No. 47144-2-II

THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION TWO

STATE OF WASHINGTON,
Respondent,

v.

DALE CARTER,
Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE STATE OF WASHINGTON FOR LEWIS COUNTY

REPLY BRIEF OF APPELLANT

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A. ARGUMENT

1. The trial court erred in failing to suppress the fruits of an unlawful stop.

In his opening brief, Mr. Carter has argued that because officers did not corroborate the informant's tip based upon which they stopped Mr. Carter, the stop was unlawful. Because the stop was unlawful, the court should have suppressed the fruits of that stop.

Where a stop is based upon an informant's tip, the Court required the State establish (1) circumstances establishing the informant's reliability or (2) some corroborative observation showing either (a) the presence of criminal activity or (b) the informer's information was obtained in a reliable fashion. *State v. Sieler,* 95 Wn.2d 43, 47, 621 P.2d 1272 (1980). The Supreme Court only recently reaffirmed the correctness of *Sieler*. *State v. Z.U.E.*, 183 Wn.2d 610, 618, 352 P.3d 796 (2015).

Based upon *Sieler* Mr. Carter has argued that Mr. Dunaway's observation of a handshake between Mr. Carter and Ms. Johnson did not contain a description of behavior that could objectively be interpreted as criminal. In its response brief, the State largely focuses on the fact that police knew who Mr. Dunaway was. Brief of Respondent at 7-8. The State confuses the concept of "know informant"

with "known individual." The former refers to a person who previously provided information to police, i.e., previously has acted as an informant. That existing relationship permits the police a basis to assess the person reliability. The mere fact that police know who a person is does not provide any basis for assessing their reliability. In fact, in both *Seiler* and *Z.U.E.* police knew the names of the callers. But even assuming Mr. Dunaway is a "known informant" that at most establishes his reliability.

> [R]eliability by itself generally does not justify an investigatory detention.... [T]he State generally should not be allowed to detain and question an individual based on a reliable informant's tip which is merely a bare conclusion unsupported by a sufficient factual basis which is disclosed to the police prior to the detention.

Z.U.E., 183 Wn.2d at 619.

The facts of *Z.U.E.* are instructive. In that case, multiple people called 911 to report that a man carried a gun through a park and then entered a car with several other people. *Id.* at 613-14. One caller said she saw a 17-year-old girl hand the gun to the man before the man carried the gun through the park. *Id.* at 614. Police were familiar with the park's reputation as a gang hangout site. *Id.*

Officers went to the area and stopped a car in which there were two male occupants and two female passengers. *Id.* The officers

believed they were investigating a minor in possession of a firearm and a gang- related assault with a deadly weapon. *Id. at 615.* They stopped the car even though neither of the male passengers matched the description given by 911 callers. *Id.* No guns were found, but Z.U.E. had marijuana and was eventually convicted of unlawful possession of a controlled substance. *Id.* at 616. The Court concluded, "Although we presume that Dawn [the 911 caller] reported honestly, the officers had no basis on which to evaluate the accuracy of her estimation." *Id.* at 623.

Here to, police even though knew Mr. Dunaway, he offered nothing more than his speculative conclusion that a handshake and a nod between a laborer and his client was evidence of a drug deal. 9/8/14 RP 5. If numerous descriptions of a person carrying a firearm, a fairly readily recognizable item, are not sufficient to justify the stop in *Z.U.E.*, Mr. Dunaway's speculation that innocuous behavior was drug deal is not more reliable. Without circumstances which corroborate the reliability of Mr. Dunaway's speculation the officers needed to independently corroborate is claim. *Sieler,* 95 Wn.2d at 47; *Z.U.E.*, 183 Wn.2d at 623. Without such corroboration the stop was unlawful.

2. The Court should accept the State's concession that the trial court improperly imposed legal financial obligations.

On appeal, Mr. Carter has argued the trial court erred in imposing a jury demand fee of $1417.78 where RCW 36.18.016(3)(b) caps the permissible amount at $250. The State concedes the trial court erred and exceeded its statutory authority.

B. CONCLUSION

For the reasons above and in his prior brief, this Court should reverse Mr. Carter's conviction and the imposition of legal financial obligations.

Respectfully submitted this 16th day of October, 2015.

s/ Gregory C. Link
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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON DIVISION TWO

STATE OF WASHINGTON, Respondent, v. DALE CARTER, Appellant.	)))))))))	NO. 47144-2-II

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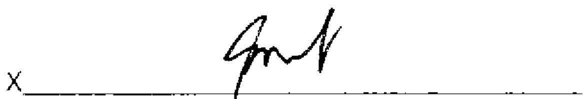
X 

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