

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

STATE OF WASHINGTON,

Respondent,

v.

GREGORY FITZGERALD BIANCHI,

Appellant.

No. 66139-6-I

DIVISION ONE

UNPUBLISHED OPINION

FILED: March 12, 2012

Leach, J. — Gregory Bianchi appeals his conviction for second degree theft. He alleges that the arresting officer lacked probable cause to arrest him because the officer did not personally witness a crime being committed. Because the law does not require the officer to witness personally the commission of a felony to have probable cause to make a warrantless arrest for that felony, we affirm.

Background

On June 26, 2009, Gregory Bianchi shoplifted a designer handbag from the Nordstrom department store in downtown Seattle. Zachary Prichartt, the store's loss prevention officer, saw Bianchi conceal a white designer handbag in a plastic bag and leave the store without paying. Prichartt attempted to stop Bianchi outside the store, but Bianchi dropped the handbag and fled on foot. Prichartt recovered the bag and chased Bianchi until he saw Seattle Police Officer Kerry Zieger on bike patrol nearby. He identified himself as Nordstrom loss prevention and pointed toward Bianchi, saying something to the effect of "this guy just stole some merchandise." Officer Zieger had

seen the two men running through traffic. Based on his observation and Pritchatt's statement, Officer Zieger detained Bianchi while his partner, Officer Raul Vaca, interviewed Prichartt. Based on Prichartt's eyewitness account to the officers, Zieger arrested Bianchi on suspicion of theft. The State charged Bianchi with second degree theft. He moved to dismiss the charge for lack of probable cause. The trial court denied the motion. After a bench trial, the court convicted Bianchi. He appeals.

Analysis

Bianchi contends that the police did not have probable cause to arrest him. Whether probable cause exists presents a legal question that we review de novo.¹ Probable cause for arrest 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."² This determination rests on "the totality of facts and circumstances within the officer's knowledge at the time of the arrest."³ The officer need not have evidence proving each element of the crime beyond a reasonable doubt;⁴ however, the bare suspicion of criminal activity does not give an officer probable cause to arrest.⁵

Bianchi argues that because the officers did not witness him taking the handbag or even see him holding the handbag, they did not have probable cause to arrest. We disagree. While the law requires an officer to personally witness the crime in order to

¹ State v. Wagner-Bennett, 148 Wn. App. 538, 541, 200 P.3d 739 (2009).

² State v. Terrovona, 105 Wn.2d 632, 643, 716 P.2d 295 (1986).

³ State v. Fricks, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979).

⁴ Terrovona, 105 Wn.2d at 643.

⁵ State v. Franklin, 41 Wn. App. 409, 416, 704 P.2d 666 (1985).

make a warrantless arrest for most misdemeanor and gross misdemeanor offenses,⁶ felony offenses and misdemeanors involving the unlawful taking of property have no such requirement.⁷ Officer Zeiger saw Prichartt chasing Bianchi through downtown Seattle. He saw Bianchi cutting across traffic attempting to elude Prichartt. Upon further investigation, he heard reliable information that Prichartt, a professional loss prevention officer, personally witnessed Bianchi shoplifting a white designer handbag, and Officer Zeiger was presented with the handbag that Prichartt claimed had been stolen. These undisputed facts create more than a “bare suspicion” that Bianchi committed theft. Based on the totality of the circumstances, Officer Zeiger had probable cause to make the arrest.

Bianchi argues that the circumstances leading up to his arrest were innocuous and did not rise to the level of probable cause. He cites State v. Neth⁸ for the proposition that a series of odd and suspicious, but potentially innocuous, circumstances cannot create probable cause. However, this conclusion relies on a mischaracterization of Neth’s salient facts. In Neth, police officers cited multiple pieces of evidence as probable cause for a search warrant, including the driver’s nervous behavior, inability to provide identification or proof of vehicle ownership, and statements about the presence of several thousand dollars in cash somewhere in the vehicle.⁹ The officers also noticed plastic baggies, common in drug transactions, in plain view, and a trained drug-sniffing dog “hit” on the car numerous times, indicating

⁶ RCW 10.31.100.

⁷ RCW 10.31.100(1).

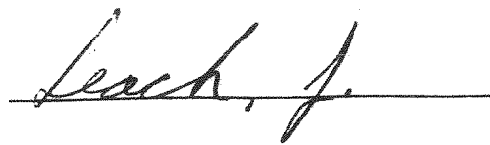
⁸ 165 Wn.2d 177, 184, 196 P.3d 658 (2008).

⁹ Neth, 165 Wn.2d at 183.

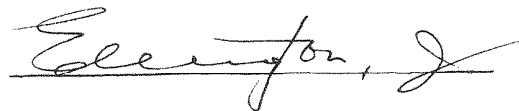
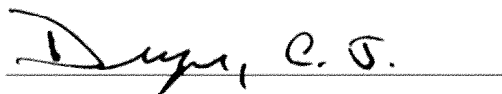
the presence of drugs.¹⁰ The court found that the police failed to establish the dog's reliability, and so its evidence had to be excluded from the probable cause determination.¹¹ Without the evidence that the dog had "hit" on the car in three different locations, the court found the other pieces of evidence, while suspicious, did not create probable cause.¹² The court also suggested that had the dog-sniff evidence been admissible, probable cause would have been likely,¹³ a key detail that Bianchi ignores. Here, Bianchi does not and cannot challenge the reliability of the evidence relied upon by the officers to provide them with probable cause. Prichartt made a reliable eyewitness account of Bianchi shoplifting from Nordstrom and Officer Zieger personally witnessed the flight and chase from the scene of the crime. The trial court correctly concluded that probable cause existed for Bianchi's arrest.

Conclusion

Because Officer Zeiger's personal observations and Prichartt's identification of Bianchi as a thief establish probable cause to arrest Bianchi, we affirm.



WE CONCUR:



¹⁰ Neth, 165 Wn.2d at 183-84.

¹¹ Neth, 165 Wn.2d at 181.

¹² Neth, 165 Wn.2d at 184-85.

¹³ Neth, 165 Wn.2d at 179.