

66036-5

66036-5

NO. 66036-5-1

COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION I

STATE OF WASHINGTON,

Respondent,

v.

ISAAC TOWNSEND,

Appellant.

2011 JUN -3 PM 11:10

COURT OF APPEALS OF THE STATE OF WASHINGTON

APPEAL FROM THE SUPERIOR COURT FOR KING COUNTY

THE HONORABLE LEROY MCCULLOUGH

BRIEF OF RESPONDENT

DANIEL T. SATTERBERG
King County Prosecuting Attorney

KIMBERLY Y. FREDERICK
Deputy Prosecuting Attorney
Attorneys for Respondent

King County Prosecuting Attorney
W554 King County Courthouse
516 Third Avenue
Seattle, Washington 98104
(206) 296-9000

TABLE OF CONTENTS

Page

A. ISSUE PRESENTED 1

B. STATEMENT OF THE CASE 1

1. KENT POLICE OFFICERS ARE DISPATCHED ON A CITIZEN REPORT OF RECKLESS DRIVING AND RUN A DOL INQUIRY FOR THE REPORTED LICENSE PLATE NUMBER..... 1

2. OFFICERS CONDUCT AN AREA CHECK AND DRIVE TO TOWNSEND'S ADDRESS..... 2

3. OFFICERS IDENTIFY TOWNSEND AND LEARN HE HAS A VALID PROTECTION ORDER AGAINST HIM 3

4. THE OFFICERS LEARN THAT TOWNSEND'S PASSENGER WAS MARY JACQUELINE ESTOQUE 4

5. THE OFFICERS ARREST ISAAC TOWNSEND FOR VIOLATING A COURT ORDER..... 5

C. ARGUMENT 6

1. APPROPRIATE STANDARD OF REVIEW..... 6

2. OFFICERS HAD SUFFICIENT REASONABLE SUSPICION TO CONDUCT AN INVESTIGATORY STOP 6

a. 911 Caller's Tip Helped To Form The Requisite Reasonable Suspicion To Conduct A *Terry* Stop..... 8

i. The 911 caller's tip was reliable 9

ii.	The 911 caller's tip contained enough objective facts to justify the pursuit and detention of the suspect...	10
iii.	The innocuous and noninnocuous details of 911 caller's tip were corroborated by police observations, suggesting that information was obtained in a reliable fashion.....	11
b.	DOL Inquiry Helped To Form The Requisite Reasonable Suspicion To Conduct A <i>Terry</i> Stop.....	11
c.	The Police Officer's Independent Observations Helped To Form The Requisite Reasonable Suspicion To Conduct A <i>Terry</i> Stop.....	12
d.	Under The Totality Of The Circumstances, The Investigative Stop Was Reasonable	13
3.	SUFFICIENT REASONABLE SUSPICION TO DETAIN TO OBTAIN DRIVER'S LICENSE STATUS AND INVESTIGATE THE NO CONTACT ORDER VIOLATION.....	14
D.	<u>CONCLUSION</u>	16

TABLE OF AUTHORITIES

Page

Table of Cases

Federal:

Aguilar v. State of Texas, 378 U.S. 108,
84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964)..... 8

Illinois v. Gates, 462 U.S. 213,
103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983)..... 9

Spinelli v. United States, 393 U.S. 410,
89 S. Ct. 584, 21 L. Ed. 2d 637 (1969)..... 8

Terry v. Ohio, 392 U.S. 1,
88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)..... 1, 6-12, 14

United States v. Cortez, 449 U.S. 411,
101 S. Ct. 690, 66 L. Ed. 2d 621 (1981)..... 14

Washington State:

