

FILED  
Court of Appeals  
Division II  
State of Washington  
2/20/2018 11:28 AM  
NO. 50931-8-II

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

---

STATE OF WASHINGTON, Respondent

v.

KELLY ALICE PETERS, Appellant

---

FROM THE SUPERIOR COURT FOR CLARK COUNTY  
CLARK COUNTY SUPERIOR COURT CAUSE NO.16-1-00900-0

---

BRIEF OF RESPONDENT

---

Attorneys for Respondent:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

KELLY M. RYAN, WSBA #50215  
Deputy Prosecuting Attorney

Clark County Prosecuting Attorney  
1013 Franklin Street  
PO Box 5000  
Vancouver WA 98666-5000  
Telephone (360) 397-2261

**TABLE OF CONTENTS**

RESPONSE TO ASSIGNMENTS OF ERROR..... 1

- I. The trial court did not err in denying Peters’ motion to suppress, because there was reasonable suspicion for her detention. .... 1
- II. The State does not intend to seek a cost bill..... 1

STATEMENT OF THE CASE..... 1

ARGUMENT ..... 4

- I. The trial court did not err in denying Peters’ motion to suppress, because there was reasonable suspicion for her detention. .... 4
- II. 2. The State does not intend to seek a cost bill..... 14

CONCLUSION..... 14

## TABLE OF AUTHORITIES

### Cases

<i>Navarette v. California</i> , 134 U.S. 1683, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014).....	7, 8, 9
<i>State v. Acrey</i> , 148 Wash.2d 738, 64 P.3d 594 (2003) .....	5
<i>State v. Duncan</i> , 146 Wn.2d 166, 43 P.3d 513 (2002) .....	5
<i>State v. Glover</i> , 116 Wn.2d 509, 806 P.2d 760 (1991).....	6
<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994).....	5
<i>State v. Howerton</i> ; 187 Wn. App. 357, 348 P.3d 781 (2015) .....	6, 7, 8
<i>State v. Lee</i> , 147 Wn.App. 912, 199 P.3d 445 (2008) .....	7, 8
<i>State v. Lesnick</i> , 84 Wn.2d 940, 530 P.2d 243 (1975).....	6, 7, 8, 10, 11
<i>State v. Ollivier</i> , 178 Wn.2d 813, 312 P.3d 1 (2013).....	6
<i>State v. Sieler</i> , 95 Wn.2d 43, 621 P.2d 1272 (1980).....	6, 7, 10, 11
<i>State v. Winterstein</i> , 167 Wn.2d 620, 220 P.3d 1226 (2009).....	5
<i>State v. Z.U.E.</i> , 183 Wn.2d 610, 352 P.3d 796 (2015).....	5, 6, 7, 8, 10, 11
<i>Terry v. Ohio</i> , 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). 5, 6, 7, 10	

### Rules

GR 14.1(a).....	12
-----------------	----

### Unpublished Opinions

<i>State v. Delp-Marquez</i> , 199 Wn. App. 1046, Slip. Op. 48446-3-II (July 6, 2017) .....	11, 12
---	--------

## RESPONSE TO ASSIGNMENTS OF ERROR

- I. The trial court did not err in denying Peters' motion to suppress, because there was reasonable suspicion for her detention.**
- II. The State does not intend to seek a cost bill.**

### STATEMENT OF THE CASE

The State charged Kelly Peters (hereafter "Peters") with possession of a controlled substance – methamphetamine and assault in the fourth degree - domestic violence, based on an incident that occurred on April 20, 2016. CP 3-4.

Before trial, Peters filed a motion to suppress evidence seized from her purse at the time of her arrest. CP 27-33. Peters argued that she was unlawfully seized, because law enforcement did not have reasonable suspicion to detain her. CP 30. A hearing was held where Clark County Sheriff's Deputy Justin Messman testified to his arrest of Peters. RP 103.

Deputy Messman was dispatched to a disturbance on April 20, 2016 to at 1844 NE 104<sup>th</sup> Lp. #7 in Clark County, Washington. RP 103. An initial 911 call came in at 6:10 PM, and the caller identified themselves as a neighbor who could hear fighting in an adjacent apartment. RP 104, 112. The caller stated it was a female versus female disturbance, and that one of the two people involved in the fight was a white female. RP 112.

