

No. 47735-1-II

**COURT OF APPEALS OF THE STATE OF WASHINGTON**

**DIVISION II**

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**CITY OF LONGVIEW,**

Respondent,

vs.

**MARK REYES,**

Mark Reyes.

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**BRIEF OF RESPONDENT**

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Heidi Thompson, # 30812  
Attorney for Respondent

City of Longview  
P.O. Box 128  
Longview, Washington 98632-7080  
Phone (360) 442-5870  
Fax (360) 442-5965

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## STATEMENT OF THE CASE

On or about April 29, 2014, in Longview, WA, Officers received information from dispatch that a named citizen, Christopher Melillo, was reporting that there was an intoxicated driver who had difficulty standing at the AM/PM Convenience Store. Mr. Melillo indicated that the person was so drunk he could barely stand, and at one point had actually grabbed on to Mr. Melillo to keep from falling down. Mr. Melillo also informed dispatch that the man was barefooted. Mr. Melillo gave a description of the vehicle being driven by the intoxicated subject as being a blue 2000 Dodge Durango with Washington license plate 681 WWK. Mr. Melillo also indicated that the vehicle had left the AM/PM and was going fast. CP 25-26, 58-59, RP 11-12, 21-23.

The Dodge Durango was registered to the Appellant, Mark Reyes. When he ran the vehicle information given to him by dispatch, Officer Maini recognized Mr. Reyes's name from a previous DUI a couple of months before. RP 4-5.

Officer Maini located the Dodge Durango as it drove in the 1100 block of 18th Ave. Officer Maini stopped the vehicle and approached the driver, Mark Reyes. CP 25-26.

Immediately upon contact with Mark Reyes, Officer Maini smelled “a very strong odor of alcoholic beverage coming from the vehicle (of which Reyes was the sole occupant).” Officer Maini also noticed that Mark Reyes “appeared disoriented and had very slow movements and responses to questions.” Mark Reyes, “admitted to drinking ‘one beer’ earlier in the night and had watery and red, bloodshot eyes with droopy eyelids. Reyes also had a very slow and very slurred speech pattern.” CP 25-26.

Mark Reyes voluntarily exited his vehicle. He “had a difficult time standing without assistance.” Due to Mr. Reyes’s high level of intoxication and inability to stand on his own, Officer Maini did not administer Field Sobriety Tests, and instead had him sit on the patrol vehicle bumper as Officer Maini talked to him. He was arrested and provided a BAC blow. Mark Reyes was charged with DUI with a BAC of .204/.205, in violation of RCW 469.61.5020. CP 25-26.

After he arrested Mr. Reyes, Officer Maini contacted the reporting party, Christopher Melillo. RP 7-8.

Mark Reyes filed a motion to suppress the stop of his vehicle, based on the 911 caller's report of a vehicle being driven by someone who was intoxicated.

His motion was denied and findings and conclusions were entered.

On November 26, 2014, Mr. Reyes was found guilty of his charge of DUI with a BAC of .204/.205 at a hearing on a stipulation of the facts.

Afterwards, Mr. Reyes filed a RALJ appeal challenging the denial of his motion to suppress.

On April 15, 2014, the Superior Court held that the 911 caller reporting the DUI was a named but unconfirmed informant. The court further held that, here, the investigatory traffic stop rose to a level sufficient to amount to a reasonable suspicion based on the totality of the circumstances rather than probable cause. As such, the court affirmed Mr. Reyes's DUI conviction and denied his RALJ appeal.

## ARGUMENT

**I. APPELLANT’S ARGUMENT THAT THE TRIAL COURT ERRED WHEN IT ENTERED ITS FINDINGS THAT A 911 CALLER WAS A “KNOWN INFORMANT” OR A “NAMED INFORMANT” IS MOOT AS THE COWLITZ COUNTY SUPERIOR COURT HAS ALREADY FOUND IN HIS FAVOR ON THIS ISSUE. THE COURT FOUND, HOWEVER, THAT THE STOP WAS STILL REASONABLE BASED ON THE TOTALITY OF THE CIRCUMSTANCES.**

Appellant, Mark Reyes, brought the above stated argument before the Cowlitz County Superior Court on April 15, 2015. At that time the Court considered the testimony and evidence and agreed that that listing the informant “as a known and therefore a presumed reliable informant [was] not supported by the evidence...” The Court then made the following Findings of Fact and Conclusions of Law:

### FINDINGS OF FACT

1. Listing the informant as a known and therefore a presumed reliable informant is not supported by the evidence.
2. The informant was a named but unconfirmed informant.
3. The presumption of reliability as defined in the case law for a known informant does not attach to the named but unconfirmed informant.

