134 Wn.2d 1, 11, 948 P.2d 1280 (1997) ("[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."). An encounter may begin as a social contact but as the degree of intrusion progresses, it may move "further from the ambit of valid social contact" and evolve into a seizure. *Harrington*, 167 Wn.2d at 667.

B. APPLICATION

Sum relies on *State v. Johnson*, 8 Wn. App. 2d 728, 440 P.3d 1032 (2019) to argue that he was seized because after asking for identification, Rickerson made it apparent to Sum that he asked for Sum's identification to investigate Sum for vehicle theft. In *Johnson*, Division One of this court held that the officers' conduct in requesting Johnson's physical identification, combined with the officers' actions that outwardly evinced their suspicion that Johnson was involved in a vehicle theft, "would lead a reasonable innocent person to believe that the vehicle, and by extension its driver, was the subject of an ongoing criminal investigation." *Johnson*, 8 Wn. App. 2d at 744. A reasonable person under such circumstances, in turn, would "believe that ignoring the officer's requests, terminating the encounter, or leaving the scene were not viable options." *Id*. What began

as a social contact in *Johnson* thus evolved into a seizure, implicating Johnson's rights under article I, section 7. *Id.* at 745.

The circumstances in *Johnson,* however, are distinguishable from this case. Primarily, Division One of this court described "[t]he sudden presence of two uniformed officers so soon after the vehicle had parked, the shining of flashlights into the vehicle," the officers' use of a ruse regarding whether the car truly belonged to another named person, and the physical impediment to terminating the interaction created by the officers' positioning. *Id.* at 744. While "the request for proof of Johnson's identity became the tipping point at which the weight of the circumstances transformed a simple encounter into a seizure," the officer's request was also considered in light of the totality of the other circumstances involved in the interaction. *Id.* at 745.

Here, unlike in *Johnson,* Rickerson parked his patrol car so that he did not block Sum from leaving. In addition, Rickerson was alone, he did not illuminate the interior of Sum's vehicle, he initially encountered Sum while checking on Sum's well-being, and he did not repeatedly question whether the car belonged to someone other than Sum.

Absent an additional display of authority, the fact that Rickerson explained that he requested Sum's identification because Sum and his passenger "were sitting in an area known for stolen vehicles" and Sum "did not appear to know to whom the vehicle he was sitting in belonged," does not alone transform the social contact into a seizure. CP at 87; *see Johnson,* 8 Wn. App. 2d at 745. Instead, Rickerson's conduct more closely mirrors those cases in which an officer does nothing more than request identification. Courts have repeatedly held that merely asking for identification is properly characterized as a social contact as opposed a seizure. See *Mote*, 129 Wn. App. at 282; *O'Neill,* 148 Wn.2d at 577; *Armenta,* 134 Wn.2d at 11;. Based on the totality of

circumstances present in this case, we conclude that Sum was not seized at the time that he provided the false name to Rickerson.

CONCLUSION

We hold that Sum was not seized at the moment that he provided Rickerson with a false name and date of birth in response to Rickerson's request for identification. The trial court properly denied Sum's CrR 3.6 motion to suppress on this basis. We therefore affirm Sum's conviction for making a false or misleading statement to a public servant.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Cruser, J.
CRUSER, J.

We concur:

Maxa, J.
MAXA, J.

Sutton, A.C.J.
SUTTON, A.C.J.

NIELSEN KOCH P.L.L.C.

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