

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

STATE OF WASHINGTON,	)	No. 63934-0-I
	)	
Respondent,	)	
	)	
v.	)	
	)	
MARTIN A. HARRIS,	)	UNPUBLISHED OPINION
(DOB 6/21/93)	)	
	)	
Appellant.	)	FILED: July 19, 2010
	)	

Ellington, J. — Martin Harris challenges his conviction for unlawful possession of a firearm. He argues that the trial court erred in denying his motion to suppress evidence of the gun because there was no lawful basis to detain him. But the court found he was not detained, and substantial evidence supports that finding. A police officer may transport a child at the request of a parent. We affirm.

FACTS

Officer Kevin McDaniel became acquainted with Martin Harris and his mother Maria through his role as a community officer in the Safe Futures program in West Seattle. Officer McDaniel and Harris had numerous conversations about the importance of staying in school. Maria, whose husband had died, often relied on Officer McDaniel to counsel Harris and help keep him from getting into trouble.

Maria's concerns intensified in September 2008 after Harris was convicted of

felony possession of stolen property. As a condition of sentencing, the court prohibited Harris from contacting others who were with him during commission of the crime. For two months, Maria called Officer McDaniel weekly to discuss Harris's behavior. Maria asked Officer McDaniel to bring Harris home if he saw him "hanging around with the wrong crew"<sup>1</sup> or getting in trouble.

On November 20, 2008, at around 4:30 p.m., Officer McDaniel saw Harris hanging out at a bus stop along with several other young men, including Mark Skinner. Officer McDaniel knew that Harris was prohibited from associating with Skinner under the terms of the no-contact order. Harris was smoking some kind of cigarette, which he threw away as Officer McDaniel drove up. Officer McDaniel reminded Harris that he was not supposed to be in contact with Skinner and asked what he had been smoking. Harris said it was tobacco. Officer McDaniel told Harris to wait by the patrol car. Then he approached the bus stop and told the group to leave unless they were waiting for a bus. At that time, Officer McDaniel noticed the smell of burnt marijuana.

Officer McDaniel returned to his patrol car and asked Harris if his mother was home. Harris said yes, and Officer McDaniel told Harris "Come on, I'm going to take you home."<sup>2</sup> Harris got into the front passenger seat of the patrol car and Officer McDaniel drove him home. When they arrived, Officer McDaniel knocked on the door and Maria answered. He informed Maria that he thought Harris might have been smoking marijuana. As Officer McDaniel and Harris entered the apartment foyer, Harris shifted his waistband and a 9 millimeter handgun fell out. Officer McDaniel quickly

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<sup>1</sup> Report of Proceedings (June 9, 2009) at 16.

<sup>2</sup> Id. at 56.

arrested Harris and recovered the gun.

Harris was charged by amended information with unlawful possession of a firearm in the second degree. He filed a CrR 3.6 motion to suppress the handgun, arguing that Officer McDaniel unlawfully seized him by ordering him away from the bus stop and into the car without articulating a reasonable suspicion of criminal activity. The court denied the motion, concluding that Officer McDaniel did not seize Harris, and even if he did, this action was justified by the community caretaking exception to the warrant requirement. In a stipulated bench trial, the court found Harris guilty as charged.

### ANALYSIS

The court found that Harris entered the patrol car voluntarily and that Officer McDaniel did not expressly order him to get in, and denied the motion to suppress. Harris contends these findings were not supported by substantial evidence. Thus, according to Harris, the initial stop and transport home constituted an unlawful seizure, and evidence of the gun must be suppressed. We disagree. The court's findings are supported by the evidence. Harris rode home in the front seat of the patrol car, was not in handcuffs, and was not searched beforehand. This was not detention.

Even if the officer detained Harris, however, the detention was proper. RCW 70.155.080 makes it a civil infraction for someone under the age of 18 to possess tobacco. Officer McDaniel observed Harris smoking either tobacco or marijuana, and he knew that Harris was 15 years old. When officers observe a nontraffic civil infraction, they may stop and detain the suspect long enough to obtain a name, address, birth date, and identification card.<sup>3</sup> Any initial stop was thus lawful.

Harris next argues that Officer McDaniel unconstitutionally seized him by putting him in the patrol car and transporting him home. The State contends that this action was authorized by the Family Reconciliation Act, chapter 13.32A RCW, and the officer's community caretaking functions. We agree.