4. The named and unconfirmed informant provided a lot of non-  
inculpatory information that was confirmed.
5. In some fashion the police come into contact with Mr. Reyes.
6. Assuming an investigatory traffic stop; the issue is a reasonable  
suspicion based on totality of the circumstances rather than Probable  
Cause.

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#### CONCLUSIONS OF LAW

The stop does rise to the level sufficient to amount to a reasonable suspicion given the totality of the circumstances.

Appellant, Mark Reyes is attempting to re-argue an issue that has already been found in his favor with the hopes that the Courts ultimate conclusion: That in the case at a bar: “The stop does rise to the level sufficient to amount to a reasonable suspicion given the totality of the circumstances” will be overlooked.

Further, in his brief, Appellant erroneously shows the Superior court’s findings and conclusions to state “The stop does not rise to the level sufficient...” See Appellant’s brief page 7(Emphasis added). This is in error as the court found that: “The stop does rise to the level sufficient to amount to a reasonable suspicion given the totality of the circumstances.” CP 112.

**II. THE TRIAL COURT DID NOT ERR WHEN IT DENIED APPELLANT'S MOTION TO SUPPRESS BECAUSE THE STOP WAS REASONABLE BASED ON THE TOTALITY OF THE CIRCUMSTANCES.**

The law is clear: an informant's tip may justify an investigative stop if the tip possesses sufficient indicia of reliability where the circumstances suggest the informant's reliability or where there is some type of corroborative observation which suggests the presence of criminal activity or that the information was obtained in a reasonable fashion. *State v. Kennedy*, 107 Wn.2d 1, 7, 726 P.2d 445 (1986). "Courts employ the totality of the circumstances test to determine whether an informant's tip possessed sufficient indicia of reliability to support reasonable suspicion." *State v. Howerton*, 187 Wn. App. 357, 365, *review denied*, 184 Wn.2d 1011(2015). Further, "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.' *Id*, quoting *State v. Lee*, 147 Wash.App. 912, 918, 199 P.3d 445 (2008).

In fact, “[t]he existing standard does not require all three factors to establish indicia of reliability.” *Howerton, supra*, quoting *State v. Saggors*, 182 Wn. App. 832, 840 n.18, 332 P.3d 1034 (2014). “Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors - quantity and quality- are considered in the ‘totality of the circumstances -the whole picture,’ that must be taken into account when evaluating whether there is reasonable suspicion.” *Howerton, supra*, quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981), and *Lee, supra*, at 917 (note: (alteration in original) (internal quotation marks omitted) (quoting *State v. Randall*, 73 Wn. App. 225, 229, 868 P.2d 207 (1994))).

The reasonableness of an officer's suspicion leading to a stop is determined by the totality of the circumstances known to the officer at the inception of the stop.” *State v. Rowe*, 63 Wash. App. 750, 753, 822 P.2d 290 (1991). “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." *Lee*, supra citing *Kennedy*, 107 Wash.2d at 8, 726 P.2d 445; *State v. Sieler*, 95 Wash.2d 43, 47, 621 P.2d 1272 (1980); *State v. Lesnick*, 84 Wash.2d 940, 944, 530 P.2d 243, cert. denied, 423 U.S. 891 (1975). Moreover, "the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." *Illinois v. Wardlow*, 528 U.S. 119, 125, 120 S.Ct. 673, 145 L.Ed.2d 570 (2000).

Simply put "[r]easonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and quality—are considered in the "totality of the circumstances—the whole picture," that must be taken into account" *Lee*, at 918. A stop is justified if the officer can point to specific and particular facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *Terry*, supra. ; *State v. White*, 97 Wn.2d. 92, 640 P.2d 1061 (1982).

In fact, "a court must evaluate the totality of circumstances presented to the investigating officer." *State v. Glover*, 116 Wn.2d 509, 806 P.2d 760 (1991), citing *United States v. Cortez*, 449 U.S. 411, 418, 101 S.Ct. 690, 66 L. Ed. 2d 621 (1981). "The court takes into

account an officer's training and experience when determining the reasonableness of a *Terry* stop.” *Glover*, supra, citing *State v. Mercer*, 45 Wn. App. 769, 774, 727 P.2d 676 (1986); *State v. Samsel*, 39 Wn. App. 564, 570-71, 694 P.2d 670 (1985).

Appellant, Mark Reyes, appears to argue that barring law enforcement first taking the time to make formal contact with a 911 caller to verify the person’s identification, any information given by the caller when calling in and describing real time events, should not be considered reliable enough for police officers to investigate the information provided. The City disagrees. It is absurd to require officers to treat an emergency call as a reason to go and investigate the caller while the suspect is left unchecked to drive through the population.

Not only would such an action place the public at greater risk of harm from an intoxicated driver, it would also lessen the likelihood of apprehension of the actual law breaker due to the passage of time. It would, in fact, enable an intoxicated driver to be able to do maximum damage by allowing them to continue unchecked for a longer period of time.

