IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

STATE OF WASHINGTON,	)	No. 67565-6-I
	)	
Respondent,	)	
v.	)	UNPUBLISHED OPINION
	)	
REMANDEZ MATTHEW NELSON,	)	
	)	
Appellant.	)	FILED: January 17, 2012

Schindler, J. — A Terry[1] stop is justified if there is a reasonable suspicion based on specific and articulable facts that criminal conduct has occurred or is about to occur. Because the record supports the conclusion that the Terry stop was justified, we affirm the conviction of Remandez Matthew Nelson for unlawful possession of marijuana with intent to deliver within 1,000 feet of a school bus route stop.

FACTS

The facts are undisputed. Lakewood Police Department Officer Aaron Grant is an experienced patrol officer. At approximately 8:06 p.m. on April 23, 2009, Officer Grant was driving alone in a marked patrol car on South Tacoma Way, a major arterial in Pierce County.

Officer Grant saw a burgundy Chevy Impala and several other vehicles traveling

[1] Terry v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

in the opposite direction and made a U-turn. As soon as Officer Grant got behind the Chevy Impala, the car "took off," accelerating rapidly at a speed exceeding the posted 35 m.p.h. speed limit and making "an abrupt right-hand turn" down an unlit alley. Officer Grant briefly lost sight of the car after it turned down the alley. As Officer Grant turned into the alley to follow the Impala, he activated the patrol car's emergency lights to initiate a stop.

The Impala came to "a stop sideways very, very quickly" with the front end of the car "off of the road and hanging over a small embankment." A passenger in the car, later identified as Remandez Matthew Nelson, and another person immediately jumped out of the car. Officer Grant saw Nelson bend down near the front driver's side tire and reach under the car. The other passenger stood by the hood of the car. The driver and a third passenger stayed inside the car.

Officer Grant directed all four of the Impala's occupants to stand by the hood of the patrol car and called for backup.

When the backup arrived, Officer Grant asked one of the officers to check underneath the Impala near the front driver's side tire. The officer found a purse and a large Ziploc bag with nine individually wrapped bags of marijuana inside it.

A female passenger told Officer Grant that right after the driver picked up Nelson, he showed them the bag of marijuana and asked where he could sell it. The passenger suggested selling the marijuana in an area near the McChord Air Force Base.

Officer Grant read Nelson his Miranda[2] rights and placed him under arrest.

[2] Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

Nelson waived his rights and told Officer Grant that the marijuana was his "but that it actually wasn't marijuana. It was a bag of weed."

The State charged Nelson with possession of marijuana with intent to deliver in violation of RCW 69.50.401(1)(2)(c) within 1,000 feet of a school bus route stop contrary to RCW 69.50.435. Nelson filed a motion to suppress all the evidence. Nelson argued that Officer Grant lacked justification to conduct a Terry stop.

Officer Grant was the only witness to testify at the suppression hearing. Officer Grant said that because"[t]he vehicle [was] accelerating away from me at a high rate of speed, I felt that something possible was awry, crime was afoot, something was wrong." Officer Grant also testified that "if I do a traffic stop, they usually always pull to the right immediately and stay in their vehicle. They don't park sideways very quickly and jump out of the car." Officer Grant said that after stopping the car, he was concerned for his safety. "The fact that the whole incident took place in a high crime area," where "[t]here's lots of gang activity . . . [and] lots of narcotics," made him concerned for his safety as a solo officer. Officer Grant testified that he directed the Impala's occupants to "walk back to the hood of the [patrol] car . . . for officer safety reasons, not knowing what they were doing, not knowing what the reaching was all about."

The trial court denied the motion to suppress. The court ruled that the Terry stop was justified and the marijuana located during the stop and the statements Nelson made to Officer Grant were admissible. The court entered "Findings of Fact and Conclusions of Law For Hearing Pursuant to CrR 3.5 and 3.6." The conclusions of law state:

1. The officer conducted a lawful Terry stop of the vehicle that the

defendant was a passenger in. The vehicle and its occupants were "seized" when the officer activated his emergency lights and subsequently ordered everyone to his patrol car. Based on the totality of the circumstances listed above, the officer had a reasonable suspicion that a traffic infraction and/or a crime had occurred or was ongoing.

2. The officer lawfully arrested the defendant.
3. The defendant's statements to Officer Grant are admissible. The defendant was properly [informed] of his constitutional rights. His decision to waive those rights was intelligently, knowingly, and voluntarily made.

Nelson waived his right to a jury trial. Following a bench trial on stipulated facts, the court convicted Nelson of unlawful possession of marijuana with intent to deliver within 1,000 feet of a school bus route stop. The court sentenced Nelson to zero days confinement on the conviction for possession with intent to deliver and 24 months confinement on the school bus route stop enhancement.

ANALYSIS

Nelson contends that the trial court erred in denying his motion to suppress because Officer Grant conducted a lawful stop under Terry. Nelson argues that, as in State v. Gatewood, 163 Wn.2d 534, 182 P.3d 426 (2008), Officer Grant lacked a reasonable suspicion supported by specific and articulable facts that criminal activity had occurred or was about to occur.

We review a trial court's decision on a motion to suppress to determine whether the findings are supported by substantial evidence and whether those findings, in turn, support the conclusions of law. State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003); State v. Broadaway, 133 Wn.2d 118, 130-31, 942 P.2d 363 (1997). Where, as here, the findings are not challenged, the findings of fact are verities on appeal.

