

NO. 71837-1-I

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

REC-11
NOV 24 2014
King County Prosecutor
Appellate Unit

STATE OF WASHINGTON,

Respondent,

v.

DELANTE HOWERTON,

Appellant.

NOV 24 10 13 AM 2014
CLERK OF COURT
COURT OF APPEALS
DIVISION ONE

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR KING COUNTY

The Honorable Douglass North, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE CONCLUSORY ALLEGATION BY A NAMED BUT UNKNOWN INFORMANT, WITH CORROBORATION OF ONLY INNOCUOUS DETAILS, DID NOT PROVIDE REASONABLE SUSPICION TO DETAIN HOWERTON.

Howerton was detained on the strength of a conclusory tip by a named but otherwise unknown 911 caller. No suspicious circumstances were corroborated before detaining him. There was no emergent risk of violence or threat to public safety that could warrant applying a less stringent standard. The mere fact that the 911 caller claimed to be an eyewitness does not render the caller reliable. The conclusory allegation and innocuous facts observed do not amount to reasonable suspicion of criminal activity. State v. Sagers, ___ Wn. App. ___, 332 P.3d 1034, 1038-39 (2014). This Court should reject the arguments made in the State's brief and reverse Howerton's convictions.

“[A] named but otherwise unknown citizen informant is not presumed to be reliable, and a report from such an informant may not justify an investigative stop.” Sagers, ___ Wn. App. at ___, 332 P.3d at, 1038-39 (citing State v. Sieler, 95 Wn.2d 43, 48, 621 P.2d 1272 (1980) and State v. Hopkins, 128 Wn. App. 855, 864, 117 P.3d 377 (2005)). Ms. Parks was a “named, but otherwise unknown citizen informant.” Regardless of whether the focus is on Officer Hutchinson or the 911

dispatcher, no one had any information regarding her reliability as an informant. 1RP 21-22. When an informant has no record, police can make no judgment about her credibility. State v. Ferrier, 136 Wn.2d 103, 106, 960 P.2d 927 (1998).

When an informant is not demonstrated to be reliable, an investigative stop may be justified by “an officer’s corroborating observation of *illegal, dangerous or suspicious activity*.” Saggers, ___ Wn. App. at ___, 332 P.3d at 1039 (emphasis added). The officers here did not observe any “illegal, dangerous or suspicious activity” to corroborate the 911 caller’s allegations. Officer Hutchinson merely observed a person walking on a sidewalk who changed direction upon seeing a police officer. 1RP 10. To describe what Officer Hutchinson saw as “flight” is exaggeration in the extreme. Indeed, Hutchinson himself did not describe it that way. 1RP 10. Although an officer “may rely on his or her experience to identify seemingly innocent facts as suspicious,” “confirming a subject’s description, location, or other innocuous facts generally does *not* satisfy the corroboration requirement.” Saggers, ___ Wn. App. at ___, 332 P.3d at 1039 (emphasis added). Hutchinson corroborated nothing more than Howerton’s description, location, and direction of movement; he corroborated nothing that was illegal, dangerous, or suspicious.

The totality of the circumstances test also permits officers to consider “emergent risks of imminent violence,” in deciding whether to conduct an investigatory stop. Id. A “less stringent standard” may be applied when the report involves a “significant threat to public safety.” Id. The State analogizes this case to Navarette v. California, ___ U.S. ___, 134 S. Ct. 1683, 1689, 188 L. Ed. 2d 680 (2014), but fails to recognize the significant distinction: the 911 call in Navarette involved a probably intoxicated driver on a highway who had already endangered lives by running the 911 caller’s car off the road. Navarette, ___ U.S. at ___, 134 S. Ct. at 1686-87. Even with this enormous and demonstrated risk to public safety, the United States Supreme Court described Navarette as a “close case.” ___ U.S. at ___, 134 S. Ct. at 1692. Nothing in the 911 call in this case and nothing about Howerton’s location or appearance comes close to suggesting an analogous risk of violence or threat to public safety.

The mere fact that the caller claimed to be an eyewitness to criminal activity does not necessarily indicate the caller’s reliability. See Saggars, ___ Wn. App. at ___, 332 P.3d at 1042. In Saggars, the caller also claimed to be an eyewitness to criminal activity and the police similarly confirmed an innocuous detail. Id. However, the police failed to corroborate any criminal activity once they arrived before detaining Saggars. Id. The court concluded, “the eyewitness nature of the 911 call

and the presence of the Suburban did not establish reasonable suspicion independent of any exigent circumstances.” Id. That is precisely the situation here. Independent of any exigent circumstances or threat to public safety, the conclusory 911 call and corroboration of purely innocuous details was not reasonable suspicion to detain Howerton.

Absent reasonable suspicion, Howerton’s detention was unlawful, and the items found on his person must be excluded as the results of an unconstitutional seizure. Hopkins, 128 Wn. App. at 864. Without that evidence, there was no evidence of any crime, and the charges against Howerton must be dismissed.

B. CONCLUSION

For the foregoing reasons and for the reasons stated in the opening Brief of Appellant, Howerton requests this Court reverse his convictions.

DATED this 24th day of November, 2014.

Respectfully submitted,

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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 24TH DAY OF NOVEMBER 2014, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL AND/OR VIA EMAIL.

[X] DELANTE HOWERTON
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SIGNED IN SEATTLE WASHINGTON, THIS 24TH DAY OF NOVEMBER 2014.

X Patrick Mayovsky