The primary justification for warrantless automobile searches is that a vehicle, because of its potential mobility, presents exigent

circumstances which require immediate action to avoid the loss of evidence and excuse the requirement of a warrant. *State v. Pate*, 12 Wn.App. 237, 529 P.2d 875 (1974).

The City contends that in the case at bar, Office Maini did have sufficient indicia of reliability to justify contacting Mr. Reyes. An eyewitness, Christopher Melillo, gave a real-time report to 911. Mr. Melillo not only gave his name and address to 911 dispatch, he also provided specific details about Mark Reyes being so intoxicated he was stumbling around and barely able to walk while outside of his car. Mr. Melillo also provided dispatch with the color and make of the vehicle Mr. Reyes was driving as well as the direction the vehicle was heading. He even provided the vehicle's license plate number.

Under *Terry*, and the Washington cases that follow, if an officer has an articulable suspicion that a crime has been committed or will be committed, he may detain the suspect to gain further information to either dispel or heighten the suspicion. An investigatory stop is also not rendered unreasonable solely because the officer did not rule out all

possibilities of innocent behavior before initiating the stop. *State v. Anderson*, 51 Wn. App. 775, 780, 755 P.2d 191 (1988).

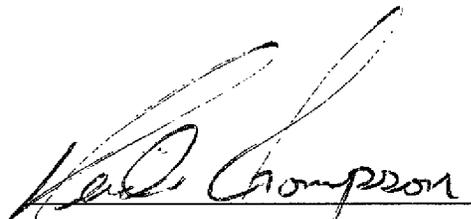
Mark Reyes argues that the stop in this case was unreasonable. However, here, Officer Maini received information from a named informant, Christopher Melillo, that an accurately described vehicle that also had its license plate and location accurately given, was being driven by a person whom Mr. Melillo had personally observed as being so intoxicated, he could barely stand. Mr. Melillo also provided information about his observations of Mr. Reyes outside of his vehicle at the AM/PM convenience store, where Mr. Reyes was extremely intoxicated, was barefoot, could barely walk and at one point actually grabbed on to Mr. Melillo to keep from falling down.

Mr. Melillo, further indicated Mr. Reyes had gotten back into the vehicle and drove away at a fast pace. As well as giving the color, make and license plate number of the vehicle, Mr. Melillo was able to also provide the direction it was traveling in. Officer Maini also had personal knowledge of Mr. Reyes as he had recently had contact with him for on a prior DUI. Here, the stop of the vehicle would have been of exceedingly

short duration had Officer Maini not immediately smelled the strong odor of intoxicants as soon as he contacted Appellant, Mark Reyes.

**CONCLUSION**

In the case at bar, the tip from an identified informant, Christopher Melillo, giving specific facts of an intoxicated driver reasonably warranted a stop of Mark Reyes's vehicle. The totality of the circumstances clearly indicated that Mark Reyes's actions amounted to DUI driving.

A handwritten signature in black ink, appearing to read "Heidi A. Thompson". The signature is written in a cursive, flowing style with a long, sweeping underline.

Heidi A. Thompson, WSBA# 30812  
Attorney, Prosecution Division  
City of Longview

**COURT OF APPEALS OF WASHINGTON, DIVISION II**

**CITY OF LONGVIEW,**

**Respondent,**

**v.**

**MARK REYES,**

**Appellant.**

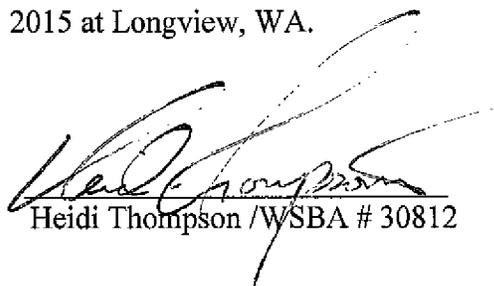
**No. 47735-1-II**

**AFFIRMATION OF SERVICE**

I, Heidi Thompson, sate the following under penalty of perjury under the laws of the State of Washington. On the date below, I personally e-filed and/or placed in the United States Mail the Brief of Respondent with this Affirmation of Service Attached with postage paid to the indicated parties:

John Hayes  
1402 Broadway  
Suite 103  
Longview, WA 98632  
jahays@3equitycourt.com

DATED: this 30<sup>th</sup> day of November, 2015 at Longview, WA.

  
Heidi Thompson / WSBA # 30812

**BRIEF OF RESPONDENT - 13**

# LONGVIEW CITY ATTORNEY

**December 01, 2015 - 9:26 AM**

## Transmittal Letter

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### Comments:

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[heidi.thompson@ci.longview.wa.us](mailto:heidi.thompson@ci.longview.wa.us)