

NO. 69852-4-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ANDREW SAGGERS,

Appellant.

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LEROY MCCULLOUGH

2013 SEP -5 PM 2:02  
COURT OF APPEALS  
STATE OF WASHINGTON

**BRIEF OF RESPONDENT**

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

JENNIFER P. JOSEPH  
Deputy Prosecuting Attorney  
Attorneys for Respondent

King County Prosecuting Attorney  
W554 King County Courthouse  
516 3rd Avenue  
Seattle, Washington 98104  
(206) 296-9650

TABLE OF CONTENTS

	Page
A. <u>ISSUES</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. PROCEDURAL FACTS .....	2
2. SUBSTANTIVE FACTS .....	2
C. <u>ARGUMENT</u> .....	9
1. OFFICERS LAWFULLY DETAINED SAGGERS IN RESPONSE TO A CITIZEN'S 911 EYE-WITNESS REPORT THAT HE HAD ASSAULTED A WOMAN AND THREATENED HER WITH A SHOTGUN.....	9
2. OFFICERS ACTED WITHIN THE LAWFUL SCOPE OF THE <u>TERRY STOP</u> .....	20
3. SAGGERS'S STATEMENTS AND SHOTGUN WERE PROPERLY ADMITTED .....	24
D. <u>CONCLUSION</u> .....	25

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Florida v. J.L., 529 U.S. 266,  
120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000) ..... 14, 16, 17

Florida v. Royer, 460 U.S. 491,  
103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983) ..... 21, 24

Miranda v. Arizona, 384 U.S. 436,  
86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966) ..... 6

Terry v. Ohio, 392 U.S. 1,  
88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968) 10, 12, 14, 21-22, 24

United States v. Terry-Crespo, 356 F.3d 1170  
(9th Cir. 2004) ..... 16, 17

United States v. Valentine, 232 F.3d 350  
(3d Cir. 2000) ..... 18

Washington State:

State v. Acrey, 148 Wn.2d 738,  
64 P.3d 594 (2003) ..... 11

State v. Connor, 58 Wn. App. 90,  
791 P.2d 261, rev. denied,  
115 Wn.2d 1020 (1990) ..... 12

State v. Duncan, 146 Wn.2d 166,  
43 P.3d 513 (2002) ..... 10, 15

State v. Franklin, 41 Wn. App. 409,  
704 P.2d 666 (1985) ..... 18

State v. Hopkins, 128 Wn. App. 855,  
117 P.3d 377 (2005) ..... 10, 16, 17, 19, 20

<u>State v. Kennedy</u> , 107 Wn.2d 1, 726 P.2d 445 (1986).....	10
<u>State v. Kinzy</u> , 141 Wn.2d 373, 5 P.3d 668 (2000).....	10
<u>State v. Lee</u> , 147 Wn. App. 912, 199 P.3d 445 (2008), <u>rev. denied</u> , 166 Wn.2d 1016 (2009).....	11, 12, 17
<u>State v. Lesnick</u> , 84 Wn.2d 940, 530 P.2d 243, <u>cert. denied</u> , 423 U.S. 891 (1975).....	10, 11
<u>State v. Luther</u> , 157 Wn.2d 63, 134 P.3d 2015 (2006).....	10
<u>State v. Marcum</u> , 149 Wn. App. 894, 205 P.3d 969 (2009).....	11
<u>State v. McCord</u> , 19 Wn. App. 250, 576 P.2d 892 (1978).....	15
<u>State v. Mendez</u> , 137 Wn.2d 208, 970 P.2d 722 (1999).....	10
<u>State v. Randall</u> , 73 Wn. App. 225, 868 P.2d 707 (1994).....	11, 14, 15, 16, 18
<u>State v. Rowe</u> , 63 Wn. App. 750, 822 P.2d 290 (1991).....	11
<u>State v. Sieler</u> , 95 Wn.2d 43, 621 P.2d 1272 (1980).....	11, 15
<u>State v. Sweet</u> , 44 Wn. App. 226, 721 P.2d 560 (1986).....	21
<u>State v. Thierry</u> , 60 Wn. App. 445, 803 P.2d 844 (1991).....	15
<u>State v. Vandover</u> , 63 Wn. App. 754, 822 P.2d 784 (1992).....	19, 20

