IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON, Respondent, v. MATTHEW DAVID LAURO, Appellant.	)))))))))))	No. 67135-9-I DIVISION ONE UNPUBLISHED OPINION FILED: August 1, 2011

Appelwick, J. — Lauro appeals his convictions for felony violation of a court order and making a false or misleading statement to a public servant. He argues that the trial court erred in denying his CrR 3.5 and 3.6 motions to suppress, contending that he was unlawfully detained and that he was unlawfully interrogated without being advised of his rights under Miranda. Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Substantial evidence supports the trial courts findings of fact and conclusions of law. We affirm.

FACTS

On January 1, 2010, the Bremerton Police Department received an anonymous 911 call from a witness who was observing an argument between a man and a woman. The caller noted that the woman looked as though she had been struck in the face, because she had a bloody lip. Officer Martin Garland

responded to that call, arriving at the site of the argument in his patrol car. Officer Garland observed the man, later identified as Matthew Lauro, engaged in a heated discussion with the woman, later identified as Amanda Dragoo. Officer Garland could not hear the discussion, but observed Lauro "leaning into" Dragoo, approximately 6 to 12 inches away from her. Officer Garland got out of his patrol car and approached Lauro and Dragoo. Lauro saw Officer Garland approaching and immediately started walking in the opposite direction, attempting to leave the scene.

Officer Garland observed that Dragoo had been crying and had dried blood around her mouth. Officer Garland then called out to Lauro as he was walking away. Officer Garland did not recall the exact words he used: "I don't remember specifically, but I remember phrasing it in the form of a question. In other words, it wasn't a command to come back to where I was at. It was along the lines of: Hey, can I talk to you for a second." Lauro heard the officer, and paused. Officer Garland testified that Lauro looked back at him and "considered his options." Then Lauro walked back to Officer Garland. Lauro testified that he felt he had no choice but to return to the scene.

Officer Garland questioned Lauro and Dragoo to try and ascertain what was going on. Dragoo seemed intimidated and uncomfortable. Lauro was cooperative. Lauro then told Officer Garland that he did not know Dragoo and had never met her before that night, but was simply trying to borrow a cigarette from her. Officer Garland asked Dragoo about the dried blood on her mouth. He observed that the injury appeared to have happened 24 or 48 hours prior.

Dragoo responded that she had been in a fight with her sister the night before, New Years Eve. Officer Garland suspected that Dragoo was intimidated by Lauro's presence and was not being truthful with him.

When a second officer, Sergeant Wendy Davis, arrived on the scene, the two officers questioned Lauro and Dragoo separately. Sergeant Davis spoke with Lauro while Officer Garland spoke with Dragoo. Dragoo then explained that she and Lauro had been boyfriend and girlfriend and had spent the previous night and several days together. Lauro and Dragoo had walked to the store from Lauro's home a few blocks away. Dragoo also explained that they had been in an argument that morning and she had wanted to leave, but Lauro was holding onto some of her clothing and demanding that she pay him $80 she owed him. The two had come to the store with the intention of getting $80 from a cash machine using her Washington State assistance debit card (also known as a Qwest card). Dragoo told Officer Garland that Lauro had her Qwest card in his wallet. She also had a cell phone in her pocket which she handed to Officer Garland and told him that the phone belonged to Lauro.

Officer Garland presented the cell phone to Lauro and asked him again if he knew Dragoo. Lauro continued to say that he did not know her. Then Officer Garland asked Lauro if he would look in his wallet for Dragoo's Qwest card. At that point, Lauro admitted that they did in fact know each other. He handed over the Qwest card and admitted that the cell phone from Dragoo's pocket belonged to him.

Meanwhile, Sergeant Davis spoke with Dragoo. She asked Dragoo about

the injury to her lip. Dragoo initially responded by saying that she just wanted to get away from Lauro. Dragoo asked if she had to make a statement, and Sergeant Davis told her she did not. Eventually, however, Dragoo told Sergeant Davis that Lauro had assaulted her and that she did not need to take that type of abuse from him. Earlier in the day, Dragoo was concerned about an "issue" with Lauro and locked herself in the bathroom at Lauro's home. Lauro pounded on the bathroom door, telling her to open it. Dragoo was fearful, but eventually did open the door. When she did, Lauro punched her in the mouth. Sergeant Davis then informed Officer Garland that there was probable cause to arrest Lauro for assault, and Officer Garland arrested Lauro.

