

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

STATE OF WASHINGTON,)	No. 30273-3-III
)	
Respondent,)	
)	
v.)	
)	
MIGUEL ANGEL CASTANEDA,)	UNPUBLISHED OPINION
)	
Appellant.)	
)	

Brown, J. • Miguel Angel Castaneda appeals his methamphetamine possession conviction following a stipulated-facts bench trial in Walla Walla County. First, he contends the trial court erred in reasoning his frisk was justified under the facts when denying his CrR 3.6 evidence suppression motion. Second, he challenges the court’s finding he had the present or likely future ability to pay legal financial obligations (LFOs). We reject his contentions, and affirm.

FACTS

The facts are mainly drawn from the CrR 3.6 hearing and the trial court’s findings

of fact and conclusions of law. The record shows no disputed facts were presented and none are argued here. We note the court's findings appear substantially consistent with the Report of Proceedings (RP).

Shortly after 1:00 a.m. on April 18, 2011, Deputy Sheriff Kenton Boyd made a legal traffic stop of a vehicle in which Mr. Castaneda was a rear seat passenger. Deputy Boyd had followed the vehicle from an area known for gang activity where he observed the vehicle stop briefly while an occupant went to and returned from a house. As Deputy Boyd approached the vehicle, he estimated there were four or five occupants inside. He had difficulty seeing in the vehicle's back seat area due to the dark window tint. Deputy Boyd was concerned for his safety because of the tinted windows. Additionally, Deputy Boyd was aware of reports the vehicle had been involved in a weapon brandishing or shooting earlier that evening. After Deputy Boyd arrested the driver for traffic violations and other passengers on active warrants, two passengers remained in the vehicle.

Based on reports the vehicle may have been recently involved in drug trafficking, Deputy Boyd requested a canine unit to sniff the vehicle's exterior. Officer Gunner Fulmer arrived with his canine and Deputy Boyd informed him of the earlier reports regarding the vehicle and its driver being involved in a shooting that evening. During the canine sniff, Officer Fulmer too had difficulty seeing in the vehicle's back seat area due to the dark window tint. Officer Fulmer's canine soon detected drugs present in the

vehicle. When the driver denied consent to search the vehicle, officers decided to seize it and apply for a search warrant.

Detective Kevin Bayne, a local gang expert, arrived and told officers some occupants were affiliated with gangs, some were reported to be involved in a shooting two and a half weeks earlier, some may have been involved in a shooting two years earlier, and the vehicle may have been involved in drug trafficking two weeks earlier. Based on this information, Detective Bayne told the officers to frisk the remaining occupants for weapons upon ordering them out of the vehicle.

Acting upon the information Deputy Boyd and Detective Bayne provided, and his knowledge of the shooting reports earlier in the evening, Officer Fulmer frisked Mr. Castaneda's person by patting down his outer clothing in search of weapons. By the time Officer Fulmer frisked Mr. Castaneda, he was one of just two remaining occupants. During the frisk, Officer Fulmer felt a bulge in Mr. Castaneda's right front pocket. He asked Mr. Castaneda what the bulge was and Mr. Castaneda responded it was a wad of cash. Officer Fulmer reached in to the top of Mr. Castaneda's pocket just enough to pull the wad up and confirm it was cash. As he did so, a baggie fell out of Mr. Castaneda's pocket. Mr. Castaneda admitted the baggie contained methamphetamine.

Detective Bayne added his belief in reports that the vehicle driver always carried a gun, and his concern the driver had passed the gun off before his arrest. Detective Bayne

recalled the reports about the vehicle, the fact officers found no weapon on the driver during his arrest, and the fact it is common for gang members to pass weapons to affiliates in anticipation of a search, gave the officers “a high suspicion” one of the remaining occupants possessed a gun. RP at 68.

The State charged Mr. Castaneda with unlawful methamphetamine possession. Mr. Castaneda moved to suppress the methamphetamine and dismiss the charge, contending police obtained the evidence without authority of law. In a letter opinion, the superior court denied Mr. Castaneda’s motions and concluded Officer Fulmer’s frisk of Mr. Castaneda was justified to preserve officer safety. In findings of fact and conclusions of law, the court stated, “[T]he baggie containing methamphetamine that fell from Mr. Castaneda’s pocket was discovered during a valid pat-down search for weapons for officer safety.” Clerk’s Papers (CP) at 71.

The court found Mr. Castaneda guilty upon stipulated facts. At sentencing, the superior court inquired on Mr. Castaneda’s employment status, and he responded he worked seasonally at a local orchard and would return to work in two days. The court did not inquire further into Mr. Castaneda’s financial resources or ability to pay, including the amount of his other financial obligations. However, the court was aware Mr. Castaneda was unmarried, resided with his parents, carried a large wad of cash when Officer Fulmer frisked him, could afford to buy methamphetamine, and was generally

employable. In paragraph 2.5 of the judgment and sentence, the court found Mr.

Castaneda had the present or likely future ability to pay LFOs, stating,

The court has considered the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court specifically finds that the defendant has the ability or likely future ability to pay the legal financial obligations ordered herein.

CP at 55.

Mr. Castaneda appealed.

ANALYSIS

A. Frisk

The issue is whether the superior court erred by denying Mr. Castaneda's motion to suppress the methamphetamine, considering Mr. Castaneda's unlawful frisk contention. He argues Officer Fulmer had no reasonable safety concern to justify his search.

Upon a trial court's denial of a suppression motion, we review the challenged findings of fact for substantial evidence and conclusions of law de novo. *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). Here, the material facts are largely undisputed, even stipulated. Therefore, we review de novo the superior court's legal conclusion that Officer Fulmer's frisk of Mr. Castaneda was justified to preserve officer safety.

Both the federal and state constitutions protect persons against unreasonable government searches and seizures. U.S. Const. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.”); Const. art. I, § 7 (“No person shall be disturbed in his private affairs, or his home invaded, without authority of law.”). Under these provisions, “[w]arrantless searches are per se unreasonable unless justified by a recognized exception.” *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009). Exceptions to the warrant requirement are “‘jealously and carefully drawn.’” *State v. Meneese*, 174 Wn.2d 937, 943, 282 P.3d 83 (2012) (quoting *State v. McKinnon*, 88 Wn.2d 75, 79, 558 P.2d 781 (1977)).

A protective frisk for weapons is an exception to the warrant requirement. *State v. Collins*, 121 Wn.2d 168, 172, 847 P.2d 919 (1993). An officer may perform a frisk if the following requirements are met: “(1) the initial stop must be legitimate; (2) a reasonable safety concern must exist to justify a protective frisk for weapons; and (3) the scope of the frisk must be limited to the protective purpose.” *Id.* at 173. Mr. Castaneda does not challenge the validity of the stop or the scope of the frisk, only whether Officer Fulmer had a reasonable safety concern to justify the frisk.

A reasonable safety concern exists “when an officer can point to ‘specific and articulable facts’ which create an objectively reasonable belief that a suspect is ‘armed

No. 30273-3-III
State v. Castaneda

and presently dangerous.” *Collins*, 121 Wn.2d at 173 (quoting *Terry v. Ohio*, 392 U.S. 1, 21-24, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). “The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent [person] in the circumstances would be warranted in the belief that his [or her] safety or that of others was in danger.” *Id.* (alterations in original) (quoting *Terry*, 392 U.S. at 27). ““A founded suspicion is all that is necessary.” *State v. Harrington*, 167 Wn.2d 656, 668, 222 P.3d 92 (2009) (emphasis omitted) (quoting *State v. Belieu*, 112 Wn.2d 587, 601-02, 773 P.2d 46 (1989)). While ““generalized suspicion is insufficient to justify a frisk,” *State v. Bee Xiong*, 164 Wn.2d 506, 511, 191 P.3d 1278 (2008) (quoting *State v. Galbert*, 70 Wn. App. 721, 725, 855 P.2d 310 (1993)), “officers in the field must routinely look at the potentially criminal roles of individuals in context, not in isolation,” *State v. Horrace*, 144 Wn.2d 386, 397, 28 P.3d 753 (2001).

Mr. Castaneda contends Officer Fulmer had no reasonable safety concern to justify the frisk. He argues Officer Fulmer did not point to specific and articulable facts creating an objectively reasonable belief Mr. Castaneda was armed and presently dangerous. But at the time officers ordered the remaining occupants out of the vehicle, Officer Fulmer was aware of reports the vehicle and its driver were involved in a shooting earlier in the evening, and some occupants were affiliated with gangs. From these specific and articulable facts, Officer Fulmer could reasonably infer that because officers

found no weapon on the driver during his arrest, one of the remaining occupants might have possessed a gun. Viewing each occupant's potential criminal role in context, Officer Fulmer had a founded suspicion one of the remaining occupants was armed and presently dangerous. Indeed, Detective Bayne recalled officers had "a high suspicion" this was the case. RP at 68.

