

No. 69218-6-I

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

STATE OF WASHINGTON,

Respondent,

v.

DANTE URELL PIGGEE,

Appellant.

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

The Honorable Bruce E. Heller

2013 MAY - 1 PM 4: 36
COURT OF APPEALS DIV I
STATE OF WASHINGTON

REPLY BRIEF OF APPELLANT

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A. STATEMENT OF THE FACTS

It is important to correct some misconceptions or obfuscations by the State in its recitation of the facts necessary for determination of review. Mr. Piggee is challenging his seizure and subsequent arrest by King County Deputy Nix. In its Brief of Respondent, the State uses the facts from the CrR 3.6 hearing on the motion to suppress and the trial interchangeably. The only facts necessary for determination of the issue on review are the facts from the CrR 3.6 hearing, which were dramatically different from those established at trial.

The fare enforcement people did *not* testify at the hearing on the motion to suppress: Deputy Nix was the only witness who testified. The only description Nix had was that the person was a black adult male. 7/19/2012RP 12. Further, the fare enforcement people were not law enforcement officers but citizen informants.

B. ARGUMENT

THE DEPUTY LACKED REASONABLE
SUSPICION TO SEIZE MR. PIGGEE

1. Mr. Piggee did not waive any challenge to the reliability of the citizen informants. The State contends Mr. Piggee waived a challenge to the reliability of the informants because he failed to raise that issue in the trial court. Brief of Respondent at 15-18. The State's

argument misunderstands the difference between the art I, sec. 7 of the Washington Constitution and the Fourth Amendment to the United States Constitution. Further, the State's argument continually conflates the test for the Washington Constitution with the test for the United States Constitution.

As a general rule, a warrantless search is per se unreasonable under both the Fourth Amendment and article I, section 7 unless the search falls within one or more specific exceptions to the warrant requirement. *State v. Duncan*, 146 Wn.2d 166, 171, 43 P.3d 513 (2002); *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999). It is always the State's burden to establish that an exception to the warrant requirement applies. *State v. Afana*, 169 Wn.2d 169, 177, 233 P.3d 879 (2010). One exception to the warrant requirement occurs in a situation where a police officer makes a brief investigatory *Terry* stop based upon reasonable suspicion, supported by objective facts, that an individual is involved in criminal activity. *Terry v. Ohio*, 392 U.S. 1, 21-22, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968); *State v. Armenta*, 134 Wn.2d 1, 10, 948 P.2d 1280 (1997).

Under article I, section 7, the State establishes an informant's tip's reliability when "(1) the *informant* is reliable *and* (2) the

informant's *tip* contains enough objective facts to justify the pursuit and detention of the suspect *or* the noninnocuous details of the tip have been corroborated by the police thus suggesting that the information was obtained in a reliable fashion.” *State v. Hart*, 66 Wn.App. 1, 7, 830 P.2d 696 (1992) (emphasis in original).

Thus, it is always the State’s burden to prove under art. I, sec. 7 both objective facts *and* reliability. The fact that Mr. Piggee did not raise it at the CrR 3.6 hearing does not absolve the State from the burden of proving the informants’ tip was reliable.

Here, the State’s recitation of the facts unwittingly corroborates Mr. Piggee’s argument that there was no evidence establishing the informants were reliable:

Here, the information Deputy Nix initially relied on when responding to the scene was from the radio call by the FEOs [Fare Enforcement Officers]. Nix knew that FEOs are private security personnel contracted with Sound Transit to enforce fare payment. *Although Nix did not know the specific FEOs who contacted Piggee*, he had experience working with and assisting FEOs as part of his job.

Brief of Respondent at 17-18 (internal citations omitted, emphasis added).

