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February 12, 2016
Court of Appeals
Division III
State of Washington

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION III

No. 337782

STATE OF WASHINGTON,

Plaintiff/Respondent,

vs.

KEVIN RAY EDGAR,

Defendant/Appellant

Respondent's Brief

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A. RESPONSE TO ASSIGNMENTS OF ERROR

- a. An officer can respond to a reported vehicle collision scene based upon information reported by a 9-1-1 caller even without ascertaining the reliability of the reporting party and conduct independent investigation that supports information given by the informant in seeking a search warrant.

B. ISSUES PRESENTED

- a. When a vehicle collision is reported by a citizen and an officer responds to the scene of the collision and conducts independent investigation, can that investigation along with the information from the reporting party whose identity is known to the police but not supplied to the magistrate in the affidavit support the issuance of a search warrant?

C. STATEMENT OF THE CASE

The Respondent agrees with the statement of facts presented by the Appellant.

D. ARGUMENT

Issuance of a warrant is a matter of judicial discretion and is, therefore, reviewed under the abuse of discretion standard. State v. Remboldt, 64 Wn. App. 505, 509, review denied, 119 Wn.2d 1005 (1992). Great deference is given to the issuing magistrate's

determination of probable cause and any doubts are resolved by reviewing courts in favor of the validity of the warrant. State v. Kalakosky, 121 Wn.2d 525, 531(1993).

In reviewing a probable cause determination in support of a warrant, the information a court considers is the information that was available to the issuing magistrate. State v. Murray, 110 Wn.2d 706, 709-10 (1988); State v. Estorga, 60 Wn. App. 298, review denied, 116 Wn.2d 1027 (1991). The affidavit supporting a search warrant should be tested in a commonsense, practical manner and not hyper technically. State v. Garcia, 63 Wn. App. 868, 871 (1992).

Information is often supplied to police by citizens who are reporting suspected criminal activity. The law calls these people “informants,” and according to the United States Supreme Court, the informants must have knowledge and be credible or reliable. Aguilar v. Texas, 378 U.S. 108 (1964) and Spinelli v. United States, 393 U.S. 410 (1969). An informant who is unidentified to the magistrate reviewing the warrant without additional information will oftentimes fail the “reliability” prong required under Aguilar-Spinelli. State v. Maxwell, 114 Wn.2d 761, 769 (1990). If an informant’s tip fails one or the other prong, probable cause may yet be established by independent police investigation that corroborates the tip. Id. The police investigation must point

to indications of criminal activity along the lines suggested by the informant. State v. Kennedy, 72 Wn. App. 244 (1993); State v. Olson, 73 Wn. App. 348, review denied, 124 WN.2d 1029 (1994).

In a case where the informant's information is not supplied to the magistrate, the court's treat the informant like an anonymous informant. See e.g. State v. Hopkins, 128 Wn. App. 855 (2005); State v. McCord, 125 Wn. App. 888, review denied, 155 Wn.2d 1019 (2005).

Independent police investigation is necessary to obtain a search warrant where the investigation was initiated by an anonymous informant. Olson, 73 Wn. App. 348, review denied, 124 Wn.2d 1029 (1994).

In this case, a person called to report a one-vehicle collision. Officers responded and saw the aftermath of the collision, the defendant's car off the roadway. They identified the car as belonging to the defendant, Mr. Edgar. They observed evidence at the scene that Mr. Edgar's car left the roadway to the north where it drove up an embankment before becoming airborne. They could deduce that the vehicle rolled coming to rest on the north shoulder. When the trooper was on scene, the vehicle was on its passenger's side facing east.

A witness who was identified to the police reported excessive speed. He also told police that the male was the driver,

and that the female was yelling at the driver for being drunk and high and almost killing her. That is the substance of the witness who was unidentified to the judge who issued the warrant (but not the police). Each of these facts was corroborated by independent police investigation.

The Trooper was at the scene of the collision and could verify that excessive speed was a likely cause for the defendant's vehicle leaving the roadway. The car belonged to the defendant, corroborating the information from the witness that the defendant was the driver. The defendant was belligerent and had an overwhelming odor of intoxicants, corroborating the information from the witness about the statements made by the passenger. Both occupants were transported to the hospital.

Giving deference to the validity of the search warrant and the facts of this case suggest that any information supplied by the unidentified witness was sufficiently corroborated by independent police investigation as required by the law.

E. CONCLUSION

For the reasons stated, the superior court's affirmation of the search warrant should be affirmed; appellant's requests must be denied.

Respectfully submitted February 12, 2016,

/s/

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