Deputy Messman was aware of this information as he arrived on the scene. RP 104.

A second 911 call came in at 6:12 PM from a female identifying herself as the victim of an assault. RP 104-5, 112. The victim said that her sister attacked her, pushed her down, and she hit her head. RP 104. The victim identified her attacker as her sister, and said that her sister's name was Kelly Peters and her sister's date of birth was June 5, 1960. RP 105. The victim said the suspect was a white female, with long red hair, wearing a camouflage skirt, a black and tan top, with a black knit pullover. RP 105. The victim told the 911 dispatcher that she hit her head and needed medical treatment. RP 106. Both 911 callers called in from the same apartment complex. RP 112. Deputy Messman was also aware of this information as he arrived on the scene. RP 104.

Deputy Messman arrived on the scene at 6:15 PM. RP 105. He observed two women that looked a lot alike walking out together from the apartment complex to the main road. RP 105-6. One of the women matched the description of the suspect given by the victim 911 caller, because she was wearing a camouflage skirt with red hair. RP 106. Deputy Messman told the women to sit down and he demanded their identification. RP 107. The women gave Deputy Messman their identifications and he ran their names through dispatch because they

matched the description of the involved parties from the 911 call. RP 107-8. Dispatch notified Deputy Messman that Peters had a warrant for her arrest, so he arrested Peters on that warrant. RP 109.

Another Sheriff's Deputy, Wayne Phillips, was also on scene and he ultimately developed probable cause to arrest Peters for assault four – domestic violence. RP 109. This arrest occurred after Peters had been arrested on the warrant. RP 109. Deputy Messman searched Peters incident to arrest on the warrant including a purse and jacket that she was holding when he contacted her. RP 110. During that search Deputy Messman found methamphetamine. RP 149.

The trial court denied Peters' motion to suppress. RP 132; CP 205-8. The trial court found that Deputy Messman had reasonable suspicion to detain Peters based on the 911 calls. RP 130-31. In the trial court's conclusions of law, the trial court found that the 911 callers corroborated each other because they were close in time and identified the same area. CP 207. The trial court also found that Deputy Messman saw two people that looked similar, one of the people matched the suspect's description, and the victim caller had injuries to her head. CP 207. The trial court went on to find that the search of Peters' jacket and purse was a lawful search incident to arrest. RP 208.

Peters went to trial on July 19, 2017 on possession of a controlled substance – methamphetamine and assault in the fourth degree - domestic violence charges. RP 137. The methamphetamine found by Deputy Messman was admitted into evidence at the trial, and the jury returned verdicts of guilty on both counts. RP 167-71, 218-19, 266; CP 134-36. This timely appeal followed.

#### **ARGUMENT**

**I. The trial court did not err in denying Peters’ motion to suppress, because there was reasonable suspicion for her detention.**

Peters argues that the trial court erred when it denied her motion to suppress evidence. She claims that Deputy Messman lacked reasonable suspicion to stop her, because he was not aware of any facts that Peters had been involved in any criminal conduct. However, Deputy Messman had reasonable suspicion to stop Peters based on the two 911 calls and the information contained in them. Those calls contained objective facts of criminal activity from the victim, and from a neighbor who heard a disturbance. Under the totality of the circumstances, the information in the 911 calls was reliable to establish reasonable suspicion to briefly detain Peters. Peters’ claim fails.

Conclusions of law relating to the suppression of evidence are reviewed de novo, while findings of fact are reviewed for substantial evidence. *State v. Winterstein*, 167 Wn.2d 620, 628, 220 P.3d 1226 (2009); citing *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002), *State v. Hill*, 123 Wn.2d 641, 647, 870 P.2d 313 (1994). An unchallenged finding of fact entered after a suppression hearing is accepted as a verity upon appeal. *Hill*, 123 Wn.2d at 644 (internal citations omitted).