When Sergeant Davis was writing her report following the arrest, she looked up Lauro's previous history and discovered that he had a no-contact order prohibiting him from contacting Dragoo.

The State charged Lauro with one count of felony violation of a court order and one count of making a false or misleading statement to a public servant. Before trial, Lauro's counsel filed two motions to suppress evidence under CrR 3.5 and 3.6. Those motions were addressed at a hearing on February 16, 2010. The trial court denied both motions to suppress. The following day, on February 17, 2010, a jury found Lauro guilty on both counts. Lauro timely appealed.

DISCUSSION

Lauro argues that the trial court erred by denying his CrR 3.5 and 3.6 motions to suppress evidence. He contends that Officer Garland lacked the

reasonable suspicion required to justify a Terry stop. Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). He also contends that the questioning was a custodial interrogation, because he did not feel he was free to leave, and that his statements thereafter should have been inadmissible since he was not advised of his Miranda rights beforehand. Lauro assigns error to the corresponding conclusions of law entered by the trial court. The trial court concluded:

> [II.] That Officer Garland's contact with the defendant was a permitted Terry stop.
>
> [III.] That because Officer Garland's contact with the defendant was an appropriate investigatory stop under all of the circumstances, the defendant was not in custody at the time of inquiry and therefore providing the defendant Miranda warnings was not required.

(Citations omitted.)

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.

The Fourth Amendment and article I, section 7 of the Washington State Constitution prohibit unreasonable searches and seizures. State v. Day, 161 Wn.2d 889, 893, 168 P.3d 1265 (2007). Miranda warnings must be given whenever a suspect is subject to custodial interrogation by police. State v.

Heritage, 152 Wn.2d 210, 214, 95 P.3d 345 (2004). A person is in "custody" if after considering the circumstances, a reasonable person would feel that his or her freedom was curtailed to a degree associated with a formal arrest. Id. at 218. As a general rule, a warrantless seizure is per se unreasonable and the State bears the burden of demonstrating the applicability of a recognized exception. Day, 161 Wn.2d at 893-94. A well-established exception allows the police to briefly stop and detain a person who the police reasonably suspect is engaged in criminal conduct. Terry, 392 U.S. 1; Day, 161 Wn.2d at 895.

A Terry stop is a seizure for purposes of the Fourth Amendment. Berkemer v. McCarty, 468 U.S. 420, 436-37, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). But unlike a formal arrest, a Terry stop is brief and less coercive than the police interrogation contemplated by Miranda. Heritage, 152 Wn.2d at 218. "[U]nlike a formal arrest, a typical Terry stop is not inherently coercive because the detention is presumptively temporary and brief, is relatively less 'police dominated', and does not easily lend itself to deceptive interrogation tactics." State v. Walton, 67 Wn. App. 127, 130, 834 P.2d 624 (1992) (quoting Berkemer, 468 U.S. at 438-39). To justify a warrantless Terry stop, the State must be able to 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, taking into account the location of the stop and the conduct of the person detained. State v. Glover, 116 Wn.2d 509, 514, 806 P.2d

760 (1991).

When justified, a detaining officer may ask a moderate number of questions during a Terry stop to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect "'in custody'" for the purposes of Miranda. Heritage, 152 Wn.2d at 219 (quoting Berkemer, 468 U.S. at 439-40). By definition, a person subject to an investigative detention under Terry is not free to leave. State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986) ("[A] stop, although less intrusive than an arrest, is nevertheless a seizure."); see also State v. Marcum, 149 Wn. App. 894, 909-10, 205 P.3d 969 (2009) (the fact that numerous police vehicles surrounded the suspect's vehicle in a parking lot did not convert the detention into a custodial arrest).

A person is not in custody simply because the person is detained and questioned by police. While a Terry stop involves a degree of restraint, a routine investigative encounter does not require Miranda warnings. Heritage, 152 Wn.2d at 218; Berkemer, 468 U.S. at 439-40 (Fourth Amendment seizure of a suspect, in the context of a routine, on-the-street Terry stop, does not rise to the level of "custody" for purposes of Miranda). Statements made in the context of a Terry stop are noncustodial even though the suspect may not be free to leave when the statements are made. See, e.g., Walton, 67 Wn. App. at 130 (statements were noncustodial even though police officer testified that he would have arrested the defendant if he attempted to leave).

