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

STATE OF WASHINGTON, Respondent, v. CHARLES ALLEN GIBSON, Appellant.	)))))))))	No. 36377-5-III UNPUBLISHED OPINION

SIDDOWAY, J. — Charles Gibson appeals his conviction for possession of a controlled substance (methamphetamine) following a stipulated facts trial. He challenges the trial court's denial of his motion to suppress evidence of methamphetamine found in his pocket when he was frisked during a *Terry*[1] stop. He contends that no reasonable

[1] *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968).

suspicion of criminal activity supported the stop, and the frisk for weapons that turned up the methamphetamine was not supported by an objectively reasonable concern for officer safety. We reject his arguments and affirm.

FACTS AND PROCEDURAL BACKGROUND

On a spring day in 2018, Brian Reinhart called Stevens County dispatch to report that he had a trespasser on his property who had been asked but failed to leave. He reported that when he last approached the trespasser's SUV[2] to renew the demand that he leave, the trespasser was sitting inside cutting up a white powdery substance on his cell phone. Deputy Randall Russell responded to the report, and after speaking with Mr. Reinhart, approached the defendant, Charles Gibson, who was by then standing outside his SUV.

The deputy asked Mr. Gibson about being seen with a baggie of a white powdery substance, and Mr. Gibson denied having anything like that. Asked for identification, Mr. Gibson reached for a wallet in his back pocket and produced his driver's license; as he reached for his wallet, the deputy noticed he had two knife sheaths on his belt. Asked if he had weapons, Mr. Gibson said he did. In addition to the knives in sheaths on his belt, Mr. Gibson turned out to have multiple pocket knives in his front pants pockets. The deputy removed the knives, shining a flashlight into the pockets, which he explained

[2] Sports-utility vehicle.

he does because in reaching into a pocket blindly, he was once almost pricked by an uncapped needle. In the course of looking into and removing knives from Mr. Gibson's right front pocket, the deputy saw and removed a baggie of a white substance that proved to be methamphetamine. Mr. Gibson was charged with one count of possession of methamphetamine.

Mr. Gibson moved to suppress the methamphetamine, supporting his motion with a copy of an incident report Deputy Russell had completed the day after Mr. Gibson's arrest. At a hearing on the motion, the deputy was the only witness who testified.

At the conclusion of the hearing, the trial court made oral findings. They included the following findings about the pat down and removal of weapons that took place after Deputy Russell saw the sheaths on Mr. Gibson's belt:

> When [the deputy] asks for ID he sees the sheaths on the belt. That's when he has the defendant place his hands on the vehicle and he pats him down for weapons, patted his front pockets, could feel what appeared to be more knives.
>
> And then he asks the defendant if he has more knives in his pockets, and he says yes.
>
> So then—Dep. Russell removes five pocket knives from the left front pocket of his pants, asked, "How many knives do you have on your person," defendant says, "I'm not sure." Dep. Russell says "I asked if he had any in his right front pocket." He states, "Yes." And so he pulls the pocket open, shines the flashlight in there, sees the baggie, and what he retrieves from the pocket are—two more knives in the right front pants pocket.
>
> So this is a—a pat-down for weapons. He knew there was a possible danger. Dep. Russell knew this because he saw the knives in—the sheaths on the belt.

> And I think that this—what triggered the investigation into the drugs you see transpires later, he sees the plastic baggie, he asks about the baggie and then he puts the defendant into custody, and that's when the pockets get searched for small containers containing drugs.
>
> He was searching for knives quite clearly. And he was searching—patting down, he felt the knives in the pockets, asked the defendant, defendant said yes, he has more knives in his right pocket. And how does law enforcement remove those knives when the defendant's hands are on the vehicle? It would be unreasonable to expect law enforcement to stick their hands blindly into pockets, knowing what we know about—needles and other hazardous—contaminated items that could be in pockets. We don't—that would be an unreasonable expectation. I don't think you could say that this was—shining a light in a pocket was done to search for drugs. It was clearly weapons, even though he had information about the observation of the property owner, would certainly have had some suspicion that drugs could be at play.
>
> So, it was—It did not—exceed the pat-down—of a Terry stop.

