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A. ISSUES PERTAINING TO APPELLANT'S ASSIGNMENTS OF ERROR.

1. Were the court's findings supported by substantial evidence?
2. Did the lower court apply the correct standard in determining whether the brief detention was reasonable and only rely on facts known to the officer at the time of the detention?
3. Was defendant's brief detention reasonable when the officer relied on specific and articulable facts, including a reliable citizen tip, which gave rise to a reasonable suspicion that defendant was, or was about to be, engaged in criminal activity?

B. STATEMENT OF THE CASE.

1. Procedure

The State charged defendant Timothy Roy Clinton by amended information with second-degree identity theft and second-degree possession of stolen property. CP 25-26. On August 2, 2006, the case came before the Honorable Rosanne Buckner for a suppression hearing. RP 1. The lower court denied defendant's motion to suppress after hearing testimony from Pierce County Sheriff Deputy Eric Jank. RP 29-

31. Defendant then freely and voluntarily waived his right to a jury trial and agreed to a stipulated facts trial. RP 34. After reviewing the arrest report and Deputy Jank's supplemental report, the lower court found defendant guilty on both counts. RP 35. The lower court imposed a standard range sentence. CP 33-43. Defendant filed a timely notice of appeal. CP 24.

2. Facts

At around 4:30 p.m. on June 15, 2006, Deputy Jank was dispatched to Prairie Ridge Drive in Pierce County to look for a suspicious ice cream truck. RP 5. Deputy Jank stopped to ask a couple girls that were about ten to twelve years old if they had seen the ice cream truck. RP 5. The girls said they had seen a white car that they did not recognize about two to three blocks away. RP 6. The girls said that the car had been parked down by the park for a while. RP 6. The girls said there was a lot of people coming to and from the car. RP 6.

Deputy Jank knew based off his experience, other reports and from other informants that there was a lot of drug activity in the section of the mobile home park next to the Prairie Ridge Community Park. RP 6-7. Within the last two weeks, Deputy Jank had received numerous reports of drug reports in that area specifically, including reports of selling drugs out of parked cars in that area. RP 18-19. Deputy Jank also had personal experience involving drug sales and young people. RP 6-7.

Based off this information, Deputy Jank decided to check out the white car the girls had seen near the community park. RP 6. Deputy Jank drove towards a fairly secluded dead-end at 128th Street, which butts up to the community park. RP 7. The community park is surrounded by a mobile home park. RP 7. As Deputy Jank drove around a corner he saw a white Ford Mustang backed up to a closed gate just sitting there. RP 7. In addition to the driver, the car had a passenger in the front seat and defendant in the back seat. RP 9-10.

As Deputy Jank drove closer he could see the front passenger look towards the driver and start waving his hand forward, which Deputy Jank thought was a motion for the car to go. RP 7, 16. Deputy Jank saw the driver fidgeting and moving his body around. RP 8. Deputy Jank did not think that people legally parked would act in such a manner. RP 15. Deputy Jank thought the occupants' actions to hurriedly leave after seeing him were suspicious. RP 15-16.

Deputy Jank parked diagonally about thirty feet away leaving enough room for the white car to drive by. RP 8. This was similar to how Deputy Jank would have parked for any traffic stop. RP 8. After Deputy Jank stopped, the passenger continued motioning and the driver started to pull away, but then stopped. RP 8. Deputy Jank got out of his vehicle and asked the driver what they were doing. RP 8. The driver first claimed that they were just hanging out. RP 8.

Deputy Jank explained to the driver that a couple kids in the area said their car was parked there for some time with people coming and going. RP 9. The driver did not respond, so Deputy Jank asked him why he was leaving. RP 9. The driver responded that he thought Deputy Jank had a key to the park and was going to open the gate. RP 9. After Deputy Jank explained that he did not carry keys to public parks, the driver claimed he was waiting for a friend. RP 9.

Deputy Jank then asked for identification from the driver and other passengers in the car. RP 9. The driver provided Deputy Jank identification. RP 9. The front passenger said he did not have identification, but told Deputy Jank his name. RP 9-10. Defendant did not provide his name and said he did not have to give Deputy Jank anything because he did not do anything wrong. RP 9.

