

66036-5

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NO. 66036-5-I

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

STATE OF WASHINGTON,

Respondent,

v.

I.T.,
(A Minor Child)

Appellant.

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COURT OF APPEALS OF THE STATE OF WASHINGTON
CLERK

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

BRIEF OF APPELLANT

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A. ASSIGNMENTS OF ERROR

1. The trial court erred in failing to suppress the fruits of the unlawful seizure of I.T.

2. To the extent it is a finding of fact and in the absence of substantial evidence, the trial court erred in entering Conclusion of Law III.

B. ISSUE PERTAINING TO ASSIGNMENTS OF ERROR

Under Article I, §section 7, an informant's tip may support a Terry stop only if the source of the information is reliable and there is a sufficient factual basis for the informant's tip or corroboration of criminal activity by independent police observation. Here an unnamed person reported that a black car was driving recklessly and was involved in a hit-and-run accident on a highway, and provided a license number for the car. Police responded to the address of the registered owner of the car, did not observe any evidence corroborating the alleged criminal activity, but nonetheless seized the driver of the car. Did the trial court err in failing to suppress the fruits of the unlawful seizure?

C. STATEMENT OF THE CASE

Kent police received a report from an unidentified person that a black Acura was driving recklessly on Interstate 5 and may

have been involved in a hit-and-run accident. CP 46. The unidentified person provided a license number for the car and stated the car had exited the freeway at Military Road. Id.

The officers learned from the Department of Licensing that I.T. had recently purchased the car. CP 46. The officers drove to I.T.'s listed address. Id. As the officers turned onto I.T.'s street they saw a black Acura back up about 10 to 15 feet and then pull forward into a parking spot of the apartment complex where I. T. lives. Id. Although the officers admitted this behavior was not reckless or otherwise illegal, they nonetheless described it as "erratic." Id.; RP 29, 46. The officers activated their lights and pulled behind I.T.'s car blocking his ability to drive away. CP 46. I.T. complied with the officers' demand that he get out of the car. CP 47. At the same, time I.T.'s passenger M.E. got out of the car and walked into the apartment complex manager's office. CP 47-48.

The officers did not observe any damage on the car. CP 47. In response to the officers' inquiry, the state patrol indicated it had not received a report of an accident on the freeway. Id. I.T. denied having driven recklessly and denied any involvement in an accident. Id.

During their detention of I.T. the officers learned a no contact order was in place between I.T. and M.E. CP 47. The officers asked I.T. if M.E. was the person who had been the passenger in the car. CP 48. I.T.'s father who was standing nearby told the officer she was. CP 48.

The juvenile court found I.T. guilty of a single count of violating a no contact order. CP 49.

D. ARGUMENT

THE OFFICERS' SEIZURE OF I.T. WAS UNCONSTITUTIONAL.

I.T. moved to suppress the fruits of the officers' stop and seizure of him. I.T. argued the officers lacked an reasonable articulable suspicion that he was involved in criminal activity. Specifically he contended the police did not observe anything that corroborated the unidentified informant's allegation.

The court denied the motion to suppress, concluding the officers' observations of such innocuous facts as the color and license number of I.T.'s car were sufficient to corroborate the call.

1. An informant's tip provides reasonable suspicion to support a stop only if the informant is reliable and there is a sufficient factual basis for the tip. Article I section 7 of the

Washington Constitution prohibits government invasion of private affairs absent authority of law. The Fourth Amendment prohibits unreasonable searches and seizures.

Generally, the seizure of a person violates both the Fourth Amendment and Article I, section 7 unless supported by probable cause. State v. Broadnax, 98 Wn.2d 289, 293, 654 P.2d 96 (1982) (citing Dunaway v. New York, 442 U.S. 200, 208, 99 S.Ct. 2248, 60 L.Ed.2d 824 (1979)). One narrow exception to the probable cause requirement is the Terry stop. See Terry v. Ohio, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). Under Terry, an officer may briefly detain a person if the officer harbors a reasonable suspicion, based on specific articulable facts, that the individual is engaging in criminal activity. Id. As an exception to the warrant requirement, the Terry stop must be narrowly construed and “jealously and carefully drawn.” State v. Martinez, 135 Wn.App. 174, 179, 143 P.3d 855 (2006).

The exception must be limited to those situations in which there is a “substantial possibility” that a crime has been committed and that the individual detained is the offender. Martinez, 135 Wn.App. at 180. “[A] hunch does not rise to the level of a reasonable, articulable suspicion.” State v. O’Cain, 108 Wn.App.

542, 548, 31 P.3d 733 (2001). “Innocuous facts do not justify a stop.” Martinez, 135 Wn.App. at 180; State v. Armenta, 134 Wn.2d 1, 13, 948 P.2d 1280 (1997).

Although Terry involved a stop based on the personal observations of police officers, in some circumstances an informant’s tip may create the required reasonable suspicion. Adams v. Williams, 407 U.S. 143, 146-47, 32 L.Ed.2d 612, 92 S.Ct. 1921 (1972). This occurs only if the tip exhibits sufficient indicia of reliability. Alabama v. White, 496 U.S. 325, 326-27, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990); State v. Sieler, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980).

Whether a tip provides sufficient indicia of reliability to support reasonable suspicion is evaluated differently under the state and federal constitutions. Under the Fourth Amendment, a tip’s reliability is analyzed by reviewing the totality of the circumstances. White, 496 U.S. at 328-29. Article I, section 7, in contrast, requires the State prove that both (1) the informant is reliable, and (2) the informant’s tip is reliable. State v. Hart, 66 Wn.App. 1, 8, 830 P.2d 696 (1992) (citing Sieler, 95 Wn.2d at 48) (emphasis in original). Unlike under the federal totality-of-circumstances test, both prongs must be satisfied; a strong

showing under one prong will not make up for a deficiency in the other. State v. Jackson, 102 Wn.2d 432, 435-36, 688 P.2d 136 (1984).

“It is now settled that Article I, section 7 is more protective than the Fourth Amendment, and a Gunwall analysis is no longer necessary.” State v. Jackson, 150 Wn.2d 251, 259, 76 P.3d 217 (2003) (citing State v. Gunwall, 106 Wn.2d 54, 720 P.2d 808 (1986)). Article I, section 7 employs a stricter test for the reliability of informants’ tips than the Fourth Amendment, whether in the context of probable cause for a warrant or reasonable suspicion for a Terry stop. Jackson, 102 Wn.2d at 433; Sieler, 95 Wn.2d at 46-49. Unlike the Fourth Amendment, Article I, section 7 requires that where a Terry stop is based upon an informant’s tip, the tip must satisfy the Aguilar-Spinelli test.¹ Sieler, 95 Wn.2d at 46-49.

Thus, a Terry stop based upon an informant’s tip must have “indicia of reliability,” that is, evidence that establishes:

- (1) knowledge that the source of the information is reliable, and
- (2) a sufficient factual basis for the informant’s tip or corroboration by independent police observation.

State v. Jones, 85 Wn.App. 797, 799-800, 934 P.2d 1224 (1997)

¹ Spinelli v. United States, 393 U.S. 410, 413, 21 L.Ed.2d 637, 89 S.Ct. 584 (1969); Aguilar v. Texas, 378 U.S. 108, 12 L.ed.2d 723, 84 S.Ct. 1509 (1964).

(citing Sieler, 95 Wn.2d at 47-49). Although a lesser showing on each prong is required to support reasonable suspicion than probable cause, both prongs must be satisfied for a stop to be upheld. Hart, 66 Wn.App. at 8.

2. Here the anonymous tip failed the two-pronged reliability test. The informant in this case was never identified. CP 46. The trial court, however, found there was sufficient corroboration of the tip. RP 155. Specifically the court found

It was near in time. It was the same kind of car, the same color car, near in space in terms of geography, the license plate was the same, and even though it wasn't illegal there was some unusual driving.

But the officers did not observe an illegal activity by the car or its occupant. The officers did not observe any damage on the car corroborating the claim that it might have been involved in an accident. The officers learned that the state patrol had not received any report of an accident on the freeway. Merely confirming that a black Acura with a specific license plate exists is not corroboration of criminal activity. State v. Vandover, 63 Wn.App. 754, 760, 822 P.2d 784 (1992) (although officers saw car of make and model reported by informant in same area reported by informant, there were "no corroborative observations pointing to the existence of

criminal activity”); see also Jones, 85 Wn.App. at 800 (suppressing evidence where truck driver had alerted officer to the fact that another driver was weaving, because company name on side of truck not sufficient indication of reliability). In the absence of any evidence corroborating the alleged activity, the officers had no reasonable basis to seize I.T.

Even under the more lenient federal test, the tip in this case lacked sufficient indicia of reliability to provide reasonable suspicion to support a Terry stop. Under the Fourth Amendment, a tip’s reliability is evaluated by reviewing the totality of the circumstances. Alabama v. White, 496 U.S. at 328-29. The totality of the circumstances includes the informant’s credibility and basis of knowledge. Id. at 328. A reviewing court considers not only the manner in which the informant obtained the information, but the degree to which independent police investigation corroborates the informant’s tip. Id. at 331-32. Where an informant accurately predicts a suspect’s future actions, especially if those actions are irregular, reliability increases. Florida v. J.L., 529 U.S. 266, 271, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000).

There was no information identifying the informant nor establishing the informant’s credibility or basis of knowledge. The

tip did not provide any prediction of future activity, and in fact reported unsubstantiated past activity. As discussed previously, there was not corroborative evidence of the alleged criminal activity. Thus, even under the more lenient standard the officers lacked a reasonable suspicion to seize I.T.

3. The Court must reverse and suppress the fruits of the unlawful seizure. “All evidence obtained as a result of an unlawful seizure is inadmissible.” State v. Reichenbach, 153 Wn.2d 126, 135, 101 P.3d 80 (2004). Thus, evidence obtained as a result of an improper Terry stop must be suppressed. Armenta, 134 Wn.2d at 17. “[T]he right of privacy shall not be diminished by the judicial gloss of a selectively applied exclusionary remedy. . . . [W]henver the right is unreasonably violated, the remedy must follow.” State v. White, 97 Wn.2d 92, 110, 640 P.2d 1061 (1982). This Court must reverse I.T.’s adjudication and remand with instructions to suppress the evidence.

E. CONCLUSION.

For the reasons set forth above, I. T. respectfully requests that this court reverse his conviction and suppress the fruits of the unlawful seizure.

Respectfully submitted this 10th day of March, 2011.

A handwritten signature in black ink, appearing to read 'Gregory C. Link', written over a horizontal line.

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

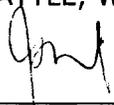
STATE OF WASHINGTON,)	
)	
Respondent,)	
)	NO. 66036-5-I
v.)	
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I.T.,)	
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Juvenile Appellant.)	

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SIGNED IN SEATTLE, WASHINGTON THIS 10TH DAY OF March, 2011.

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