<u>State v. Wakeley</u> , 29 Wn. App. 238, 628 P.2d 835 (1981).....	12
<u>State v. Williams</u> , 102 Wn.2d 733, 689 P.2d 1065 (1984).....	22, 24

Rules and Regulations

Washington State:

CrR 3.5.....	2
CrR 3.6.....	2

A. ISSUES

1. Reports by citizen eye-witnesses in 911 calls are presumed reliable, and officers relying on such reports involving the threat of violence are justified in making an investigatory stop. Here, a person identifying himself as Abraham Anderson called 911 to report that he had just witnessed a man at a given address assault a woman and threaten her with a shotgun. Did the trial court correctly conclude that the officers had reasonable suspicion to briefly detain the resident to investigate the report?

2. Whether police conduct exceeds the permissible scope of an investigative stop depends upon the totality of the circumstances, including the purpose of the stop, the amount of physical intrusion on the suspect's liberty, and the length of time of the seizure. Following a 911 report that Saggars had assaulted a woman and threatened her with a shotgun, officers handcuffed him and detained him in a patrol car for less than fifteen minutes while they secured the scene, investigated the report, and determined that it was unfounded. During that investigation, police discovered that Saggars unlawfully possessed a shotgun. Did the trial court correctly conclude that the officers acted within the lawful scope of an investigative stop?

B. STATEMENT OF THE CASE

1. PROCEDURAL FACTS

The State charged Andrew Saggors with Unlawful Possession of a Firearm in the Second Degree. Clerk's Papers (CP) 1. Saggors moved to suppress his statement to police that he owned a shotgun, as well as the gun that police found during a subsequent consensual search of his home. CP 9-14. Following a CrR 3.5 and 3.6 hearing, the trial court denied the motions. RP 241-44<sup>1</sup>; CP 84-93. The Honorable LeRoy McCullough found Saggors guilty as charged following a stipulated-facts bench trial. RP 263. The trial court later imposed a sentence of 30 days of electronic home detention. CP 70-75. Saggors timely appealed. CP 76.

2. SUBSTANTIVE FACTS

Shortly before 3:00 a.m. on June 19, 2012, a man identifying himself as Kyle Thompkins called 911 to request a civil standby to collect items from Andrew Saggors's personal residence in Kent. RP 7; CP 90. Kent Police Officer Shane Walter returned

---

<sup>1</sup> The Verbatim Report of Proceedings consists of two consecutively paginated volumes covering the pretrial proceedings of December 18 and 20, 2012. The State refers to the VRP by page number.

Thompkins's call, and told him that it was unreasonable to perform that function at that hour. RP 7-8; CP 90. During the conversation, Thompkins informed Walter that Saggars had a gun that he was not allowed to own because of a prior domestic violence incident. RP 11-12, 46; CP 3, 90. Thompkins ultimately agreed to call back later and the conversation ended at 3:00 a.m. RP 12; CP 90.

At 3:13 a.m., a man identifying himself as Abraham Anderson and providing his birth date called 911 from a gas station to report an assault at Saggars's address. RP 12-14, 18; CP 3, 90. The station was about one mile away from Saggars's home. RP 14. Anderson reported that he had been walking his dog in the area a few minutes before and overheard an argument between a man and a woman over a drug transaction. RP 13, 15; CP 3, 90. He saw the man hit the woman, go inside the house, and come out with a shotgun. Id. Anderson described the woman and said that she drove away in an older, green Toyota while the man stood on the porch and threatened her with the shotgun. Id. Anderson reported the direction in which the woman had driven. Id. He also described the house as having a gray and red Suburban in the driveway. RP 16; CP 3.

