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COURT OF APPEALS
OF THE STATE OF WASHINGTON,
DIVISION ONE

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STATE OF WASHINGTON,
Respondent,

v.

RAYNE WELLS,
Appellant

FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SAN JUAN COUNTY

Brief of Respondent

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ORIGINAL

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INTRODUCTION

When reviewing a police officer's Terry stop based on an informant's tip, this Court looks at the totality of the circumstances.

> The reasonableness of the officer's suspicion is determined by the totality of the circumstances known to the officer at the inception of the stop. The totality of the circumstances test allows the court and police officers to consider several factors when deciding whether a Terry stop based on an informant's tip is allowable, such as the nature of the crime, the officer's experience, and whether the officer's own observations corroborate information from the informant. Moreover, the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior.

State v. Lee, 147 Wn. App. 912, 917, 199 P.3d 445 (2008) (citations omitted).

On September 21, 2000, San Juan County Deputy Sheriff Raymond Clever pulled over a truck containing defendant Rayne Wells. Orcas High School Principal Barbara Kline and two high school students had told the Deputy that a person matching Wells' description had been selling drugs at the high school. The trial court found that Deputy Clever had good reason to stop the truck.

> The court finds that [Principal Barbara] Kline and the two students who approached him in the parking lot to be the informants, that the circumstances suggest that they were reliable informants, and that, based upon all the facts and circumstances known to Deputy Clever at the time he conducted the investigatory

> stop, he had reasonable suspicion to believe that there was a substantial possibility that criminal conduct by the occupants of the pickup truck had occurred or was about to occur.

(3.6 Hearing Conclusion of Law ¶ B; CP 109) (Attached as Appendix A). The Court upheld the Terry stop and later found defendant Wells guilty of one count of Unlawful Possession of a Firearm in the Second Degree. (Bench Trial Findings ¶ A; CP 204) (Attached as Appendix B).

Because substantial evidence supports the trial court's findings of fact and conclusions of law, the State of Washington respectfully requests this Court to affirm the trial court's judgment, uphold defendant Wells' conviction, and dismiss this appeal.

I. RESTATEMENT OF ISSUES PRESENTED.

Defendant's appeal raises two issues:

A. The Court reviews "the denial of a motion to suppress by determining whether substantial evidence exists to support the trial court's findings of fact, and whether those findings support the trial court's conclusions of law." State v. Ross, 106 Wn. App. 876, 880, 26 P.3d 298 (2001). Undisputed facts show that two reliable citizen-witnesses told Deputy Clever about defendant Wells' illegal activity at the High School and one witness identified Wells as he

drove away. Does substantial evidence support the trial court's decision to uphold the Terry stop?

B. "Where a defendant has requested an exceptional sentence below the standard range, review is limited to circumstances where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range." State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997). The trial court carefully examined defendant Wells' request for a downward departure, concluding "I'm not convinced that there's a substantial and compelling reason for the Court to go below the standard range." (5/11/11 VRP 313). Does RCW 9.94A.585 therefore bar defendant's appeal of his standard range sentence?

II. STATEMENT OF FACTS.

Defendant's statement of facts summarizes the events leading up to Deputy Clever stopping the black truck with defendant Wells as a passenger. Because defendant has not assigned error to the trial court's findings of fact, the following are undisputed:

> On September 20, 2000, Deputy Ray Clever of the San Juan County Sheriff's Office received a telephone call from Barbara Kline, principal of Orcas High School. Ms. Kline told Deputy Clever the following: She had received information from four

> students about unauthorized visitors on the high school campus who allegedly had a gun and were trying to sell marijuana. One of the visitors was named "D.J." a white male with a bad haircut and bad facial acne. The students were quite concerned about the gun and did not want Ms. Kline to approach the visitors out of concern for her safety. One of the visitors had tried to open one of the student's cars.

(3.6 Hearing Findings of Fact ¶ 1; CP 105). The day before the stop, Deputy Clever had information from a trustworthy source, Ms. Kline, that criminal activity took place at the high school. (3.6 Hearing Findings of Fact ¶ 2; CP 105) ("Deputy Clever considered Ms. Kline to be a trustworthy person").

Furthermore, the information itself was reliable.

> Clever considered it unusual that four students would relay that type of information to the school principal, because in his experience students rarely do that. He therefore believed that this was an indication that students were legitimately concerned about the situation, particularly as to the firearm.

(3.6 Hearing Findings of Fact ¶ 3; CP 105-106).

The next day, Deputy Clever saw the black truck and had a student identify it as the one on campus the day before.

> At approximately noon on September 21, 2000, Deputy Clever was parked in his marked patrol car in front of Orcas Island Elementary School, which is immediately adjacent to the high school. Lisa Harvey and one other high school student ran up to the deputy's car and in an excited manner said: "They are

> back, Ms. Kline wants you back at the high school" or words to that effect.

(3.6 Hearing Findings of Fact ¶ 9; CP 106). He knew Lisa Harvey, and she had provided reliable information in the past. (3.6 Hearing Findings of Fact ¶ 10; CP 106).

When Deputy Clever was ready to leave, "a black pickup truck drove past him, at which time one of the two students said 'that's them.'" (3.6 Hearing Findings of Fact ¶ 11; CP 106) He could see that "the passenger in the black pickup truck matched the description of 'D.J.' that had been given him by Ms. Kline" the day before. (3.6 Hearing Findings of Fact ¶ 12; CP 106).

He followed the pickup away from the school grounds and pulled it over at a safe spot. (3.6 Hearing Findings of Fact ¶ 13; CP 106-107). While searching defendant Wells, Deputy Clever found a pipe with marijuana. (3.6 Hearing Findings of Fact ¶ 18; CP 107). His search of the pickup revealed a handgun. (3.6 Hearing Findings of Fact ¶ 24; CP 108).

San Juan County Superior Court Judge Donald Eaton denied defendant Wells' motion to suppress the results of the search, and on a stipulated record, found defendant guilty of one

count of Unlawful Possession of a Firearm in the Second Degree. (Bench Trial Findings ¶ A; CP 204). Defendant now appeals.

ARGUMENT

III. STANDARD OF REVIEW

This Court reviews the trial court's denial of the motion to suppress for substantial evidence.

> We review the denial of a motion to suppress by determining whether substantial evidence exists to support the trial court's findings of fact, and whether those findings support the trial court's conclusions of law. Unchallenged findings are verities for purposes of appeal... We review the conclusions of law de novo.

State v. Ross, 106 Wn. App. 876, 880, 26 P.3d 298 (2001) (footnotes omitted).

The Court reviews defendant's appeal from a sentence in the standard range for a failure to exercise discretion.

> [R]eview is limited to circumstances where the court has refused to exercise discretion at all or has relied on an impermissible basis for refusing to impose an exceptional sentence below the standard range. A court refuses to exercise its discretion if it refuses categorically to impose an exceptional sentence below the standard range under any circumstances; *i.e.,* it takes the position that it will never impose a sentence below the standard range...Conversely, a trial court that has considered the facts and has concluded that there is no basis for an exceptional sentence has exercised its discretion, and the defendant may not appeal that ruling.

State v. Garcia-Martinez, 88 Wn. App. 322, 330, 944 P.2d 1104 (1997).

IV. SUBSTANTIAL EVIDENCE SUPPORTS THE TRIAL COURT'S RULING

A. The Informants Were Trustworthy And The Information, Reliable

An officer may conduct a Terry stop based on an informant's statements if the tip possesses sufficient indicia of reliability.

> [A]n officer's reasonable suspicion may be based on information supplied by an informant. But "[a]n informant's tip cannot constitutionally provide police with such a suspicion unless it possesses sufficient 'indicia of reliability.' " State v. Sieler, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980) (quoting Adams v. Williams, 407 U.S. 143, 147, 92 S.Ct. 1921, 32 L.Ed.2d 612 (1972)). When deciding whether this "indicia of reliability" exists, the courts will generally consider several factors, primarily (1) whether the informant is reliable, (2) whether the information was obtained in a reliable fashion, and (3) whether the officers can corroborate any details of the informant's tip. Sieler, 95 Wn.2d at 47, 621 P.2d 1272.

State v. Lee, 147 Wn. App. 912, 918, 199 P.3d 445 (2008).

When ordinary citizens provide the information, police officers must act promptly.

> A citizen-witness's credibility is enhanced when he or she purports to be an eyewitness to the events described. Indeed, victim-witness cases usually require a very prompt police response in an effort to find the perpetrator, so that a leisurely investigation of the report is seldom feasible. Moreover, courts

> should not treat information from ordinary citizens who have been the victim of or witness to criminal conduct the same as information from compensated informants from the criminal subculture.
>
> Thus, the police are entitled to give greater credence to a report from a citizen crime victim than to a report from a criminal associate of the suspect. Indeed, there is no constitutional requirement that police distrust ordinary citizens who present themselves as crime victims and "[c]ourts are not required to sever the relationships that citizens and local police forces have forged to protect their communities from crime." United States v. Christmas, 222 F.3d 141, 145 (4th Cir.2000).

State v. Lee, 147 Wn. App. at 918-919 (citations omitted).

For compelling reasons, Judge Eaton found both Principal Kline and the student witnesses reliable.

1. The information provided to Deputy Clever by Barbara Kline on September 20, 2000 included a significant number of objective facts concerning the strangers who were reported to be on the campus with guns, with drugs for sale and who had attempted to break into a student's car;

2. Barbara Kline was a reliable informant, notwithstanding the fact that she did not have personal knowledge of the facts she relayed to Deputy Clever;

3. The information provided to Deputy Clever by Barbara Kline reasonably appeared to Deputy Clever to have been obtained by her from reliable sources, even though Ms. Kline did not tell Deputy Clever whether or not the

information from her sources was based upon the personal knowledge of those sources.