In the circumstances, this founded suspicion was individualized, not generalized, because by the time Officer Fulmer frisked Mr. Castaneda, he was one of just two remaining occupants. While Officer Fulmer was not absolutely certain Mr. Castaneda was armed, a reasonably prudent person in the circumstances would be warranted in believing his or her safety was in danger. Therefore, Officer Fulmer pointed to specific and articulable facts creating an objectively reasonable belief Mr. Castaneda was armed and presently dangerous. Officer Fulmer's warrantless frisk of Mr. Castaneda was thus constitutional because it was justified by a reasonable safety concern. In sum, the trial court did not err in its CrR 3.6 rulings.

B. Legal Financial Obligations

The issue is whether the superior court's finding that Mr. Castaneda had the present or likely future ability to pay LFOs is clearly erroneous. Mr. Castaneda contends this finding, contained in paragraph 2.5 of the judgment and sentence, is unsupported by the record.

No. 30273-3-III
State v. Castaneda

We review a trial court's determination on an offender's financial resources and ability to pay under the clearly erroneous standard. *State v. Bertrand*, 165 Wn. App. 393, 403-04 n.13, 267 P.3d 511 (2011) (citing *State v. Baldwin*, 63 Wn. App. 303, 312, 818 P.2d 1116 (1991), 837 P.2d 646 (1992)). "A finding of fact is clearly erroneous when, although there is some evidence to support it, review of all the evidence leads to a 'definite and firm conviction that a mistake has been committed.'" *Schryvers v. Coulee Cmty. Hosp.*, 138 Wn. App. 648, 654, 158 P.3d 113 (2007) (quoting *Wenatchee Sportsmen Ass'n v. Chelan County*, 141 Wn.2d 169, 176, 4 P.3d 123 (2000)).

The trial court need not make formal, specific findings on an offender's present or likely future ability to pay LFOs. *Bertrand*, 165 Wn. App. at 404 (citing *Baldwin*, 63 Wn. App. at 311-12). However, the court must make an adequate record for us to conclude there is a sufficient "factual basis for the defendant's . . . ability to pay." *Baldwin*, 63 Wn. App. at 311 (affirming a trial court finding that an offender had the present or likely future ability to pay LFOs where the sole evidence to support it was a statement in the presentence report that the offender "describe[d] himself as employable"); *see also Bertrand*, 165 Wn. App. at 404 (reversing, as clearly erroneous, a trial court finding that an offender had the present or likely future ability to pay LFOs where the record contained no evidence to support it). Specifically, the trial court must make a record showing "the trial court judge took into account the financial resources of

No. 30273-3-III
State v. Castaneda

the defendant and the nature of the burden' imposed by LFOs." *Bertrand*, 165 Wn. App. at 404 (quoting *Baldwin*, 63 Wn. App. at 312).

At sentencing, the superior court inquired on Mr. Castaneda's employment status, and he responded he worked seasonally at a local orchard and would return to work in two days. The court did not inquire further into Mr. Castaneda's financial resources or ability to pay, including the amount of his other financial obligations. However, the court was aware Mr. Castaneda was unmarried, resided with his parents, carried a large wad of cash when Officer Fulmer frisked him, could afford to buy methamphetamine, and was generally employable.

In sum, the record shows a sufficient factual basis to determine Mr. Castaneda could pay LFOs because he stated he was employed and described himself as employable. *See Baldwin*, 63 Wn. App. at 311-12. In making this record, the court took into account Mr. Castaneda's financial resources by inquiring on his employment status, and took into account the nature of the burden LFOs would impose on him by considering his other life circumstances. *See id.* Thus, the evidence supports paragraph 2.5 of the judgment and sentence. The court's finding that Mr. Castaneda had the present or likely future ability to pay LFOs is not clearly erroneous.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the

No. 30273-3-III
State v. Castaneda

Washington Appellate Reports, but it will be filed for public record pursuant to RCW
2.06.040.

Brown, J.

WE CONCUR:

Korsmo, C.J.

Kulik, J.