At that point, Deputy Jank requested a second car to assist him. RP 10. Deputy Jank knew there was a second deputy nearby that had been the initial dispatch for the suspicious ice cream truck in the area. RP 10. The second deputy arrived in two to three minutes. RP 10. The other deputy recognized defendant and knew he had a warrant. RP 11. Deputy Jank checked to confirm defendant's warrant, then the other deputy arrested defendant. RP 11.

C. ARGUMENT.

1. THE COURT SHOULD TREAT THE WRITTEN FINDINGS OF FACT AS VERITIES ON APPEAL.

Deciding whether the trial court erred in denying the motion to suppress depends on whether substantial evidence exists to support the findings of fact and, in turn, the conclusions of law. State v. Madarash, 116 Wn. App. 500, 509, 66 P.3d 682 (2003)(citing State v. Broadaway, 133 Wn.2d 118, 131, 942 P.2d 363 (1997)). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). Appellate courts treat unchallenged findings of fact as verities on appeal and reviews challenges to a trial court's conclusions of law de novo. Robel v. Roundup Corp., 148 Wn.2d 35, 42-43, 59 P.3d 611 (2002). Credibility determinations are for the trier of fact and not subject to review. State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). In this case, defendant does not challenge any of the court's written findings of fact, therefore they should be treated as verities on appeal.

2. WHILE NOT CONTROLLING, THE ORAL FINDING DEFENDANT CHALLENGES IN THIS CASE WAS SUPPORTED BY SUBSTANTIAL EVIDENCE.

A court's oral opinion is not a finding of fact. State v. Reynolds, 80 Wn. App. 851, 860 n.7, 912 P.2d 494 (1996)(citing State v.

Williamson, 72 Wn. App. 619, 623, 866 P.2d 41 (1994)). Rather, the court's oral opinion is "no more than a verbal expression of [its] informal opinion at that time . . . necessarily subject to further study and consideration, and may be altered, modified, or completely abandoned." Ferree v. Doric Co., 62 Wn.2d 561, 567, 383 P.2d 900 (1963). And the trial court's oral decision is not binding "unless it is formally incorporated into findings of fact, conclusions of law, and judgment." State v. Dailey, 93 Wn.2d 454, 458-59, 610 P.2d 357 (1980)(citations omitted).

A trial court has the power to enter a judgment that differs from its oral ruling, but once written judgment has been entered, it cannot enter an amended judgment after rethinking the case, unless the amended judgment is supported by the record. Presidential Estates Apartment Assocs. v. Barrett, 129 Wn.2d 320, 326, 917 P.2d 100 (1996). See also, State v. Eppens, 30 Wn. App. 119, 126, 633 P.2d 92 (1981)(an appellate court may consider a trial court's oral decision in interpreting its written findings of facts and conclusions of law, "so long as there is no inconsistency").

Defendant challenges the court's oral finding that "defendant was in a vehicle parked by a gate to a park where the deputy knew there was drug sales from vehicles." RP 31. While oral findings of the court are not controlling, the oral finding defendant challenges in this case was supported by substantial evidence. Deputy Jank testified that defendant was in a car parked to a gate near the park. RP 7, 10. Deputy Jank testified that based off his experience, other reports and from other

informants that he knew there was a lot of drug activity in the section of the mobile home park next to the Prairie Ridge Community Park. RP 6-7. Deputy Jank also testified that he had received reports of selling drugs out of cars parked in that area. RP 19. Accordingly, the court's oral finding was supported by substantial evidence.

3. THE LOWER COURT APPLIED THE CORRECT STANDARD IN DETERMINING WHETHER THE BRIEF DETENTION WAS REASONABLE AND ONLY RELIED ON FACTS KNOWN TO THE OFFICER AT THE TIME OF THE DETENTION.