As a general rule, warrantless searches and seizures are per se unreasonable and are in violation of the Fourth Amendment and Article I, Section 7 of the Washington State Constitution unless they fall under one of the few exceptions to the warrant requirement. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002). One such exception is the *Terry* stop. *Id.* A *Terry* stop is a justified stop if a law enforcement officer can “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 16-19, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). To justify a *Terry* stop, the State is required to show that “an officer had reasonable suspicion that the detained person was, or was about to be, involved in a crime”. *State v. Z.U.E.*, 183 Wn.2d 610, 617, 352 P.3d 796 (2015); citing *State v. Acrey*, 148 Wash.2d 738, 747, 64 P.3d 594 (2003).

Reasonableness in an investigatory stop under *Terry* must be evaluated by examining the totality of the circumstances including the location of the stop, the conduct of the person detained, observations the officer makes, and inferences and deductions drawn from the officer's training and experience. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991).

The State is required to show that when an investigatory stop is based on an informant's tip, that tip bears "some indicia of reliability" under the totality of the circumstances. *Z.U.E.*, 183 Wn.2d at 618. For a tip to be sufficient to establish reasonable suspicion there must be either:

- (1) circumstances establishing the informant's reliability; or
- (2) some corroborative observation, usually by the officers, that shows either (a) the presence of criminal activity or (b) that the informer's information was obtained in a reliable fashion.

*Z.U.E.*, 183 Wn.2d at 618; *citing State v. Sieler*, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980); *State v. Lesnick*, 84 Wn.2d 940, 944, 530 P.2d 243 (1975).

Citizen informants are presumed to be reliable. *State v. Howerton*, 187 Wn. App. 357, 367, 348 P.3d 781 (2015); *citing State v. Ollivier*, 178 Wn.2d 813, 850, 312 P.3d 1 (2013). This Court can look at the veracity of the informant as well as the factual basis of their knowledge to help determine the reliability of a 911 caller's tip. *Z.U.E.*, 183 Wn.2d at 620.

There are several factors relevant to determining reliability, including if the caller is an eyewitness to the alleged crime, if the caller made the report contemporaneously, or if the caller used the 911 emergency system. *Z.U.E.*, 183 Wn.2d at 621; citing *Navarette v. California*, 134 U.S. 1683, 1689, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014).

The seriousness of the reported crime is also an important factor when determining if there was reasonable suspicion for a *Terry* stop. *Z.U.E.*, 183 Wn.2d at 620; *Sieler*, 95 Wn.2d at 50; *Lesnick*, 84 Wn.2d at 944-45. Less reliability may be required for a stop if the 911 call involves a serious crime or potential danger. *Z.U.E.*, 183 Wn.2d at 623-24; *Sieler*, 95 Wn.2d at 50; *Lesnick*, 84 Wn.2d at 944-45. Furthermore, there is enhanced reliability when a victim reports a crime, because cases involving a victim often require a very prompt police response. *Howerton*; 187 Wn. App. at 366; citing *State v. Lee*, 147 Wn.App. 912, 918-19, 199 P.3d 445 (2008). There can be urgent cause for an officer to act on a tip when the reported or suspected crime poses a threat of physical violence or harm to society or to the officer. *Z.U.E.*, 183 Wn.2d at 619; *Lesnick*, 84 Wn.2d at 944.

In the present case, there was reasonable suspicion to stop Peters based on the totality of the circumstances known to Deputy Messman. First, both 911 callers reported there had been a fight or an attack which

made this a serious crime or potential danger that Deputy Messman needed to respond quickly to. RP 104. The victim caller had said that her sister attacked her, pushed her down, she hit her head, and that she needed medical treatment. RP 104-6. Based on the seriousness of the reported crime and the threat of physical violence, it enhanced the 911 callers' reliability and justified Deputy Messman's initial detention of Peters when he arrived on scene. *Howerton*; 187 Wn. App. at 366; citing *State v. Lee*, 147 Wn.App. at 918-19; *Z.U.E.*, 183 Wn.2d at 619; *Lesnick*, 84 Wn.2d at 944.

