**IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON**

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| STATE OF WASHINGTON,<br><br>Respondent,<br>v.<br><br>BOBANICA NECORIA HAULCY,<br><br>Appellant. | No. 65074-2-I<br><br>DIVISION ONE<br><br>UNPUBLISHED OPINION<br><br>FILED: July 25, 2011 |

Leach, J. — A jury convicted Bobanica Haulcy of possession with the intent to deliver cocaine under the Uniform Controlled Substances Act.[1] Haulcy appeals, claiming that the trial court erred when it denied her motion to suppress evidence of money found on her person. She contends that when the police arrested her, they did not have probable cause. She also claims that defense counsel was ineffective by failing to challenge cocaine evidence gathered as a result of her arrest. Because the police had probable cause at the time of her arrest, we affirm.

Background

Around 10:00 p.m. on March 21, 2009, Seattle Police Officers James Lee and Matthew Pasquan were conducting an "emphasis patrol," looking for narcotics activity in Pioneer Square. Both officers had extensive training related

[1] RCW 69.50.401(1)-(2)(a).

to indentifying narcotics-related criminal activity and were very familiar with the drug activity in the area. The officers were patrolling in an unmarked SUV and were wearing their emphasis patrol uniform of jeans, black tactical vest with the word "police" written in white letters on the front and back, and duty belt with badge.

Officer Pasquan was driving and Officer Lee was in the passenger seat of the patrol vehicle. As the officers drove southbound along the 600 block of Second Avenue, they observed two women, approximately 15 feet away, engaged in a huddle with a group the officers recognized as drug users. The two women were later identified as the defendant, Bobanica Haulcy, and her sister Kelly Hendricks.[2] In the estimated 10 to 20 seconds the officers remained undetected, both officers witnessed what they believed to be hand-to-hand drug transactions. Officer Lee saw each of the women place a small object into the outstretched hand of a prospective buyer and saw the buyer examine the item and either put it in his mouth or cup it in his hands. Each buyer gave one of the women money in return.

As the officers observed the exchanges, someone in the group spotted the police SUV and alerted the others. The group split up; the buyers walked northbound while Haulcy and Hendricks went south. The officers followed Haulcy and Hendricks in their patrol vehicle and attempted to contact them at the intersection. As Officer Lee got out of the vehicle, the women turned and ran

[2] Hendricks is also referred to as "Kelly Haulcy" and "Kelly Haully" in the reports and proceedings for this case.

northbound. Officer Lee ordered the women to stop, but they continued to run. Officer Lee gave pursuit, while Officer Pasquan remained in the SUV. At this point, the testimony of the police officers differed as to the order in which the individuals ran up Second Avenue. Officer Lee testified that both women turned and ran up the street, and he ran after them. Officer Pasquan testified that Hendricks ran north, Officer Lee chased her, and Haulcy followed the two up the street.[3]

As Officer Lee ran behind Hendricks, he saw her remove a bindle from her jacket, tear it open, and dump what appeared to be crack cocaine onto the street. While Officer Lee pursued Hendricks, Officer Pasquan drove around the block in an attempt to cut off the group at the north end of the block. Officer Lee eventually caught up to Hendricks and began to handcuff her. As Officer Lee was arresting Hendricks, Haulcy approached him, yelling. Officer Lee ordered Haulcy to step back multiple times, and she would temporarily comply but then come closer again.

Finally, Officer Pasquan arrived on the scene, got out of the SUV, and approached Haulcy, who was still animated and yelling 10 to 15 feet from Officer Lee. Officer Pasquan ordered Haulcy to stop, and as she did, he saw her open her right hand and drop suspected crack cocaine. Officer Pasquan then placed Haulcy in handcuffs and recovered the cocaine from the ground. In a search

[3] The trial court found both officers credible and stated in its oral findings, "At the very least, Ms. Hendricks began running northbound." However, the trial court's written findings of fact found that "[t]he women ran northbound, with one crossing the street in an eastbound direction, and Off[icer] Lee gave pursuit."

incident to arrest, Officer Pasquan found $79 on Haulcy's person.

The State charged Haulcy with possession of a controlled substance (cocaine) with the intent to deliver. Defense counsel moved to suppress the money found on Haulcy, arguing that the police lacked probable cause to arrest her. Counsel did not move to suppress the cocaine because he believed that Haulcy lacked standing due to abandonment. In its written findings,[4] the court concluded that Haulcy was not arrested until she was handcuffed by Officer Pasquan. By that time, Pasquan had probable cause to arrest based on seeing her drop the cocaine. The trial court denied the suppression motion.

