

NO. 67259-2-1

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

STATE OF WASHINGTON,

Respondent,

v.

RAYNE WELLS,

Appellant.

FILED
COURT OF APPEALS DIV. 1
STATE OF WASHINGTON
2012 MAY 23 PM 4:20

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SAN JUAN COUNTY

The Honorable Donald Eaton, Judge

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

POLICE DID NOT HAVE A REASONABLE SUSPICION OF CRIMINAL ACTIVITY.

In his opening brief, appellant Rayne Wells asserted police did not have a reasonable suspicion to stop him based on a tip originating from unnamed student informants and which consisted of a conclusory statement regarding criminal activity. Brief of Appellant (BOA) 6-17.¹ The State's argument in response essentially boils down to two points: Principal Barbara Kline and student Lisa Harvey were trustworthy informants and they gave reliable identifying information.² Brief of Respondent (BOR) at 9-11. In focusing on the trustworthiness of Kline and Harvey and the

¹ In making this argument, appellant assigned error to several conclusions of law. As a point of clarification appellant's assignment of error Conclusion of Law "B" covers all the subsections under that conclusion. BOA at 2. To the extent the State's brief suggests otherwise, it is not accurate. BOR at 8-9 (citing Conclusions of Law B(1)-(5)).

² Specifically, the State argues:

...Principal Kline and Lisa Harvey did not have to witness illegal activity to be reliable sources of information. As noted above, Principle Kline testified to hearing similar descriptions of defendant from multiple students. Furthermore, Lisa Harvey had sufficient knowledge to identify the truck defendant was riding in.

BOR at 11.

factual basis of the identification, however, the State misses an important point – the State never established that any informant or student’s report of criminal activity was based on personal knowledge of facts supporting such an allegation.

Even a reliable informant’s tip is insufficient to justify a stop if the information consists of a bare conclusion of criminal activity that remains unsupported by a sufficient factual basis. State v. Sieler, 95 Wn.2d 43, 47-48, 621 P.2d 1272 (1980). The rationale behind requiring a sufficient factual basis regarding criminal activity is to prevent investigatory detentions made “on the basis of a tip provided by an honest informant who misconstrued innocent conduct.” Id. Hence, informants, no matter how trustworthy, must give a sufficient factual basis establishing criminal activity for the tip to be deemed reliable. Id.; see also, Florida v. J.L., 529 U.S. 266, 272, 120 S.Ct. 1375 (2000) (holding informant’s description of a subject’s location and appearance alone did not meet the requirement that a tip be reliable in its assertion of illegality).

The central problem in this case is the State failed to establish that a single informant³ had personal knowledge

³ For reasons stated in appellant’s opening brief, it is appellant’s position that the trial court erred in considering Kline and Harvey

establishing a sufficient factual basis of criminal activity to justify Clever's stop.

For a tip to be deemed reliable, the record must establish the basis of the informant's personal knowledge unless there is independent officer corroboration.⁴ State v. Vandover, 63 Wn. App. 754, 759-60, 822 P.2d 784 (1992). In Vandover, officers received a tip that a man in a gold colored Maverick was brandishing a saw-off shotgun in front of a restaurant in downtown Port Angeles. Id. at 755. The record did indicate if the informant's tip was based on an eyewitness account of criminal activity. Id. Without corroborating the tip, officers pulled over Vandover's gold colored Maverick. Id. at 756. Upon a search, they discovered a full-sized shotgun locked in the trunk and cocaine in the car. Id.

The trial court denied Vandover's motion to suppress the evidence, finding the search reasonable. Id. The Court of Appeals

the informants for purposes of judging reliability; instead, it was the reporting students (who remained unnamed to Clever up to the point of his stopping Wells) whose reliability should have been considered. BOA at 12-16. Appellant stands by this analysis. However, in answering the State's response, appellant will focus solely on the point that -- regardless who is considered "the informant" -- the fact remains that no one with personal knowledge ever provided Clever with particularized factual details supporting the conclusory allegation of criminal activity. See, BOA at 16-19.

⁴ There was no evidence of corroboration here.

reversed, concluding the informant's tip was insufficient to establish a reasonable suspicion of criminal conduct. Id. at 760. Specifically, the Court found the tip unreliable because "the police officer had no way of knowing whether there was any basis for the informant's personal knowledge." Id. at 759. The Court explained:

It makes no sense to require some "indicia of reliability" that the informer is personally reliable but nothing at all concerning the source of his information, considering that one possible source would be another person who was totally unreliable.⁵

Id. at 759 (quoting 3 W. LaFare, Search and Seizure § 9.3(e) at 481 (1987)). The Court concluded that without evidence the informant had been an eyewitness or possessed some basis of personal knowledge regarding the criminal activity, it was unreasonable for officers to conclude the tip was reliable as to its assertion of criminal activity and to execute the stop. Id. at 760.

As in Vandover, the State failed to establish the tipsters possessed personal knowledge of any alleged criminal activity or of particularized facts suggesting criminal activity. The trial court

⁵ This is also why case law establishes that trial courts should focus the inquiry on the reliability of the original tipster and not the third-party who relays information to police. See, BOA at 9-10 (discussing this point in detail).

found Kline had no personal knowledge. CP 207. Its findings also establish that Harvey's knowledge went to identification, not criminal activity. CP 207. And there are no findings that any of the reporting students had a basis of personal knowledge regarding particularized criminal activity.⁶ CP 206-07. Most importantly, the trial court found Clever could not recall if he had been informed that anyone had personal knowledge of facts establishing criminal activity. CP 207.

Based on this record, the State was unable to establish any basis of knowledge regarding anything other than an identification of a stranger and his car and a conclusory statement regarding criminal activity. This is not enough to justify a stop, however.

See, Florida v. J.L., 529 U.S. at 272 (holding informant's description of a subject's location and appearance alone does not meet the requirement that a tip be reliable in its assertion of illegality); State v. Hopkins, 128 Wn. App. 855, 862-63, 117 P.3d 377 (2005) (reversing conviction where there was not a reliable factual basis of criminal activity); State v. Lesnik, 84 Wn.2d 940,

⁶ Indeed, Kline admitted that no student had reported personally witnessing drugs or guns on campus. RP 37-41.

943, 530 P.2d 243 (1975) (explaining a tip that merely identifies subject's car is not sufficiently reliable).

In sum, the State failed to establish that any informant or reporting student provided police information based on personal knowledge that included a specific factual basis supporting an allegation of criminal activity. For this reason and all those stated in appellant's opening brief, this Court should hold the stop was unreasonable.

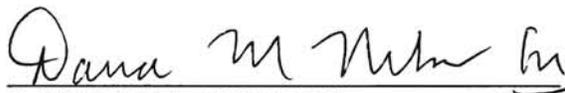
B. CONCLUSION

This Court should reverse the trial court's denial of appellant's Motion to Suppress and reverse his conviction.

DATED this 23rd day of May, 2012.

Respectfully submitted,

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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 23RD DAY OF MAY 2012, 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.

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x *Patrick Mayovsky*

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