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Court of Appeals  
Division III  
State of Washington  
8/21/2019 8:00 AM

NO. 36295-7-III

COURT OF APPEALS  
STATE OF WASHINGTON  
DIVISION III

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**STATE OF WASHINGTON,**

Plaintiff/Respondent,

V.

**CHRISTOPHER LEE MURPHY,**

Defendant/Appellant.

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**REPLY BRIEF**

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## ARGUMENT

The State's Brief addresses a number of cases involving reliability of an informant. Mr. Murphy has not attacked that issue.

Rather, the issue centers on whether or not the officers had sufficient information in order to contact with Mr. Murphy.

The Motel 6 desk clerk complained that Mr. Murphy was parked in the parking lot and had refused to leave. However, by the time officers arrived in the area Mr. Murphy had moved his truck across the street to another parking lot next to Zips.

The State's reliance upon *State v. Guzman-Cuellar*, 47 Wn. App. 326, 734 P.2d 866 (1987) is misplaced. The *Guzman-Cuellar* case involved a murder investigation. The initial contact with Mr. Guzman-Cuellar resulted from his trespass on private property as opposed to a business open to the public.

Moreover, in *Guzman-Cuellar* the initial contact was made based upon the officer's own observations as opposed to information from an informant.

The State then goes on to argue that observations by the officers after contact was made gave a sufficient basis for the initial stop and further investigation.

It would appear that the officers were using these observations as an afterthought for their continued contact. Every step of the way it was determined that Mr. Murphy was not violating any law until the patdown search revealed the gun in his pocket.

The pickup (PU) was not a stolen vehicle. The items on the trailer were not stolen.

The purpose of hauling trailers with a PU is generally to transport other items of property too large to fit in the PU itself.

The State then references *State v. Z.U.E.*, 183 Wn.2d 610, 352 P.3d 796 (2015) in its discussion of the *Aguilar-Spinelli*<sup>1</sup> Test.

The State ignores the result in *Z.U.E.* The juvenile's conviction was reversed since the officers did not have a reasonable suspicion to effect a stop of the vehicle in which the juvenile was a passenger.

In its analysis the *Z.U.E.* Court references *State v. Sieler*, 95 Wn.2d 43, 621 P.2d 1272 (1980) and *State v. Lesnick*, 84 Wn.2d 940, 530 P.2d 243 (1975).

The *Z.U.E.* Court did not overrule either case. Mr. Murphy relied upon *Sieler* in his original brief.

What the *Z.U.E.* Court stated, at 620-21, was:

...[W]e acknowledge both the “veracity” and “factual basis” prongs are helpful to the reliability inquiry but we decline to adopt a rule whereby each prong is concluded as a necessary element. Such a bright line rule could potentially restrict officers in their ability to act in scenarios not yet contemplated. The appropriate constitutional analysis for a stop precipitated by an informant is a review of the reasonableness of suspicion under the totality of the circumstances. In so concluding, we do not intend to overturn *Lesnick* or *Sieler*. In both cases, we find the circumstances were such that the officers were unreasonable in relying solely on their assertions of criminal activity from essentially anonymous informants. But we maintain that a more flexible approach is needed and that each case requires an individualized review of the circumstances.

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<sup>1</sup> *Aguilar v. Texas*, 378 U.S. 108, 84 S. Ct. 1509, 20 L. Ed. 2d 723 (1964); *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed.2d 637 (1969).

Mr. Murphy asserts that the facts and circumstances of his case, even though they involve an identified informant, do not satisfy the totality of the circumstances as references by *Z.U.E.*

The Motel 6 clerk gave a description of the vehicle and trailer. No description of Mr. Murphy was provided. No description of his girlfriend was provided.

Additionally, after Mr. Murphy drove from the Motel 6 parking lot, the clerk again called 9-1-1 to inform them that he had left. This appeared to occur almost simultaneously with the officers contacting Mr. Murphy across the street.

The *Z.U.E.* Court acknowledged that the facts in its case were similar to cases where there was a named, but otherwise unknown 9-1-1 caller. *State v. Z.U.E., supra*, 622.

The Court went on to say:

Absent circumstances sufficiently establishing the reliability of the tip, the officers must be able to independently corroborate “ ‘either [2] the presence of criminal activity or [3] that the informer’s information is obtained in a reliable fashion’ ” *Sieler*, 95 Wn.2d at 47 (alternations in original) (quoting *Lesnick*, 84 Wn.2d at 944.) In this case, the State can point to no observations supporting a reasonable suspicion of criminal activity... And because the officers never contacted any of the 9-1-1 witnesses, they were unable to establish whether the tips were obtained in a reliable manner. At most, the officers were able to verify that a female of a matching description was located in a general area. But corroboration of an innocuous fact, such as appearance, is insufficient. *Marcum*, [*State v. Marcum*, 149 Wn. App. 894, 205 P.3d 969 (2009)] at 903.

*State v. Z.U.E., supra*, 623.

Mr. Murphy reasserts his position that there was an insufficient basis to effect contact with him at the parking lot across the street from the Motel 6. A parking lot of a motel, open to the public for its customers, is not of such a nature that the temporary presence of a pickup and trailer constitutes criminal trespass in the second degree.

The limited timeframe involved from the desk clerk's refusal to rent a room to Mr. Murphy and his girlfriend until he moved the PU and trailer across the street does not amount to criminal trespass.

The officer's failure to obtain any other corroborating information other than a description of the vehicle and trailer did not authorize the stop that occurred in this case.

Mr. Murphy otherwise relies upon the argument contained in his original brief.

DATED this 21st day of August, 2019.

Respectfully submitted,

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**NO. 36295-7-III**

**COURT OF APPEALS**

**DIVISION III**

**STATE OF WASHINGTON**

STATE OF WASHINGTON,	)	
	)	BENTON COUNTY
Plaintiff,	)	NO. 18 1 00063 1
Respondent,	)	
	)	
v.	)	<b>CERTIFICATE OF SERVICE</b>
	)	
CHRISTOPHER LEE MURPHY,	)	
	)	
Defendant,	)	
Appellant.	)	
_____	)	

I certify under penalty of perjury under the laws of the State of Washington that on this 21st day of August, 2019, I caused a true and correct copy of the *REPLY BRIEF* to be served on:

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**Transmittal Information**

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