IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. LYLE ELMER ESTEP, Appellant.	)	No. 66727-1-I DIVISION ONE UNPUBLISHED OPINION FILED: July 16, 2012

Appelwick, J. — Estep appeals his conviction for unlawful possession of a firearm in the second degree, arguing the officers' Terry stop violated his constitutional rights, and that the trial court therefore erred by denying his motion to suppress. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). The officers had specific and articulable facts that criminal conduct had occurred, or was about to occur, and had a reasonable belief that Estep might be armed and presently dangerous. The Terry stop was justified. We affirm.

FACTS

At approximately one o'clock in the morning, two King County police officers, Jeff Barden and Koby Hamill, heard a report from Federal Way dispatch

of a suspicious person in the area of their patrol. The suspect was described as an unknown race male that was wearing dark clothing including a hood over his head, carrying a flashlight and possibly a backpack. The caller who reported the suspicious prowling activity also communicated that there had been a recent rash of gas thefts and vehicle prowls in the neighborhood.

The officers responded to the report and arrived in the area within eight to twelve minutes. When they were approximately a mile, or about twelve blocks, from the location where the call was made from, they noticed a man walking on the shoulder of the road. He was wearing a dark hooded jacket, with his hands in his pockets and his hood pulled over his head against the rain. The man was later identified as the defendant, Lyle Estep. There were no other pedestrians in the area. The officers activated the emergency lights, to get Estep to stop and to alert any oncoming vehicles of their location. Estep turned, began walking back towards the patrol car, and removed his hood. He moved his hands towards his pockets, hesitated, dropped them briefly to his sides, and then put them back into his pockets again. Officer Hamil told Estep why they were contacting him, and asked him if he had a flashlight on his person. Estep was cooperative and responded that he did not have a flashlight.

Concerned with Estep's movements, Officer Hamil asked him to remove his hands from his pockets. Estep initially complied, though he then put his hands back in his pockets. At that point, Officer Hamil asked Estep if it would be alright if Officer Barden performed a pat-down search of his person for any weapons. Estep said that would be fine. Upon conducting the pat-down, Officer

Barden felt a hard object under Estep's waistband, which he believed to be a gun. When he asked Estep if he was feeling a gun, Estep said, yes. The officers placed Estep in handcuffs and removed a fully loaded semiautomatic pistol from his waistband. Officer Hamill asked Estep if he had any other weapons on his person, and he responded that he did, gesturing to his right hip, where Officer Hamill located a buck knife with a six inch blade.

The State charged Estep with one count of unlawful possession of a firearm in the second degree. At trial, Estep moved to suppress evidence under CrR 3.6. After a suppression hearing with argument from both parties, the trial court denied the motion. Proceeding by bench trial on a stipulated record, the trial court found Estep guilty as charged. Estep timely appeals.

DISCUSSION

Estep argues the trial court erred by denying his motion to suppress evidence. He contends the officers lacked the reasonable suspicion required to justify a Terry stop.

We review the trial court's determination on a motion to suppress for substantial evidence and to see if the findings support the conclusions of law. State v. Schlieker, 115 Wn. App. 264, 269, 62 P.3d 520 (2003). Unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of a finding's truth. Id.

Generally, warrantless searches and seizures are unconstitutional. State v. Gatewood, 163 Wn.2d 534, 539, 182 P.3d 426 (2008). A Terry stop is a well-

established exception, however, that allows the police to briefly stop and detain a person to investigate whether a crime has occurred. Id.; Terry, 392 U.S. at 30-31. Although less intrusive than an arrest, a Terry stop is nevertheless a seizure. State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986). A Terry stop is justified if the State can point to specific and articulable facts giving rise to a reasonable suspicion that the person stopped is, or is about to be, engaged in criminal activity. State v. Kinzy, 141 Wn.2d 373, 384-85, 5 P.3d 668 (2000).

When reviewing the justification for a Terry stop, we evaluate the totality of the circumstances presented to the officer. State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991). The totality of the circumstances include factors such as the officer's training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, the amount of physical intrusion upon the suspect's liberty, and the length of time the suspect is detained. State v. Acrey, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

Estep first argues the search and seizure was unjustified, because he was completely cooperative with the officers and did nothing to create a reasonable suspicion. He relies on Gatewood, 163 Wn.2d at 542. In that case, officers in a patrol car saw the defendant sitting at a bus shelter. Id. at 537. As they drove by, Gatewood's eyes grew large in surprise and he twisted his body to the side as though trying to hide something. Id. He then left the shelter and jaywalked across the street. Id. at 537-38. The court held that his furtive or startled reaction, without more, did not provide a reasonable suspicion to justify a Terry stop. Id. at 540.

