IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 27981-2-III**
	)	
Respondent,	)	
	)	
v.	)	**Division Three**
	)	
CHRISTOPHER DEAN BROWN,	)	
	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, J. — The question presented by this appeal is whether deputies were justified in detaining Christopher Brown while investigating his passenger who appeared to be in need of medical attention. We agree with the trial court that the action was proper. The conviction for possession of cocaine is affirmed.

FACTS

Deputy Brett Hubbell was on patrol in the morning of March 30, 2008. He saw a woman, looking distressed, on the side of the road. He pulled over to inquire about her situation. She explained that "my friend, Kat, is really messed up" and needed help. She

earlier had seen Kat passed out in an apartment stairwell; Kat was now in a car with a man. The woman was going to get her friend Tony to help her with Kat.

Deputy Hubbell drove into the parking lot where he was told he could find Kat. A car passed him as he drove in; the passenger met the description given him for Kat. She appeared to be passed out or unconscious. The deputy turned his car around and signaled with his overhead lights for the other car to stop. Deputy Hubbell testified that his sole intention was to see if the woman needed medical attention.

Deputy Ryan Smith arrived as backup; Hubbell advised him that the woman might have suffered an overdose. Deputy Smith approached the passenger side of the car while Deputy Hubbell approached the driver. Hubbell asked the woman if she was all right. The woman appeared confused and did not know what was going on; she was unable to answer simple questions. Deputy Smith took over the contact and had her step out of the car so that she could speak freely to him.

About this time Deputy Hubbell recognized Mr. Brown from an intense encounter a few weeks earlier where Mr. Brown had pulled a realistic-looking gun on another officer and was nearly shot. Deputy Hubbell conducted the subsequent search of Mr. Brown's car on that occasion and discovered several weapons.

Concerned about the prior incident, Hubbell asked Brown if he had any weapons.

Mr. Brown responded "yes," and reached to his right. The deputy ordered him to put his hands on the steering wheel and leave them there. The deputy also observed a machete tucked between the back seats of the vehicle. Deputy Hubbell asked Mr. Brown to confirm his name and date of birth. Dispatch reported that there was a felony warrant for Mr. Brown's arrest. Deputy Hubbell arrested Mr. Brown; cocaine was discovered in one of his pockets when he was booked into jail.[1]

One count of possession of cocaine was filed in the Spokane County Superior Court. Mr. Brown moved to suppress and the matter proceeded to a CrR 3.6 hearing. The defense argued that the stop was invalid and the ensuing detention exceeded the scope of a community caretaking stop. The trial court disagreed and denied the motion to suppress.

Mr. Brown was subsequently convicted after a trial on stipulated facts. He timely appealed to this court.

ANALYSIS

The sole issue in this appeal is whether the scope of the detention was improper under the community caretaking doctrine. We agree with the trial court that it was not.

One exception to the constitutional protection against warrantless searches is the

[1] Meanwhile, the passenger was identified as Kathleen Hough. She did not know Mr. Brown's name. The deputy believed she was under the influence, but had not overdosed. Deputy Smith arrested her on an outstanding warrant.

community caretaking function. *Cady v. Dombrowski,* 413 U.S. 433, 37 L. Ed. 2d 706, 93 S. Ct. 2523 (1973). This police function is "totally divorced from a criminal investigation." *State v. Kinzy,* 141 Wn.2d 373, 385, 5 P.3d 668 (2000), *cert. denied*, 531 U.S. 1104 (2001). Officers may perform routine checks on an individual's health and safety and courts will assess those encounters by balancing the individual's privacy interest against the public's interest in having police perform the caretaking function. *Id.* at 386-388, 394. A specific type of community caretaking is the emergency aid function. That function applies when an officer subjectively believes someone needs assistance, a reasonable person would agree with that assessment, and there is a connection between the need and the police actions. *Id.* at 386-387. The emergency aid function typically "involves circumstances of greater urgency and searches resulting in greater intrusion." *Id.* at 386. In evaluating a general caretaking stop, courts look to the reasonableness of the officer's behavior. *State v. Acrey,* 148 Wn.2d 738, 753-754, 64 P.3d 594 (2003).

While it is arguable that this case is better analyzed as an emergency aid case than a more general community caretaking function, the parties focus on the caretaking exception and we will as well because the outcome would be the same under either approach. Indeed, Mr. Brown does not contest that he was validly seized while the deputies checked out Ms. Hough's condition. Rather, he argues that Deputy Hubbell

wrongly detained him while running the warrant check.

In the course of a caretaking function, officers are permitted to protect themselves. *Acrey,* 148 Wn.2d at 754 (patdown for weapons of young man seized for caretaking purposes); *see also State v. Kennedy,* 107 Wn.2d 1, 726 P.2d 445 (1986) (officer could expand scope of *Terry*[2] stop due to officer safety concerns). The facts of this case presented the need for the deputies to protect themselves. Mr. Brown was known to Deputy Hubbell for pulling a gun on a fellow deputy sheriff just weeks before.[3] Mr. Brown admitted he was in possession of some type of unknown weapon and reached toward some unseen object. The deputy also could see a machete between the back seats of the vehicle. Under these facts, it was quite reasonable to detain Mr. Brown and check on his status. These facts also presented articulable suspicion,[4] or even probable cause, to believe that Mr. Brown was carrying a dangerous weapon in violation of RCW 9.41.270. It also is permissible in an investigatory detention to have the suspect identify himself. *Florida v. Royer,* 460 U.S. 491, 501, 75 L. Ed. 2d 229, 103 S. Ct. 1319 (1983).

We agree with the trial court that Deputy Hubbell had legitimate safety concerns

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

[3] The earlier incident led to Mr. Brown being convicted of third degree assault and two counts of possession of a controlled substance. Those convictions are currently pending before this court in cause No. 27895-6-III.

[4] An officer may seize a suspect if there is articulable suspicion that the person has committed or is about to commit a crime. *Terry,* 392 U.S. at 21.

that justified the further detention and identification of Mr. Brown. The subsequent arrest pursuant to the warrant and the discovery of the cocaine were therefore proper. The motion to suppress was correctly denied.

The judgment is affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

_____
Sweeney, J.