A jury found Haulcy guilty, and the court imposed the standard range sentence of 12 months and a day.

Haulcy appeals.

Analysis

Haulcy argues that the trial court erred when it denied her motion to suppress the money found on her person because she was arrested without probable cause.

We review the denial of a motion to suppress by determining whether substantial evidence exists to support the trial court's findings of fact and whether those findings support the trial court's conclusions of law.[5] Unchallenged findings are verities for purposes of appeal.[6] Haulcy does not

[4] The written findings also incorporate the court's oral findings.
[5] State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994).
[6] Hill, 123 Wn.2d at 644.

assign error to any of the trial court's findings of fact. We therefore determine whether those findings support the court's conclusions of law.[7] We review the conclusions of law de novo.[8]

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington State Constitution prohibit unreasonable searches and seizures.[9] As a general rule, warrantless searches and seizures are per se unreasonable, and the State bears the burden of demonstrating the applicability of a recognized exception to the rule.[10]

"'Not every encounter between an officer and an individual amounts to a seizure.'"[11] A person is "seized" when in an objective view of all the circumstances surrounding the incident, "a reasonable person would have believed that he was not free to leave."[12] Police statements such as "halt," "stop, I want to talk to you," and "wait right here" are seizures.[13] A seizure may be a custodial arrest,[14] a detention for brief further investigation as outlined in Terry v. Ohio,[15] or occasionally for another purpose.[16] A seizure for custodial arrest must

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[7] State v. Veltri, 136 Wn. App. 818, 821, 150 P.3d 1178 (2007).
[8] State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).
[9] State v. Day, 161 Wn.2d 889, 893, 168 P.3d 1265 (2007).
[10] Day, 161 Wn.2d at 893–94.
[11] State v. Hansen, 99 Wn. App. 575, 578, 994 P.2d 855 (2000) (quoting State v. Armenta, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997)).
[12] Michigan v. Chesternut, 486 U.S. 567, 573, 108 S. Ct. 1975, 100 L. Ed. 2d 565 (1988); State v. Bennett, 62 Wn. App. 702, 707, 814 P.2d 1171 (1991) (quoting State v. Stroud, 30 Wn. App. 392, 395, 634 P.2d 316 (1981)).
[13] See State v. Whitaker, 58 Wn. App. 851, 854, 795 P.2d 182 (1990); State v. Friederick, 34 Wn. App. 537, 541, 663 P.2d 122 (1983).
[14] See, e.g., United States v. Robinson, 414 U.S. 218, 227, 94 S. Ct. 467, 38 L. Ed. 2d 427 (1973).
[15] 392 U.S. 1, 16-20, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

be supported by probable cause.[17] An arresting officer has probable cause when "'the facts and circumstances within [his] knowledge and of which [he] had reasonably trustworthy information [are] sufficient in themselves to warrant a man of reasonable caution in the belief'" that a crime has been committed.[18] A Terry stop does not require probable cause but must be grounded in specific and articulable facts that, taken with their rational inferences, "reasonably warrant that intrusion."[19] A court may consider factors such as "the officer's training and experience, the location of the stop, and the conduct of the person detained."[20] Based on an officer's experience and the surrounding circumstances, observation of behavior that could reasonably constitute a drug transaction can be the basis for a legitimate Terry stop.[21]

Haulcy claims she was under custodial arrest when Officer Pasquan yelled "stop." While we agree that Haulcy was seized at this point in time, we disagree that she was arrested. Rather, the officers seized Haulcy with knowledge of "specific and articulable" facts that justified an investigatory Terry stop. Both officers witnessed Haulcy and Hendricks huddled in the overhang of

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[16] State v. Lund, 70 Wn. App. 437, 444, 853 P.2d 1379 (1993) (citing State v. Hehman, 90 Wn.2d 45, 578 P.2d 527 (1978); Michigan v. Summers, 452 U.S. 692, 696, 101 S. Ct. 2587, 69 L. Ed. 2d 340 (1981)).

[17] State v. Solberg, 122 Wn.2d 688, 696, 861 P.2d 460 (1993).

[18] Brinegar v. United States, 338 U.S. 160, 175-76, 69 S. Ct. 1302, 93 L. Ed. 1879 (1949) (third alteration in original) (quoting Carroll v. United States, 267 U.S. 132, 162, 45 S. Ct. 280, 69 L. Ed. 543 (1925)); State v. Fricks, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979).