Second, both 911 callers were reliable based on the factual basis for their knowledge that they provided to law enforcement. When the first 911 caller called in at 6:10 PM they said they could hear fighting in an adjacent apartment that involved two women, one of whom was white. RP 104, 112. The caller also provided the exact location of the apartment complex. RP 112. This first caller was reliable, because they were an eyewitness, they made the call contemporaneously, and they called into 911. While the caller did not "see" the incident, they are still an eyewitness because they could hear a fight as it was happening. A caller having firsthand knowledge of what they are reporting is the key to their reliability, so when the first 911 caller is describing what they are hearing it strengthens their reliability. *Navarette*, 134 U.S. at 1689. This caller's

report was made contemporaneously, because they were describing what they were hearing when they reported that they “could hear fighting.” RP 104. Contemporaneous reporting has long been treated as especially reliable, so this is another factor that strengthens the reliability of the call. *Navarette*, 134 U.S. at 1689. The contemporaneousness of the report is also supported by the second 911 call from the victim, because that call was made two minutes later and described an assault that had just occurred. RP 104, 112. While the first caller did not provide a name and only described themselves as a neighbor, the fact that they called into 911 is another indicator of their veracity and reliability. *Navarette*, 134 U.S. at 1689. These factors show that the first 911 caller was reliable, and their information could be relied on to form reasonable suspicion to detain Peters.

The second 911 call by the victim was also reliable, because the victim was an eyewitness, she made the call contemporaneously, and she called into 911. The victim caller was an eyewitness to an assault when she called in to report that that her sister attacked her, pushed her down, and she hit her head. RP 104. She also provided very detailed and specific suspect information when she said that her sister’s name was Kelly Peters, her sister’s date of birth was June 5, 1960, and that the suspect was a white female, with long red hair, wearing a camouflage skirt, a black and tan

top, with a black knit pullover. RP 105. The victim also said she needed medical treatment and gave her location. RP 106, 112. This shows that the victim caller described what she had seen in great detail, right after it happened, and to 911. Therefore, she had a sufficient basis of knowledge to establish her reliability, and this information could also be relied on to form the reasonable suspicion necessary to detain Peters.

This case is unlike the informant tips that were found to be unreliable in *Z.U.E.*, *Sieler*, and *Lesnick*, because the 911 callers in this case demonstrated a sufficient factual basis for their observations. In *Z.U.E.*, *Sieler*, and *Lesnick*, the Court found there was no reasonable suspicion for the *Terry* stops, because the factual bases of the tips could not be established. A common theme of the 911 callers in those cases was that they gave bare conclusions without any factual support for them. In *Lesnick*, a 911 caller reported that the driver of a van was selling illegal gambling punchboards, but the caller refused to give any information as to the source of his knowledge. 84 Wn.2d at 941, 944. In *Sieler*, a 911 caller reported that a drug sale had occurred in a school parking lot, but the caller did not provide any information as to why he believed a drug sale had occurred. 95 Wn.2d at 44-45, 49. In *Z.U.E.*, multiple 911 callers described a shirtless male carrying a gun, but one caller named Dawn said a 17 year old female handed the gun to the shirtless male. 183 Wn.2d at

613-14. The Court held that the call from Dawn lacked a sufficient factual basis, because she provided no information as to how she knew the female was 17. *Id.* at 622-23.

In the present case, both 911 callers provided more information than a bare conclusion that an assault or a fight had occurred. The first caller reported a disturbance with two females, and could hear fighting from an adjacent apartment. RP 104. These are all facts beyond bare conclusions that support the caller's reliability. The victim caller also provided a sufficient factual basis to be relied upon for determining reasonable suspicion. This is because the victim described how she was attacked, where she was attacked, by whom she was attacked, and also how she was injured in the attack. RP 104-5, 112. The information provided by both 911 callers in this case was sufficient to establish the reliability of the callers, because it went beyond unsubstantiated conclusions, unlike in *Z.U.E.*, *Sieler*, and *Lesnick*.

