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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 37070-4-III

STATE OF WASHINGTON, Respondent,

v.

EDWARD JON GUNN, Appellant.

APPELLANT'S BRIEF

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I. INTRODUCTION

The State detained Edward Gunn based on a sting operation in which an informant purported to arrange to buy drugs from him over the phone. However, prior to the detention, police never confirmed Gunn's identity as the person on the phone and only corroborated innocuous information that she provided. Because the informant's tip was never corroborated in its assertion of illegality, police lacked reasonable suspicion to stop Gunn and detain him. His motion to suppress should have been granted, and his conviction for possessing methamphetamine should be reversed.

II. ASSIGNMENTS OF ERROR

ASSIGNMENT OF ERROR NO. 1: Finding of fact number 2.7 is unsupported by substantial evidence.

ASSIGNMENT OF ERROR NO. 2: The trial court erred in concluding that reasonable suspicion supported the *Terry* stop of Gunn's vehicle.

III. ISSUES PERTAINING TO ASSIGNMENTS OF ERROR

ISSUE NO. 1: Whether multiple inconsistencies in the criminal informant's information to police contradicts the trial court's finding that everything she told police came to pass.

ISSUE NO. 2: Whether a criminal informant is subject to a higher standard of reliability than a citizen informant.

ISSUE NO. 3: Whether police employed a reliable method of corroborating a criminal informant's tip that Gunn was involved in drug activity when they took no steps to confirm that the phone number called belonged to Gunn or that the voice on the call belonged to him.

ISSUE NO. 4: Whether police corroborated the criminal informant's assertion of illegality when they confirmed only Gunn's address and the make and color of his car?

IV. STATEMENT OF THE CASE

Amy Trujillo was caught by police possessing needles, as well as a container and a digital scale tainted with heroin residue. RP 8. Although the scale was in her purse, Trujillo denied that it was hers. RP 8. After police arrested her for possessing a controlled substance, Trujillo volunteered that she was willing to provide information in exchange for getting out of trouble. RP 9. Police agreed not to book her into jail and to recommend that the prosecutor reduce charges against her. RP 9.

In exchange, Trujillo told police that she had bought drugs in the past from Edward Gunn and another individual named Jory Smith. RP 9.

She claimed to have already arranged with Gunn to buy \$200 worth of methamphetamine from him later that night. RP 9-10. However, she also told police that she was afraid of Gunn, accusing him of having raped her in the past, and they believed she acted extremely scared of him. RP 30-31.

Police then requested that Trujillo call Gunn. RP 10. She made a call and placed it on speaker. RP 10. The police officer had never met Gunn, did not know his voice, did not know what number Trujillo dialed, and never obtained any evidence that the number she dialed belonged to Gunn. RP 19. Using drug lingo, Trujillo asked a male voice on the phone to buy a "ball" of methamphetamine, which police understood to mean an eighth of an ounce. RP 10. Police did not explain how this request was consistent with her having already arranged to purchase that amount of methamphetamine from Gunn later that night, as she had told them previously.

The man on the phone told Trujillo that he had the drugs in the car and was headed back to Pullman from the Walgreen's in Moscow, about a 15-minute drive away. RP 11, 15. He agreed to meet her at his house to complete the exchange. RP 11-12. Trujillo told police that Gunn lived on Webb Street, and they verified his address through local records. RP 12,

15. They did not, apparently, attempt to ascertain whether anybody else resided at the house. Trujillo also described Gunn's car as a blue Oldsmobile. RP 16. She told police that Gunn often travels with another person who was armed. RP 21.

About 30 to 45 minutes after Trujillo made the phone call, police saw a blue Oldsmobile turn onto Webb Street and Trujillo identified it as Gunn's car. RP 16, 20. Police detained Gunn in the driveway, handcuffing him and walking him back toward the patrol vehicle. RP 17. There was nobody else in the car and no weapons in the car. RP 21.

Pretrial, Gunn moved to suppress evidence discovered from the detention, contending that police failed to corroborate non-innocuous details of the information Trujillo provided. CP 16-18. The trial court denied the motion, entering written findings of fact and conclusions of law detailing its ruling. CP 41-44. A jury subsequently convicted Gunn of possessing a controlled substance based upon evidence discovered as a result of the stop, and the sentencing court imposed a mid-range sentence of 3 months based on Gunn's offender score of 0. CP 127, 135, 136, 152, 154.

V. ARGUMENT

Police never corroborated Ed Gunn's involvement in criminal activity but relied on the word of a self-interested criminal informant to detain him. Because their information lacked sufficient indicia of reliability to support the detention, Gunn's motion to suppress should have been granted.

Article I, section 7 of Washington's constitution permits police to stop and detain an individual for criminal investigation only if they possess a reasonable and articulable suspicion that the individual is involved in criminal conduct, such that there is a substantial possibility that criminal conduct is about to occur. *State v. Lee*, 147 Wn. App. 912, 916, 199 P.3d 445 (2008), *review denied*, 166 Wn.2d 1016 (2009). Although the reasonableness of the officer's suspicion is based upon a totality of the circumstances, police may generally not rely upon information provided by an informant unless the tip possesses indicia of reliability, considering the reliability of the informant, the manner in which the information was obtained, and whether details of the informant's tip are corroborated by police. *Id.* at 917-18.

Reliability of an informant alone will not generally support a detention because it is common for known informants who have

previously provided reliable information to make false allegations. *State v. Sieler*, 95 Wn.2d 43, 48-49, 621 P.2d 1272 (1980). Indeed, information obtained from criminal associates of the accused is far less credible than information received from ordinary citizens who are witnesses to, or victims of, criminal activity. *Lee*, 147 Wn. App. at 919. This is because information is provided by criminal informants for reasons other than civic duty, including benefits to be obtained in charging or sentencing, potential money payments, and perverse incentives such as revenge or eliminating competition. 2 LeFave, Wayne, *Search And Seizure: A Treatise on the Fourth Amendment*, § 3.3 n. 6 (5th Ed. Oct. 2019). Consequently, a stricter showing of veracity is required when the informant is part of the criminal milieu. *State v. Cole*, 128 Wn.2d 262, 287, 906 P.2d 925 (1995).

If circumstances do not sufficiently establish the reliability of the informant's tip, then police must independently corroborate either the presence of criminal activity or the reliability of the manner in which the informant obtained the information. *State v. Z.U.E.*, 183 Wn.2d 610, 623, 352 P.3d 796 (2015). Corroborating innocuous facts is insufficient. *Id.*

Here, Trujillo did not approach police voluntarily as a civic-minded citizen. She was arrested for heroin possession, potentially faced a more serious allegation of intention to deliver drugs based on having a

heroin-tainted scale in her purse, and was on her way to jail when she expressly sought to get out of trouble in exchange for providing information about her drug dealers. Moreover, she admitted unrelated animus toward Gunn. Trujillo is precisely the kind of criminal informant whose self-interested motives – the addiction-fueled compulsion to remain at liberty to continue using drugs, the desire to minimize negative consequences from criminal behavior, and the interest in using police to take revenge on underworld enemies – render such informants unreliable, requiring a higher showing that their allegations can be trusted.

In concluding that Trujillo was a reliable informant, the trial court relied upon its finding that everything Trujillo said would happen did in fact happen. CP 42 (Finding of Fact no. 2.7). A trial court's findings should be disregarded on appeal when they are unsupported by a sufficient quantity of evidence in the record to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 647, 870 P.2d 313 (1994). The finding that everything Trujillo told police came to pass is not borne out by the record. First, Trujillo told police that she had already arranged to buy \$200 worth of methamphetamine from Gunn before making a phone call, purportedly to Gunn, to buy \$200 worth of methamphetamine. No explanation was ever proffered to reconcile the conflict between Trujillo making a phone call to set up a deal when she

claimed the deal was already set up. Second, Trujillo professed to be extremely frightened of Gunn due to an unrelated allegation she made against him, yet she told police he was one of her drug dealers. Third, the man on the phone indicated that he was in Moscow, about a 15-minute drive from Gunn's home, but Gunn did not arrive home until 30 to 45 minutes later. Fourth, Trujillo told police that Gunn was often accompanied by an armed individual in his car, which caused police to instigate an aggressive, high-risk stop on Gunn's car. However, he was alone in the vehicle and had no weapons in the car. These discrepancies squarely contradict the trial court's finding that "everything" Trujillo told police bore fruit, thereby bolstering her reliability.

Because Trujillo was not a reliable informant, police were required to demonstrate that either her method of obtaining information about Gunn was reliable, or that they independently corroborated Gunn's involvement in criminal activity. *See Z.U.E.*, 183 Wn.2d at 623. The method was not reliable because police took no steps whatsoever to verify either that the number she called belonged to Gunn or that Gunn was the male voice on the call. The only information that police verified was innocuous, such as Gunn's address and the fact that he drove a blue Oldsmobile. These details fail to sufficiently confirm Gunn's involvement in criminal activity to allow police to detain Gunn based on the information Trujillo provided.

Accordingly, Trujillo's tip to police lacked sufficient indicia of reliability to justify Gunn's detention. Without adequate reliability, suspicion that Gunn was involved in criminal activity was not reasonable and does not support the investigative stop. Gunn's motion to suppress should have been granted and the evidence obtained from the stop suppressed at trial. Because the evidence provided the basis for Gunn's conviction, the conviction should be reversed.

VI. CONCLUSION

For the foregoing reasons, Gunn respectfully requests that the court REVERSE his conviction for possessing a controlled substance.

RESPECTFULLY SUBMITTED this 27 day of January, 2020.

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CERTIFICATE OF SERVICE

I, the undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Appellant's Brief upon the following parties in interest by depositing it in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed and sworn this 27 day of January, 2020 in Kennewick, Washington.



Andrea Burkhart

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