Report of Proceedings (RP) at 40-42.

Following denial of the motion to suppress, Mr. Gibson agreed to proceed to a stipulated facts trial, at which he was found guilty as charged. The trial court sentenced Mr. Gibson to 90 days of incarceration and 12 months of community custody. He appeals.

ANALYSIS

Mr. Gibson assigns error to the trial court's denial of his suppression motion and to its written findings, entered following the hearing, that "the court finds the *Terry* pat-down search of the defendant was justified" and "[T]he subsequent discovery of the suspected narcotics was proper." Br. of Appellant at 1 (quoting Clerk's Papers (CP) at 28). He contends that the deputy's actions were based on an informant's uncorroborated

statement that Mr. Gibson was observed cutting a white powdery substance and, even if the initial stop was justified, Deputy Russell's search of Mr. Gibson's front pants pockets exceeded the permissible scope of a *Terry* stop because he had no objectively reasonable belief that Mr. Gibson was armed and dangerous.

Standard of review

When reviewing the denial of a CrR 3.6 motion to suppress, this court "determines whether substantial evidence supports the challenged findings of fact and whether the findings support the conclusions of law." *State v. Garvin*, 166 Wn.2d 242, 249, 207 P.3d 1266 (2009). "Evidence is substantial when it is enough 'to persuade a fair-minded person of the truth of the stated premise.'" *Id.* (quoting *State v. Reid*, 98 Wn. App. 152, 156, 988 P.2d 1038 (1999)). Conclusions of law are reviewed de novo. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002).

Validity of *Terry* stop

"Warrantless searches and seizures are per se unreasonable unless one of the few jealously and carefully drawn exceptions to the warrant requirement apply." *State v. Tarango*, 7 Wn. App. 2d 425, 432, 434 P.3d 77 (2019). "A *Terry* investigative stop is a well-established exception." *Id.* A police officer who suspects that a particular person has committed a crime can conduct a *Terry* stop and detain that person briefly to investigate the circumstances provoking suspicion. *Berkemer v. McCarty*, 468 U.S. 420, 439, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984). A *Terry* stop allows "'police to make an

intermediate response to a situation for which there is no probable cause to arrest but which calls for further investigation.'" *State v. Armenta*, 134 Wn.2d 1, 16, 948 P.2d 1280 (1997) (quoting *State v. Kennedy*, 107 Wn.2d 1, 17, 726 P.2d 445 (1986) (Dolliver, C.J., dissenting)).

"To conduct a valid *Terry* stop, an officer must have 'reasonable suspicion of criminal activity based on specific and articulable facts known to the officer at the inception of the stop.'" *State v. Weyand*, 188 Wn.2d 804, 811, 399 P.3d 530 (2017) (quoting *State v. Fuentes*, 183 Wn.2d 149, 158, 352 P.3d 152 (2015)). The standard for articulable suspicion is a "substantial possibility that criminal conduct has occurred or is about to occur." *Kennedy*, 107 Wn.2d at 6. "The reasonableness of an officer's suspicion is evaluated based on the totality of the circumstances known to the officer." *Tarango*, 7 Wn. App. 2d at 432.

When it comes to relying on information provided by a citizen informant, "[u]nder the totality of the circumstances test, an informant's tip provides reasonable suspicion sufficient to justify an investigatory stop if 'it possesses sufficient indicia of reliability.'" *State v. Marcum*, 149 Wn. App. 894, 903-04, 205 P.3d 969 (2009) (internal quotation marks omitted) (quoting *State v. Sieler*, 95 Wn.2d. 43, 47, 621 P.2d 1272 (1980)). "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.'" *State v. Howerton*, 187 Wn. App. 357, 365, 348 P.3d 781 (2015) (quoting *State v. Lee*, 147 Wn. App. 912, 918, 199 P.3d 445 (2008)). "Citizen informants are deemed presumptively reliable." *State v. Gaddy*, 152 Wn.2d 64, 73, 93 P.3d 872 (2004).

Here, the citizen informant called to report a trespass on his property, providing an address and meeting Deputy Russell on his arrival. He identified himself to the deputy as Brian Reinhart and told the deputy that he knew the trespasser as "Charlie." He repeated his earlier report that when he approached Charlie's SUV to ask him to leave a second time, he observed Charlie with a plastic bag of a white powdery substance that he was cutting on his phone. He also told the deputy that Charlie claimed his SUV would not start.

Mr. Reinhart is presumed reliable and Deputy Russell's contact with Mr. Gibson corroborated much of the information Mr. Reinhart had provided. The deputy found Mr. Gibson and his SUV near a barn, which is where Mr. Reinhart said he would be. Mr. Gibson answered to "Charlie." Asked by Deputy Russell what was going on, Charlie told the deputy his car would not start. When asked to produce identification, his driver's license revealed his first name to be Charles. These are sufficient indicia of reliability to justify Deputy Russell's reliance on Mr. Reinhart's report that Mr. Gibson was trespassing and had been seen in possession of a white powdery substance, some of which he had been cutting on his phone.

Mr. Gibson also challenges the scope of the search. "A reasonable safety concern exists, and a protective frisk for weapons is justified, when an officer can point to 'specific and articulable facts' which create an objectively reasonable belief that a suspect is 'armed and presently dangerous.'" *State v. Collins*, 121 Wn.2d 168, 173, 847 P.2d 919 (1993) (quoting *Terry*, 392 U.S. at 21-24). Mr. Gibson argues that the evidence did not support an objectively reasonable belief that Mr. Gibson was dangerous, making much of the fact that when Deputy Russell was asked at the suppression hearing whether Mr. Gibson "pose[d] any type of threat," the deputy responded, "You never know." RP at 10. The deputy immediately added, however, "[I]f I talk to someone out on the—situation that I'm in like that where I'm by myself, and I see that they have weapons I'm going to remove those weapons." RP at 11.

Neither federal nor state cases require that a law enforcement officer wait until a knife is wielded or actual danger otherwise materializes before taking protective action. Our Supreme Court reframed the concern that will support a protective frisk in the following terms:

> "[C]ourts are reluctant to substitute their judgment for that of police officers in the field. 'A founded suspicion is all that is necessary, some basis from which the court can determine that the [frisk] was not arbitrary or harassing.'"

State v. Collins, 121 Wn.2d at 173, (emphasis omitted) (alteration in original) (quoting *State v. Belieu*, 112 Wn.2d 587, 601-02, 773 P.2d 46 (1989). In *State v. Olsson*, 78 Wn.

App. 202, 205, 208, 895 P.2d 867 (1995), this court held that having taken one knife from a suspect, it was reasonable for the law enforcement officer in that case to pat down the suspect and retrieve another knife, in the course of which he found a substance later identified as cocaine.

At the suppression hearing, Deputy Russell identified the following facts that supported his reasonable concern: Mr. Gibson was carrying two sheathed knives, admitted having others, and the deputy was the only law enforcement officer present. As he explained, under such circumstances, he "[is] going to remove those weapons." RP at 11. This is a sufficient basis for determining that the frisk was not arbitrary or harassing. An additional articulable fact, although not mentioned by the deputy, was his reason to believe, based on the information provided by Mr. Reinhart, that Mr. Gibson had recently used methamphetamine.

The trial court's oral findings were supported by the evidence and supported its conclusions that the *Terry* pat-down search of the defendant was constitutional. The trial court properly denied the suppression motion.

Affirmed.

A majority of the panel has determined this opinion will not be printed in the Washington Appellate Reports, but it will be filed for public record pursuant to RCW 2.06.040.

Siddoway, J.

WE CONCUR:

Lawrence-Berrey, C.J.

Fearing, J.