An investigative encounter or detention must be "reasonably related in

scope to the justification for [its] initiation." Terry, 392 U.S. at 29. The lawful scope of a Terry stop may be enlarged or prolonged as needed, and the officer may "'maintain the status quo momentarily while obtaining more information.'" State v. Williams, 102 Wn.2d 733, 737, 689 P.2d 1065 (1984) (quoting Adams v. Williams, 407 U.S. 143, 146, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972)); State v. Smith, 115 Wn.2d 775, 785, 801 P.2d 975 (1990).

Here, we turn first to whether substantial evidence supported the trial court's conclusion that Officer Garland conducted a lawful Terry stop. We look to whether Officer Garland, weighing the totality of the circumstances, had a reasonable suspicion that Lauro was or was about to be, engaged in criminal activity. Kinzy, 141 Wn.2d at 384-85; Glover, 116 Wn.2d 514. Here, there were reasonable grounds to justify a Terry stop. Officer Garland was responding to an anonymous caller's report that a male and female were engaged in a heated argument. The caller also communicated concern that there may have been an assault. When Officer Garland arrived at the scene, he observed the heated discussion himself, with Lauro "leaning into" Dragoo. Officer Garland also observed that Dragoo looked to have been crying and had dried blood around her mouth. Lastly, when Lauro saw Officer Garland approaching him on foot, Lauro swiftly began walking in the opposite direction.[1]

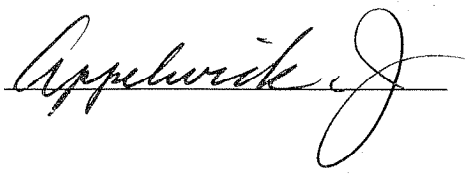
[1] The trial court entered findings of fact on this same evidence. Finding of fact 1 addressed the anonymous 911 caller's report of a domestic verbal dispute and apparent injury to the female. Finding of fact 2 was that Officer Garland observed the heated argument and the injury to Dragoo's lip. Finding of fact 3 was that Lauro began to walk away when Officer Garland approached on foot. Lauro does not dispute any of these findings of fact and they are thus verities on appeal. Hill, 123 Wn.2d at 644.

The totality of this evidence supports Officer Garland's reasonable suspicion, grounded in specific and articulable facts, that Lauro was engaged in or was about to engage in criminal activity. Lauro argues that none of his actions, on their own, rose to the level of criminal activity. He points out that a heated discussion is not illegal; that Dragoo's injury was an old one; and that Lauro's initial response of walking away from the scene was not an illegal act either. Lauro's argument is unpersuasive. We do not consider each piece of evidence in isolation, but consider the totality of the circumstances presented to Officer Garland, including his experience, the location, and the conduct of Lauro. Glover, 116 Wn.2d at 514. We hold that a Terry stop was warranted by the circumstances here and that the trial court did not err in concluding that Officer Garland's contact with Lauro was a permitted Terry stop.

We turn next to whether substantial evidence supported the trial court's conclusion that Lauro "was not in custody at the time of inquiry and therefore providing [him] Miranda warnings was not required." Lauro argues that he did not feel free to leave the scene when Officer Garland called him back. He contends that he was thus seized and held in custody, for purposes of a Miranda analysis and that Officer Garland was required to give him Miranda warnings before commencing questioning. But, Lauro's argument about custodial interrogation fails on its face, in light of our holding that Officer Garland's contact with Lauro was a permitted Terry stop. As both the United States and the Washington Supreme Court have stated, a routine Terry stop is not custodial for the purposes of Miranda. Berkemer, 468 U.S. at 439-440; Heritage, 152 Wn.2d

at 218. Terry stops are brief, in public, and less "'police dominated'" than the police interrogations contemplated by Miranda. Heritage, 152 Wn.2d at 218 (quoting Berkemer, 468 U.S. at 439-40). Thus a detaining officer may ask a moderate number of questions during a Terry stop to determine the identity of the suspect and to confirm or dispel the officer's suspicions without rendering the suspect "in custody" for the purposes of Miranda. Id. Here, this was precisely how the officers proceeded. They asked questions to confirm or dispel their suspicions of assault, and only arrested Lauro after obtaining probable cause. We hold that there was substantial evidence to support the trial court's conclusion of law that Lauro was not in custody at the time of inquiry, and thus that he was not entitled to Miranda warnings.

We affirm.



WE CONCUR: