

65922-7

65922-7

NO. 65922-7-I

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

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STATE OF WASHINGTON,

Respondent,

v.

BLAINE OLDS,

Appellant.

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APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE MICHAEL HAYDEN

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**BRIEF OF RESPONDENT**

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TABLE OF CONTENTS

	Page
A. <u>ISSUES PRESENTED</u> .....	1
B. <u>STATEMENT OF THE CASE</u> .....	2
1. PROCEDURAL FACTS .....	2
2. SUBSTANTIVE FACTS .....	2
C. <u>ARGUMENT</u> .....	6
1. THE INFORMATION PROVIDED BY EVANGELISTA GAVE OFFICERS PROBABLE CAUSE TO ARREST OLDS .....	6
a. Relevant Facts .....	7
b. Olds Cannot Show That Any Alleged Error Should Result In Suppression Of The Guns ...	9
c. The Information Provided By Evangelista Meets Both Prongs Of The Aguilar-Spinelli Test .....	10
2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING EVIDENCE UNDER ER 403 .....	18
D. <u>CONCLUSION</u> .....	25

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Aguilar v. Texas, 378 U.S. 108,  
84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964)..... 6, 9-12, 14, 15

Illinois v. Gates, 462 U.S. 213,  
103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)..... 11

Ker v. California, 374 U.S. 23,  
83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963)..... 15

Spinelli v. United States, 393 U.S. 410,  
89 S. Ct. 584, 21 L. Ed. 2d 637 (1969)..... 6, 9-15

Washington State:

State v. Bourgeois, 133 Wn.2d 389,  
945 P.2d 1120 (1997)..... 23

State v. Bowers, 36 Wn. App. 119,  
672 P.2d 753 (1983)..... 17

State v. Coleman, 155 Wn. App. 951,  
231 P.3d 212 (2010), review denied,  
170 Wn.2d 1016 (2011)..... 19, 21

State v. Conner, 58 Wn. App. 90,  
791 P.2d 261 (1990)..... 17

State v. French, 157 Wn.2d 593,  
141 P.3d 54 (2006)..... 19

State v. Gluck, 83 Wn.2d 424,  
518 P.2d 703 (1974)..... 17

State v. Helfrich, 33 Wn. App. 338,  
656 P.2d 506 (1982)..... 11

<u>State v. Hughes</u> , 106 Wn.2d 176, 721 P.2d 902 (1986).....	19
<u>State v. Jackson</u> , 102 Wn.2d 432, 688 P.2d 136 (1984).....	11, 12, 13, 14
<u>State v. McGee</u> , 15 Wn. App. 563, 550 P.2d 552 (1976).....	16
<u>State v. Mullin-Coston</u> , 115 Wn. App. 679, 64 P.3d 40 (2003).....	19
<u>State v. O'Connor</u> , 39 Wn. App. 113, 692 P.2d 208, <u>rev. denied</u> , 103 Wn.2d 1022 (1985).....	12
<u>State v. Rupe</u> , 101 Wn.2d 664, 683 P.2d 571 (1984).....	18
<u>State v. Sieler</u> , 95 Wn.2d 43, 621 P.2d 1272 (1980).....	13
<u>State v. Smith</u> , 39 Wn. App. 642, 694 P.2d 660 (1985).....	12
<u>State v. Spring</u> , 128 Wn. App. 398, 115 P.3d 1052 (2005), <u>review denied</u> , 156 Wn.2d 1032 (2006).....	9

## Rules and Regulations

### Washington State:

CrR 3.6.....	7
ER 403.....	1, 18, 20
ER 404.....	20

Other Authorities

[http://seattletimes.nwsourc.com/html/localnews/2010382767\\_webfourdead29m.html](http://seattletimes.nwsourc.com/html/localnews/2010382767_webfourdead29m.html))..... 3

Jack Broom, Mike Carter, Sara Jean Green, Jonathan Martin, Steve Miletich, Jennifer Sullivan, and Bob Young, 4 Lakewood officers slain; ex-con sought for questioning, Seattle Times, November 29, 2009 ..... 3

**A. ISSUES PRESENTED**

1. Probable cause is established by an informant's tip where there is a sufficient showing of the informant's basis of knowledge and veracity. Here, an informant arranged for Olds, a felon, to sell guns to a fictitious buyer and confirmed that Olds possessed the guns on the day that the sale was scheduled to occur. The informant had a track record of providing reliable information over the course of several years. Based on the information provided by the informant, did officers have probable cause to arrest Olds for unlawful possession of a firearm?

2. Under ER 403, relevant evidence is admissible unless the probative value is substantially outweighed by unfair prejudice. Witnesses testified that Olds referred to his gun by its street name, "cop killer." The informant testified that she contacted police because Olds's research regarding "cop killer" guns concerned her in the wake of the Lakewood officer shooting. Did the trial court properly admit the evidence when it was relevant to the State's theory of the case and it was not unfairly prejudicial?

**B. STATEMENT OF THE CASE**

1. PROCEDURAL FACTS.

Defendant Blaine Olds was charged by amended information with two counts of unlawful possession of a firearm in the first degree and two counts of possessing a stolen firearm. CP 41-42. Trial occurred in July of 2010. The jury found Olds guilty on both counts of unlawful possession of a firearm. CP 47, 49. The jury convicted Olds of one count of possessing a stolen firearm, but acquitted him on the other count. CP 48, 50. The court imposed a standard range sentence. CP 79-86.

2. SUBSTANTIVE FACTS.

Rose Evangelista lived in Burien and was known to take in friends who were homeless or needed a maternal figure. 5RP 103.<sup>1</sup> Evangelista met Olds some time in October of 2009. 5RP 101. Olds was homeless, spending nights at various friends' homes. Id. He visited Evangelista multiple times a week,

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<sup>1</sup> The verbatim report of proceedings consists of eight volumes, which will be referred to as follows: 1RP (7/6/2010); 2RP (7/7/2010, 9/23/2010); 3RP (7/8/2010-voir dire); 4RP (7/8/2010-pretrial matters); 5RP (7/12/2010); 6RP (7/13/2010); 7RP (7/14/2010); and 8RP (7/30/2010).

showering, eating, and occasionally using her printer to print documents from his laptop. 5RP 101-03.

In early December, Olds printed several documents using Evangelista's printer. 5RP 188. He collected most of the pages, but left behind an article entitled The 5.7 x 28 Millimeter 'Cop Killer' Cartridge Myth. 5RP 119, 148. Evangelista discovered the print-out several days after the shooting of four police officers in Lakewood, Washington.<sup>2</sup> 5RP 119. In the wake of that shooting, Evangelista was alarmed to see that Olds had been researching "cop killer" guns. She decided to contact Seattle Police Detective Sam DeJesus, with whom she had worked as a confidential informant. 5RP 114, 117.

After receiving the article from Evangelista, DeJesus instructed her to see if Olds wanted to sell any guns. 6RP 46. Evangelista told Olds that she knew someone who was interested in buying guns and taking them back to Yakima. 5RP 123. Olds provided Evangelista with information about the guns he was willing to sell. Id. Evangelista emailed a photo of several guns to

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<sup>2</sup> Jack Broom, Mike Carter, Sara Jean Green, Jonathan Martin, Steve Miletich, Jennifer Sullivan, and Bob Young, 4 Lakewood officers slain; ex-con sought for questioning, Seattle Times, November 29, 2009 (available at: [http://seattletimes.nwsourc.com/html/localnews/2010382767\\_webfourdead29m.html](http://seattletimes.nwsourc.com/html/localnews/2010382767_webfourdead29m.html)).

DeJesus, who told Evangelista to inquire about the 5.7 millimeter and a .44 millimeter Colt Anaconda. 6RP 48-49. Using Evangelista as the intermediary, DeJesus and Olds settled on a price of \$400 and agreed that the sale would occur on January 7, 2010. 6RP 49-50.

The plan was for Olds to arrive at Evangelista's house at around 3:30 p.m., but Olds called Evangelista to let her know he was running late. 6RP 50-51. Olds and his girlfriend, Dawn Swain, arrived a few hours after the original meeting time. 6RP 51. Evangelista called DeJesus to notify him that Olds had arrived and was getting an unidentified object out of the trunk; surveillance officers confirmed these details. 6RP 57. When Olds was in the house, Evangelista called DeJesus again, this time pretending to talk to her fictitious buyer. 5RP 130; 6RP 57. Evangelista asked Olds where the guns were, and Olds responded that they were in the glove compartment. 5RP 130. DeJesus overheard a male voice saying that he brought the 5.7 and the Anaconda. 6RP 59.

Swain drove Olds and Evangelista to the Burien Fred Meyer. 5RP 133-34. Swain parked the car and Evangelista went to look for her buyer. Id. SWAT officers moved in and arrested Olds and

Swain.<sup>3</sup> 6RP 66. Officers advised Olds of his constitutional rights, but did not immediately notify him why he was being arrested.<sup>4</sup> Once he realized that Swain was also under arrest, Olds was eager to talk. 6RP 76-78.

The car was not searched at the scene. 6RP 73. Rather, it was sealed and transported to the Seattle Police Department's Evidence Unit until officers could obtain a search warrant. 6RP 74.

Officer Michael Schaefer of the U.S. Bureau of Alcohol, Tobacco, and Firearms assisted in the operation and interviewed Olds. 5RP 35. The interview was video-taped and DeJesus was also present. Ex. 1; 5RP 35. When asked what officers would find in the vehicle, Olds admitted that the 5.7 and the Anaconda were in the glove compartment. Ex. 1. When asked what was so special about the 5.7, Olds explained that it was known as a "cop killer" because of the special rounds that it fires. Id. Olds said that he had obtained the guns from a friend named Johnny and admitted knowing that the 5.7 was stolen. Id.

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<sup>3</sup> Officers also arrested Evangelista in order to avoid revealing that she had been cooperating with the investigation. 6RP 67.

<sup>4</sup> Olds also had an outstanding bench warrant at the time of his arrest. 1RP 18.

Officers obtained a search warrant for the vehicle and executed it on January 12, 2010. 6RP 78, 153. They found the 5.7 and the Anaconda in the glove compartment. 6RP 79. They also found Olds's laptop in the vehicle. 6RP 85.

Both the 5.7 and the Anaconda belonged to Daniel Ginsey, who did not know Olds. 5RP 90-91. The guns were stolen from Ginsey's house on December 3, 2009, when Ginsey was on vacation and his son hosted a party at his house. 5RP 95.

Olds was previously convicted of a serious felony and knew that he was not allowed to possess a firearm. CP 45-46.

**C. ARGUMENT**

1. THE INFORMATION PROVIDED BY EVANGELISTA GAVE OFFICERS PROBABLE CAUSE TO ARREST OLDS.

Olds argues that officers did not have probable cause to arrest him because the information provided by Evangelista does not satisfy the Aguilar-Spinelli test. Therefore, he argues, the evidence found in his vehicle should be suppressed. Olds has not established that the search warrant, which led to the discovery of the guns, would have been invalidated had the trial court granted

his challenge to the arrest. In addition, Olds's argument fails because Evangelista's information satisfies the Aguilar-Spinelli test.

a. Relevant Facts.

At trial, Olds argued that officers did not have probable cause to arrest him for unlawful possession of a firearm and that any evidence found in his vehicle should therefore be suppressed.<sup>5</sup> CP 7-12. Detective DeJesus was the sole witness at the CrR 3.6 hearing. His testimony regarding the transaction was similar to his trial testimony. He also described his relationship with Evangelista.

DeJesus had known Rose Evangelista for three years. CP 133. Evangelista originally began working as an informant in exchange for a criminal case not being filed. CP 133-34. In the first year that Evangelista worked with DeJesus, they worked on one investigation. CP 134. During the course of that year-long investigation, Evangelista provided information on an almost daily basis. Id. All of the information that Evangelista provided was reliable; DeJesus never found that Evangelista had provided false

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<sup>5</sup> Prior to hearing testimony, the trial court noted that the evidence had been discovered following the execution of a search warrant and expressed doubt as to whether a successful CrR 3.6 motion would necessarily result in suppression of the guns. 1RP 8-13.

information. Id. Evangelista's information led to arrests and convictions in that first investigation. Id. After the first investigation, Evangelista continued to provide reliable information to DeJesus as they worked on two other investigations. 1RP 17.

In December of 2009, Evangelista contacted DeJesus about the article that Olds had left in her printer. Id. At DeJesus's request, Evangelista told Olds that she had a potential buyer for his guns. Id. Evangelista obtained names and photographs of several guns from Olds. Id.

While Evangelista was arranging the transaction, DeJesus investigated Olds and determined that he had felony convictions and two outstanding warrants for his arrest. Id.

On the day of the sale, Evangelista kept in constant contact with DeJesus, updating him about Olds's whereabouts. CP 135. Surveillance officers corroborated Evangelista's information. Id. They also confirmed that Olds had arrived in a red Honda with a broken mirror, as predicted by Evangelista. Id.

When Olds entered Evangelista's house, she called DeJesus. Id. DeJesus overheard Olds confirm that he had brought the Anaconda and the 5.7. Id. After meeting at Evangelista's

house, Olds, Evangelista, and Swain all drove to the Burien Fred Meyer, the predetermined location. Id.

The trial court found that both prongs of the Aguilar-Spinelli test were met and that officers had probable cause to arrest Olds. Id.

b. Olds Cannot Show That Any Alleged Error Should Result In Suppression Of The Guns.

Olds argues that the remedy for his allegedly unlawful arrest is suppression of the guns and reversal of his conviction. However, even if officers lacked probable cause to arrest Olds for unlawful possession of a firearm, Olds has not shown that the guns were discovered as a direct result of his arrest. Indeed, Olds skips a crucial step in the analysis. The guns were found as the result of a search warrant. The warrant would still be valid if the lawfully obtained evidence in the warrant application supported probable cause to search. State v. Spring, 128 Wn. App. 398, 405, 115 P.3d 1052 (2005), review denied, 156 Wn.2d 1032 (2006). Such an inquiry requires review of the information contained in the search warrant affidavit.

DeJesus obtained a search warrant for the Honda after Olds's arrest and the guns were found as a result of that search warrant. Olds has not assigned error to the search warrant and has not engaged in any analysis as to how a successful challenge to the arrest would have affected the warrant. Olds cannot show that a successful motion to suppress the arrest would have resulted in suppression of the evidence found in the vehicle, specifically the guns.<sup>6</sup>

c. The Information Provided By Evangelista Meets Both Prongs Of The Aguilar-Spinelli Test.

To establish probable cause using an informant's tip, the tip must meet the two-part test announced in Aguilar v. Texas, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964) and refined in Spinelli v.

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<sup>6</sup> Olds has not even supported his claim that the confession would have been suppressed if the officers lacked probable cause to arrest him for unlawful possession of a firearm. Olds had an outstanding warrant at the time that he was arrested for unlawful possession of a firearm. 1RP 18. Without being told why he was under arrest, Olds was eager to speak to police. 1RP 40. It is possible that Olds would have made those statements regardless of why he was under arrest.

United States, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969).<sup>7</sup> The analysis is the same regardless of whether the question is one of probable cause for a magistrate to issue a warrant or for an officer to make a warrantless arrest. State v. Helfrich, 33 Wn. App. 338, 656 P.2d 506 (1982). The Aguilar-Spinelli test requires that the information include sufficient underlying circumstances: 1) from which the informant drew conclusions, so that the reliability of the manner in which the information was acquired can be evaluated; and 2) from which it can be concluded that the informant is credible and/or that his or her information is reliable. See, e.g., State v. Jackson, 102 Wn.2d 432, 435, 688 P.2d 136 (1984). The former is commonly referred to as the “basis of knowledge” prong, and the latter as the “veracity” prong. Id. at 437. Put another way, the “basis of knowledge” prong requires that the informant explain how he or she came by the information, and the “veracity” prong requires that it be established that the informant is credible or that the informant’s information was

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<sup>7</sup> Federal courts have since retreated from strict use of the Aguilar-Spinelli test. Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983). However, Washington courts have explicitly declined to follow Gates and have continued to require compliance with the Aguilar-Spinelli test. State v. Jackson, 102 Wn.2d 432, 688 P.2d 136 (1984).

reliable in the specific instance. State v. Smith, 39 Wn. App. 642, 646, 694 P.2d 660 (1985).

As a general rule, both prongs must be satisfied in order for probable cause to exist. If the informant's tip meets both prongs of the Aguilar-Spinelli test, there is no requirement that police corroborate the information. See, e.g., State v. O'Connor, 39 Wn. App. 113, 692 P.2d 208, rev. denied, 103 Wn.2d 1022 (1985). However, if the tip fails under either prong, probable cause may still be established if independent police investigation corroborates suspicious activity (as opposed to innocuous details). Jackson, 102 Wn.2d at 438.

Here, the information that Evangelista provided met both prongs of the Aguilar-Spinelli test. Although not necessary, DeJesus's investigation further corroborated Evangelista's information.