[19] Terry, 392 U.S. at 21; State v. Acrey, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

[20] State v. Pressley, 64 Wn. App. 591, 596, 825 P.2d 749 (1992).

[21] Pressley, 64 Wn. App. at 597.

a building in a high narcotics area, handing small items between their fingertips to known drug users in exchange for currency. Both of the officers were well trained and experienced in recognizing drug transactions, and both believed they were witnessing criminal activity. These established reasonable suspicion to detain Haulcy for investigation of possible narcotics sales.[22] Indeed, although not necessary to our opinion, these facts and circumstances appear sufficient to establish probable cause under State v. Fore.[23]

Therefore, Pasquan's command to "stop" did not rise to the level of a custodial arrest. A custodial arrest occurs when an authorized officer manifests intent to take the person into custody and either seizes or detains the person.[24] "The existence of an arrest depends in each case upon an objective evaluation of all the surrounding circumstances."[25] Here, Pasquan did not order Haulcy to the ground or order her to put her hands behind her back. Pasquan did not draw his weapon, tell her she was under arrest, or move to handcuff her.[26] Nothing in

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[22] See Pressley, 64 Wn. App. at 597 (holding that an experienced narcotics officer's observation of two women standing next to each other in a high narcotics area, pointing and counting objects in their hands, then separating and walking away from each other when the officer approached is sufficient to establish reasonable suspicion).

[23] State v. Fore, 56 Wn. App. 339, 343-44, 783 P.2d 626 (1989).

[24] State v. Patton, 167 Wn.2d 379, 387, 219 P.3d 651 (2009).

[25] Patton, 167 Wn.2d at 387 (quoting 12 Royce A. Ferguson, Jr., Washington Practice: Criminal Practice and Procedure § 3104, at 741 (3d ed. 2004) (footnote omitted)).

[26] See Patton, 167 Wn.2d at 387 (holding that the defendant was under arrest when a deputy pulled into the driveway behind the defendant's car with his lights activated, immediately approached the defendant and told him he was under arrest and to put his hands behind his back); see State v. Gering, 146 Wn. App. 564, 567, 192 P.3d 935 (2008) ("When a suspect is handcuffed, placed in a patrol car, and told he or she is under arrest, it suggests custodial arrest.").

the record indicates Officer Pasquan manifested the intent to place her under custodial arrest until after he saw her drop the suspected cocaine.

Neither party disputes that once Officer Pasquan saw Haulcy drop the cocaine, he had probable cause to arrest her. That legal custodial arrest provided the "authority of law" to search Haulcy in order to preserve evidence.[27] The money thus was obtained by a valid search incident to arrest, and the trial court properly denied the suppression motion.

Finally, Haulcy claims that her counsel was ineffective because he did not challenge the admission of the cocaine. To establish ineffective assistance, Haulcy must show that counsel's performance was deficient and that deficient performance prejudiced her.[28] Counsel's performance is not deficient when he fails to argue a meritless motion.[29] Because Haulcy was not arrested at the time she dropped the cocaine, it was voluntarily abandoned. Police may retrieve voluntarily abandoned property without violating an individual's constitutional rights.[30] Property is not voluntarily abandoned where a defendant demonstrates (1) unlawful police conduct and (2) a causal nexus between that conduct and the abandonment.[31] No unlawful police conduct occurred here; therefore Haulcy voluntarily abandoned the cocaine. The trial court properly admitted the cocaine.

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[27] State v. O'Neill, 148 Wn.2d 564, 585, 62 P.3d 489 (2003).

[28] Strickland v. Washington, 466 U.S. 668, 687, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984); State v. Thomas, 109 Wn.2d 222, 225-26, 743 P.2d 816 (1987).

[29] State v. Briggins, 11 Wn. App. 687, 692, 524 P.2d 496 (1974).

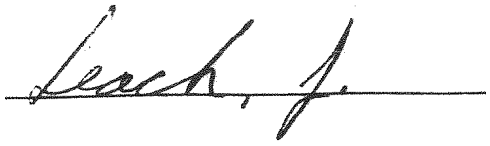
[30] State v. Nettles, 70 Wn. App. 706, 708, 855 P.2d 699 (1993).

[31] Nettles, 70 Wn. App. at 708.

Here, trial counsel appropriately declined to challenge admission of the cocaine because Haulcy had abandoned it. Any challenge to its admission would have failed. Therefore, counsel's performance was not deficient.

Conclusion

We affirm.



WE CONCUR: