

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

CHARLES NIKOLAUS GODWIN,

Appellant.

No. 41844-4-II

UNPUBLISHED OPINION

Hunt, J. — Charles Nikolaus Godwin appeals his jury trial forgery conviction. He argues that the trial court erred in denying his motion to suppress evidence. We affirm.

FACTS

After discovering Charles Godwin in possession of counterfeit currency, the State charged him with forgery. He moved to suppress that currency, contending that law enforcement officers had seized it without a warrant. The trial court denied his motion and entered the following pertinent undisputed findings of fact:

2. Officer McClanahan directed [a speed measuring] device at a silver Honda . . . and obtained a reading of 51 miles per hour in a 35 m.p.h. speed zone. He motioned the Honda to pull over. In response, the car initially slowed down but then sped off. McClanahan could see that the car was full, containing at least 4 people, and that the driver was a female.

3. Officer McClanahan . . . lost sight of the Honda for a moment and then observed it at the intersection of Ruddell Road and 39th Street. The Honda was stopped partially on the curb, the engine was running, the doors were wide open, and there was no one in the vehicle. McClanahan observed two males running north on Ruddell Road and requested assistance from other police officers.

4. While other officers came to assist, McClanahan got out of his vehicle

and stood by the Honda in order to watch for the female driver.

5. A few minutes [later], defendant Charles Godwin emerged from a nearby wooded area and approached Officer McClanahan. Godwin stated that he had previously been in the Honda and had run with the others, but had then decided to come back because he had not done anything wrong. Godwin provided his name and address and showed McClanahan a bank folder in his possession. Godwin asked to be allowed back into the Honda to retrieve a car title, but McClanahan refused to allow this.

6. Officer McClanahan was focused on maintaining a perimeter by the Honda to look for the female driver. Dealing with Godwin was not conducive to carrying out that responsibility. Therefore, when Godwin did not leave on his own, McClanahan requested that Godwin leave the area, and Godwin did so.

....

9. [Lieutenants] Mack and Ward [responded to McClanahan's call for assistance and] searched a wooded area for the persons who had fled the Honda.

....

11. After Mack and Ward walked out of the wooded area, they observed the defendant about 45 yards away. When Mack initially noticed Godwin, the defendant was kneeling down, appearing to have some sort of notebook open, and was going through the contents.

12. As Mack and Ward approached the defendant's location, he stood up and began walking toward them. At the same time, he was flipping through bills in an open check book. Ward stated, "Hey, come here" and used his finger to motion toward himself. As the officers walked up to the defendant, Ward identified Mack and himself as Lacey police officers and asked to speak with the defendant. Godwin was very cooperative in response.

13. The defendant was first asked for his name and he identified himself in response. Next the defendant was asked where he was coming from and he responded, "Pepper's car."

Clerk's Papers (CP) at 102-04.

The trial court's next finding of fact was disputed:

15. After the defendant stated that he had come from "Pepper's car", the defendant was next asked about the check book he was holding. The defendant responded that it was his and handed it over to Lieutenant Mack without having been ordered to do so.

CP at 104. Thereafter, the trial court continued to enter the following pertinent undisputed findings of fact:

16. Mack handed the check book over to Ward while Mack continued to

Speak with the defendant. . . .

17. While Mack spoke with the defendant, Ward looked at the currency inside the check book. He quickly realized that some of the bills were counterfeit. Ward made that determination based upon the feel and colors of the bills and the fact that the bills in each denomination had the same serial number.

CP at 105.

Based on these findings of fact, the trial court entered the following pertinent conclusions of law:

3. Lacey Police Officer McClanahan's contact with the defendant on October 18, 2010, did not constitute a seizure.

4. The contact Lacey Police Lieutenants Mack and Ward had with the defendant on October 18, 2010, did not constitute a seizure until Lieutenant Ward discovered the defendant was in possession of counterfeit money. Once that discovery had been made, there was lawful authority for the seizure of the defendant.

5. By spontaneously handing over the check book to Lieutenant Mack, the defendant voluntarily consented to the officers examining the contents of that check book.

CP at 107.

Godwin agreed to be tried on stipulated facts.¹ The trial court found him guilty of forgery. He appeals.²

ANALYSIS

Godwin argues that (1) he was "seized" when Lieutenants Ward and Mack confronted him, they "seized" him;³ and (2) Lieutenant Ward's examination of the check book constituted an

¹ Godwin assigns error to the trial court's Findings of Fact 8, 14, 15, 19, and 21. But he does not argue that the evidence was insufficient to support these findings.

² A commissioner of this court initially considered Godwin's appeal as a motion on the merits under RAP 18.14 and then transferred it to a panel of judges.

³ Br. of Appellant at 16 (citing *State v. Young*, 135 Wn.2d 498, 512, 957 P.2d 681 (1998); *United States v. Mendenhall*, 446 U.S. 544, 554-55, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980)).

illegal warrantless search. We disagree.

A person is seized by a law enforcement officer when the officer uses physical force or a show of authority that would lead a reasonable person to believe, under the totality of the circumstances, that he is not free to leave or to decline the officer's request. *State v. O'Neill*, 148 Wn.2d 564, 574, 62 P.3d 489 (2003) (citing *State v. Young*, 135 Wn.2d 498, 510, 957 P.2d 681 (1998)). The standard is "a purely objective one, looking to the actions of the law enforcement officer." *Young*, 135 Wn.2d at 501. We review the trial court's finding of whether a seizure occurred as a mixed question of law and fact. *State v. Thorn*, 129 Wn.2d 347, 351, 917 P.2d 108 (1996), *overruled on other grounds by O'Neill*, 148 Wn.2d at 571.

Godwin relies on *State v. Gleason*, 70 Wn. App. 13, 17, 851 P.2d 731 (1993), in which Division Three of our court concluded that Gleason had been seized when an officer approached and asked to talk to him, asked why he was there, and demanded identification. Unlike *Gleason*, no officer first approached or demanded identification from Godwin;⁴ on the contrary, it was Godwin who initiated both the first and the second contacts with law enforcement. Godwin initially emerged from the woods and, of his own volition, approached Officer McClanahan (standing next to the Honda), provided his name and address, and showed Officer McClanahan a bank folder in his possession. Focusing on trying to locate the female driver, Officer McClanahan asked Godwin to leave; initially Godwin complied, and the first contact ended.

Later, however, Lieutenants Mack and Ward noticed that Godwin had returned to the area near the Honda; he was kneeling down, apparently going through a notebook. As the officers approached, Godwin stood up and began walking toward them, while flipping through bills in an

⁴ *Gleason*, 70 Wn. App. at 17.

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open check book. Although Lieutenant Mack asked Godwin to approach and asked for his name, Lieutenant Mack did not demand that Godwin provide identification or hand over the check book. As was the case with the first contact, during this second contact, Lieutenants Mack and Ward's manner was not aggressive or threatening such that a reasonable person would have believed he was not free to leave or to decline the officer's request. *O'Neill*, 148 Wn.2d at 574.

We hold, therefore, that the trial court did not err (1) in concluding that Lieutenants Mack and Ward had not seized Godwin when he voluntarily handed the check book to Lieutenant Mack; (2) in concluding that Lieutenant Ward's subsequent examination of the check book was not an illegal warrantless search; and (3) in denying Godwin's motion to suppress the counterfeit bills found in the check book.

We affirm.

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.

Hunt, J.

We concur:

Armstrong, P.J.

Van Deren, J.