Here, there was *no* information presented about the fare enforcement officers, not their names nor any phone number, nor any

identifying information. The only information that was learned from the testimony at the CrR 3.6 hearing was that the individuals were *not* fully commissioned law enforcement officers. Further, the only information provided by the fare enforcement people and corroborated by the deputy was that Mr. Piggee was a black man. There was no information presented that the black man the fare enforcement people were attempting to detain was Mr. Piggee. There was nothing presented to establish the fare enforcement officers' reliability, and the fact corroborated by the deputy, that Mr. Piggee was a black man, was entirely innocuous. Thus, contrary to the trial court's conclusion, there was no reasonable suspicion to authorize the detention of Mr. Piggee. As a consequence, as argued in the Brief of Appellant, this Court's decision in *State v. Hopkins*, 128 Wn.App. 855, 862, 117 P.3d 377 (2005), controls here.

2. A civil infraction violation never justifies a *Terry* stop. The State also contends that Mr. Piggee waived any challenge to the fare employees' authority to cite people for the civil infraction of fare evasion because it was not raised in the trial court and it is merely a statutory claim. Brief of Respondent at 19-24. Again, the State misunderstands that it is its burden of proving the seizure of Mr. Piggee

was with authority of law under art. I, sec. 7 of the Washington Constitution. The State contends the deputy did not stop Mr. Piggee pursuant to the statutes but under *Terry*. But, the Washington Supreme Court has refused to extend a “*Terry*” stop to a violation of a civil infraction. *See State v. Day*, 161 Wn.2d 889, 897-98, 168 P.3d 1265 (2007) (parking infraction); *Duncan*, 146 Wn.2d at 171-72 (open container of alcohol in a public place). To detain a person for violation of a civil infraction, the violation must have occurred in the police officer’s presence. *Duncan*, 147 Wn.2d at 179. Any violation of the fare requirement by Mr. Piggee was not committed in the deputy’s presence, thus the deputy could not constitutionally detain Mr. Piggee.

3. Even under the Fourth Amendment, the deputy lacked reasonable suspicion based upon anonymous informants’ tip. In *Florida v. J.L.*, the United States Supreme Court unequivocally held that an anonymous tip that a particular person is carrying a gun is insufficient to justify a police officer’s stop of that person. 529 U.S. 266, 271, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000). Here, the fare enforcement officers alleged that a black man had committed a fare violation; no other information about the fare enforcement people was admitted. Thus, the fare enforcement individuals’ information was no

more than an anonymous tip. The ensuing stop of Mr. Piggee therefore violated the Fourth Amendment. *J.L.*, 529 U.S. at 268.

In sum, under both the Fourth Amendment and article I, section 7, the seizure of Mr. Piggee and the marijuana and other contraband seized from him was unconstitutional. This Court should reverse Mr. Piggee's conviction and remand with instructions to suppress the items seized from him as a result of the improper stop. *State v. Kennedy*, 107 Wn.2d 1, 4, 726 P.2d 445 (1986).

C. CONCLUSION

For the reasons stated, Mr. Piggee requests this Court reverse his conviction and order the contraband seized from him suppressed.

DATED this 1st day of May 2013.

Respectfully submitted,



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)	
Appellant.)	

DECLARATION OF DOCUMENT FILING AND SERVICE

I, MARIA ANA ARRANZA RILEY, STATE THAT ON THE 1ST DAY OF MAY, 2013, I CAUSED THE ORIGINAL **REPLY BRIEF OF APPELLANT** TO BE FILED IN THE **COURT OF APPEALS - DIVISION ONE** AND A TRUE COPY OF THE SAME TO BE SERVED ON THE FOLLOWING IN THE MANNER INDICATED BELOW:

<input checked="" type="checkbox"/> LINDSEY GRIEVE, DPA KING COUNTY PROSECUTOR'S OFFICE APPELLATE UNIT 516 THIRD AVENUE, W-554 SEATTLE, WA 98104	<input checked="" type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	U.S. MAIL HAND DELIVERY _____
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SIGNED IN SEATTLE, WASHINGTON THIS 1ST DAY OF MAY, 2013.

X _____ 

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