City of Seattle v. Megrey, 93 Wn. App. 391,
968 P.2d 900 (1998)..... 6

State v. Gaddy, 152 Wn.2d 64,
93 P.3d 872 (2004)..... 11, 12

State v. Glover, 116 Wn.2d 509,
806 P.2d 760 (1991)..... 6, 14

State v. Gluck, 83 Wn.2d 424,
518 P.2d 703 (1974)..... 15

State v. Hart, 66 Wn. App. 1,
830 P.2d 696 (1992)..... 8, 11

State v. Harvey, 41 Wn. App. 870,
707 P.2d 146 (1985)..... 7

<i>State v. Hill</i> , 123 Wn.2d 641, 870 P.2d 313 (1994).....	6
<i>State v. Kennedy</i> , 107 Wn.2d 1, 726 P.2d 445 (1986).....	7
<i>State v. Lesnick</i> , 10 Wn. App. 281, 518 P.2d 199 (1974).....	12, 13
<i>State v. Little</i> , 116 Wn.2d 488, 806 P.2d 749 (1991).....	6, 15
<i>State v. Madrigal</i> , 65 Wn. App. 279, 827 P.2d 1105 (1992).....	15
<i>State v. Martin</i> , 106 Wn. App. 850, 25 P.3d 488 (2001).....	15
<i>State v. Mewes</i> , 84 Wn. App. 620, 929 P.2d 505 (1997).....	6
<i>State v. Randall</i> , 73 Wn. App. 225, 868 P.2d 207 (1994).....	9, 10
<i>State v. Reeb</i> , 63 Wn. App. 678, 821 P.2d 84 (1992).....	15
<i>State v. Sieler</i> , 95 Wn.2d 43, 621 P.2d 1272 (1980).....	8, 9
<i>State v. Sinclair</i> , 11 Wn. App. 523, 523 P.2d 1209 (1974).....	15
<i>State v. Tarica</i> , 59 Wn. App. 368, 798 P.2d 296 (1990).....	13
<i>State v. Thornton</i> , 41 Wn. App. 506, 705 P.2d 271 (1985).....	7
<i>State v. Wakeley</i> , 29 Wn. App. 238, 628 P.2d 835 (1981).....	9

Constitutional Provisions

Federal:

U.S. Const. amend. IV 6

Washington State:

Const. art. I, § 7..... 6

Statutes

Washington State:

RCW 46.61.500..... 10

Rules and Regulations

Washington State:

CrR 3.6..... 1, 16

A. ISSUE PRESENTED

Whether denial of a CrR 3.6 motion to suppress is proper when officers form requisite reasonable suspicion to conduct a *Terry* stop from the combination of a 911 caller's tip, independent police observations corroborating the tip, DOL records corroborating the tip, and an assessment of the danger the reported behavior poses to the community.

B. STATEMENT OF THE CASE

1. KENT POLICE OFFICERS ARE DISPATCHED ON A CITIZEN REPORT OF RECKLESS DRIVING AND RUN A DOL INQUIRY FOR THE REPORTED LICENSE PLATE NUMBER

On the afternoon of July 25, 2010, Kent Police Department Officer Jason Panuccio, was on routine patrol in the area of Kent Des Moines Road and Military Road South in Kent, Washington. RP 20-21. A career police officer with 15 years of experience, but newly hired by Kent Police Department from out of state. RP 18-19. Officer Panuccio was riding with his Field Training Officer, Dan Butenschoen. RP 20.

Around 3:40 PM, dispatch advised the officers that a citizen had called 911 to report that a vehicle was speeding and swerving

across lanes on I-5, and may have struck another vehicle. RP 22-23. The caller reported that the vehicle was a black-colored Acura with Washington license plate number 548-SPG. RP 23. The caller also reported that the Acura had exited I-5, heading south on Military Road. RP 23.

The officers ran a DOL inquiry on the license plate number reported by the caller, and learned that it was registered to a 1996 black Acura. RP 49. The record indicated that the vehicle had recently been sold, and dispatch reported that the listed buyer was Isaac Townsend, the Appellant. RP 23-24. Dispatch relayed Townsend's address to the officers as 25619 - 27th Place South -- within close proximity to the area of the reckless driving reported by the caller. RP 24-25.

2. OFFICERS CONDUCT AN AREA CHECK AND DRIVE TO TOWNSEND'S ADDRESS

Having learned that the DOL records matched the vehicle description and plate number provided by the 911 caller and that the registered owner lived in the same area as the reported reckless driving, the officers decided to do an area check. RP 27. Eventually they drove to Townsend's address to investigate.

RP 27. As they approached the address, an apartment complex, they saw a black-colored Acura driving in reverse on 27th Avenue South. RP 28. This driving appeared erratic and peculiar to the officers and drew their attention. RP 28-30. The vehicle stopped when the driver appeared to notice the officers, and pulled forward into the apartment complex parking lot, stopping in a parking stall. RP 30-31. The officers also noticed that the vehicle and license plate matched the description of the vehicle reported by the 911 caller. RP 27-28.

The officers pulled up behind Townsend's vehicle and activated their overhead lights. RP 31. Townsend was ordered out of the car and stepped out of the driver's side door. RP 33. A girl also stepped out of the front passenger seat and walked away from the car toward the apartment complex. RP 33.

3. OFFICERS IDENTIFY TOWNSEND AND LEARN HE HAS A VALID PROTECTION ORDER AGAINST HIM

The officers asked Townsend about his driving, telling him that they had received a report of a vehicle, with a description and license plate matching his, speeding and swerving on nearby I-5. RP 33. Townsend told the officers that he did not know what they

were talking about. RP 33. They asked for Townsend's identification. RP 33. While he could not present a valid driver's license, he verbally identified himself as Isaac Townsend. RP 33. His father, Vervis Townsend, who had been standing in the parking lot when Isaac and the officers pulled in, verified to the officers that Isaac Townsend was indeed who he said he was, and that he was his son. RP 33-34. The officers learned that Vervis Townsend managed the apartment complex. CP 46.

The officers ran Isaac Townsend's name, and learned that he had a valid protection order against him, prohibiting him from coming into contact with or being within 500 feet of Mary Jacqueline Estoque. RP 35. The order was granted a month earlier, on June 8, 2010, and was valid for a year, until June 8, 2011. RP 35.

4. THE OFFICERS LEARN THAT TOWNSEND'S PASSENGER WAS MARY JACQUELINE ESTOQUE

When they learned of the protection order against Townsend, the officers became concerned about the girl who had been in the car with him. RP 38. They asked Townsend if the girl in the car was Mary Estoque, but he did not answer. RP 38. They then asked his father, Vervis, who the girl was. RP 38. Vervis

Townsend verified that the girl that the officers saw getting out of the car was indeed Mary Estoque. RP 38.

Officer Butenschoen then walked over to where Mary Estoque had gone. RP 38. He asked who she was and she told him that she was Mary Estoque. She also confirmed the protection order and confirmed that she had been in the car with Isaac Townsend. RP 38.

5. THE OFFICERS ARREST ISAAC TOWNSEND FOR VIOLATING A COURT ORDER

After confirming Isaac's and Mary's identities, and having seen the two of them in the car together, the officers arrested Isaac Townsend for violating a court order. RP 39. They read him his *Miranda* rights. RP 39-40. He acknowledged his rights and did not make any statements. RP 40. The officers then told Isaac's father that they would be taking Isaac to Kent city jail. Vervis indicated that Isaac was only 17, and asked if he should be taken to jail. RP 105. The officers then re-Mirandized Isaac, with the additional juvenile warnings. RP 41. Isaac Townsend was taken to the Kent city jail. After being processed and fingerprinted, he was booked into custody at the YSC. RP 41.

C. ARGUMENT

1. APPROPRIATE STANDARD OF REVIEW

On appeal, a trial court's conclusions of law are reviewed de novo, but the Court of Appeals accords a trial court's conclusions of law great significance. *City of Seattle v. Megrey*, 93 Wn. App. 391, 393-94, 968 P.2d 900 (1998). A trial court's findings of fact will not be disturbed if supported by substantial evidence. *State v. Mewes*, 84 Wn. App. 620, 622, 929 P.2d 505 (1997). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person of the truth of the finding. *State v. Hill*, 123 Wn.2d 641, 644, 870 P.2d 313 (1994).

2. OFFICERS HAD SUFFICIENT REASONABLE SUSPICION TO CONDUCT AN INVESTIGATORY STOP

Analysis under the Fourth Amendment to the United States Constitution and Article I, Section 7 of the Washington State Constitution is indistinguishable: each requires that an investigatory stop be reasonable. See *State v. Glover*, 116 Wn.2d 509, 806 P.2d 760 (1991); *State v. Little*, 116 Wn.2d 488, 806 P.2d 749 (1991). The Washington Supreme Court adopts the rationale set forth in *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 1884,

20 L. Ed. 2d 889, 911 (1968), when examining the validity of an investigatory stop. See, e.g., *State v. Kennedy*, 107 Wn.2d 1, 726 P.2d 445 (1986). Under this rationale, an investigatory stop is lawful if the officer possesses "specific articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21.

A law enforcement officer's decision to briefly detain an individual may be based on his or her own observations, observations of other officers, tips from citizens and informants, or any combination of these. *State v. Thornton*, 41 Wn. App. 506, 705 P.2d 271 (1985); *State v. Harvey*, 41 Wn. App. 870, 707 P.2d 146 (1985). In this case, the officer's requisite reasonable suspicion to conduct a *Terry* stop was obtained from a combination of the 911 caller's tip, corroborating information obtained through a DOL license plate check, and the officer's independent observations which corroborated the information received from the 911 caller and DOL.

a. 911 Caller's Tip Helped To Form The Requisite Reasonable Suspicion To Conduct A Terry Stop

An informant's tip by itself can provide reasonable suspicion to make an investigatory stop. *State v. Sieler*, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980). But the informant's tip must be reliable. *Id.* The State established a tip's reliability when "1) the informant is reliable and 2) the informant's tip contains enough objective facts to justify the pursuit and detention of the suspect or the noninnocuous details of the tip have been corroborated by police this suggesting that the information was obtained in a reliable fashion." *State v. Hart*, 66 Wn. App. 1, 7, 830 P.2d 696 (1992).

Appellant mistakenly asserts that the appropriate legal standard for determining whether police suspicion resulting from an informant's tip is sufficiently reasonable to support a *Terry* stop is the two part inquiry derived from *Aguilar v. State of Texas*, 378 U.S. 108, 84 S. Ct. 1509, 12 L. Ed. 2d 723 (1964), and *Spinelli v. United States*, 393 U.S. 410, 89 S. Ct. 584, 21 L. Ed. 2d 637 (1969). Appellant's Brief at 5-7. Although the *Aguilar-Spinelli* test is used to determine whether an informant's tip provides a sufficient basis for probable cause to arrest, a different standard is required when determining reasonable suspicion to conduct an investigatory stop.

State v. Randall, 73 Wn. App. 225, 228-29, 868 P.2d 207 (1994).

The "totality of the circumstances" test, as set forth in *Illinois v. Gates*, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983), provides the appropriate calculus in determining whether an informant's tip provides sufficient reasonable suspicion for a *Terry* stop. *Id.*

i. The 911 caller's tip was reliable

Although the parties repeatedly refer to the 911 caller as an "anonymous informant," the CAD report (Supp. CP __ (Sub. 28A, Exhibit 8, CAD Report) indicates that the caller gave his name and phone number as Martin Kinney at phone number 253-212-6357. This does not necessarily change the analysis. As stated in *State v. Sieler*, 95 Wn.2d 43, 48, 621 P.2d 1272 (1980), [t]he reliability of an anonymous telephone informant is not significantly different from the reliability of a named but unknown telephone informant. However, we may generally presume the reliability of a tip from a citizen informant. *State v. Wakeley*, 29 Wn. App. 238, 241, 628 P.2d 835 (1981).

ii. The 911 caller's tip contained enough objective facts to justify the pursuit and detention of the suspect

The 911 call in this case was from a concerned citizen who called 911 to report that a person was speeding and swerving on I-5, and may have hit another vehicle. CP 46. "An important factor comprising the totality of the circumstances which must be examined is the nature of the suspected crime." *State v. Randall*, 73 Wn. App. 225, 229, 868 P.2d 207 (1994). When the tip involves a crime posing a significant risk to the safety of others, "the officer should be able to rely on the reliability of information disseminated by police dispatch and...his or her observations corroborat[ing] the information...to make an investigatory stop." *Id.* at 230.

Although reckless driving and hit and run are only gross misdemeanors, the threat of harm to the community created by these two crimes is great. Reckless driving entails willful and wanton disregard for the safety of others and property. See RCW 46.61.500. To engage in driving of this sort on I-5 at 3:40 on a Sunday afternoon involves a significant safety risk to the public. Given the danger the driving poses to society, the officers were justified in following up on this information. Also, the officers did not rely solely on the 911 caller's tip as the basis of the *Terry* stop. The

officers went on to verify the details of the 911 call through a DOL inquiry and their independent observations.

iii. The innocuous and noninnocuous details of 911 caller's tip were corroborated by police observations, suggesting that information was obtained in a reliable fashion

As discussed in further detail below, both the innocuous and noninnocuous details of the 911 caller's tip were verified by police before conducting the investigatory stop, as detailed in *State v. Hart*, 66 Wn. App. 1, 7, 830 P.2d 696 (1992). Not only did police verify the information through their own independent observations, but they also received verification through a DOL license plate check.

b. DOL Inquiry Helped To Form The Requisite Reasonable Suspicion To Conduct A Terry Stop

In addition to the 911 caller's tip, officers also received information from a DOL license plate check which helped to form the basis for reasonable suspicion to stop. The Washington Supreme Court has held that information obtained from DOL is presumptively reliable. *State v. Gaddy*, 152 Wn.2d 64, 73, 93 P.3d

872 (2004). This is because DOL has firsthand knowledge of an individual's license and registration status. *Id.* at 72. There is also a very high level of reliability due to the extensive regulations that govern DOL to ensure that its reports are credible. *Id.* at 72-73.

In our case DOL corroborated the "innocuous" details of 911 caller's tip. The license plate check revealed that license plate number that the 911 caller provided was correct, and that the license plate was, in fact, registered to a black Acura. DOL also corroborated a "noninnocuous" detail provided by the caller with confirmation that the registered owner lived in an area in close proximity to the report of reckless driving on I-5 and near where the vehicle was reported to have exited from the highway.

c. The Police Officer's Independent Observations Helped To Form The Requisite Reasonable Suspicion To Conduct A Terry Stop

In determining the reliability of the information provided by an informant, a distinction is made between "[d]escriptive information which enables the officers to simply determine the identity of the subject, and a tip that incorporates...information about a suspects movements." *State v. Lesnick*, 10 Wn. App. 281,

285, 518 P.2d 199 (1974). In our case, before the Appellant was stopped, the "innocuous" details provided by the 911 caller were verified by the officer's observations. The officers saw that the license plate of the Appellant's car matched the license plate number given by the 911 caller. The officers also saw that the car was a black Acura, as reported by the 911 caller. In addition, certain noninnocuous details were also observed by the officers. When they arrived at the address provided by DOL (which was in close proximity to where the reported reckless driving had taken place), the officers saw the black Acura backing down the street. Although this driving was not per se reckless, the officers characterized this driving as erratic and peculiar and it tended to corroborate the information regarding erratic driving on I-5.

**d. Under The Totality Of The Circumstances,
The Investigative Stop Was Reasonable**

In analyzing the validity of an investigatory stop, the court conducts a two-part inquiry: "(1) whether the initial detention was justified, and (2) whether the detention was reasonably related in scope to the reason for the detention." *State v. Tarica*, 59 Wn. App. 368, 375, 798 P.2d 296 (1990). A reviewing court must evaluate

the reasonableness of an investigatory stop in view of the totality of the circumstances and the officer's training and experience. *State v. Glover*, 116 Wn.2d 509, 514, 806 P.2d 760 (1991), citing *United States v. Cortez*, 449 U.S. 411, 418, 101 S. Ct. 690, 66 L. Ed. 2d 621 (1981).

In our case, in consideration of the totality of the circumstances, the investigative stop was justified. This was not a case of an uncorroborated tip by an anonymous informant. Rather, before making the decision to conduct a *Terry* stop, the officers relied on a tip given by a 911 caller. They verified the information provided by that caller with both their independent observations and information provided by DOL. Also, given the potential danger to the public the reported driving presented, the officers were justified in stopping the Appellant to determine if he had been involved in a hit and run collision on I-5.

**3. SUFFICIENT REASONABLE SUSPICION TO
DETAIN TO OBTAIN DRIVER'S LICENSE STATUS
AND INVESTIGATE THE NO CONTACT ORDER
VIOLATION**

After the initial *Terry* stop the officers were also justified in determining the Appellant's driver's license, court order, and

warrant status. An officer has not exceeded the scope of a *Terry* stop by identifying him or herself as a police officer, detaining a suspect, and asking the suspect for identification and an explanation of his or her activities. *State v. Little*, 116 Wn.2d 488, 495, 806 P.2d 749 (1991); *State v. Gluck*, 83 Wn.2d 424, 426, 518 P.2d 703 (1974). Likewise, as part of a lawful investigatory stop a law enforcement officer may temporarily detain a suspect pending the results of a police headquarters' radio check. *State v. Sinclair*, 11 Wn. App. 523, 529, 523 P.2d 1209 (1974). An outstanding warrant check during a valid criminal investigatory stop is reasonable routine procedure and does not trigger the need for *Miranda*. *State v. Reeb*, 63 Wn. App. 678, 680-81, 821 P.2d 84 (1992). See *State v. Madrigal*, 65 Wn. App. 279, 827 P.2d 1105 (1992). This Court has found that there is a clear governmental interest in ensuring that drivers are properly licensed, do not have outstanding warrants, and are in compliance with no contact orders. *State v. Martin*, 106 Wn. App. 850, 861, 25 P.3d 488 (2001).

When officers asked for a license, the Appellant could not produce one. In order to determine his driving, warrant, and court order status, officers ran his name and date of birth. The Appellant's driver's license status and the information regarding the

protection order were obtained at the same time. At that point the officers formed requisite reasonable suspicion to investigate whether the girl they saw leaving the Appellant's vehicle was the protected party.

D. CONCLUSION

Given the totality of the circumstances, there was sufficient reasonable suspicion to support a denial of the CrR 3.6 motion to suppress. The State, therefore, respectfully requests that this Court confirm Appellant's conviction.

DATED this 3rd day of June, 2011.

Respectfully submitted,

DANIEL T. SATTERBERG
King County Prosecuting Attorney

By: Kimberly Frederick
KIMBERLY Y. FREDERICK, WSBA #37857
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 Gregory Charles Link, the attorney for the appellant, at Washington Appellate Project, 1511 3rd. Ave. Ste. 701, Seattle, WA 98101-3635, containing copies of the Brief of the Respondent and Supplemental Designation of Clerk's Papers, STATE V. ISSAC TOWNSEND, Cause No. 66036-5-I, 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.

Kimberly Frederick
Name Kimberly Frederick
Done in Seattle, Washington

6/3/11
Date

FILED
COURT OF APPEALS
STATE OF WASHINGTON
2011 JUN -3 PM 4:50