That both 911 callers provided consistent information is another factor that further establishes reasonable suspicion for the detention of Peters. In *State v. Delp-Marquez*, 199 Wn. App. 1046, Slip. Op. 48446-3-II (July 6, 2017), which this Court may consider as nonbinding persuasive

authority under GR 14.1(a)<sup>1</sup>, this Court uphold a *Terry* stop and relied in part on the fact that multiple 911 calls provided consistent information. In *Delp-Marquez*, there were several 911 calls reporting a fight at an intersection where three men were attacking another man, and several callers described the suspects and the location of the fight. *Id.* at 1. An officer received this information through dispatch, arrived on the scene, saw three people who matched the suspects' descriptions, and ordered the men to stop when Delph-Marquez ran but was ultimately caught. *Id.* Delph-Marquez argued that there was no reasonable suspicion for the officer's initial attempt to stop him, but this Court disagreed. *Id.* at 3. This Court held that there was reasonable suspicion for the stop, because the 911 callers had sufficient indicia of reliability based on their being eyewitnesses, making their reports at the time of the incident, calling 911, and the information between the callers being consistent. *Id.* at 4. This is almost the exact situation in the present case. Here, the two 911 callers both reported a fight, both described the exact location of the fight, they were made two minutes apart, and they both described specific information about the involved parties. RP 104-6, 112. This consistency

---

<sup>1</sup> GR 14.1(a) states in part, "...unpublished opinions of the Court of Appeals filed on or after March 1, 2014, may be cited as non-binding authorities, if identified as such by the citing party, and may be accorded such persuasive value as the court deems appropriate."

further reinforces the reliability of the callers, and supports the reasonable suspicion to stop Peters.

Under the totality of the circumstances, the two 911 calls in this case were sufficiently reliable to justify the brief detention of Peters that ultimately resulted in her arrest. Deputy Messman received two reports of a fight or an attack from the same apartment complex two minutes apart, and both 911 callers reported that one of the involved parties was a white female. The victim gave extremely detailed and specific suspect information naming Peters as her sister and her attacker. The victim also described the attack in detail, and said she had hit her head and needed medical treatment. Deputy Messman arrived on the scene five minutes after the first call and immediately observed a person matching the exact description of the suspect (camouflage skirt and red hair). That suspect was also walking with someone that looked like she could have been the victim. Based on the seriousness and danger of violence from the calls, the similar facts contained in both calls, the basis of knowledge of both callers, and Deputy Messman's observation of two people matching the suspect and possibly the victim, there was reasonable suspicion to warrant the brief detention of Peters that ultimately resulted in her arrest and search of her person. Peters' claim fails.

**II. 2. The State does not intend to seek a cost bill.**

The State does not intend to seek a cost bill in this case in the event it substantially prevails on appeal. Peters' argument is therefore moot.

**CONCLUSION**

The State respectfully requests this Court affirm Peters' convictions.

DATED this 20 day of February, 2018.

Respectfully submitted:

ANTHONY F. GOLIK  
Prosecuting Attorney  
Clark County, Washington

By:   
KELLY M. RYAN, WSBA #50215  
Deputy Prosecuting Attorney  
OID# 91127

**CLARK COUNTY PROSECUTING ATTORNEY**

**February 20, 2018 - 11:28 AM**

**Transmittal Information**

**Filed with Court:** Court of Appeals Division II  
**Appellate Court Case Number:** 50931-8  
**Appellate Court Case Title:** State of Washington, Respondent v Kelly Alice Peters, Appellant  
**Superior Court Case Number:** 16-1-00900-0

**The following documents have been uploaded:**

- 509318\_Briefs\_20180220112823D2756385\_3236.pdf  
This File Contains:  
Briefs - Respondents  
*The Original File Name was Brief - Respondent.pdf*

**A copy of the uploaded files will be sent to:**

- reedspeirlaw@seanet.com

**Comments:**

---

Sender Name: Jennifer Casey - Email: jennifer.casey@clark.wa.gov

**Filing on Behalf of:** Kelly Michael Ryan - Email: kelly.ryan@clark.wa.gov (Alternate Email: CntyPA.GeneralDelivery@clark.wa.gov)

Address:  
Clark County Prosecuting Attorney  
PO Box 5000  
Vancouver, WA, 98666  
Phone: (360) 397-2261 EXT 4476

**Note: The Filing Id is 20180220112823D2756385**