

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,)	
)	No. 65099-8-I
Respondent,)	
)	DIVISION ONE
v.)	
)	
SONTAVIA LANEA HARRIS,)	UNPUBLISHED OPINION
)	
Appellant.)	FILED: July 25, 2011
)	
_____)	

Becker, J. — Sontavia Harris appeals her conviction for possession of a controlled substance with intent to deliver. She was arrested after officers observed her in an area known for high narcotics activity, making contacts with several people in a manner strongly indicative of drug transactions. Concluding the officers did not lack probable cause for the arrest, we affirm.

At the CrR 3.6 suppression hearing, the State called one witness—Seattle Police Officer Dave Blackmer. Blackmer has extensive experience in narcotics enforcement, having worked five years with the West Precinct Anticrime Team. The team emphasizes street-level narcotic enforcement. Blackmer testified that he has been involved in thousands of arrests.

On August 3, 2009, at about 9:15 p.m., Blackmer was in an elevated

location in the Smith Tower, located in downtown Seattle in the Pioneer Square area. Using binoculars, he was looking for narcotics activity below. The area was known for narcotics activity, and police had received related complaints.

At about 9:30 p.m., Blackmer observed two women, later identified as Harris and her sister, walk across the street to the "Sinking Ship" parking garage. They stopped by the entrance on Yesler Street. Two men approached them. Harris motioned them to follow her. The group went into the garage for about 30 seconds before reemerging. Blackmer could not see them while they were in the garage. When the men came out of the garage, they went away.

Shortly thereafter, two different men approached the women. Harris walked eastbound on Yesler and motioned the men to follow her. They followed her to a payphone located outside near the top level of the garage. Blackmer could see that when Harris reached the payphone, she picked up the phone, but did not dial or deposit any money. While at the phone, Harris reached around her waistband area. It then appeared to Blackmer that she put something up by the ledge of the phone, but Blackmer could not see exactly what. While this was happening, Blackmer observed Harris's sister standing back and looking up and down the street.

After hanging up the phone, Harris stepped away. One of the men approached the phone, made a motion consistent with picking something off of the ledge, looked at his hand, and then moved his hand toward his mouth. Blackmer testified that crack cocaine is not soluble and is often carried in the

mouth so that it can be swallowed quickly to hide it.

After his actions at the payphone, the man tried to hand Harris some cash, but Harris directed the man to give the cash to her sister. He did so. The group separated. The men walked south on Second Avenue, and the women circled around the block and stopped back at the garage entrance on Yesler.

There, Harris and her sister waited and met another man. They started to move east up Yesler. Blackmer saw that this man had money in his hand. Two other men, one pushing a baby carriage, hailed the group across the street and came across the street to join them. As the group of five left Blackmer's line of sight, he called in an arrest team. Both sisters were arrested and searched. Police found crack cocaine in Harris's bra and \$493 in her sister's purse.

Harris moved to suppress the evidence of the cocaine and cash, arguing police did not have probable cause to believe she committed a crime. The trial court found that Officer Blackmer's testimony was reliable, concluded there was probable cause to arrest Harris for possession with intent to deliver, and denied the motion. Harris argues on appeal her motion should have been granted.

The trial court did not enter written findings and conclusions of law as required under CrR 3.6 until October 18, 2010, when this appeal was pending. This court will not reverse on this ground unless the appellant can establish prejudice from the delay or that the findings and conclusions were tailored to meet the issues presented. State v. Quincy, 122 Wn. App. 395, 398, 95 P.3d 353 (2004), review denied, 153 Wn.2d 1028 (2005). The findings are consistent

with the testimony. Harris has not filed a reply brief and does not argue the findings were tailored. We see no basis for holding Harris was prejudiced by the late entry.

Where, as here, an appellant does not challenge a court's factual findings on the suppression motion, they are verities on appeal. State v. Acrey, 148 Wn.2d 738, 745, 64 P.3d 594 (2003). In an order pertaining to suppression of evidence, we review conclusions of law de novo. Acrey, 148 Wn.2d at 745.

Both article 1, section 7 of the Washington Constitution and the Fourth Amendment to the United States Constitution require that arrests be supported by probable cause. See State v. Graham, 130 Wn.2d 711, 724, 927 P.2d 227 (1996). Probable cause exists where the facts and circumstances within the arresting officer's knowledge and of which the officer has reasonably trustworthy information are sufficient to warrant a person of reasonable caution in a belief that an offense has been committed. Graham, 130 Wn.2d at 724. In determining whether probable cause to arrest in a narcotics case exists, the court must consider the totality of the facts and circumstances within the officer's knowledge at the time of the arrest. Graham, 130 Wn.2d at 724. The standard of reasonableness to be applied takes into consideration the special experience and expertise of the arresting officer. Graham, 130 Wn.2d at 724.

Harris argues this case is similar to State v. Poirier, 34 Wn. App. 839, 664 P.2d 7 (1983). In that case, according to written findings entered after a suppression hearing, police officers saw Poirier standing in a parking lot. They

saw another man arrive at the parking lot, get out of his vehicle, and approach Poirier. The men exchanged what appeared to be white envelopes or packages. They were arrested, and after a search revealed cocaine and money, they were convicted. Poirier, 34 Wn. App. at 841-42. The conviction was reversed on appeal because there was not probable cause. The facts as found by the trial court did not establish that the officers knew the men, or that drug activity regularly took place in the parking lot, or that the envelopes were particularly distinctive of packaged drugs, or that the men acted in a suspicious or furtive manner. Poirier, 34 Wn. App. at 843. A mere exchange of white envelopes or packages is not probable cause.

In contrast to Poirier, in this case there were additional circumstances indicative of drug transactions—the use of the garage by people without cars, the use of the payphone as a place to put an object rather than for making a call, the insertion of an object into the mouth, and the transaction involving cash. While presence in a high crime area by itself is insufficient to establish probable cause, it is a relevant consideration in determining whether probable cause exists. See State v. Larson, 93 Wn.2d 638, 644-45, 611 P.2d 771 (1980).

Officer Blackmer observed what appeared to be three drug transactions. The fact that he did not actually see the object exchanged at the phone booth is not determinative. Sufficient suspicious circumstances surrounding an exchange, rather than an officer's ability to identify the object, can properly support probable cause. State v. Fore, 56 Wn. App. 339, 783 P.2d 626 (1989) (

“Absolute certainty by an experienced officer as to the identity of a substance is unnecessary to establish probable cause.”), review denied, 114 Wn.2d 1011 (1990); State v. White, 76 Wn. App. 801, 803-05, 888 P.2d 169 (1995) (probable cause where officer observed through binoculars circumstances indicating a drug transaction, though officer was unable to identify the object exchanged), aff’d, 129 Wn.2d 105, 915 P.2d 1099 (1996).

The trial court specifically relied on State v. Rodriguez-Torres, 77 Wn. App. 687, 893 P.2d 650 (1995). A police officer saw another man hand money to Rodriguez-Torres, who was holding his left hand in a cupped fashion. The man picked an item out of Rodriguez-Torres’ left hand and looked at it. As the officer approached, someone yelled “police!” The man dropped the item and left. Rodriguez Torres picked up the item and left. The officer stopped Rodriguez-Torres and arrested him. This court held that the officer’s observations, in light of his experience and expertise, provided probable cause to conclude that a drug offense was committed. Rodriguez-Torres, 77 Wn. App. at 693-94.

Following Fore, White, and Rodriguez-Torres, we conclude the officer had probable cause to arrest. The trial court did not err in denying the motion to suppress.

Affirmed.

Becker, J.

WE CONCUR:

Dupe, C. S.

Leach, A. C. J.