

NO. 36061-6-II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION II

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STATE OF WASHINGTON
COURT OF APPEALS
DIVISION II
BY *[Signature]*

STATE OF WASHINGTON,

Respondent,

v.

KWAKU OJA TRAMMELL,

Appellant.

APPELLANT'S BRIEF

MICHELLE BACON ADAMS
WSBA #25200
Attorney for Appellant

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I. ASSIGNMENTS OF ERROR

1. The trial court erred by entering Conclusion of Law

No. 3, which reads as follows:

That pursuant to the Aguilar-Spinelli test, the State has established both the basis of the informant's information and the credibility of the informant or the reliability of the informant's information.

2. The trial court erred by entering Conclusion of Law

No. 4, which reads as follows:

That based on the totality of the circumstance within Deputy Argyle's knowledge at the time of the arrest, he had sufficient probable causes to arrest the Defendant.

3. The trial court erred by entering Conclusion of Law

No. 5, which reads as follows:

That the Defense motion is denied.

II. ISSUE PERTAINING TO THE ASSIGNMENTS OF ERROR

1. The trial court erred in denying Mr. Trammell's motion to dismiss the charge for lack of probable cause when law enforcement acted on a tip provided by an informant without verifying the basis of the tipster's information or reliability of the information provided. (Assignment of Error No. 1, 2, 3)

2. The trial court erred in denying Mr. Trammell's motion to dismiss for lack of probable cause when law enforcement failed to discover the identity of an assumed protected party in a residence, or the existence of a "No Contact Order" between Mr. Trammell and that individual at the time of arrest. (Assignment of Error No. 2, 3)

III. PROCEDURAL HISTORY

Mr. Trammell was charged with Violation of a No Contact Order. CP 4. The charges were amended the day before trial to name Ms. Kostic as the protected party. CP 4, 11; RP 02/12/2007. Prior to trial the Honorable Judge Roof denied Mr. Trammell's multiple motion to dismiss the charges. RP 11, 02/12/2007; RP 4-6, 02/13/2007. The motions were denied. RP 13, 02/13/2007; RP 02/13/2007. A bench trial followed. RP 1-48, 02/13/2007; RP 02/13/2007. The Honorable Judge Roof found Mr. Trammell guilty of the charge. RP 3, 02/14/2007. This appeal timely follows. CP 80.

IV. STATEMENT OF FACTS

Ms. Astra Kostic has been married to Kwaku Trammell for the past seven years. RP 10, 02/13/2007. Ms. Kostic and Mr. Trammell have children in common. RP 10, 02/13/2007. On

October 27, 2006, Ms. Kostic woke up feeling ill. RP 10, 02/13/2007. Ms. Kostic was suffering from a cold and back pain. RP 15, 02/13/2007. She did not feel well enough to take their son to the bus stop. RP 15, 16, 02/13/2007. Their son cannot walk to the bus by himself. RP 16, 02/13/2007. This situation created a problem for her as their son needed transportation to and from school. RP 13, 02/13/2007. Ms. Kostic contacted Mr. Trammell to assist with transportation. RP 13, 02/13/2007. Ms. Kostic believed she was in an emergency situation. RP 13, 14, 02/13/2007. She felt she had no choice but to contact Mr. Trammell for assistance. RP 18, 02/13/2007.

A "No Contact Order" was entered in August 2006 prohibiting Mr. Trammell from contacting Ms. Kostic. RP 11, 02/13/2007. The "No Contact Order" originated from a criminal charge. RP 12, 02/13/2007. Ms. Kostic presented a request to lift the restraining order in October 2006. RP 12, 02/13/2007. The request was denied because the criminal charge which provided the basis for the "No Contact Order" remained a pending charge. RP 12, 02/13/2007. That criminal charge was later dismissed. RP 12, 02/13/2007.