O'Neill, 148 Wn.2d at 571; Broadaway, 133 Wn.2d at 131. We review conclusions of law de novo. State v. Johnson, 128 Wn.2d 431, 443, 909 P.2d 293 (1996).

Subject to a few " 'jealously and carefully drawn' exceptions," a warrantless seizure violates both the Fourth Amendment and article I, section 7 of the Washington Constitution. State v. Williams, 102 Wn.2d 733, 736, 689 P.2d 1065 (1984)[3] (quoting State v. Houser, 95 Wn.2d 143, 149, 622 P.2d 1218 (1980)). A Terry stop is a well-established exception that allows the police to briefly stop and detain a person to investigate whether a crime has occurred. See Terry v. Ohio, 392 U.S. 1, 30-31, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); State v. Day, 161 Wn.2d 889, 895, 168 P.3d 1265 (2007).

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 officer can point to " 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.' " Kennedy, 107 Wn.2d at 5 (quoting Terry, 392 U.S. at 21). A reasonable suspicion is the "substantial possibility that criminal conduct has occurred or is about to occur." Kennedy, 107 Wn.2d at 6. Whether an officer's suspicion is reasonable is determined by the totality of the circumstances known to the officer at the inception of the stop. Gatewood, 163 Wn.2d at 539; State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991).

"[T]he totality of the circumstances . . . include[s factors such as] the officer's training and experience, the location of the stop, and the conduct of the person detained;" as well as " 'the purpose of the stop, the amount of physical intrusion upon

[3] (Internal quotation marks and citation omitted.)

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) (quoting Williams, 102 Wn.2d at 740). Courts may consider flight to determine whether an officer had reasonable suspicion of criminal activity. Gatewood, 163 Wn. 2d at 540 (citing State v. Little, 116 Wn.2d 488, 496, 806 P.2d 749 (1991)). And while innocuous explanations might exist, circumstances appearing innocuous to the average person may appear incriminating to a police officer, based on the officer's experience. State v. Samsel, 39 Wn. App. 564, 570, 694 P.2d 670 (1985).

Nelson argues that the decision in Gatewood controls. Gatewood is easily distinguishable. In Gatewood, officers driving by a bus shelter saw Gatewood visibly react as they drove by. Gatewood, 163 Wn.2d at 537. Gatewood twisted to the left as if to hide something and then got up and jaywalked across the street. Gatewood, 163 Wn.2d at 537-38. The court held that the evidence was insufficient to justify a Terry stop because there was no articulable suspicion of criminal wrongdoing. Gatewood, 163 Wn. 2d at 541.

Here, unlike in Gatewood, the undisputed facts, together with the rational inferences from those facts, establish that there was a reasonable suspicion that criminal conduct had occurred or was about to occur.

As soon as Officer Grant pulled up behind the Impala, the driver rapidly accelerated, fleeing at a speed above the posted speed limit and turning down an alley in a high crime area. After briefly losing sight of the Impala, Officer Grant saw the Impala come quickly to a stop in an unusual manner, sideways in the alley with its front

end off the road. Nelson and another occupant immediately jumped out of the car. Nelson went to the front of the Impala and reached under the car.

Nelson asserts that there was no evidence the Impala was fleeing. Contrary to Nelson's assertion, the undisputed evidence in the record shows that the Impala fled from Officer Grant. Finding of Fact No. 6 states:

> The officer believed based on his training and experience that the vehicle was purposefully fleeing or avoiding him. The officer noted that the vehicle's driving was unusual and inconsistent with how people normally drive when a police car is present, i.e., reduced speeds and complying with all traffic laws.

Conclusion of Law No. 1 also states, in pertinent part, that "[b]ased on the totality of the circumstances listed above, the officer had a reasonable suspicion that a . . . crime had occurred or was ongoing." The record supports the trial court's conclusion that the Terry stop was justified.

In the alternative, Nelson argues that Officer Grant unlawfully detained him. An officer "should be able to control the scene and ensure his or her own safety." State v. Mendez, 137 Wn.2d 208, 220, 970 P.2d 722 (1999), overruled in part on other grounds by Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007). An officer must be able "to articulate an objective rationale predicated specifically on safety concerns . . . for ordering a passenger to . . . exit the vehicle." Mendez, 137 Wn.2d at 220. Factors bearing on whether an officer has an objective concern for safety include "the number of officers, the number of vehicle occupants, the behavior of the occupants, the time of day, the location of the stop, traffic at the scene, affected citizens, or officer knowledge of the occupants." Mendez, 137 Wn.2d at 220-21.

There is no dispute that the Impala and its occupants were seized when Officer Grant activated the emergency lights and ordered all the occupants to stand by the hood of the patrol car. The unchallenged findings support Officer Grant's decision to detain Nelson.

After the driver stopped the Impala in an unusual manner sideways in the alley, Nelson and another passenger immediately jumped out. Nelson went to the front of the Impala and reached under the car. The Impala's four occupants outnumbered Officer Grant, who was alone in an unlit alley in a high crime area.

The record supports an objective safety concern and the brief detention of the driver and passengers.

Affirmed. [4]

Schindler, J.

WE CONCUR:

Leach, A.C.J.

Appelwick, J.

[4] The State also argues that the trial court properly admitted the evidence because Nelson had abandoned it, citing State v. Reynolds, 144 Wn.2d 282, 27 P.3d 200 (2001). We agree. See Reynolds, 144 Wn.2d at 290-91 (property that defendant abandoned before seizure occurred was admissible evidence).