Dispatch alerted officers to the situation with a “tone-out priority call.” RP 13, 22. As is usual with priority calls involving weapons, several officers immediately responded with emergency lights activated. RP 16. Officer Walter stopped only to put on body armor designed to protect against shotgun fire and to prepare his patrol rifle. RP 21, 52. Although officers thought the 911 call might not be legitimate, they took it seriously because “you have to handle every call as if what’s being said is quite plausible. And especially calls with guns, we take as the utmost priority and with the utmost seriousness.” RP 20; CP 90. They did not first attempt to find Anderson or confirm his identity because their highest priority was to get to the location, “figure out what’s going on and stop ... an act of violence.” RP 22.

At least six officers responded to Saggars’s address. RP 23. They confirmed the presence of the gray and red Suburban, which was blocked in by another car. RP 25; CP 90. Shortly after the officers arrived, dispatch relayed more information from Anderson: that he had seen the Suburban driving near the gas station. RP 16; CP 90. It was unclear when dispatch had obtained that information, which could have been delayed. RP 64-65; CP 90. Despite the fact that the Suburban was clearly still at the residence, the house

was dark and quiet, and officers saw no suspects, the officers did not assume the 911 call was a hoax. RP 110-11; CP 90. They believed that they were required to investigate because of the possibility that the woman had come back or that someone else was inside the house hurt. RP 26, 115; CP 90. Even if the officers suspected that the 911 call was a prank, they did not ignore it because "if I'm wrong, that's somebody's life that I'm putting at risk." RP 115.

The officers took cover and formed a perimeter around the house for officer safety. RP 113-15. They did not approach the front door for fear of being shot. Id. Instead, they attempted to contact the house occupants by phone. RP 110; CP 91. Receiving no response after multiple calls, the officers next used a P.A. system to direct the occupants to come outside. Id. After several minutes, Saggars came to the door. RP 115; CP 91. He carried no visible weapons and was completely cooperative. RP 28, 72-73; CP 91.

Officer Christopher Mills handcuffed Saggars, took him to a patrol car, and patted him down, finding no weapons. RP 29, 116. Mills moved Saggars away from the front of the unsecured house to protect him in case someone still inside "runs out with a weapon."

RP 117; CP 91. Mills advised Saggars that he was not under arrest, but was being detained for investigation. Id. Mills informed Saggars of his Miranda<sup>2</sup> rights and left him in the closed patrol car for “[a] couple minutes” while Mills returned to cover the house. RP 119, 139, 156. Meanwhile, an officer sent to the gas station from which the 911 call was placed discovered the payphone off the hook and dangling from its cord. RP 68.

After Saggars was detained, some of the officers entered the house to perform a security sweep and to locate Saggars's roommate, “Eddie.” RP 75; RP 140. Officer Walter spoke with Eddie at the front door. RP 32-33. Eddie explained that Thompkins had come to the house earlier, banged on the door, and asked to retrieve some things from the garage. RP 33. Eddie told Thompkins to leave because he and Saggars were sleeping. Id. He also said there had been no one else in the house and was unaware of any females having been there. RP 77; CP 91. After this conversation, the officers who spoke to Eddie concluded that the incident reported in the 911 call had not occurred. RP 76-77; CP 91.

---

<sup>2</sup> Miranda v. Arizona, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

While officers spoke with Eddie at the front door, Saggers waived his right to silence and spoke to Officer Mills in the patrol car. RP 122, 141, 145, 148, 159, 161; CP 91, 92. Mills was unaware of the information obtained from Eddie before speaking to Saggers. CP 91. Saggers said he believed that Thompkins was the 911 caller, and that Thompkins was lying about the alleged altercation with a woman. RP 122. Saggers asserted that no woman had been at his house all night and that he had never waved a shotgun at anyone. RP 123; CP 91. Saggers admitted, however, that he owned a shotgun, which he kept in a locked case in his closet. Id. After speaking with Saggers, Officer Mills independently concluded that Saggers was not involved in the incident reported to 911. RP 124.

As part of the investigation, Mills and a sergeant both ran background checks on Saggers. RP 124. Since Mills's check revealed nothing about ineligibility to own a firearm, he removed Saggers's handcuffs and released him. Id.; CP 91. At that point, Saggers was sitting in the patrol car with his feet outside the car, "so [Mills] wasn't holding him there or anything." Id. Although Saggers was free to leave once he was uncuffed, Mills did not actually say the words, "you are free to leave." RP 151. Dispatch

then advised Mills that Saggars was ineligible to possess a firearm. CP 91. The sergeant's background check had revealed a domestic violence protection order and a prior domestic violence conviction. RP 34; RP 124-25. Because Saggars had admitted having a shotgun, Mills asked for his consent to enter the home and remove the weapon. RP 124; CP 91. Mills advised Saggars of his right to refuse, limit, and revoke consent to search the house. RP 125; CP 91-92. Saggars consented to the search and escorted the officers to the shotgun's location. RP 125-27; CP 92. The officers confiscated the gun but did not arrest Saggars at that time. RP 36; RP 126-27; CP 92.

At some point, Officer Walter and/or dispatch tried to locate information about the 911 caller, Abraham Anderson. RP 36-37; RP 190-91. There was no record of the man. RP 37. "[I]t's not completely unheard of or unusual for a real person not to have a record, but it is a little ... odd." Id.

A couple of days after the incident, Officer Walter recorded a phone conversation with Saggars. RP 37. Saggars explained that his father had left the shotgun with him after returning from a hunting trip. RP 40. Saggars said he kept the gun in his closet and did not realize that he was violating the law. RP 41. He also

reiterated his belief that Thompkins had placed the 911 call from the gas station, and noted that Thompkins knew about the shotgun. RP 41-42, 80-81. Officer Walter confirmed that Saggars had a domestic violence court order violation conviction with a disposition date in January 2009. CP 4.

C. ARGUMENT

1. OFFICERS LAWFULLY DETAINED SAGGERS IN RESPONSE TO A CITIZEN'S 911 EYE-WITNESS REPORT THAT HE HAD ASSAULTED A WOMAN AND THREATENED HER WITH A SHOTGUN.

Saggars contends that the trial court erred by denying his motion to suppress because an “anonymous tip received via 911” did not provide reasonable suspicion to justify an investigatory stop. Brief of Appellant at 11. Saggars’s argument fails in its very premise because this case involves no anonymous tip. Rather, a citizen eye-witness called 911, identified himself by name and birth date, and gave a description of a serious violent crime, certain details of which were corroborated by officers. This Court should reject Saggars’s claim and conclude that the officers were entitled to make an investigatory stop.

In reviewing the denial of a motion to suppress, this Court reviews factual findings for substantial evidence and conclusions of law de novo. State v. Hopkins, 128 Wn. App. 855, 862, 117 P.3d 377 (2005) (citing 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)). Unchallenged findings are verities on appeal. State v. Luther, 157 Wn.2d 63, 78, 134 P.3d 2015 (2006).

Brief, investigatory “Terry” stops are well-established exceptions to the general rule that warrantless seizures are unconstitutional. Terry v. Ohio, 392 U.S. 1, 30-31, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); State v. Lesnick, 84 Wn.2d 940, 530 P.2d 243, cert. denied, 423 U.S. 891 (1975). A Terry stop is justified when an officer has specific and articulable facts that give rise to a reasonable suspicion that the person stopped is, or is about to be, engaged in criminal activity. State v. Kinzy, 141 Wn.2d 373, 384-85, 5 P.3d 668 (2000).

A reasonable suspicion is the “substantial possibility that criminal conduct has occurred or is about to occur.” State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). “The reasonableness of the officer’s suspicion is determined by the totality of the circumstances known to the officer at the inception of

the stop.” State v. Rowe, 63 Wn. App. 750, 753, 822 P.2d 290 (1991). The totality of the circumstances include factors such as the officer’s training and experience, the location of the stop, the conduct of the person detained, the purpose of the stop, the amount of physical intrusion upon the suspect’s liberty, and the length of time the suspect is detained. State v. Acrey, 148 Wn.2d 738, 747, 64 P.3d 594 (2003).

Reasonable suspicion may be based upon information supplied by another person. Lesnick, 84 Wn.2d at 943; State v. Randall, 73 Wn. App. 225, 227, 868 P.2d 707 (1994). An informant’s tip provides police with reasonable suspicion to justify an investigatory stop when it possesses sufficient “indicia of reliability.” State v. Marcum, 149 Wn. App. 894, 903, 205 P.3d 969 (2009) (citing State v. Sieler, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980)). To determine whether sufficient indicia exist, “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. Lee, 147 Wn. App. 912, 918, 199 P.3d 445 (2008), rev. denied, 166 Wn.2d 1016 (2009) (citing Sieler, 95 Wn.2d at 47; Lesnick, 84 Wn.2d at 944)). Because no

single rule can be set forth to apply to every possible situation, “the reviewing court must evaluate the reasonableness of the police action and the extent of the intrusion in light of the particular circumstances.” State v. Connor, 58 Wn. App. 90, 95, 791 P.2d 261, rev. denied, 115 Wn.2d 1020 (1990).

Generally, citizen informants are deemed “presumptively reliable sources of information.” State v. Wakeley, 29 Wn. App. 238, 241, 628 P.2d 835 (1981). A citizen’s ability to give “specific details about the commission of a crime suggests that the information was obtained in a reliable fashion.” Connor, 58 Wn. App. at 97. Moreover, a “citizen-witness’s credibility is enhanced when he or she purports to be an eyewitness to the events described.” Lee, 147 Wn. App. at 918.

Here, the totality of the circumstances establishes that officers had reasonable suspicion to justify a Terry stop: police received information through a priority radio dispatch that Anderson called 911, identified himself by name and birth date, and reported having witnessed a violent altercation in front of Sagggers’s home involving a shotgun. Anderson was able to describe the incident, the victim, her car, and the direction in which she drove away. He also described the gray and red Suburban in front of the house,

a detail that officers were able to corroborate upon arrival at the scene. Additionally, Officer Walter had received information from Thompkins that corroborated that Saggars, an occupant at the same address, possessed a shotgun and had been involved in domestic violence in the past. Thus, the officers had information supporting the reliability of the informant and the basis of his knowledge, and were able to corroborate some of the details of the informant's report.

Saggars contends that the officers here should have realized that Anderson's 911 call was false because it came on the heels of Thompkins's request for a civil standby at the same address and because certain details of the report seemed "improbable." Brief of Appellant at 13. But even if officers suspected that the two calls were related, this would not necessarily alleviate the officers' concern. Officer Walter noticed that the priority call involved the same address at which he had refused to conduct a civil standby. He testified, "there was no way to know for sure how it was connected, whether it was somebody forcing the issue, unhappy with my services and forcing the issue and going after a house, whether that be banging on the door, kicking the door in, breaking windows, taking matters into their own hands, if you will, or just

generating a call to get the police coming.” RP 20. Given the serious, violent nature of the 911 report, the officers reasonably believed that they could rely on the information disseminated by police dispatch and had an immediate duty to investigate. See Randall, 73 Wn. App. at 230.

Ignoring the fact that the informant in this case was not anonymous, Saggars argues that a mere allegation involving a firearm by an anonymous tipster does not automatically give rise to reasonable suspicion. He relies in large part on Florida v. J.L., 529 U.S. 266, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000). This reliance is misplaced.

In J.L., the Supreme Court assessed the reliability of an anonymous tip that a black male minor, standing at a bus stop and wearing a plaid shirt, possessed a firearm in violation of Florida law. 529 U.S. at 271. The informant apparently did not place an emergency call to 911, but called the police department. See id. at 275 (Kennedy, J., concurring). The Court held that an anonymous tip identifying an individual as carrying a gun, “without more,” did not provide reasonable suspicion justifying a Terry stop and frisk. Id. at 268 (emphasis added). Rather, the tip amounted to no more than a “bare report of an unknown, unaccountable informant who

neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L.” Id. at 271.

Although the Court expressly declined to adopt an automatic firearm exception to the reasonable suspicion rule, it also emphasized that “[t]he facts of this case do not require us to speculate about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability.” 529 U.S. at 273-74. The Court thus acknowledged what Washington courts have long recognized: that when the potential danger posed by an individual is significant, a greater intrusion on lesser suspicion will be tolerated.<sup>3</sup> Indeed, this Court has held that where officers receive information about a contemporaneous threat of serious violence, corroborated by their observations, they may act upon it without first undertaking an

---

<sup>3</sup> See, e.g., Duncan, 146 Wn.2d at 177 (“[W]e place an inversely proportional burden in relation to the level of the violation. Thus, society will tolerate a higher level of intrusion for a greater risk and higher crime than it would for a lesser crime.”); State v. Sieler, 95 Wn.2d 43, 50, 621 P.2d 1272 (1980) (“[T]he seriousness of the criminal activity reported by an informant can affect the reasonableness calculus which determines whether an investigatory detention is permissible.”); State v. Randall, 73 Wn. App. 225, 868 P.2d 207 (1994) (relaxing the informant reliability requirement in cases involving violent offenses, because requiring an in-depth analysis of the reliability of the information would “greatly increase the threat to public safety”); State v. Thierry, 60 Wn. App. 445, 448, 803 P.2d 844 (1991) (“Officers may do far more if the suspect conduct endangers life or personal safety than if it does not.”); State v. McCord, 19 Wn. App. 250, 253, 576 P.2d 892 (1978) (“A determination of the reasonableness of an officer’s intrusion depends to some degree on the seriousness of the apprehended criminal conduct. An officer may do far more if the suspected misconduct endangers life or personal safety than if it does not.”).

exhaustive analysis of the tip's reliability. Randall, 73 Wn. App. at 230.

Further, the facts of this case distinguish it from J.L. First, this case does not involve an anonymous informant. Anderson gave a name and birth date. While it is true that officers were unable to verify his identity, the Ninth Circuit held in similar circumstances that police have no duty "to confirm the identity of every 911 caller who provides his or her name" before responding to a report of violent crime. United States v. Terry-Crespo, 356 F.3d 1170, 1175 (9th Cir. 2004). "Police delay while attempting to verify an identity or seek corroboration of a reported emergency may prove costly to public safety and undermine the 911 system's usefulness." Id. at 1176; see also Hopkins, 128 Wn. App. at 870 (Quinn-Brintnall, C.J., dissenting). Given the 911 report of an identified citizen informant concerning a dangerously violent situation, it was reasonable for police to investigate without first confirming the caller's identity.

Additionally, while the officers eventually concluded that "Anderson" was probably a fictitious person, the fact that he used the emergency 911 system supported his credibility. "If an informant places his anonymity at risk, a court can consider this

factor in weighing the reliability of the tip.” 529 U.S. at 276 (Kennedy, J., concurring). Despite giving a false name, the caller here placed his anonymity at risk because “merely by calling 911 and having a recorded conversation risks the possibility that police could trace the call and identify [him] by his voice.” Terry-Crespo, 356 F.3d at 1176. Because “[i]t is well understood in today’s society that 911 calls are recorded, that information about the source of a call is obtained, and that it is a crime to initiate false statements to 911 dispatchers and law enforcement,” many courts ascribe greater reliability to 911 calls. Hopkins, 128 Wn. App. at 869 & n.9 (Quinn-Brintnall, C.J., dissenting) (collecting cases).

Second, the J.L. court emphasized that the informant did not specify the source of his information: he “neither explained how he knew about the gun nor supplied any basis for believing that he had inside information[.]” 529 U.S. at 271. In contrast, Anderson’s detailed eye-witness description of the events and participants indicated a reliable basis for the report. This Court has recognized that a “citizen-witness’s credibility is enhanced when he or she purports to be an eyewitness to the events described.” Lee, 147 Wn. App. at 918. See also Terry-Crespo, 356 F.3d at 1176 (“[T]he police could place additional reliability on [the caller’s] tip because

his call evidenced first-hand information from a crime victim laboring under the stress of recent excitement.”); United States v. Valentine, 232 F.3d 350, 354 (3d Cir. 2000) (concluding that police may ascribe greater reliability to a tip, even if anonymous, where an informant “was reporting what he had observed moments ago,” rather than stale or second-hand information).

Additionally, officers were able to corroborate significant details about Anderson’s report: the presence of the gray and red Suburban, the fact that a resident at the address involved owned a shotgun, and that that resident had been involved in domestic violence in the past.<sup>4</sup> Under similar circumstances, this Court has concluded that officers had reasonable suspicion and a duty to promptly respond. See Randall, 73 Wn. App. at 230; State v. Franklin, 41 Wn. App. 409, 414, 704 P.2d 666 (1985). (“[T]he potential danger to the public posed by an armed individual calls for immediate action, and in such circumstances, the police may forego lengthy and unnecessary questioning of an informant in favor of an immediate investigation[.]”).

---

<sup>4</sup> In his brief, Saggars argues that police were able to corroborate only the “non-innocuous” detail involving the Suburban. Brief of Appellant at 18. But in addition to the presence of the gray and red Suburban in Saggars’s driveway, police also had corroboration through Thompkins that Saggars owned a shotgun and that he had been involved in domestic violence in the past.

Indeed, Saggars acknowledges that “police were not remiss in investigating the incident.” Brief of Appellant at 14. Saggars argues, however, that the police “did more than investigate” by directing Saggars to come outside, handcuffing and patting him down for weapons, and detaining him in the patrol car “for an unknown amount of time.” Brief of Appellant at 15. In fact, the record – including Saggars’s testimony – establishes that Saggars was held in the car for only about 10 minutes and uncuffed as soon as Officer Mills determined he was not involved in the incident reported to 911. RP 145, 152, 156, 208-09. The record also establishes that the officers directed Saggars out of his home only after no one responded to their attempts to reach the occupants by phone. Given the circumstances, the officers’ conduct was a reasonable effort to investigate the report of a dangerous situation.

Saggars also relies on Hopkins and State v. Vandover, 63 Wn. App. 754, 822 P.2d 784 (1992), to argue that the mere allegation involving a firearm by an anonymous tipster does not automatically give rise to reasonable suspicion. The State does not argue otherwise. But Saggars’s reliance on these two distinguishable cases is misplaced. In both, Division Two held that inaccurate reports from an unknown informant about a suspect

carrying or brandishing a gun contained insufficient information to justify the resulting investigatory detention. Hopkins, 128 Wn. App. at 864-65 (detention was unlawful when based solely upon informant's tip that inaccurately described Hopkins's age and appearance and vaguely asserted that he unlawfully possessed a gun as a minor); Vandover, 63 Wn. App. at 759-60 (investigatory stop of a man in a green Maverick was unlawful when based solely upon an anonymous tip about a man in a gold Maverick brandishing a gun, with no indication that the informant's tip was based on an eyewitness account). Here, unlike both Hopkins and Vandover, a 911 caller who gave both his name and a birth date provided an eyewitness account of a violent crime only moments after it occurred, details of which were corroborated by Thompkins's earlier call and by the presence of the gray and red Suburban at Saggars's home.

Under the totality of the circumstances, the officers had reasonable suspicion justifying an investigatory stop. This Court should affirm the trial court's denial of Saggars's suppression motion.

2. OFFICERS ACTED WITHIN THE LAWFUL SCOPE OF THE TERRY STOP.

Saggers next contends that, even if the police initially had reasonable suspicion to detain him, the seizure exceeded the permissible scope of a Terry stop because any suspicion evaporated once the officers interviewed Eddie. Given the unchallenged finding that the officer who questioned Saggers “did not know the information other officers obtained from Eddie prior to speaking with the defendant,” CP 91, and because the record supports the trial court’s finding that this officer’s conversation with Saggers took place at the same time as other officers were speaking with Eddie, Saggers’s argument fails.

The permissible scope of a Terry stop depends on the specific circumstances of each case. State v. Sweet, 44 Wn. App. 226, 232, 721 P.2d 560 (1986). In general, investigative stops must be “temporary and last no longer than is necessary to effectuate the purpose of the stop. Similarly, the investigative method employed should be the least intrusive means reasonably available to verify or dispel the officer’s suspicion in a short period of time.” Id. (quoting Florida v. Royer, 460 U.S. 491, 500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983)). Thus, three factors must be considered in determining whether police exceeded the permissible scope of a Terry stop: “the purpose of the stop, the amount of

physical intrusion upon the suspect's liberty, and the length of time the suspect is detained." State v. Williams, 102 Wn.2d 733, 740, 689 P.2d 1065 (1984).

