IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. ROY STEPHEN PORTER, AKA ROY TEPHEN PORTER, Appellant.	)	No. 63738-0-I DIVISION ONE UNPUBLISHED OPINION FILED: June 21, 2010

Grosse, J. — An officer has probable to cause to arrest based on information provided by a fellow officer that there is probable cause to arrest a particular individual. Here, the arresting officer acted based on a surveillance officer's description of a suspected drug dealer and the suspect's location, and the record supports a finding that the description and location given by the surveillance officer were sufficiently specific for the arresting officer to identify the defendant as the suspect. Thus, there was probable cause to arrest and the trial court properly denied the motion to suppress. Accordingly, we affirm.

FACTS

On the evening of October 5, 2008, police officers were conducting surveillance for drug activity in Occidental Park in Seattle. At that time, there were about 40 to 60 people in the park, the majority of whom were African-American. Officer James Lee was using binoculars to conduct surveillance from the stairwell of a building in the northwest corner of the park and observed a man conducting what he believed were several "hand-to-hand" drug transactions, in which the man was approached by other

individuals, received money and then handed them something. Lee then alerted an arrest team, gave them a description of the suspect and his location, and told them he had probable cause to arrest the suspect conducting these transactions.

Officer J. M. Diamond, who was part of the arrest team, arrested Roy Porter based on the information Lee provided about the suspect's description and his location. Police searched Porter at the scene and recovered over one hundred dollars in cash. A later search of Porter at the precinct revealed trace amounts of cocaine in Porter's pants pocket.

The State charged Porter with one count of possession of cocaine, a violation of the Uniform Controlled Substances Act.[1] Before trial, Porter moved to suppress the evidence of the cocaine, contending that the officers lacked probable cause to arrest him. The trial court denied the motion to suppress. A jury found him guilty as charged. Porter requested an exceptional sentence below the standard range based on the extraordinarily small amount of controlled substance involved. The trial court denied his request and sentenced him to the low end of the standard range, ordering him to serve six months and one day on work release. Porter appeals.

ANALYSIS

I. Probable Cause to Arrest

Porter challenges his arrest, contending that the arresting officer lacked individual probable cause to arrest him. We review de novo a trial court's determination of whether the evidence meets the probable cause standard.[2] But we

[1] Chapter 69.50 RCW.
[2] In re Det. Peterson, 145 Wn.2d 789, 799, 42 P.3d 952 (2002).

will uphold a trial court's findings of fact if they are supported by substantial evidence in the record.[3] We accept the credibility determinations made by the trial court and will not review them on appeal.[4]

Probable cause to arrest exists where the totality of the facts and circumstances known to the officers at the time of the arrest would warrant a reasonably cautious person to believe an offense is being committed.[5] When police officers are acting together as a unit, cumulative knowledge of all of the officers involved in the arrest may be considered in deciding whether there was probable cause to apprehend a particular suspect.[6] Probable cause must be individualized to the specific person being arrested.[7]

At the hearing on the motion to suppress, Officer Lee testified that he could not remember the clothing description he gave the arrest team at the time, but did recall that he told the arrest team that the suspect was standing by some benches on the east side of the park. Lee also testified that within ten seconds of alerting the arrest team, he saw the team arrive and the suspect walk away in a southbound direction when the officers approached. Lee further testified that the suspect was ultimately arrested near a totem pole, which was about 20 feet south of the benches, and he confirmed to the arrest officers that this was the correct person.

Officer Diamond testified that Lee described the suspect as a black male

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[3] State v. Vickers, 148 Wn.2d 91, 116, 59 P.3d 58 (2002).
[4] State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).
[5] State v. Herzog, 73 Wn. App. 34, 53, 867 P.2d 648 (1994).
[6] State v. Dorsey, 40 Wn. App. 459, 470, 698 P.2d 1109 (1985); State v. Maesse, 29 Wn. App. 642, 647, 629 P.2d 1349 (1981).
[7] Ybarra v. Illinois, 444 U.S. 85, 91, 100 S. Ct. 338, 62 L. Ed. 2d 238 (1979); State v. Grande, 164 Wn.2d 135, 142-43, 187 P.3d 248 (2008).

wearing a white T-shirt and jeans who was near the totem pole in the park. Diamond also testified that when he arrived with the arrest team at the park, he immediately saw the suspect, who was Porter, because he was the only black male in the park wearing a white T-shirt. Diamond testified that when the arrest team began to approach, Porter walked away from the totem pole heading northbound toward the boccie ball courts and stood behind two people in what appeared to be an attempt to hide from the officers. Diamond then testified that he arrested Porter near the boccie ball courts, about 10 to 15 feet away from the totem pole.

Porter contends that the arresting officer was not given a description specific enough to create probable cause to arrest him because the officer could not reasonably single out the suspect from a group in which there were others to whom the description could have also applied. Specifically, he argues that because the description upon which Officer Diamond relied was simply a black man wearing a white T-shirt in a park that was populated with 40 to 60 people, most of whom were African-American, it was not sufficiently specific to limit the pool of potential suspects present in the park. We disagree.

The record supports a finding that the description was sufficiently specific to support a finding that Diamond had probable cause to arrest Porter. Diamond testified that the description he received was a black male wearing a white T-shirt and jeans and that Porter was the only male in the park wearing a white T-shirt.[8] While Porter contends that this claim is "highly dubious" and that many of the African-American

[8] Diamond testified, "[I]t was pretty easy for me to see him because there was no confusion as to who, which male in a white T-shirt, because he was in [sic] the only one in the park wearing a white T-shirt that night."

males in the park "could have been wearing the common combination of a white T-shirt and jeans," these assertions are not supported by the record. In fact, Diamond testified there were other black males in the area, but that they had on jackets and Porter was the only one without a jacket. Thus, Porter's argument simply raises a credibility issue that was resolved by the trial court and will not be reviewed on appeal.

Porter further argues that Lee's confirmation to Diamond that he arrested the correct suspect is "questionable," noting the contradictions between Lee's testimony that the suspect walked southbound and did not hide and Diamond's testimony that he walked northbound and attempted to hide. He also contends that it is "highly likely" that Lee lost track of the suspect and confirmed the arrest of Porter simply because he was a black male wearing a white T-shirt and jeans. He notes that Lee was positioned far away, it was dark out and Lee's attention was focused on the suspect's hands rather than his facial features. But again, these are simply arguments about credibility and inferences from the evidence that were resolved by the trial court as factual determinations and are not reviewable on appeal. But even given the conflicting testimony about the direction the suspect walked when the officers arrived, the record supports the trial court's finding that Diamond had sufficient probable cause. Whether the suspect walked southbound or northbound when the officers arrived is of little consequence, given the short distance he walked (10 to 15 feet) and the fact that both Lee and Diamond agreed that he was arrested by the totem pole.

II. Exceptional Sentence

Porter also challenges his sentence, contending that the trial court erred by

failing to impose an exceptional sentence below the standard range based on the extraordinarily small amount of controlled substances involved. Porter concedes that he is generally precluded from appealing a sentence imposed within the standard range, but contends that review is warranted here because the trial court relied on an impermissible basis for its denial of his request for an exceptional sentence downward.

Review of a trial court's denial of an exceptional sentence below the standard range is limited to circumstances where the court has refused to exercise discretion at all or had relied on an impermissible basis for its refusal to impose an exceptional sentence.[9] As we have explained:

> A court refuses to exercise its discretion if it refuses categorically to impose an exceptional sentence below the standard range under any circumstances; i.e., it takes the position that it will never impose a sentence below the standard range. A court relies on an impermissible basis for declining to impose an exceptional sentence below the standard range if it takes the position, for example, that no drug dealer should get an exceptional sentence down or it refuses to consider the request because of the defendant's race, sex or religion. . . . Conversely, a trial court that has considered the facts and has concluded that there is no basis for an exceptional sentence has exercised its discretion, and the defendant may not appeal that ruling.[10]

Here, the trial court considered the facts and found that they did not establish mitigating factors justifying a sentence below the standard range:

> Well, my sense is from the trial that the amount of cocaine really isn't of much significance. You had some. I thought it's a little cheesey that you suggested it might be your brother's pants or something like that, but I wouldn't be very happy if I was your brother, but my sense is from the testimony, that even though it's not what you're charged with, at one time in the evening you may have had more in your pants than what you had when the police got you. . . . I don't think there's enough basis here for me to give you the exceptional sentence downward. That would really be an extraordinary thing, just as it would be extraordinary for me to sentence someone to above the standard range.

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[9] State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997).
[10] 88 Wn. App. at 330.

Thus, the court concluded that the small amount involved in this case did not diminish Porter's culpability to justify an exceptional sentence because the surrounding facts suggested that he was actually criminally liable for more than with what he was actually charged. In other words, the court just disagreed with Porter that the facts warranted entry of the findings he sought and concluded that there was no factual or legal basis to justify an exceptional sentence. As we observed in State v. Garcia-Martinez, "[t]his is an appropriate exercise of sentencing discretion."[11]

Grosse, J

WE CONCUR:

Dwyer, C. J.

Appelwick, J

[11] 88 Wn. App. 322, 330-31, 944 P.2d 1104 (1997).