The Family Reconciliation Act "clearly is designed to promote the public interest in the safety of children."<sup>4</sup> It provides that "[a] law enforcement officer shall take a child into custody: (a) If a law enforcement agency has been contacted by the parent of the child that the child is absent from parental custody without consent; or (b) if a law enforcement officer reasonably believes, considering the child's age, the location, and the time of day, that a child is in circumstances which constitute a danger to the child's safety.<sup>5</sup> The officer must inform the child why he is being taken into custody, must transport him home if a parent is present, and upon releasing him to the parent's custody must explain why he was taken into custody.<sup>6</sup>

Here, Officer McDaniel knew Maria wanted Harris returned home if he was getting into trouble or was seen with the people he was prohibited from contacting. On the day of the incident, Officer McDaniel observed Harris with Skinner, smoking tobacco or possibly marijuana, at a bus stop known for high crime and narcotics activity. These factors implicated Harris's safety and well-being.

Officer McDaniel also properly transported Harris home under the community caretaking function exception to the warrant requirement. This function includes

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<sup>3</sup> RCW 7.80.060.

<sup>4</sup> State v. Kinzey, 141 Wn.2d 373, 389, 5 P.3d 668 (2000).

<sup>5</sup> RCW 13.32A.050(1).

<sup>6</sup> RCW 13.32A.060(1)(a), (b).

situations involving emergency aid or routine checks on health and safety.<sup>7</sup> “When police officers are engaged in noncriminal, noninvestigative community caretaking functions, ‘whether a particular stop is reasonable depends not on the presence of probable cause or reasonable suspicion, but rather on a balancing of the competing interests involved in light of all the surrounding facts and circumstances.’”<sup>8</sup> These include the “‘individual’s interest in freedom from police interference against the public’s interest in having the police officers perform a community caretaking function.’”<sup>9</sup> The community caretaking function exception is applied cautiously because of the risk of abuse.<sup>10</sup>

Officer McDaniel’s transportation of Harris was detached from any criminal investigation. Its sole purpose was to return him to the custody of his mother, as authorized by the Family Reconciliation Act. Officer McDaniel was well acquainted with Harris in his role as a community officer in the Safe Futures program. When he observed Harris smoking and hanging around at a high-crime bus stop with someone he was barred from contacting, Officer McDaniel became concerned for Harris’s safety. He invited Harris to ride in the front seat of the patrol car, and did not frisk or handcuff him. Officer McDaniel had no intention of arresting Harris at that point.

Harris argues that under State v. Kinzy,<sup>11</sup> his transportation home was illegal. In

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<sup>7</sup> State v. Acrey, 148 Wn.2d 738, 749, 64 P.3d 594 (2003).

<sup>8</sup> Id. at 748–49 (internal quotation marks and emphasis omitted) (quoting State v. Chisholm, 39 Wn. App. 864, 867, 696 P.2d 41 (1985)).

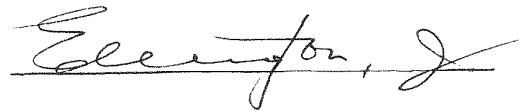
<sup>9</sup> Id. at 750 (internal quotation marks omitted) (quoting Kinzy, 141 Wn.2d at 387).

<sup>10</sup> Kinzy, 141 Wn.2d at 388.

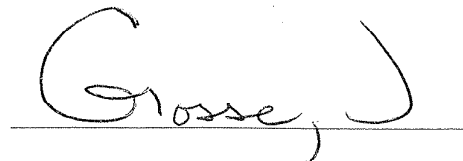
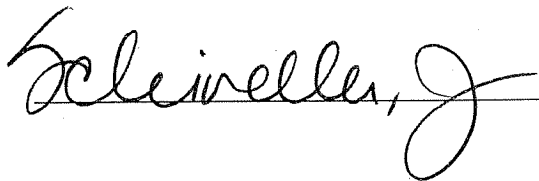
<sup>11</sup> 141 Wn.2d 373, 5 P.3d 668 (2000).

Kinzy, police encountered an unknown teenage girl in a high crime area at night with older individuals.<sup>12</sup> The police stopped her and asked her name and age. The police then conducted a Terry<sup>13</sup> frisk, which led to the discovery of drugs.<sup>14</sup> The court held that although the police properly contacted the girl to determine whether she needed assistance, the community caretaking function did not justify the Terry frisk because her interest in freedom from police interference outweighed the public safety interest.<sup>15</sup> The court also noted that the facts did not support detaining the girl under the Family Reconciliation Act.<sup>16</sup> Here, in contrast, Officer McDaniel never conducted a Terry frisk. His sole purpose in transporting Harris was to return him to his mother.

In sum, we conclude that Harris was not unlawfully seized. Therefore, the gun was not the product of an illegal search or seizure, and the trial court did not err in denying Harris's CrR 3.6 motion to suppress.



WE CONCUR:



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<sup>12</sup> Id. at 378–79.

<sup>13</sup> Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

<sup>14</sup> Kinzy, 141 Wn.2d at 378.

<sup>15</sup> Id. at 391–92.

<sup>16</sup> Id. at 389.