On October 27, 2007, law enforcement arrived at Ms. Kostic's residence. RP 10, 02/13/2007. Deputy Argyle arrived at the residence that day. RP 21, 02/13/2007. Deputy Argyle did not ascertain Ms. Kostic's identity. RP 17, 02/13/2007. At the time Deputy Argyle arrived, Mr. Trammell was in Ms. Kostic's residence. RP 18, 02/13/2007. Mr. Trammell was in the residence for a brief time to gather a few items. RP 18, 02/13/2007.

Deputy Argyle was dispatched to Ms. Kostic's residence to respond to a tip advising Mr. Trammell was at 3024 Hollywood Avenue residence in violation of a protection order. RP 22, 02/13/2007. CenCom verified for Deputy Argyle a "No Contact Order" between Mr. Trammell and Christina Ward. RP 22, 02/13/2007.

The tipster provided his name and telephone number. RP 22, 02/13/2007. The tipster stated he had been keeping an eye on the residence. RP 22, 23, 02/13/2007. Deputy Argyle did not know of the location of the informant or verified the ability of the informant to "keep an eye on the place". RP 29, 02/13/2007. The informant reported himself to be the ex-husband of Christina Ward. RP 35, 02/13/2007. Upon arrival at 3024 Hollywood Avenue, Deputy

Argyle observed a vehicle in the driveway of the residence. RP 23, 02/13/2007. Deputy Argyle ran the license plate which returned to Kwaku Trammell. RP 23, 02/13/2007. Ms. Kostic resided at 3024 Hollywood Avenue for approximately two and a half years prior to the time of the trial. RP 10, 02/13/2007.

Deputy Argyle knocked on the door of the residence. RP 23, 02/13/2007. The Deputy spoke to the woman who answered the door but did not ascertain the identity of the female from either the female or Mr. Trammell. RP 23, 32 02/13/2007. Deputy Argyle assumed the female was Christina Ward. RP 23, 02/13/2007.

Deputy Argyle was at the residence for approximately ten minutes. RP 30, 02/13/2007. Deputy Argyle arrested Mr. Trammell for violating a "No Contact Order". RP 24, 02/13/2007. A physical description of Christina Ward was included in the report by a computer. RP 33, 02/13/2007. The error regarding the appropriate protected party was discovered when Ms. Kostic was served at her residence with a subpoena to testify. RP 17, 02/13/2007.

Ms. Kostic's identification was checked when Deputy Walthall came to her residence to serve Ms. Kostic with a subpoena in December 2006. RP 17, 02/13/2007. The subpoena was not in Ms. Kostic's

name. *Id.* Deputy Walthall went to Ms. Kostic's residence on two occasions following Mr. Trammell's arrest. *Id.*

V. ARGUMENT

1. The court erred in concluding the Aguilar-Spinelli test was met.

Issue Summary:

The appellate court conducts a de novo review of Conclusions of Law in an order pertaining to a suppression motion. *State v. Mendez*, 137 Wn.2d 208, 214, 970 P.2d 722 (1999); *State v. Shaver*, 116 Wn.App. 375, 380, 65 P.3d 688 (2003). In this case Deputy Argyle acted on a tip given by a person who wished to be anonymous. (RP 22, 02/13/2007) The tipster reported Mr. Trammell was at a residence in violation of a protection order. Deputy Argyle did not verify whether the tipster was in a position to observe the residence nor did Deputy Argyle verify the occupant of the residence. RP 23, 29, 32, 02/13/2007.

Pursuant to Article 1, Section 7 of the Washington State Constitution, an informant's tip cannot establish probable cause unless the two-prong test set forth in Aguilar-Spinelli is satisfied. *State v. Jackson*, 102 Wn.2d 432, 432, 688 P.2d 136 (1984); *State*

v. Conner, 58 Wn.App. 90, 98, 791 P.2d 261 (1990). To satisfy the test the tip must provide (1) an independent and objective basis for evaluating the informant's basis of knowledge and (2) the underlying circumstances supporting the informant's veracity.