4. The nature of possible criminal activity reported to Deputy Clever by Barbara Kline reasonably gave Deputy Clever a heightened concern for needing to investigate the situation.

5. When the two students pointed to the black pickup truck driving past Deputy Clever when he was parked in front of the Orcas Island Elementary School, and Deputy Clever was able to observe that the passenger in the truck matched the description of the suspect provided by Barbara Kline, Deputy Clever had a reasonable suspicion that there was a substantial possibility that the occupants of the truck were involved in criminal activity.

(3.6 Hearing Conclusions of Law B(1)-(5); CP 109). As noted above, the facts contained in these conclusions are undisputed.

In his opening brief, defendant Wells challenges the Court's ruling on three grounds. First, he alleges the trial court should have considered the reporting students, not Principal Kline, as the informant. Second, he contends neither Kline nor Harvey witnessed the illegal activity. Third, he claims the students were "unknown" and therefore anonymous informants. (Opening Brief at 9-12). None of these arguments are persuasive.

First, because Principal Kline heard the initial reports from the students – *and necessarily weighed their credibility before*

relaying them to the police – the trial court appropriately considered Principal Kline the informant. As she testified at the 3.6 Hearing,

> One, it's unusual for the students to tell me things like this unless they were really concerned, and by listening to them it was pretty clear they were scared. They considered this a menace. And two, those students who talked to me were the kind of students who chose to risk the edge a little bit sometimes, and so they were the ones who were more likely to have information about something of this nature.

(4/15/11 VRP 18). A high school principal must routinely judge whether a student is telling the truth. Here, Principal Kline heard multiple, consistent warnings from students who normally would say nothing. She appropriately judged their reports credible and reason for concern.

Deputy Clever in turn could rely on Principal Kline's ability to separate hyperbole from truth. As he testified,

> Barbara Kline is the principal of the school and a pretty trustworthy person. The kids that she was getting this information from, like I said, I had no negative professional contact with them. I knew them. I knew some of their families. It's an island sort of thing. When I retired I said I raised two-and-a-half generations of kids on Orcas.

(4/15/11 VRP 62). Deputy Clever had good reason to trust what Principal Kline and the two students told him.

Citing State v. Sieler, 95 Wn.2d 43, 621 P.2d 1272 (1980), defendant Wells argues that neither Principal Kline nor Lisa Harvey were the informants. But the facts in Sieler were quite different from those here.

> The officers were simply told that a Mr. Tuntland had concluded a drug transaction had occurred, but that he was not available. *The officers knew nothing about the informant beyond his name, nor why he concluded a drug transaction had occurred.* One officer, by radio, attempted to obtain a description of the suspects, but apparently none was available. In the officer's words, "all we had to go on was the vehicle description."

Sieler, 95 Wn.2d at 45 (emphasis added). In contrast, Deputy Clever knew the informants and had two day's worth of information on suspected drug dealing at the High School.

Second, Principal Kline and Lisa Harvey did not have to witness the illegal activity to be reliable sources of information. As noted above, Principal Kline testified to hearing similar descriptions of defendant from multiple students. Furthermore, Lisa Harvey had sufficient knowledge to identify the truck defendant was riding in. Deputy Clever then identified defendant as the suspect with a bad haircut and facial acne. He stopped the truck based on what he heard from Principal Kline and Lisa Harvey *and* what he saw. Both

Kline and Harvey provided accurate, reliable information about defendant's activities at the High School and his description.

Finally, the informants were not "unknown" and anonymous. Deputy Clever testified that he knew the students who provided Principal Kline with the reports.

> Q. And when she [Principal Kline] gave you the names of the students that she provided at that time, do you recall if you had any opinion about whether or not they would be people who could provide accurate information?
>
> A. Yeah. I would have termed them reliable. I had not had negative professional contact with them in that context.
>
> Q. So aside from the fact that these students had reported to her that this person DJ was on campus selling marijuana and displaying a pistol, did she tell you anything else?
>
> A. That the students were quite concerned about the firearm aspect and did not want her to approach them for fear that she may be harmed, or I think the "Columbine" phrase was used.
>
> Q. Did Ms. Kline relate to you anything about any other activity on the part of these strangers that was of concern?
>
> A. That one of them had attempted to open Tara Linnes' car – her truck, I think it was at the time.
>
> Q. And did you know Tara Linnes?

A. I do.

Q. Were you provided with a description of this person, DJ?

A. Male, white, bad haircut, bad acne, and possibly from Mount Vernon.

(4/15/11 VRP 60-61). None of the informants were anonymous and all were citizen-witnesses.

