69852-4 69852-4

No. 69852-4-1

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

STATE OF WASHINGTON,
Respondent,

v.

ANDREW DAVIS SAGGERS,
Appellant.

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

The Honorable Judge McCullough

REPLY BRIEF OF APPELLANT

GILBERT H. LEVY
JENNIFER KAPLAN
Attorneys for Petitioner
WSBA No 4805

Law Office of Gilbert H. Levy
Suite 330 Market Place One
2003 Western Avenue
Seattle, WA 98121
Phone: (206) 443-0670
Fax: (206) 448-2252
E-mail: courts@glevylawer.com

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Appellant Andrew Saggers replies to the Brief of Respondent filed by the State.

I. OFFICERS ILLEGALLY DETAINED SAGGERS

The state argues that officers lawfully detained Saggers in response to the 911 call by "Abraham Anderson". The state has correctly identified the three-part test for determining whether a 911 call gives rise to reasonable suspicion: to detain a suspect; whether the informant is reliable; whether the informant's information was obtained in a reliable manner; and whether officers corroborate details of the purported criminal activity. *State v. Lee*, 127 Wash.App 912, 918, 199 P.3d 445 (2008). However, it is not able to establish any of these criteria.

A. THE INFORMANT WAS NOT RELIABLE

The state rests on two theories to establish the prank caller's reliability: that he provided a name and date of birth and that he used the 911 system to report his false tip. Both are absurd.

Washington courts have already solidly rejected the notion that providing a name during a 911 call makes a tipster credible. Notwithstanding the risk described in *State v. Hopkins*, 128 Wash. App. 855, 863-64, 117 P.3d 377, 381 (2005) that a telephone informant could

— and here, did — fabricate an alias, police need more than a name to determine whether an informant is reliable. In *Hopkins,* the informant's real name and cell phone number appeared on the officers' computer, substantiating his identity, but the officers were not familiar with him. The court found this insufficient to establish the informant's reliability. *Id.* See also *State v. Sieler*, 95 Wash. 2d 43, 48, 621 P.2d 1272, 1275 (1980) ("The reliability of an anonymous telephone informant is not significantly different from the reliability of a named but unknown telephone informant."). Here, the police had fewer indicia that the informant was reliable, as they knew he had called from a payphone, not his cell phone, and therefore could not presume that the caller would be traceable.

The state's argument that using the 911 system bolsters an informant's credibility because 911 calls are recorded is unsupported. It cites *United States v. Terry-Crespo*, 356 F.3d 1170, 1176 (9th Cir. 2004) for this proposition. However, that position was rejected by the *Hopkins* court, where it was only cited the dissent and not the majority. Further, the facts of this case indicate that a fraudulent 911 call does not necessarily put the caller at risk, as nothing in the record indicates that the Kent Police Department ever investigated Kyle Thompkins, the likely source of the call, for his egregious criminal conduct.

B. THE INFORMATION WAS NOT OBTAINED IN A RELIABLE FASHION

This case involves a prank call to 911. All parties are in agreement that this was a prank call. The state does not dispute that the officers who responded to the call strongly suspected that it was a prank call. The state has chosen not to address this issue in its brief, treating the case as if it were an ordinary 911 informant case. Its unwillingness to address this central weakness in its case is indicative of the merits of its position. Regardless, since police testified that they had suspicions that the 911 call was fake at the time, the state cannot now defend it as reliable.

The state's argument that the informant's information was reliably obtained lies in the caller being an eyewitness to a crime. As a general proposition, that is a reasonable argument. Here, however, responding officers did not believe that the caller was actually an eyewitness to a crime; rather, they responded out of an abundance of caution.

To recap, nothing about the story led police at the time of the event to believe the caller's claim was true. Police noted several inconsistencies that made the story implausible on its face. These points, undercutting the caller's story, included the short amount of time between the two calls; the fact that the caller said he was on foot, but called from a mile away from

Saggers' residence; and the fact that the caller said he saw Saggers' vehicle driving in a different neighborhood at the same time that police saw it parked in his driveway (described more fully *infra*). Further, the story is so nonsensical — a witness walking his dog after 3am saw a suspect hit a woman over a drug deal and then go inside a residence to retrieve a shotgun while she waited outside, and then the witness traveled a mile to a payphone to call the police — that it could not have been reliably obtained. An officer and a sergeant testified that they did not give the story full credence at the time, and this Court should not afford it more credibility in retrospect.

C. THE POLICE CORROBORATED NO DETAILS OF THE PURPORTED CRIMINAL ACTIVITY

For a 911 call to be considered reliable, the police must not solely be able to corroborate *any* details from the tip; rather there must be "corroborative observation which suggests the presence of criminal activity." *State v. Hart*, 66 Wash. App. 1, 6, 830 P.2d 696, 699 (1992). The police must corroborate the non-innocuous details of the tip. *Hopkins*, *supra* at 381.

The state concedes that nothing that officers saw when they arrived at the scene of Saggers' house led them to believe that criminal activity was recently underfoot. The lights were off and there was no observable activity in the house. As the police were not able to independently corroborate any evidence of criminal activity, the state relies on two other scraps of information, neither of which suffice.