Estep argues that his actions were far less suspicious than Gatewood's. He never attempted to conceal anything from the officers or evade them, but actually walked towards them, took his hood down, and was cooperative throughout, with the exception of putting his hands back in his pockets despite the instruction to keep them in view. But, while Estep correctly asserts the general principle of Gatewood—that a defendant's nervous or furtive reaction to seeing police will not, in and of itself, support a Terry stop—Gatewood is plainly distinguishable. In that case, the officers were patrolling an area and happened upon Gatewood by chance. Id. at 537. Here, by contrast, the officers were responding to a specific report of suspicious criminal activity in the area. The suspect matched the general description given in the report and was present in an area that had a large amount of recent crime, less than one mile away from where the suspect in the report was seen eight to twelve minutes prior. It was 1:00 a.m. on a rainy night, and there were no other pedestrians around.

Estep next relies on State v. Doughty, 170 Wn.2d 57, 65, 239 P.3d 573 (2010), another case where the court held that there was not a reasonable suspicion of criminal activity to justify a Terry stop. The court noted that a defendant's mere presence in a high crime area, late at night, did not provide the legal basis for a Terry stop. Id. at 62, 64. But Doughty is distinguishable for the same reasons that Gatewood is. Estep's reliance on Doughty would be proper if the officers' reliance on Estep's presence in a high crime area was the sole basis for justifying the Terry stop. But, the fact that there was a reported rash of recent crime in the area was only one of numerous factors that informed the

officers' decision. Estep's location when the officers contacted him was relevant, not only for its proximity to the alleged high crime area, but also for its proximity to the specific report of suspicious prowling activity. Estep did not match every aspect of the description, but he did have a dark hood and was the only pedestrian in the area, late at night. And, his actions in hesitating and putting his hands back in his pockets also contributed to the officers' concern.

The totality of this evidence supports the officers' reasonable suspicion, grounded in specific and articulable facts, that Estep was engaged in or was about to engage in criminal activity. Estep's argument correctly suggests that any one of the facts, taken separately, may not have provided adequate justification for the officer's decision. But, we do not consider each piece of evidence in isolation. Instead, we consider the totality of the circumstances presented to the officers, including their experience, the location, and Estep's conduct. Glover, 116 Wn.2d at 514. The record supports the conclusion that the Terry stop was justified.

Estep next raises a similar argument, that the officers had no basis to believe he was armed or dangerous when they contacted him. An officer who observes conduct which leads him reasonably to conclude that a person he has detained may be armed and presently dangerous, is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing in an attempt to discover weapons which might be used to assault him. Terry, 392 U.S. at 30. "'The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the

circumstances would be warranted in the belief that his safety or that of others was in danger.'" State v. Harvey, 41 Wn. App. 870, 875, 707 P.2d 146 (1985) (quoting Terry, 392 U.S. at 27).

One factor an officer may consider is the nature of the crime that the suspect is alleged to be involved with. See Id. ("Harvey fit the description and had been pointed out as the [burglary] suspect. It is well known that burglars often carry weapons. The pat-down frisk in this case falls within the self-protective frisk permitted by Terry and necessary to effective law enforcement.") Another factor is a suspect's hand placement and movements, in relation to where weapons may be found. See State v. Harper, 33 Wn. App. 507, 509, 511, 655 P.2d 1199 (1982) ("Because the defendant repeatedly thrust his hands into his coat pockets, the officer feared he had a weapon and patted him down. . . . The defendant's demeanor and actions during questioning provided a sufficient basis for the officer's fear that the defendant's coat pockets contained a weapon.") Both of these factors, weighed in context of the totality of the circumstances, support the officers' belief that their safety was in danger and a pat-down was warranted. They responded to a report of an individual who was prowling and shining a flashlight down residents' driveways late at night. They observed the defendant in the neighborhood approximately 8 to 12 minutes later, and noted the defendant matched the description of the prowler. And, while Estep was generally calm and cooperative, he moved his hands towards his pockets, hesitated, and then placed them into his pockets, making the officers nervous. Under these facts, the officers had a reasonable belief that their safety

might be in danger.

We hold that the officers conducted a lawful seizure of Estep, and that the limited weapons frisk was reasonable under the circumstances. The trial court properly denied Estep's motion to suppress.

We affirm.

WE CONCUR: