

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

STATE OF WASHINGTON,)	No. 64321-5-I
)	
Respondent,)	
)	
v.)	
)	
TERRON LEE THOMPSON,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: November 15, 2010
)	

Ellington, J. — Terron Thompson challenges his convictions for bail jumping and unlawful possession of a firearm, challenging the constitutional sufficiency of the charging document and arguing that the trial court should have suppressed evidence found after police seized Thompson at his sister’s residence in violation of his constitutional rights. Because Thompson fails to demonstrate error, we affirm.

BACKGROUND

On April 26, 2007, Community Corrections Specialist Kris Rongen asked King County Sheriff Deputies Aaron Thompson and Joseph Gagliardi to assist in a search of Shameka Thompson’s car at the office of the Department of Corrections (DOC) in Burien. After the officers found a gun in the car and Shameka Thompson was arrested for probation violations, Officer Rongen decided to search her residence. Officer Rongen gathered a team, including Deputies Gagliardi and Thompson, as well as other

police and DOC officers, and advised them that there may be firearms and gang members carrying firearms at the residence.

When the officers arrived at the house, they saw Terron Thompson standing outside with another young man. As the officers approached, Thompson looked around nervously and put his right hand into his pocket. The officers shouted at him to show his hands. Thompson did not comply and began backing toward the house. The officers pointed their guns and continued to shout orders at Thompson, who leaned back and tossed a gun into the house. The police arrested Thompson and recovered the gun.

The State charged Thompson with unlawful possession of a firearm in the first degree. He posted bail but failed to appear, and the State added a charge of bail jumping. Prior to trial, Thompson moved to suppress the gun and his custodial statements, claiming that he was unconstitutionally seized.

At a suppression hearing, Deputy Gagliardi testified that he drove the first car to arrive at the house and that Deputy Thompson rode with him. Deputy Gagliardi testified that as he pulled into the driveway, he saw Thompson and another young man standing in the carport area by the front of the house. Deputy Gagliardi could not remember whether Thompson had his hands in his pockets when the officers arrived. He testified that after he got out of the car, he and Deputy Thompson ordered the young men to show their hands. When Thompson did not comply and began backing toward the house, Deputy Gagliardi drew his gun. Deputy Gagliardi explained his concerns for the safety of the officers and others:

Well, the refusal to show me his hands, combined with the backing up, I was starting to wonder if he was going to run into the house and try to arm himself or try and hide or just try and run out the back and get away, or if his hands were in his pockets and he had a gun and he was moving back to a position of cover in the house so he could engage us as we were standing in the open.^[1]

Deputy Thompson testified that as he got out of the car and started walking up to the house, he “saw two guys standing out by the carport. One of the guys looked very surprised to see the police, and jammed his hands in his right pocket, his jacket pocket, and started backing up to the front door of the house, which was opened.”² The State’s direct examination of Deputy Thompson continued:

Q. At what point did you issue the commands for them to show you their hands?

A. When he jammed his hands in his pocket, I was concerned that I didn't know if there was a weapon in there or what the deal was, but it wasn't what I considered normal behavior when you see a police officer. That is when I pointed my shotgun at him and told him to show me his hands.

Q. Did he jam his hands in his pocket immediately upon seeing you?

A. Yeah, when he saw us and recognized that we were the police, he kind of got a startled look on his face and put his hand in his pocket.

.....

Q. Did you have any concerns when you saw him jam his hand in his pocket in that manner?

A. Yes, I was concerned he might be accessing a weapon.

Q. Did you have any other concerns?

A. I was concerned for my safety and Joe's safety and anybody else

¹ Report of Proceedings (RP) (July 15, 2008) at 19.

² Id. at 53.

that was with us at that point. Joe and I were the only two up there that I know of. I don't know. I didn't look behind me.^[3]

Deputy Thompson also testified that as the officers continued to shout commands, he saw Thompson back toward the front door of the house, lean back on the steps, take a gun out of his pocket, and throw the gun into the house.

Officer Rongen also testified that as the officers drove up to the house, he saw Thompson look concerned and put his hand into his pocket. Officer Rongen believed that the deputies began yelling commands as they approached the house on foot after Thompson put his hand into his pocket, but he admitted that he could not testify to a specific time the events occurred.

In an oral ruling at the hearing, the trial court found that as the officers approached the house on foot, Thompson looked alarmed and put his hand in his pocket: "It was more than casually dropping his hand in his pocket, but thrusting it into his pocket."⁴ The court found that the officers "didn't order him to stop or to show his hands until he made the gesture into his pocket," causing "reasonable apprehension on the part of the officers that he was reaching for a firearm."⁵ When Thompson did not show his hands and began backing toward the house, the officers were reasonably concerned that Thompson was seeking "access to firearms or some response either to flee or to get into the house to be able to fire back in some way."⁶ The trial court denied the suppression motion based on its determination that the officers reasonably

³ Id. at 55–56.

⁴ Id. at 116.

⁵ Id. at 117–18.

⁶ Id. at 118.

detained Thompson by verbal commands and drawn weapons after he reached into his pocket, possibly for a weapon, and that the officers then properly arrested him when they found the firearm and learned of his record. The trial court later signed written findings of fact and conclusions of law, incorporating by reference its oral findings and conclusions.

The jury found Thompson guilty as charged and the trial court imposed a drug offender sentencing alternative sentence. Thompson appeals.

Sufficiency of the Information

Thompson challenges the constitutional sufficiency of the amended information charging bail jumping because it fails to state that he received notice of the specific court date on which he failed to appear. To be constitutionally sufficient, a charging document must apprise the defendant of “the elements of the crime charged and the conduct of the defendant which is alleged to have constituted that crime.”⁷ We construe “quite liberally” an information challenged initially on appeal, as here.⁸ If the allegedly missing element appears in any form or can be found by fair construction in the charging document, the “defendant may prevail only if he can show that the unartful charging language actually prejudiced him.”⁹

The amended information states:

That the defendant TERRON LEE THOMPSON in King County, Washington, on or about October 12, 2007, being charged with Unlawful Possession of a Firearm in the First Degree, a Class B Felony, having

⁷ State v. Kjorsvik, 117 Wn.2d 93, 98, 812 P.2d 86 (1991) (discussing State v. Leach, 113 Wn.2d 679, 689, 782 P.2d 552 (1989)).

⁸ State v. Hopper, 118 Wn.2d 151, 156, 822 P.2d 775 (1992).

⁹ State v. Nonog, 169 Wn.2d 220, 227, 237 P.3d 250 (2010) (citing Kjorsvik, 117 Wn.2d at 106).

been admitted to bail, and with knowledge of the requirement of a subsequent personal appearance before the court, did fail to appear; [c]ontrary to RCW 9A.76.170, and against the peace and dignity of the State of Washington.^[10]

RCW 9A.76.170 provides: “Any person having been . . . admitted to bail with knowledge of the requirement of a subsequent personal appearance before any court of this state . . . and who fails to appear . . . is guilty of bail jumping.”

Relying on State v. Carver¹¹ and State v. Fredrick,¹² Thompson claims that the specific date of the subsequent court appearance is an essential element of the crime. In Carver, Division II of this court rejected a defense of forgetfulness to a bail jumping charge and expressly held that “the State must prove only that Carver was given notice of his court date—not that he had knowledge of this date every day thereafter.”¹³ In Fredrick, Division II of this court rejected a claim that requiring the defendant to prove the affirmative defense of uncontrollable circumstances relieved the State of the burden of proving knowledge.¹⁴ “The State must prove that the defendant was given notice and knew of the date,” but “knowledge of the required date is not an element of the offense.”¹⁵

Even assuming, without deciding, that these cases support a conclusion that an information charging bail jumping must include an allegation that the defendant had notice of a court hearing scheduled for a specific day, the information was sufficient.

¹⁰ Clerk’s Papers at 102.

¹¹ 122 Wn. App. 300, 93 P.3d 947 (2004).

¹² 123 Wn. App. 347, 97 P.3d 47 (2004).

¹³ Carver, 122 Wn. App. at 306.

¹⁴ Fredrick, 123 Wn. App. at 353–54.

¹⁵ Id. at 354.

The information charged Thompson with “the crime of Bail Jumping,” committed by failing to appear “on or about October 12, 2007,” after “having been admitted to bail, and with knowledge of the requirement of a subsequent appearance before the court.”¹⁶

From this language, Thompson had clear notice that he was accused of knowingly failing to appear before the court on October 12, 2007 for a required personal appearance. Thompson does not argue that he was prejudiced by any unartful charging language. Under Kjorsvik’s liberal construction test, the information reasonably apprised Thompson of the essential elements of the crime of bail jumping.

Suppression Motion

Thompson also challenges the trial court’s denial of his motion to suppress evidence based on an unconstitutional seizure of his person. Thompson first claims that the seizure occurred when the officers arrived with guns visible and yelled, “Police, show us your hands,” before he did anything.

We review the denial of a motion to suppress to determine whether substantial evidence supports the trial court’s factual findings and whether those findings support its conclusions of law.¹⁷ We review de novo the conclusions of law.¹⁸

To avoid violating the Fourth Amendment guarantee against unreasonable searches and seizures, the State bears the burden of showing that a warrantless seizure fits one of a few limited and jealously guarded exceptions to the warrant requirement.¹⁹ One exception is where an officer has probable cause to believe a

¹⁶ Clerk’s Papers at 101–02.

¹⁷ State v. Ross, 106 Wn. App. 876, 880, 26 P.3d 298 (2001).