In sum, the totality of circumstances supports Deputy Clever's Terry stop. He had two day's worth of reports that someone named DJ was selling marijuana and showing a gun on school grounds. The trusted High School Principal also believed the reports credible, given their consistency and the students making them. Next, one of the students identified the black truck as the one on campus. Finally, Deputy Clever saw that the passenger matched the description of DJ, the alleged drug dealer.

Deputy Clever had a well-founded and reasonable suspicion that the black truck and defendant Wells had engaged in criminal activity. The Terry stop was therefore lawful.

V. THE COURT APPROPRIATELY REJECTED AN EXCEPTIONAL SENTENCE

The trial court sentenced defendant Wells to 51 months incarceration, which was within the standard range for his criminal

history and offense. (Warrant of Commitment; Sub #179; CP __)*. (Attached as Appendix C). Under RCW 9.94A.585, "a sentence within the standard sentence range, under RCW 9.94A.510 or 9.94A.517, for an offense shall not be appealed."

This bar has only a limited exception.

> Where...a defendant has requested an exceptional sentence below the standard range, we may review the decision if the court either refused to exercise its discretion at all or relied on an impermissible basis for refusing to impose an exceptional sentence. A trial court that has considered the facts and has concluded that there is no basis for an exceptional sentence has exercised its discretion, and the defendant may not appeal that ruling.

State v. Khanteechit, 101 Wn. App. 137, 138-139, 5 P.3d 727 (2000).

The trial court exercised its discretion in this case – it just did not decide in defendant's favor. After hearing counsels' arguments, the trial court took a recess to consider whether to grant an exceptional sentence.

> What I am struggling with here is whether or not to go below the standard range. I think some of the arguments are pretty persuasive that the Court ought to look at this fairly creatively...So before I make a

---

* Respondent has filed a supplemental designation of clerk's papers and CP cites do not yet exist for these documents. The brief cites to the sub number to identify the document.

> decision here, I may want to take a few minutes to go in chambers and think this through.

(5/11/11 VRP 302-03).

When it went back on the record, the trial court decided that a downward departure was not appropriate.

> I had a chance to review the statutes in the cases that were cited by the prosecuting attorney, and I'm convinced that the statute in the cases make the offender's score calculations. The fact that the prior convictions were included in the offender's score here, while it may seem unfair and work contrary to the goals of the SRA, I think that the statute is very clear that any adult convictions that are on the record subsequent to the – or prior to the date of sentencing, then they're included in calculating the offender's score.

(5/11/11 VRP 312). The trial court exercised its discretion, and therefore under RCW 9.94A.585 defendant's standard range sentence is not subject to appeal.

In his supplemental brief, defendant Wells argues that the trial court deprived him of credit for time served. (Supplemental Brief at 3). Mr. Wells notes correctly that under RCW 9.94A.505(6), a convicted defendant should receive credit for time served "if that confinement was solely in regard to the offense for which the offender is being sentenced." But Mr. Wells provides no proof in the record that his incarceration was "solely" for this case or

conviction. In fact, the trial court's warrant of commitment shows that his present sentence shall run concurrently with other sentences he is serving. (Warrant of Commitment; Sub #179; CP __).

CONCLUSION

Viewing the totality of the circumstances, Deputy Raymond Clever had good reason to stop the black pickup that contained defendant Rayne Wells. He had information from multiple, credible citizen-witnesses that a person matching Wells' description had a gun and was selling marijuana at the local High School. Because substantial evidence supports the trial court's decision upholding the Terry stop and subsequent search, the State of Washington respectfully requests this Court to affirm defendant's conviction and dismiss this appeal.

DATED this 26th day of April, 2012.

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DECLARATION OF SERVICE

The undersigned declares under penalty of perjury under the laws of the State of Washington, that on the date stated below, I mailed or caused delivery of **Brief of Respondent** to:

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HEIDI MAIN

APPENDIX A

COUNTY CLERKS OFFICE
FILED

MAY 05 2011

JOAN P. WHITE
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IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SAN JUAN

STATE OF WASHINGTON, Plaintiff, v. RAYNE DEE WELLS, Defendant.	NO. 00 1 05037 0 FINDINGS OF FACT AND CONCLUSIONS OF LAW CrR 3.6

This matter having come before the above-entitled court on defendant's motion to suppress evidence, and the court having heard the testimony and reviewed the exhibits presented and having read the memoranda submitted and heard the argument of counsel, makes the following

FINDINGS OF FACT

The court finds that the following facts are undisputed:

1. On September 20, 2000, Deputy Ray Clever of the San Juan County Sheriff's Office received a telephone call from Barbara Kline, principal of Orcas High School. Ms. Kline told Deputy Clever the following: She had received information from four students about unauthorized visitors on the high school campus who allegedly had a gun and were trying to sell marijuana. One of the visitors was named "D.J." a white male with a bad haircut and bad facial acne. The students were quite concerned about the gun and did not want Ms. Kline to approach the visitors out of concern for her safety. One of the visitors had tried to open one of the student's cars.

2. Deputy Clever considered Ms. Kline to be trustworthy person.

3. Clever considered it unusual that four students would relay that type of information to

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the school principal, because in his experience students rarely do that. He therefore believed that this was an indication that students were legitimately concerned about the situation, particularly as to the firearm.

4. Deputy Clever did not speak to any of the students on that day.

5. Deputy Clever did not know if the students had approached Ms. Kline individually or as a group.

6. Deputy Clever can no longer recall if Ms. Kline gave him the names of the students or if Ms. Kline told him what any particular student said to her about the situation.

7. Deputy Clever can no longer recall if Ms. Kline told him that students had personal knowledge of the facts they had reported to her, or if he asked if she knew whether they had personal knowledge of the facts. Ms. Kline did not have personal knowledge of the visitors or their activities;

8. Although Ms. Kline testified that she did not recall which student told her about an attempt by one of the visitors to open a student's car, Deputy Clever understood that information about the attempt to open a student's car came from the student who owned that car and was one of the four students who had made a report to Ms. Kline.

9. At approximately noon on September 21, 2000, Deputy Clever was parked in his marked patrol car in front of the Orcas Island Elementary School, which is immediately adjacent to the high school. Lisa Harvey and one other high school student ran up to the deputy's car and in an excited manner said: "They are back, Ms. Kline wants you back at the high school" or words to that effect.

10. Deputy Clever had previously received reliable information from Lisa Harvey in connection with another criminal investigation.

11. As Deputy Clever prepared to leave, a black pickup truck drove past him, at which time one of two students said "That's them."

12. Deputy Clever could see that the passenger in the black pickup truck matched the description of "D.J." that had been given to him by Ms. Kline on September 20, 2000.

13. Deputy Clever followed the black pickup truck and stopped it after it had traveled a

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distance away from the school grounds.

14. With his handgun drawn, Deputy Clever ordered "D.J." to get out of the truck. The passenger, who is the defendant in this case, got out of the truck.

15. Deputy Clever conducted a pat down or weapons frisk of the defendant in order to determine if he was armed with a weapon. Deputy Clever felt a hard object in the defendant's left-front pocket. The object was L-shaped, 5 to six inches long on one part, and approximately 1 ½ to 2 inches long on the other part.

16. Deputy Clever believed the object might be hand gun, and therefore asked the defendant what it was. The defendant told Deputy Clever that it was a lighter.

17. Because the object did not feel like lighter, Deputy Clever's concern that the object might be a handgun was heightened. Out of this concern, Deputy Clever again asked the defendant what the object was. The defendant did not respond to Deputy Clever's second inquiry, which again increased Deputy Clever's concern.

18. Deputy Clever reached into the defendant's pocket and withdrew the object, which was a pipe containing marijuana.

19. Deputy Clever arrested the defendant for possession of marijuana and placed him in a patrol car.

20. Deputy Clever approached Deputy Crowe, who had arrived at the scene shortly after Deputy Clever had stopped the pickup truck, and who was then standing by the open driver's door of the truck with the driver. At that point, Deputy Clever saw another marijuana pipe in the truck on the driver's side and told Deputy Crowe that they were going to the search vehicle. This was said within the hearing of the driver of the truck.

21. Deputy Clever asked the driver for permission to search the truck. The driver gave his consent. Deputy Clever advised the driver that he did not have to give consent, and asked a second time if the driver would consent to a search of the pickup truck. The driver gave his consent a second time. The driver was the owner of the pickup truck.

22. Deputy Clever searched the cab of the truck and seized the marijuana smoking pipe with marijuana residue in it. Deputy Cleever told Deputy Crowe that he had found a

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marijuana pipe in the truck. Deputy Crowe then arrested the driver for possession of marijuana and advised him of his Miranda rights.

23. Deputy Clever completed the searched the cab of the truck, where he found and seized five bags of marijuana, an electric scale, and a book about marijuana

24. Deputy Clever search in the bed of the pickup truck and saw the butt of a handgun protruding from under some plywood. He seized the handgun and some ammunition that he located in the cab of the truck.

25. The defendant and the driver were taken to the sheriff's office on Orcas Island.

Disputed facts

There are no material disputed facts.

Based upon the above findings, the court makes the following

CONCLUSIONS OF LAW

A. The court applies the following legal principals:

1. Law enforcement officers may conduct an investigatory stop if they have a reasonable and articulable suspicion that the individual was involved in criminal activity.
2. A reasonable suspicion means that there is a substantial possibility that criminal conduct has occurred or is about to occur.
3. A law enforcement officer's reasonable suspicion for an investigatory stop may be based upon information supplied by an informant.
4. An informant's tip cannot constitutionally provide officers with reasonable suspicion for an investigatory stop unless the tip possesses sufficient indicia of reliability.
5. In deciding whether an informant's tip possesses sufficient indicia of reliability, the court applies *the totality of the circumstances test* as set forth in *State v. Lee*, 147 Wn. App. 912 (2008), rather than the *Aguilar-Spinelli* two-prong test,. The *totality of the circumstances test* allows law enforcement officers and the courts to consider several factors in determining whether a tip possesses sufficient indicia of reliability, including the nature of the crime, the officer's experience,

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and whether the officer's own observations corroborate information from the informant. The determination of reasonable suspicion must be based upon common sense judgments and inferences about human behavior.

6. As set forth in *State v. Kennedy*, 107 Wn.2d 1 (1986), there are three criteria, any one of which can satisfy the indicia or reliability test: (a) the circumstances suggest the informant is reliable; or (b) there is some corroborative observation to suggest the presence of criminal activity; or (c) the informant's information was obtained in a reliable manner.

B. Based upon the above findings and legal principles, the court finds that Ms. Kline and the two students who approached him in the parking lot to be the informants, that the circumstances suggest that they were reliable informants, and that, based upon all of the facts and circumstances known to Deputy Clever at the time he conducted an investigatory stop, he had reasonable suspicion to believe that there was a substantial possibility that criminal conduct by the occupants of the pickup truck had occurred or was about to occur:

1. The information provided to Deputy Clever by Barbara Kline on September 20, 2000 included a significant number of objective facts concerning the strangers who were reported to be on the campus with guns, with drugs for sale and who had attempted to break into a student's car;
2. Barbara Kline was a reliable informant, notwithstanding the fact that she did not have personal knowledge of the facts she relayed to Deputy Clever;
3. The information provided to Deputy Clever by Barbara Kline reasonably appeared to Deputy Clever to have been obtained by her from reliable sources, even though Ms. Kline did not tell Deputy Clever whether or not the information from her sources was based upon the personal knowledge of those sources.
4. The nature of the possible criminal activity reported to Deputy Clever by Barbara Kline reasonably gave Deputy Clever a heightened concern for needing to investigate the situation.
5. When the two students pointed to the black pickup truck driving past Deputy Clever when he was parked in front of the Orcas Island Elementary School, and Deputy Clever was able to observe that the passenger in the truck matched the description of the suspect provided by Barbara Kline, Deputy Clever had a reasonable suspicion that there was a substantial possibility that the occupants of the truck were involved in criminal activity.

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C. Deputy Clever made a lawful investigatory stop when he stopped the black pickup truck in which the defendant was riding.

D. Because the possible criminal activity Deputy Clever intended to investigate included the possession of a gun by one or both of the strangers on the campus, and because the defendant is the person who responded when Deputy Clever ordered that "D.J." exit the truck, Deputy Clever was justified in believing that the defendant was presently armed and dangerous, and he was justified in having his weapon drawn when he conducted the stop and was justified in conducting a weapons frisk as soon as the defendant exited the truck.

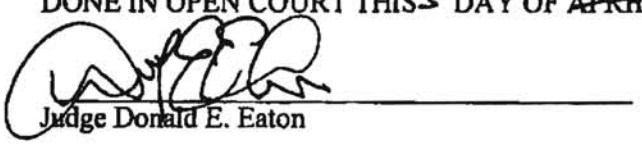
E. Deputy Clever did not exceed the scope of a permissive frisk when he reached into the defendant's pants pocket and withdrew an objected that turned out to be a marijuana pipe because (1) the object felt like a weapon; (2) the defendant's apparently deceptive response to Deputy Clever's inquiry about what the object was, and the defendant's subsequent failure to respond to Deputy Clever's second inquiry about the object, gave Deputy Clever reasonable basis to intrude further into the defendant's privacy in order to protect himself and Deputy Crowe from the possibility that the object might be a handgun.

F. The consent to search to search the truck was given voluntarily the owner of the truck and the search of the truck pursuant to that consent was lawful..

G. The fact that the driver was placed under arrest after Deputy Clever had searched the cab of the truck, but before Deputy Clever had searched the bed of the truck did not negate the voluntary consent to search that had been given by the owner of the truck.

Based upon the above findings of fact and conclusions of law, the defendant's motion to suppress evidence is DENIED and the evidence seized at the scene of the investigatory stop and any statements made at that time or thereafter may be introduced into evidence trial.

DONE IN OPEN COURT THIS 5th DAY OF ~~APRIL~~ May, 2011



Judge Donald E. Eaton

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Presented by:

Charles Z. Silverman, WSBA # 8654
Deputy Prosecutor

Approved as to form:

Stephen A. Brandli, WSBA #38201
Attorney for Defendant

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APPENDIX B

COUNTY CLERKS OFFICE
FILED

MAY 11 2011

JOAN P. WHITE
SAN JUAN COUNTY, WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SAN JUAN

STATE OF WASHINGTON, Plaintiff, v. RAYNE DEE WELLS, Defendant.	NO. 00 1 05037 0 FINDINGS: BENCH TRIAL ON A STIPULATED RECORD

This matter having come before the above-entitled court for a bench trial on the record, and the court having reviewed the stipulated record, makes the following

FINDINGS OF FACT

1. Sometime during the weekend of September 16-17, 2000, the defendant contacted L.H., showed her a small silver colored hand gun wrapped in a black cloth and asked if she knew anyone who wanted to buy it;

2. On September 18 or 19, 2000, the defendant went to the Orcas High School, contacted a student, A.S., asked if he wanted to purchase some marijuana, and sold him some marijuana near the perimeter of the school;

3. On September 18, 2000, the defendant contacted J.A., a student at the Orcas High School and asked if he wanted to buy some marijuana;

4. On September 20, 2000, the defendant contacted L.H., a student at the school, and asked her if she knew anyone who wanted to purchase drugs. The defendant showed

175 pgs

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L.H. some white powder he said was cocaine;

5. On September 20, 2000, Deputy Ray Clever of the San Juan County Sheriff's Office received a telephone call from Barbara Kline, principal of Orcas High School. Ms. Kline told Deputy Clever the following: She had received information from four students about unauthorized visitors on the high school campus who allegedly had a gun and were trying to sell marijuana. One of the visitors was named "D.J." a white male with a bad haircut and bad facial acne. The students were concerned about the gun and did not want Ms. Kline to approach the visitors out of concern for her safety. One of the visitors had tried to open on of the student's cars;

6. Deputy Clever checked the area of the school and the Eastsound Village, but did not see the suspects;

7. At approximately noon on September 21, 2000, Deputy Clever was parked in his marked patrol car in front of the Orcas Island Elementary School, which is immediately adjacent to the high school. Lisa Harvey and one other high school student ran up to the deputy's car and in an excited manner said: "They are back, Ms. Kline wants you back at the high school" or words to that effect;

8. As Deputy Clever prepared to leave, a black pickup truck drove past him, at which time one of two students said "That's them." Deputy Clever could see that the passenger in the black pickup truck matched the description of "D.J." that had been given to him by Ms. Kline on September 20, 2000;

9. Deputy Clever followed the black pickup truck and stopped it after it had traveled a distance away from the school grounds;

10. With his handgun drawn, Deputy Clever ordered "D.J." to get out of the truck. The passenger, who is the defendant in this case, got out of the truck;

11. Deputy Clever conducted a pat down or weapons frisk of the defendant in order to determine if the defendant was armed with a weapon. Deputy Clever found in one of the defendant's pants pockets a smoking pipe containing marijuana;

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12. Deputy Clever arrested the defendant for possession of marijuana and placed him in a patrol car;

13. Deputy Clever approached Deputy Crowe, who had arrived at the scene shortly after Deputy Clever had stopped the pickup truck, and who was then standing by the open driver's door of the truck with the driver. At that point, Deputy Clever saw another marijuana pipe in the truck on the driver's side and told Deputy Crowe that they were going to the search vehicle;

14. Deputy Clever asked the driver for permission to search the truck. The driver gave his consent. Deputy Clever advised the driver that he did not have to give consent, and asked a second time if the driver would consent to a search of the pickup truck. The driver gave his consent a second time. The driver was the owner of the pickup truck;

15. Deputy Clever searched the cab of the truck and seized a marijuana smoking pipe from the driver's side of the cab. At the request of Deputy Clever, Deputy Crowe arrested the driver and placed him in a patrol car. Deputy Clever continued his search of the cab of the truck and seized five bags of marijuana, an electric scale suitable for weighing drugs, and a book about marijuana. Two of the baggies contained a total of 19 smaller baggies of marijuana packaged for street sale; samples of the contents of the baggies were tested by Sgt. Scott Brennan, who is certified to conduct marijuana leaf analyses, and who determined that the baggies contained marijuana;

16. Deputy Clever searched in the bed of the pickup truck and saw the butt of a handgun protruding from under some plywood. He seized the handgun and some ammunition that he located in the cab of the truck. The gun was a .22 caliber Jensen sem-automatic handgun with a fully loaded magazine and the safety in the "off" position;

17. After waiving his constitutional rights, the defendant spoke with Det. Edwin Commet. The defendant said that he had traveled to Orcas Island to settle a drug debt he owed to his drug supplier. He claimed that on the day before the interview his supplier had "fronted" him 1/4 pound of marijuana to sell. The defendant said he watched as the supplier weighed out 1/8 baggies for the defendant to sell at $40 to $50 each. The defendant said he agreed to sell the marijuana and pay his supplier $1,200, yielding the defendant and the supplier a profit of $200 each;

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18. The defendant said his supplier gave him the .22 caliber handgun for protection because the defendant had claimed that he had had problems with some other people who tried to rob him. The defendant said he had placed the gun in the back of the truck;

19. On February 19, 1997, the defendant was adjudicated guilty as a juvenile of Burglary in the Second Degree and Theft of a Firearm, which are felony offenses, in Skagit County Juvenile Court cause number 97 8 00019 4 and was advised in writing of his ineligibility to possess any firearm.

Based upon the above findings, the court makes the following

FINDINGS AND CONCLUSIONS

A. The court finds that the State has proven, beyond a reasonable doubt:

1. On or about the 21st day of September, 2000, the defendant knowingly had a firearm in his possession or control;
2. The defendant had previously been adjudicated guilty as a juvenile of Burglary in the Second Degree and Theft a Firearm, which are felony offenses, in Skagit County Juvenile Court cause number 97 8 00019 4
3. The defendant was advised in writing of his ineligibility to possess any firearm in Skagit County Juvenile Court cause number 97 8 00019 4;
4. The possession or control of the firearm occurred in the State of Washington.

A. Based upon the above findings and conclusions, the court hereby finds that the defendant is guilty of the crime of Unlawful Possession of a Firearm in the Second Degree as charged in Count II

B. Based upon the motion of the State, Counts I: Possession of Marijuana with Intent to Deliver, and Count III: Possessing a Dangerous Weapon on School Grounds, are hereby Dismissed.

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DONE IN OPEN COURT THIS 11 DAY OF MAY, 2011

Judge Donald E. Eaton

Presented by:

Charles Z. Silverman, WSBA # 8654
Deputy Prosecutor

Approved for entry

Stephen A. Brandli, WSBA #38201
Attorney for Defendant

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APPENDIX C

COUNTY CLERKS OFFICE
FILED

MAY 11 2011

JOAN P. WHITE
SAN JUAN COUNTY, WASHINGTON

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF SAN JUAN

STATE OF WASHINGTON, Plaintiff, v RAYNE DEE WELL, JR., Defendant.	CASE NO. 00 1 05037 0 WARRANT OF COMMITMENT

TO: SHERIFFS OF SAN JUAN ISLAND COUNTY

WHEREAS the defendant has been convicted in the San Juan County Superior Court of the crime(s) of

Count I :
Count II : Unlawful Possession of Firearms in the Second Degree
Count III:

and judgment has been pronounced against said defendant, and the Court having decreed that said defendant shall be punished by serving the determined sentence(s) of:

Count I : ____ days/months; Count II: 57 days/months; Count III: ____ days/months;

[x] Sentences imposed shall be concurrent with any sentence defendant is currently serving

[x] Defendant shall receive credit for all days served solely on this cause of action prior to this date. Computed by Dept of Corrections

NOW, THEREFORE, IT IS HEREBY ORDERED:

[ ] THE SHERIFF SHALL take the defendant into his custody and safely deliver said defendant to the proper facility for confinement and placement as ordered in the Judgment and Sentence; [ ] defendant is hereby authorized to serve _____ [ ] days [ ] months of confinement on [ ]work crew [ ] work release, if a position is available and the defendant is eligible and pays all costs.

NOTE: IF PARTIAL CONFINEMENT HAS BEEN AUTHORIZED, THE DEFENDANT

179 cbs

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MUST CONTACT THE WORK CREW COORDINATOR IMMEDIATELY AND ARRANGE TO START SERVING THE SENTENCE ON PARTIAL CONFINEMENT PRIOR TO THE COMMENCEMENT DATE NOTED BELOW. IF THE DEFENDANT IS NOT ACTUALLY SERVING PARTIAL CONFINEMENT PRIOR TO THE COMMENCEMENT DATE, THE DEFENDANT MUST REPORT TO THE ISLAND COUNTY JAIL ON THE DATE AND TIME NOTED BELOW.

[X] THE SHERIFF SHALL take and deliver the defendant to the proper officers of the Department of Corrections; and

YOU, THE PROPER OFFICERS OF THE DEPARTMENT OF CORRECTIONS, ARE COMMANDED to receive the defendant for classification, confinement and placement as ordered in the Judgment and Sentence.

[ ] The defendant is committed for up to thirty (30) days evaluation at Western State Hospital or Eastern State Hospital to determine amenability to sexual offender treatment.

THE SHERIFF SHALL take and deliver the defendant to the proper officers of the Department of Corrections pending delivery to the proper officers of the Secretary of the Department of Social and Health Services.

YOU, THE PROPER OFFICERS OF THE SECRETARY OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES, ARE COMMANDED to receive the defendant for evaluation as ordered in the Judgment and Sentence.

[ ] The Sheriff of San Juan/Island County shall take the defendant into his custody when the defendant appears at the county detention facility/jail on _____ at _____ a.m./p.m.

THE DEFENDANT SHALL NOT FAIL TO COMPLY WITH THESE PROVISIONS. FAILURE TO REPORT AS ORDERED MAY RESULT IN PROSECUTION FOR ADDITIONAL OFFENSES, INCLUDING BAIL JUMPING AND ESCAPE.

By direction of the Honorable

Date: 5/11/11

Judge

Clerk

By: _____
Deputy Clerk

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