The lower court applied the correct standard in determining whether the brief detention was reasonable. The lower court's first conclusion for admitting the evidence stated, "The Court finds that given the officer's experience, the information that he had, and the actions of the suspects the deputy had reason for a brief stop." CP 27-30. The record shows that the court's use of the language, "reason for a brief stop," was referring to the adequate legal standard which had been (1) addressed in the written motion to suppress, (2) argued at the suppression hearing and (3) referred to in the court's oral ruling. Defendant's written motion to suppress cited State v. Larson, 93 Wn.2d 638, 644, 611 P.2d 771 (1980), which stated that in order for an officer to "detain a suspect briefly," the officer is required "to have a reasonable suspicion, based on objective

facts, that the individual is involved in criminal activity.” CP 3-16. The State argued at the suppression hearing that the officer had an articulable suspicion that there were drug sales going on. RP 27. The lower court also stated in its oral ruling, that “given these facts, the brief detention of the defendant was reasonable.” RP 31. In sum, the record shows that court’s use of the language, “reason for a brief stop,” was responding to the adequate legal standard.

Moreover, the lower court ultimately only relied on facts known to the officer at the time of the detention in determining that the detention was reasonable. The court’s oral ruling listed the following facts supporting its conclusion that the detention was reasonable: (1) defendant was in a vehicle parked by a gate to a park where the deputy knew there was drug sales from vehicles, (2) two young girls had reported the car and numerous people coming and going from the car, (3) the driver and front passenger behaved suspiciously when they saw the deputy drive up to them, (4) the driver gave different explanations for why they were parked by the closed gate, (5) defendant refused to provide identification when requested and had a warrant out for his arrest. RP 31. However, the court did not include any information about the different explanations in its written findings and conclusions for admissibility. CP 27-30. Further, the court in its conclusions clarified, first that the deputy had reason for the brief stop (conclusion one), before addressing defendant’s warrant

(conclusion two). CP 27-30. Accordingly, the lower court ultimately only relied on facts known to the officer at the time of the detention in determining that the detention was reasonable.

4. DEFENDANT’S BRIEF DETENTION WAS REASONABLE BECAUSE THE OFFICER RELIED ON SPECIFIC AND ARTICULABLE FACTS GIVING RISE TO A REASONABLE SUSPICION THAT DEFENDANT WAS, OR WAS ABOUT TO BE, ENGAGED IN CRIMINAL ACTIVITY.

Consistent with the Fourth Amendment and article 1, section 7 of the Washington State Constitution, a police officer may conduct an investigatory stop based on less than probable cause if the officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” State v. Glover, 116 Wn.2d 509, 514, 806 P.2d 760 (1991)(quoting Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)(internal quotation marks omitted). The level of articulable suspicion necessary to support an investigatory detention is “a substantial possibility that criminal conduct has occurred or is about to occur.” State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). The action must be “justified at its inception” and “reasonably related in scope to the circumstances” that justified the interference. State v. Ladson, 138 Wn.2d 343, 350 979 P.2d 833 (1999) (quoting Terry, 392 U.S. at 20). When evaluating the reasonableness of an

investigatory detention, a court considers the totality of the circumstances, including the officer's training and experience, the location of the stop, and the conduct of the person detained. Glover, 116 Wn.2d at 514.

Experienced officers are not required to ignore arguably innocuous circumstances that rouse their suspicions. State v. Kennedy, 107 Wn. App. 972, 980, 29 P.3d 746 (2001)(citing State v. Samsel, 39 Wn. App. 564, 570-71, 694 P.2d 670 (1985)). They may expand the scope of the initial stop to encompass events occurring during the stop. See, State v. Belieu, 112 Wn.2d 587, 605, 773 P.2d 46 (1989). They may ask a few questions to determine whether a further short intrusion is necessary to dispel their suspicions. See, e.g., State v. Gonzales, 46 Wn. App. 388, 394-95, 731 P.2d 1101 (1986).

An officer's reasonable suspicion may be based on information supplied by an informant. Adams v. Williams, 407 U.S. 143, 147, 92 S. Ct. 1921, 1924, 32 L. Ed. 2d 612 (1972); Kennedy, 107 Wn.2d at 7-8. The information must, however, carry some "indicia of reliability." State v. Sieler, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980)(quoting Adams, 407 U.S. at 147). To be sufficiently reliable, the tip must have been made under circumstances which suggest the informant's reliability and there must be some corroboration that criminal activity is occurring or that the informant's information was obtained in a reliable manner. State v. Walker, 66 Wn. App. 622, 626, 834 P.2d 41 (1992).