¹⁸ Id.

¹⁹ State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984).

person has committed a crime. A second, narrower exception is an investigative Terry stop of a person reasonably suspected to be engaging in criminal activity.²⁰ An even narrower third exception is that officers executing a search warrant at a residence may “briefly detain occupants of that residence, to ensure officer safety and an orderly completion of the search.”²¹ This exception does not extend to those merely present on the premises, but the detention or search of a person, other than an occupant, during a valid search of a residence may be justified by independent factors “tying the person to illegal activities being investigated or raising a reasonable suspicion that the person is armed and dangerous.”²² To detain such a person at the scene of a search based on a threat to officer safety, police must have an individualized suspicion that the person is armed and dangerous.²³

Thompson has not assigned error to the trial court’s factual findings describing the following sequence of events: (1) the deputies approached the house on foot; (2) Thompson was standing outside near the carport; (3) “[t]he defendant looked surprised and alarmed when he saw the police”;²⁴ (4) “[t]he defendant immediately thrust his right hand into his pocket and began looking about in all directions”;²⁵ and (5) “[t]he deputies drew their guns and instructed the defendant . . . to show [his]

²⁰ State v. Smith, 145 Wn. App. 268, 275, 187 P.3d 768 (2008) (citing Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)).

²¹ Id. (emphasis omitted) (quoting State v. King, 89 Wn. App. 612, 618–19, 949 P.2d 856 (1998)).

²² Id. at 276.

²³ Id. at 276–77.

²⁴ Clerk’s Papers at 73 (Finding of Fact I).

²⁵ Id. (Finding of Fact m).

hands.”²⁶ Instead, citing only Deputy Gagliardi’s testimony, Thompson claims that immediately after getting out of their car, the deputies yelled, “Police, show us your hands.”²⁷

But Deputy Gagliardi admitted that he did not recall the specific order of events. Even so, he remembered that Thompson had his hand in his pocket and testified that he was concerned for his safety when he commanded Thompson to show his hands. Officer Rongen also testified that although he could not specifically recall the exact timing, he believed that Thompson looked concerned and put his hand into his pocket before the officers began shouting commands. Deputy Thompson testified very specifically that he approached the house ahead of Deputy Gagliardi and recalled seeing Thompson look startled and thrust his hand into his pocket before the police shouted any commands or raised their weapons. Deputy Thompson also testified that he shouted and raised his shotgun because he was concerned that Thompson was reaching into his jacket pocket for a gun. As the fact finder, the trial court was entitled to rely on Deputy Thompson’s specific description of the events, and we will not disturb those credibility determinations.²⁸ In sum, our review of the record demonstrates that substantial evidence supports the trial court’s findings of fact.

Thompson also assigns error to the trial court’s conclusion of law to the extent that it includes a factual finding that the police suspected Thompson of “criminal activity” before they seized him.²⁹ But to the extent this language is erroneous, it is of

²⁶ Id. (Finding of Fact n).

²⁷ RP (July 15, 2008) at 16.

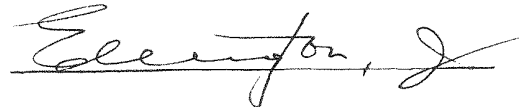
²⁸ State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990).

²⁹ Clerk’s Papers at 74.

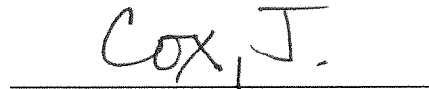
no moment. It is clear from the written findings, as well as the trial court's oral findings and conclusions incorporated by reference, that the trial court determined that the police properly detained Thompson based on their reasonable and individualized suspicion that he was armed and dangerous.

Finally, citing United States v. Robertson,³⁰ Thompson contends that even if the initial detention was justified, the use of excessive force transformed the stop into an unreasonable arrest. But here, the trial court's findings support the conclusion that the detention at gun point was justified by the officers' specific fear that Thompson may be armed because he looked startled to see police and reached into his pocket as if for a weapon while standing outside of a house in which DOC officers suspected they may find firearms or gang members known to carry firearms.³¹ Thompson fails to demonstrate error in the trial court's denial of his suppression motion.³²

Affirmed.



WE CONCUR:



³⁰ 833 F.2d 777, 781–82 (9th Cir. 1987) (where police had no specific information that a woman was armed and dangerous when police found her walking near house in which criminal activity was suspected, it was unreasonable to stop and arrest her at gunpoint).

³¹ See State v. Belieu, 112 Wn.2d 587, 603–04, 773 P.2d 46 (1989) (suspicion that occupants of car were involved in burglaries resulting in weapons being stolen, police reasonably believed they might be armed and were therefore justified in ordering them out of car at gunpoint without probable cause sufficient for an arrest).

³² Thompson's October 2010 pro se motion for an appeal bond is denied.

Leach, A.C.J.