In this case, all three factors support the conclusion that the officers acted within the permissible scope of an investigatory detention. The purpose of the stop was to investigate a 911 report of a violent altercation involving assault and the threatened use of a shotgun. Sagers was temporarily handcuffed, frisked for weapons, and placed in the patrol car for questioning about the 911 report. Mills told Sagers he was not under arrest. As a logical part of the investigation, Mills asked Sagers whether he owned a shotgun, and Sagers confirmed that he did. Also as part of the investigation, officers performed a background check, which revealed that Sagers was ineligible to possess firearms. The entire investigation occurred in less than 15 minutes, even by Sagers's estimate. RP 208-09. Further, Officer Mills testified that he handcuffed Sagers for officer safety and removed Sagers's handcuffs as soon as he concluded that he had not been involved in the incident reported to 911. RP 117, 124.

Sagers argues that he should have been released immediately after officers spoke to Eddie, and challenges the trial

court's finding that Mills's conversation with Saggars occurred at the same time that other officers were speaking with Eddie. CP 92. The record supports this finding. Mills testified that he knew when he returned to the patrol car that the security sweep was complete and that officers had "contacted" Eddie. RP 159. But Mills "didn't know they were having a conversation with the roommate" when he went back to question Saggars. RP 145, 161.

More important, the record is clear that Mills did not know what Eddie told the other officers when he returned to the patrol car. Mills testified that, while he assumed that someone talked to Eddie, he was unaware of the content of that conversation and did not know that the other officers had concluded that the 911 call was a prank. RP 141, 143-44, 145, 148-49, 159-60. In the "couple minutes" between the time that Mills first put Saggars in the patrol car and the time he returned to question Saggars, Mills learned "[n]othing. That they had done a security sweep and there was no female inside." RP 143-44. The trial court's unchallenged finding that "Officer Mills did not know the information other officers obtained from Eddie prior to speaking to the defendant" is supported by the record. Saggars's claim that officers exceeded

the scope of a Terry stop by questioning him even after officers had spoken to Eddie is therefore unpersuasive.

Because the detention was temporary, lasted no longer than necessary to effectuate the purpose of the stop, and utilized investigative methods that were no more intrusive than necessary to dispel the officer's suspicion in a short period of time, this Court should conclude that the officers acted within the lawful scope of the Terry stop. See Williams, 102 Wn.2d at 738 (citing Royer, 460 U.S. at 500).

3. SAGGERS'S STATEMENTS AND SHOTGUN WERE PROPERLY ADMITTED.

Saggers contends that his admission to owning a shotgun and his consent to search for and remove the shotgun were tainted by his illegal detention, so the fruits of the search should therefore have been suppressed. As argued above, Saggers was subjected to a lawful investigatory detention, the scope of which was not exceeded. Accordingly, there is no fruit of the poisonous tree to suppress. And as Saggers identifies no other basis to exclude the evidence, this Court should conclude that Saggers's statements and shotgun were properly admitted.

D. CONCLUSION

For all the foregoing reasons, the State respectfully asks this Court to affirm Saggars's conviction for Unlawful Possession of a Firearm in the Second Degree.

DATED this 5<sup>th</sup> day of September, 2013.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By:   
JENNIFER P. JOSEPH, WSBA #35042  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
Office WSBA #91002

Certificate of Service by Mail

Today I deposited in the mail of the United States of America, postage prepaid, a properly stamped and addressed envelope directed to Gilbert H. Levy and Jennifer Kaplan, the attorneys for the appellant, at Law Office of Gilbert H. Levy, 2003 Western Avenue, Suite 330, Seattle, WA 98121, containing a copy of the BRIEF OF RESPONDENT, in STATE V. ANDREW DAVIS SAGGERS, Cause No. 69852-4-1, in the Court of Appeals, Division I, for the State of Washington.

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

Dated this 5<sup>th</sup> day of September, 2013

U Brame  
Name  
Done in Seattle, Washington