First, the state notes that the 911 caller had said that there was a red and grey Suburban truck in the suspect's driveway. Police did see a red and grey Suburban truck in the driveway when they arrived at the scene, but this is an innocuous detail of exactly the sort that the Supreme Court of the United States has found insufficient. In *Florida v. J.L.*, 529 U.S. 266, 268 (2000), a 911 caller told police that a young black male at a bus stop wearing a plaid shirt was carrying a gun. Police arrived at the scene and saw a young black male wearing a plaid shirt. *Id.* They frisked him and found a gun. *Id.* The Court rejected the plaid shirt as an indicator of reliability:

> An accurate description of a subject's readily observable location and appearance is of course reliable in this limited sense: it will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person.

Id. at 272. The type of car parked in the driveway of a suspect's house is no more corroborative of illegality.

The state's reliance upon the Suburban is further undermined by the fact that the information about the Suburban is suspicious. When officers observed the Suburban at the house, it was blocked into the driveway by another vehicle, which the 911 caller had not reported. Further, after the police already arrived at the house, information came over dispatch saying that the 911 caller saw the Suburban driving past him. Officer Walter attributed this to a delay in the dispatch system, but there is no plausible timeline that could have accounted for this. Officer Walter ended his call with Kyle Thompkins, who was standing outside Saggers home, at 3am. Thompkins did not mention an altercation. The toned priority call from the 911 dispatch went through at 3:13:35, and the call was placed a mile from Saggers's house. Officer Walter arrived at the house at 3:18 and saw the Suburban blocked in by a second vehicle. At 3:19, the information was received that the Suburban was seen a mile away. There was not enough time in the 18 minutes between when Officer Walter and Thompkins ended their call and when Officer Walter arrived at the house for the following events to take place: an altercation to occur, and then, after the witness had left the scene, for the Suburban to drive a mile, turn around, come back, and be blocked into the driveway by

another vehicle. The Suburban is therefore corroborative of nothing except that the 911 caller was providing false information.

The other shred that the state relies upon is that the 911 caller said that the suspect had assaulted a woman and threatened her with a shotgun, and Thompkins had told Officer Walter that Saggers had a shotgun and a previous domestic violence conviction. What a coincidence! Of all of the things that Thompkins could have said about Saggers, he happened to mention what became the subject of a 911 call minutes later. The commonality of the content of the two calls corroborated not that Saggers was involved in criminal activity, but that the 911 call was a prank.

II. EVEN IF SAGGERS' INITIAL DETENTION WAS LEGAL, IT EXCEEDED THE PERMISSIBLE SCOPE

The state concedes that Officer Mills continued to detain and question Saggers after the rest of his team had determined that the call was a prank and that the reported crime had not actually occurred. However, it argues that other officers failed to report this to Mills, and he was therefore permitted to continue the detention and question Saggers about other crimes. Allowing an ongoing detention in these circumstances violates Washington's fellow-officer rule, also known as the police team rule, which is an integral component of Fourth Amendment analysis.

This rule "allows a court to consider the cumulative knowledge of police officers in determining whether there was probable cause to arrest a suspect." *State v. Ortega*, 177 Wash. 2d 116, 126, 297 P.3d 57, 62 (2013) (internal citations omitted). *See also State v. Maesse*, 29 Wash.App. 642, 646, 629 P.2d 1349, 1351 (1981) ("The crux of the fellow-officer rule is that "in determining whether probable cause existed we must evaluate the collective information of all the officers.") "[T]he fellow officer rule permits probable cause to be determined upon the information possessed by the police as a whole when they are acting in concert. The rule does not require a finding of probable cause to be based solely upon the personal or subjective knowledge of the arresting officer. We agree that in those circumstances where police officers are acting together as a unit, cumulative knowledge of all the officers involved in the arrest may be considered in deciding whether there was probable cause to apprehend a particular suspect." *Id.*

Here, unlike in many cases, every police officer on the team, except Officer Mills, had reason to believe that Saggers had not committed the assault reported by the 911 caller. The fellow-officer rule tells us that Mills's lack of information about the resolution of the case is not dispositive; rather all of the officers' knowledge that Saggers was innocent of the assault constitutes the bulk of the cumulative knowledge that must

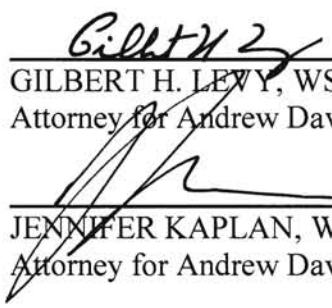
be considered in determining whether there was probable cause to continue holding him, and the obvious conclusion, therefore, is that there was not.

III. CONCLUSION

In light of the foregoing, the trial Court's denial of Saggers' Suppression Motion should be reversed.

DATED this __4th__ day of October, 2013.

Respectfully submitted,



GILBERT H. LEVY, WSBA No. 4805
Attorney for Andrew Davis Saggers

JENNIFER KAPLAN, WSBA No. 40937
Attorney for Andrew Davis Saggers

CERTIFICATE OF SERVICE

I certify under penalty of perjury that I served a true and correct copy of the foregoing on counsel for the respondent at the office and address listed below by depositing the same in United States Mail, postage pre-paid on the _4th_ day of October 2013:

King County Prosecuting Attorney's Office
King County Courthouse, Room W554
516 Third Avenue
Seattle, WA 98104-2362

and I caused a copy of this document to be served upon the following entities by depositing said copy in the United States Mail, postage pre-paid on the _4th_ day of October 2013::

Andrew Davis Saggers
12509 SE 299th Pl.
Auburn, WA 98092

SARAH MAY JOHNSON,
Legal Assistant,
Law Office of Gilbert H. Levy