Generally, citizen-informants are deemed presumptively reliable, and police are justified in concluding that a tip from such informant comes from a reliable source. State v. Garcia, 125 Wn.2d 239, 242, 883 P.2d 1369 (1994)(Information provided by a citizen does not require a showing of the same degree of reliability as a “professional” informant.); State v. Wakeley, 29 Wn. App. 238, 241, 628 P.2d 835 (1981)(Informant was reliable because he provided name, address, telephone number, and other background information.).

In this case, the officer’s reasonable suspicion was based in part on information from the two girls that a lot of people were coming and going from a white Mustang that had been parked at the end of 128th Street for a while. CP 27-30 (Undisputed Finding 1). Because the girls were citizen informants, the officer was justified in concluding their tip was from a reliable source. While the officer did not ask for the girls’ contact information, the officer was able to corroborate that there was a white Mustang parked at the end of 128th Street. RP 7; CP 27-30 (Undisputed Finding 2). The officer was unable to confirm that people had been coming and going from the Mustang because immediately upon seeing the officer the car attempted to flee the area. RP 7, 16; CP 27-30 (Undisputed Finding 3).

Defendant attacks the girls’ reliability citing State v. Sieler, which is distinguishable. In Sieler a parent who believed that he observed a drug sale in another car while waiting for his son in a school parking lot

informed the school secretary by telephone of his conclusion. Sieler, 95 Wn.2d at 44-45. He described the car to the secretary as a black-over-gold Dodge and gave her a license plate number in addition to his own telephone number and last name. Sieler, 95 Wn.2d at 45. The secretary called the police and relayed the information given to her by the parent. Sieler, 95 Wn.2d at 45. When the police arrived, the school vice-principal told them that he had talked to the four occupants in the car, two being students, and had not observed any contraband or any suspicious activity. Sieler, 95 Wn.2d at 45. According to the Washington Supreme Court, the facts given to the officers by the secretary were not sufficient to establish the reliability of the informant parent because a named but unknown telephone informant is not much different from an anonymous telephone informant. Sieler, 95 Wn.2d at 48.

Unlike Sieler, the observations in this case were made by two girls who the officer spoke to directly. Unlike Sieler, the girls did not offer a conclusion to the officer, rather the officer made his conclusion based on his further experience and the actions of the Mustang's occupants. The officer knew based off his experience, other reports and from other informants that there was a lot of drug activity in that specific area, including selling of drugs out of parked cars. RP 6-7, 18-19. Upon seeing the officer, the front passenger immediately started motioning for the driver to go. RP 7, 16. The officer saw the driver fidgeting and moving his body around and then the Mustang started to leave. RP 8; CP 27-30

(Undisputed Finding 3). The officer did not think that people legally parked would act in such a manner. RP 15. The officer parked diagonally about thirty feet away in order to stop the Mustang and investigate. CP (Undisputed Finding 3). Given the officer's experience, the information he had from the girls, and the actions of the suspects, the officer had reasonable suspicion before initiating the stop that the Mustang's occupants were involved in drug activity. See, Glover, 116 Wn.2d at 514 (the defendant's presence in a high crime area, and his avoidance of officers upon seeing them amounted to reasonable suspicion for stop); State v. Little, 116 Wn.2d 488, 496, 806 P.2d 749 (1991)(the defendant's presence in a high crime area plus flight upon seeing an officer provided the officer with "substantial grounds of criminal activity [sic] to justify a detention.").

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D. CONCLUSION.

For the foregoing reasons, the State respectfully asks the court to affirm the defendant's convictions.

STATE OF WASHINGTON
BY [Signature]
DEPUTY

DATED: JUNE 5, 2007

GERALD A. HORNE
Pierce County
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[Signature]
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Levi Larson
Rule 9

Certificate of Service:

The undersigned certifies that on this day she delivered by U.S. mail or ABC-LMI delivery to the attorney of record for the appellant and appellant c/o his attorney true and correct copies of the document to which this certificate is attached. This statement is certified to be true and correct under penalty of perjury of the laws of the State of Washington. Signed at Tacoma, Washington, on the date below.

6/5/07 [Signature]
Date Signature