The "basis of knowledge" prong was satisfied in this case. The basis of knowledge prong ensures that the informant has made her allegations on the basis of information obtained in a reliable way. Spinelli, 393 U.S. at 417. It helps "prevent investigatory detentions made on the basis of a tip provided by an honest informant who misconstrued innocent conduct. It also reduces

such detentions when an informant, who has given accurate information in the past, decides to fabricate an allegation of criminal activity." Jackson, 102 Wn.2d at 444 (quoting State v. Sieler, 95 Wn.2d 43, 48-49, 621 P.2d 1272 (1980)).

In general, this prong is met when the informant's tip contains a sufficient statement of the underlying circumstances from which the informer concluded that illegal activity was occurring. Spinelli, 393 U.S. at 416. The information may be based on the informant's firsthand knowledge or hearsay. Jackson, 102 Wn.2d 437-38. If the informant's information is hearsay, the basis of knowledge prong can be satisfied if there is sufficient information so that the hearsay establishes a basis of knowledge. Id.

Here, Evangelista's information was based on her own interactions and conversations with Olds. Olds printed the article about "cop killer" guns using Evangelista's printer. Olds told Evangelista that he owned a cop killer gun and was willing to sell several of his guns. Olds specified the price of the guns and provided a photo of the guns that were for sale. Once he had agreed to sell to Evangelista's buyer, Olds arranged the logistics with her. On the day that the sale was supposed to take place,

Olds kept Evangelista apprised of his whereabouts. Finally, when he arrived at her house, Olds told Evangelista that the guns were locked in the glove compartment. Although Evangelista did not see the guns on the day of the sale, she had significant firsthand knowledge that Olds possessed guns and came to her house with the intention to sell them.

Evangelista's proven track record with DeJesus clearly satisfies the "veracity" prong of the Aguilar-Spinelli test. The most common way to satisfy the "veracity" prong is to evaluate the informant's "track record," *i.e.*, has she provided accurate information to the police a number of times in the past? Jackson, 102 Wn.2d at 437. Evangelista certainly had a reliable track record with DeJesus. DeJesus had worked with Evangelista for approximately three years. In the first year, Evangelista worked on one case with DeJesus, providing information on a nearly-daily basis. Evangelista's work on that first case eventually led to arrests. She then assisted DeJesus on two additional cases. In the latter cases, DeJesus estimated that Evangelista had provided intelligence on approximately 50 occasions. DeJesus never found that Evangelista had provided false information.

Olds argues that Evangelista's reliability is undermined by the fact that she was paid \$400 for her work on his case. Olds did not elicit this fact during the motion to suppress and it should not be considered when reviewing the trial court's application of the Aguilar-Spinelli test. See generally 1RP 13-60; 2RP 13-27. Olds also argues that Evangelista was not reliable because she had pending charges "for which she hoped to earn leniency." Appellant's Brief at 12. A careful review of the testimony cited by Olds shows that Evangelista acknowledged her pending charges, but never testified that she hoped for leniency. 6RP 5-8. Just like the testimony about her compensation, Evangelista's pending charges were not presented during the motion to suppress and should not be considered by this Court. Even if Olds had elicited these facts during the motion to suppress, they do not negate Evangelista's established track record with DeJesus.

Even if this Court were to find one of the two prongs was not satisfied, the police investigation certainly corroborated Evangelista's information. When the police investigation alone does not result in probable cause, officers may have probable cause for arrest when their investigation is supplemented by an

informant's tip. Ker v. California, 374 U.S. 23, 35-37, 83 S. Ct. 1623, 10 L. Ed. 2d 726 (1963).

Seemingly innocuous observations, when combined with an informant's tip, can rise to probable cause. For example, in State v. McGee, 15 Wn. App. 563, 550 P.2d 552 (1976), a reliable informant told police that McGee would be driving a particular car from Spokane to Pullman on a particular date at a particular time, and that McGee would be carrying a large amount of drugs. Id. at 563-64. The appellate court found that no evidence in the record established that the tip was more than belief or suspicion. Id. at 565. However, the police also observed the defendant driving at the exact time, place, and direction predicted by the informant. Id. The court found that based on these observations, the police "could reasonably infer that the information from the informant was gained in a reliable way." Id.

Here, early in the investigation, police confirmed that Blaine Olds existed, and that he had felony criminal history and outstanding warrants. On the day of the operation, police confirmed that Olds arrived in the vehicle Evangelista had

described.<sup>8</sup> Olds and his girlfriend arrived at Evangelista's house, as planned, albeit late. Evangelista immediately advised DeJesus when Olds arrived. She also notified DeJesus that Olds was removing something from the vehicle's trunk, a fact that was confirmed by surveillance officers. DeJesus corroborated details that would only be readily available to someone who was closely connected to Olds and the transaction. State v. Bowers, 36 Wn. App. 119, 123-24, 672 P.2d 753 (1983). His investigation makes up for any alleged deficiencies in Evangelista's information.

The information provided by Evangelista, combined with DeJesus's investigation, provided probable cause to arrest Olds for unlawful possession of a firearm. An officer has probable cause to make a warrantless arrest where the facts and circumstances within the arresting officer's knowledge are sufficient to permit a person of reasonable caution to believe that an offense has been or is being committed. State v. Conner, 58 Wn. App. 90, 97, 791 P.2d 261 (1990) (citing State v. Gluck, 83 Wn.2d 424, 518 P.2d 703 (1974)). An officer need not have facts sufficient to establish guilt beyond a reasonable doubt, but only reasonable grounds for

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<sup>8</sup> The vehicle did not belong to Olds or Swain and was not a vehicle Olds regularly drove. 6RP 167-77.

suspicion, along with evidence of circumstances sufficiently strong in themselves to allow a cautious and disinterested person to believe the suspect is guilty. Conner, at 98.

Here, the information provided by Evangelista certainly contained sufficient facts from which a reasonable person of ordinary caution would believe that Olds, a felon, possessed a firearm.

2. THE TRIAL COURT PROPERLY EXERCISED ITS DISCRETION IN ADMITTING EVIDENCE UNDER ER 403.

Olds argues that the trial court erred when it allowed references to the 5.7 as a “cop killer” gun. Olds also contends that the trial court should have excluded Evangelista’s references to the shooting of the Lakewood police officers. Olds’s claims fail because he cannot show that the trial court abused its discretion in admitting evidence that was relevant to the State’s case. Furthermore, even if the trial court erred, any error was harmless given the overwhelming evidence against Olds.

Under ER 403, relevant evidence may be excluded if its probative value is *substantially* outweighed by the danger of *unfair* prejudice. Unfair prejudice is that which suggests a decision on an

improper basis, often, though not necessarily, an emotional one.

State v. Rupe, 101 Wn.2d 664, 686, 683 P.2d 571 (1984).

The trial court is afforded great deference on evidentiary rulings. State v. French, 157 Wn.2d 593, 605, 141 P.3d 54 (2006). Broad discretion must be accorded to the trial judge in such matters because he is in a superior position to evaluate the impact of the evidence, since he sees the witnesses, defendant, jurors, and counsel, and their mannerisms and reactions. State v. Hughes, 106 Wn.2d 176, 201, 721 P.2d 902 (1986).

Evidence may be relevant even if it does not directly relate to an element of the crime. For instance, evidence may be admitted to support the credibility of a key witness. State v. Mullin-Coston, 115 Wn. App. 679, 694, 64 P.3d 40 (2003). It may also be admitted to explain the actions of witnesses. Id.; State v. Coleman, 155 Wn. App. 951, 955, 231 P.3d 212 (2010), review denied, 170 Wn.2d 1016 (2011).

In Coleman, the defendant drove his codefendant, Phillips, to a drug-related robbery. Id. at 955. At trial, Phillips testified that he had known Coleman for years, that they sometimes dealt drugs together, and that Coleman had driven him to over 10 sales. Id. at 956. Phillips had told Coleman about his plans to rob the victim in

advance. Id. In addition to driving Phillips to the robbery, Coleman procured a gun for Phillips. Id. On appeal, Coleman argued that the trial court should have excluded Phillips's testimony regarding past drug deals under ER 403 and ER 404(b). Id. at 962. The appellate court found that the evidence was relevant to show why Phillips would trust Coleman enough to recruit Coleman's help with a drug-related robbery, and that the trial court did not abuse its discretion in admitting the evidence. Id. at 963.

Olds first challenges the use of the phrase "cop killer" gun. One of the guns that Olds had arranged to sell was a 5.7 millimeter handgun, commonly known as a "cop killer." When officers interviewed Olds after his arrest, they asked about the significance of the 5.7. Olds explained that it was known as a "cop killer gun" because of the special rounds that it fires.

Olds's use of the term "cop killer" was relevant to show that Olds was familiar with the specific type of gun that officers subsequently found in the glove compartment. As the trial court found, it also corroborated Evangelista's testimony that Olds had used her printer to print out an article about "cop killer" guns. 2RP 68-71. Contrary to Olds's argument, the evidence was relevant to the State's theory of the case.

Olds also challenges the references to the shooting of the Lakewood police officers. Evangelista found the article about the "cop killer" guns some time in December of 2009. Because it was shortly after the Lakewood officers had been killed, Evangelista found the article disturbing and contacted DeJesus. The trial court found that the testimony was relevant to explain Evangelista's motive in notifying DeJesus about the article. 2RP 86.

Olds is correct that the State did not have to prove Evangelista's motive. However, the jury was required to evaluate Evangelista's credibility and the reference to the Lakewood shooting helped to explain why she felt it was necessary to involve DeJesus. Just as in Coleman, the reference to the Lakewood shooting helps to explain Evangelista's actions. It was reasonable to expect that Evangelista's credibility would be attacked, given the trial court's ruling allowing broad impeachment.<sup>9</sup>

In addition to discounting its relevance, Olds overstates the prejudicial nature of the challenged evidence. The references to "cop killer" guns were brief, and the phrase was always used to

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<sup>9</sup> Recognizing that Evangelista's credibility was important, the trial court allowed Olds to impeach Evangelista using a broad range of prior bad acts, including crimes of dishonesty that had occurred more than 10 years prior. 2RP 100-02, 105.

identify the gun that Olds planned to sell. Nobody suggested that Olds or the fictitious buyer wanted the gun for the purpose of killing police officers. Olds cannot show that this testimony was unfairly prejudicial, particularly considering the fact that he was the one who originally identified the 5.7 as a "cop killer."

Olds offers no evidence to support his claim that the "community was still reeling from the Lakewood murders," which occurred seven months before Olds's trial. Brief of Appellant at 18. However, even if the issue was still raw, the references to the Lakewood shootings were still relevant. Indeed, if the Puget Sound community was still "reeling" from that case seven months later, Evangelista certainly would have been "reeling" a few weeks later. The references helped to explain why she called DeJesus.

In any event, the references to the Lakewood shootings were fleeting. The State did not encourage the witnesses to belabor the point and did not mention the shootings in closing argument. Any prejudice was minimal and the trial court did not abuse its discretion in admitting the evidence.

Even if the trial court erred in admitting the reference to "cop killer" guns and the Lakewood officer shootings, any error was harmless. Because the alleged error involves the violation of an

evidentiary rule, rather than a constitutional mandate, the error is not prejudicial "unless, within reasonable probabilities, the outcome of the trial would have been materially affected had the error not occurred." State v. Bourgeois, 133 Wn.2d 389, 403, 945 P.2d 1120 (1997). Any error is harmless if the evidence is of minor significance in reference to the overall, overwhelming evidence as a whole. Id.

Here, the State had ample unchallenged evidence to prove that Olds knowingly possessed the firearms and that he knew that the 5.7 millimeter gun was stolen. Olds agreed to bring guns to Evangelista's house with the intention of selling them. He negotiated the deal, with Evangelista as the intermediary, over several conversations. When he arrived at Evangelista's house, Olds said that the guns were in the glove compartment. After his arrest, Olds admitted that officers would find two guns in the glove compartment and described how he had come to possess the guns. He also admitted knowing that the 5.7 was stolen. Considering the overwhelming evidence against Olds, it is unlikely that the challenged evidence had any impact on the outcome of his trial.



D. **CONCLUSION**

For all of the foregoing reasons, the State asks this court to affirm Olds's convictions.

DATED this 14 day of June, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG  
King County Prosecuting Attorney

By: Bridgette E Maryman  
BRIDGETTE E. MARYMAN, WSBA #38720  
Deputy Prosecuting Attorney  
Attorneys for Respondent  
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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 Lila Silverstein, the attorney for the appellant, at Washington Appellate Project, 701 Melbourne Tower, 1511 Third Avenue, Seattle, WA 98101, containing a copy of the Brief of Respondent, in STATE V. BLAINE OLDS, Cause No. 65922-7-1, 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.



\_\_\_\_\_  
Name  
Done in Seattle, Washington

06/14/11  
\_\_\_\_\_  
Date

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