State v. Jackson, 102 Wn.2d at 435; *State v. Conner*, 58 Wn.App. At 98. The two prongs should be examined independently. *State v. Jackson*, 102 Wn.2d 437. Probable cause exists only when both tests are satisfied. *Id.*

Anonymous informants are presumed unreliable because an anonymous informant may have an ulterior motive for making an accusation. *State v. Northness*, 20 Wn.App. 551, 7, 582 P.2d 546 (1976). An anonymous informant may refuse to identify themselves to avoid accountability for false or inaccurate accusation. *Id.* In the event an anonymous informant does not have a record of providing accurate information, the State must satisfy the veracity prong of the Aguilar-Spinelli test by showing the informant's statement contains adequate "indicia of reliability". *State v. Jackson*, 102 Wn.2d at 437. Alternatively, the State may satisfy the veracity test by establishing the informant had a strong motive to be truthful. See *State v. Bean*, 89 Wn.2d 467, 471, 572 P.2d 1102 (1978). (An

offer of a favorable sentence recommendation gave an informant a strong motive to provide accurate information.) *State v. Estorga*, 60 Wn.App. 298, 304-5, 803 P.2d 813 (1991). (Offers to drop charges in exchange for accurate information established strong motive to be truthful.) *State v. Smith*, 39 Wn.App. 642, 647-8, 694 P.2d 660 (1984). (Offer of a reduction in charge from felony to misdemeanor gave informant a strong motive to be truthful.) The State satisfies the basis of knowledge test by showing the informant personally witnessed the defendant commit a criminal offense. *State v. Conner*, 58 Wn.App. At 99.

The State may satisfy either prong of the test by corroborating the informant's tip through independent police investigation. The police investigation must produce evidence that "tends to give substance and verity to the report the suspect is engaged in criminal activity". *State v. Jackson*, 102 Wn.2d at 438. Corroboration of public or innocuous facts is not sufficient to satisfy the test. Action based on information that fails Aguilar-Spinelli violates Article I, Section 7 of the Washington State Constitution; *State v. Jackson*, 102 Wn.2d at 443-45; *State v. Cole*, 128 Wn.2d

262, 287, 906 P.2d 925 (1995). Any evidence obtained from such a search must be suppressed.

The trial court erred in determining both prongs of the Aguilar-Spinelli test was met in this case. As to the first test, the State did not establish the basis of the informant's information. The informant requested to remain anonymous but did provide his name and address. RP 22, 02/13/2007.

The informant reported to be the ex-husband of Christina Ward. RP 35, 02/13/2007. The informant reported Mr. Trammell was at 3024 Hollywood Avenue in violation of a "No Contact Order". RP 22, 02/13/2007. The informant also reported that he had been keeping an eye on the residence. RP 22-23, 02/13/2007. Deputy Argyle did not know the location of the informant's reported residence. RP 29, 02/13/2007. Nor did Deputy Argyle verify the informant's claim he was keeping an eye on the residence. RP 29, 02/13/2007. The informant provided Mr. Trammell's name but did not give his physical description. RP 36, 02/13/2007. To Deputy Argyle's knowledge the informant had not previously provided tips to law enforcement in other cases. RP 36, 02/13/2007.

The information provided by the informant is insufficient to meet the Aguilar-Spinelli test establishing the informant's basis of knowledge. Deputy Argyle did not take any steps to verify the information provided by the informant to determine if he had a sufficient basis of knowledge. The informant could have been anywhere at the time he made contact with law enforcement.

The information within the knowledge of Deputy Argyle was not sufficient to establish the required basis of knowledge needed to rely on the tip and cannot be used to contribute to a finding of probable cause. In fact the record appears to indicate that the informant told law enforcement his ex-wife, Christina Ward, resided at the address he provided. RP 35, 02/13/2007. Ms. Ward did not live at that residence. RP 35-36, 02/13/2007. Ms. Kostic resided at the residence for the past two and a half years. RP 10, 02/13/2007.

Likewise the second prong of the Aguilar-Spirelli test was not met. Although Deputy Argyle did connect the car in the driveway of the residence to Mr. Trammell, Deputy Argyle took no further action to determine the credibility or reliability of the informant. Most importantly, Deputy Argyle took no action to verify the occupant of the residence provided by the tipster. The

information tying the car to Mr. Trammell is not enough to establish criminal activity. Mr. Trammell would be guilty of a crime only if he contacted a protected party or sent to a protected party's residence in violation of a court order. The Deputy must verify that a person Mr. Trammell is prohibited from contacting is located or resides in the place Mr. Trammell is suspected to be in order to satisfy this prong of the test. Simply ascertaining the identity of Ms. Kostic or verifying she resided at the address would have been sufficient. Instead of taking any further action to verify information regarding the reported protected party, Deputy Argyle assumed the information provided by the tipster was correct, when in fact it was not correct. For these reasons, the information fails the Aguilar-Spinelli test and cannot contribute to a finding of probable cause.

Subsequent searches and other evidence tainted by the initial unlawfulness must be also suppressed as "fruit of the poisonous tree". *State v. Schlicker*, 115 Wn.App. 264, 272, 62 P.3d 520 (2003). Law enforcement discovered the error with the named victim only at the time the subpoena to testify was served. RP 17, 02/13/2007. Ms. Kostic's identity was established for the purposes of this case was not established until nearly two months after the

incident when her identification was requested for the first time.

RP 17, 02/13/2007.

A search based on information that fails the Aguilar-Spinelli test violates Article I Section 7 of the Washington State Constitution; *State v. Jackson*, at 443-45. Any evidence obtained from such a search must be suppressed. Consequently the later questioning of Ms. Kostic that led to the discovery of the error should have been suppressed as argued by defense counsel. CP 55; RP 11-12, 02/12/2007; RP 37-40. Law enforcement would not have returned to the residence and later discovered the error if not for the unlawful arrest.

For these reasons, the court erred in denying defense counsel's motion to dismiss.

2. The court erred in concluding Deputy Argyle had probable cause to arrest Mr. Trammell when the Deputy did not determine if a "No Contact Order" was in effect prohibiting Mr. Trammell from contacting the female found at the residence.

Article I Section 7 of the Washington State Constitution provides a more expansive freedom from unreasonable searches and seizures than the Fourth Amendment of the United States

Constitution. *State v. Jackson*, 102 Wn.2d 432, 439, 688 P.2d 136 (1984); *State v. O'Neill*, 148 Wn.2d 564, 585, 62 P.2d 489 (2003)

An independent *Gunwall* analysis is necessary to prove the broader protections given to individuals in Washington State. *State v. Athan*, 160 Wn.2d 354, 158 P.3d 27 (2007)

A lawful custodial arrest must be based on either probable cause or a warrant. Article I Section 7 Washington State Constitution; *State v. O'Neill*, 148 Wn.2d at 585. "Probable cause exists when the arresting officer is aware of facts or circumstances, based on reasonably trustworthy information is sufficient to cause a reasonable officer to believe a crime has been committed." *State v. Gaddy*, 152 Wn.2d 64, 70, 93 P.3d 872 (2004) *citing State v. Terrovona*, 105 Wn.2d 632, 643, 716 P.2d 295 (1986). Probable cause is determined by the facts and circumstances "within the officer's knowledge at the time of the arrest". *State v. Mance*, 82 Wn.App. 539, 542-43, 918 P.2d 527 (1996) *quoting State v. Fridcs*, 91 Wn.2d 391, 398, 588 P.2d 1328 (1979). Probable cause is required before a warrantless arrest may occur under RCW 10.31.100. Appellate courts review the issue of probable cause de

novo. See *Ornelas v. United States*, 517 U.S. 690, 699, 116 S.Ct. 1657, 134 L.Ed.2d 911 (1996).

Defense raised the issue of lack of probable cause at trial. RP 2, 02/12/2007; RP 3, 02/13/2007. The trial court concluded that Deputy Argyle had sufficient probable cause to arrest Mr. Trammell. CP 63. Mr. Trammell challenges that conclusion.

Deputy Argyle did not arrest Mr. Trammell for an outstanding warrant. Rather, he arrested Mr. Trammell on the belief Mr. Trammell contacted Ms. Ward in violation of a court issued "No Contact Order". RP 24-25, 02/13/2007. Deputy Argyle was required to find probable cause that Mr. Trammell committed a crime to execute a lawful arrest. Deputy Argyle made no effort to determine if the female who answered the door was a protected person whom Mr. Trammell was court ordered not to contact. RP 32, 02/13/2007. Deputy assumed the veracity of the information provided by the informant, and therefore assumed the female opening the door to the residence was Ms. Ward.

Deputy Argyle did not have probable cause to arrest Mr. Trammell in the absence of verification of the female's identity. Deputy Argyle did not have enough information within his

knowledge to cause him to believe Mr. Trammell violated a “No Contact Order”. It is anticipated the State will argue that Ms. Kostic’s hesitation in confirming Mr. Trammell’s presence supported probable cause. However, that hesitation is not enough to establish probable cause. A mere suspicion of criminal activity does not establish probable cause to arrest. *State v. Chavez*, 138 Wn.App. 29 (2007). It is common for individuals to have some hesitation when faced with contact by law enforcement. Without the identity of the female, a reasonable law enforcement officer would not have sufficient information to believe a crime of violating a “No Contact Order” had occurred.

V. CONCLUSION

For the foregoing reasons, Mr. Trammell respectfully requests this court reverse the trial court’s suppression order and finding of guilt and dismiss the charge.

Respectfully submitted this 23 day of August, 2007.



MICHELLE BACON ADAMS
WSBA No. 25200
Attorney for Appellant

APPENDIX A

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IN OPEN COURT
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DAVID W. PETERS
KITSAP COUNTY CLERK

IN THE KITSAP COUNTY SUPERIOR COURT

STATE OF WASHINGTON,)
) No. 06-1-01599-0
)
) Plaintiff,)
) FINDINGS OF FACT AND CONCLUSIONS
) OF LAW FOR HEARING ON CrR 3.6
)
) v.)
)
) KWAKU OJA TRAMMELL,)
) Age: 36; DOB: 07/30/1970,)
)
) Defendant.)

THIS MATTER having come on regularly for hearing before the undersigned Judge of the above-entitled Court pursuant to a hearing on CrR 3.6; the parties appearing by and through their attorneys of record below-named; and the Court having considered the motion, briefing, testimony of witnesses, if any, argument of counsel and the records and files herein, and being fully advised in the premises, now, therefore, makes the following-

FINDINGS OF FACT

I.

That on August 1, 2006, the Kitsap County District issued a domestic violence no-contact order in cause number 17732001. This order prohibited the Defendant from having any contact whatsoever with Astra Kostic, his wife, and from coming or remaining within 500 feet of her residence.

II.

That on October 27, 2006, a concerned citizen called 911 and reported that he had seen



Handwritten initials/signature

1 the Defendant at the Victim's residence, which is located at 3024 Hollywood Avenue in
2 Bremerton, WA. The citizen eventually identified himself to the 911 operator, but he expressed
3 his desire to remain anonymous.

4 **III.**

5 That the 911 operator dispatched this information through CenCom. Deputy Argyle of
6 the Kitsap County Sheriff's Office received the dispatch and proceeded to 3024 Hollywood
7 Avenue. At the time of the dispatch, Deputy Argyle knew the caller's name and phone number
8 and of the details the caller provided to CenCom.

9 **IV.**

10 That upon arriving at the residence Deputy Argyle observed a white Chevy Impala
11 parked out front. Deputy Argyle confirmed with a rental agency that the Defendant had rented
12 this car.

13 **V.**

14 That Deputy Argyle had confirmed through CenCom that a valid no-contact order existed
15 prohibiting the Defendant from contacting a person named Christina Ward.

16 **VI.**

17 That Deputy Argyle approached the residence and knocked on the door. A woman, later
18 identified as Astra Kostic, answered the door. Deputy Argyle never asked the woman who
19 answered the door what her name was.

20 **VII.**

21 That Deputy Argyle asked this woman where the Defendant was. She initially denied
22 that he was present, but moments later came to the door. The Defendant was arrested. There was
23 no protest from either the protected party or the Defendant.

24 **VIII.**

25 That after the Defendant was booked, Deputy Argyle called the named informant and
26 informed him about the incident.

27 **CONCLUSIONS OF LAW**

28 **I.**

29 That the above-entitled Court has jurisdiction over the parties and the subject matter of
30 this action.
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II.

That the domestic violence no-contact order that was entered in the Kitsap County District court was in effect and valid on October 27, 2006.

III.

That pursuant to the Aguilar-Spinelli test, the State has established both the basis of the informant's information and the credibility of the informant or the reliability of the informant's information.

IV.

That based on the totality of the circumstance within Deputy Argyle's knowledge at the time of the arrest, he had sufficient probable cause to arrest the Defendant.

V.

That the Defense motion is denied.

That

SO ORDERED this 16th day of March, 2007.

[Handwritten signature]

JUDGE
APPROVED FOR ENTRY-

PRESENTED BY-
STATE OF WASHINGTON
[Handwritten signature]

KEVIN W. CURE, WSBA No. 34409
Deputy Prosecuting Attorney

[Handwritten signature]

[Handwritten signature], WSBA No. 34271
Attorney for Defendant

Prosecutor's File Number-06-177320-2



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DIVISION II

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STATE OF WASHINGTON
IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION II ~~BY DEPUTY~~

STATE OF WASHINGTON,

Respondent,

v.

KWAKU OJA TRAMMELL,

Appellant.

CERTIFICATE OF MAILING

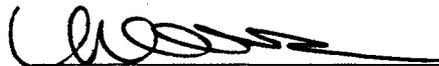
I, JEANNE L. HOSKINSON, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and based on my personal knowledge, and that I am competent to testify to the same.

That on this day I had the Brief of Appellant in the above-captioned case hand-delivered or mailed as follows:

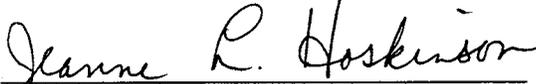
Original Brief of Appellant Hand-Delivered To:

Clerk of Court
Court of Appeals, Division II
950 Broadway, Suite 300
Tacoma, WA 98402

DATED this 24 day of August, 2007, at Port Orchard, Washington.


MICHELLE BACON ADAMS

DATED this 24th day of August, 2007, at Port Orchard,
Washington.



JEANNE L. HOSKINSON
Legal Assistant

NO. 36061-6-II

IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON, DIVISION II

STATE OF WASHINGTON,

Respondent,

v.

KWAKU OJA TRAMMELL,

Appellant.

CERTIFICATE OF MAILING
~~STATEMENT OF BRIEF OF~~
~~ARRANGEMENTS APPELLANT~~

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AUG 24 2007
CLERK OF COURT OF APPEALS
STATE OF WASHINGTON

I, JEANNE L. HOSKINSON, declare under penalty of perjury under the laws of the State of Washington that the following statements are true and based on my personal knowledge, and that I am competent to testify to the same.

That on this day I had the Brief of Appellant in the above-captioned case hand-delivered or mailed as follows:

Copy of Brief of Appellant Hand-Delivered To:

Mr. Randall Sutton
Kitsap County Prosecuting Attorney's Office
614 Division Street, MS-35
Port Orchard, WA 98366

Copy of Brief of Appellant Mailed To:

Kwaku Oja Trammell
3024 Hollywood Avenue
Bremerton, WA 98310