

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**

**STATE OF WASHINGTON,**

**No. 28969-9-III**

**Respondent,**

**Division Three**

**v.**

**KARL GREGORY McEACHRAN,**

**UNPUBLISHED OPINION**

**Appellant.**

Sweeney, J. — Police have the authority to conduct a search without a warrant if they have reasonable grounds to believe that a suspect might be armed and dangerous. Here, a police officer received information from a juvenile probation counselor that the defendant was alleged to have been involved in a burglary where weapons were stolen. The officer searched the defendant based on that information. We conclude that the information was sufficient to justify the search and we affirm the subsequent conviction for possession of a dangerous weapon—brass knuckles.

**FACTS**

T.M. was a juvenile with an outstanding arrest warrant. He was reported to be in a

parking lot of the Food Pavilion in Moses Lake, Washington. This information was relayed to Officer Aaron Hintz and he responded to that parking lot on July 24, 2009, at around 11:15 p.m. Officer Hintz arrived and saw four juveniles standing around a parked car with smoke coming from the hood. Other officers at the scene confirmed the juvenile warrant and arrested T.M.

Officer Hintz called Kevin Hake, a Grant County Juvenile Probation Counselor, to ask about T.M.'s curfew. Mr. Hake asked Officer Hintz who was with T.M. Officer Hintz named Karl McEachran and others. Mr. Hake warned Officer Hintz to use caution around Mr. McEachran because he had been involved in a recent burglary where firearms were stolen, and Mr. Hake was concerned that he may still be in possession of those firearms. Officer Hintz became concerned for his safety. He works with Mr. Hake on a regular basis and believed Mr. Hake's information was reliable.

Officer Hintz ordered Mr. McEachran to put his hands behind his back and frisked him for weapons. Officer Hintz asked Mr. McEachran if he had any weapons. Mr. McEachran responded that he had a pair of brass knuckles in his right front pants pocket. Officer Hintz retrieved them, handcuffed Mr. McEachran, and placed him in the back of the patrol car. Mr. McEachran asked that he not be taken to juvenile detention and explained that he "only had the brass knuckles for protection as things were crazy on the streets of Moses Lake." Report of Proceedings (Nov. 25, 2009) at 22.

Mr. McEachran was arrested for and

charged with one count of unlawful possession of a dangerous weapon. Mr. McEachran moved to suppress evidence of the brass knuckles and argued that the police did not have legal grounds to search him. The court disagreed, refused to suppress the evidence, and ultimately found him guilty of possession of a dangerous weapon.

#### DISCUSSION

Mr. McEachran contends here, as he did in the trial court, that Officer Hintz did not have grounds to conclude that he was armed or dangerous based on what he characterizes as vague and indefinite information. And, he continues, other circumstances were required to justify the search, even if Mr. Hake's information was accurate.

The question before us is whether the information provided to the officer justified the search here as a protective frisk. This is a question of law and so our review is de novo. *State v. Bee Xiong*, 164 Wn.2d 506, 510, 191 P.3d 1278 (2008). But, we give significant weight to those conclusions entered by a trial court following a suppression hearing. *State v. Collins*, 121 Wn.2d 168, 174, 847 P.2d 919 (1993).

The Fourth Amendment to the United States Constitution and article I, section 7 of the Washington Constitution protect against unreasonable searches and seizures unless supported by probable cause. *State v. Setterstrom*, 163 Wn.2d 621, 625-26, 183 P.3d 1075 (2008). Exceptions to the general requirement of probable cause are “narrowly drawn and carefully circumscribed.” *State*

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*v. Hudson*, 124 Wn.2d 107, 112, 874 P.2d 160 (1994) (citing *Terry v. Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)). One such exception allows an officer to frisk for weapons if, among other things, the officer's safety concerns are reasonable. *Collins*, 121 Wn.2d at 173.

Mr. McEachran argues that Officer Hintz's safety concerns were not reasonable. "A reasonable safety concern exists, and a protective frisk for weapons is justified, when an officer can point to 'specific and articulable facts' which create an objectively reasonable belief that a suspect is 'armed and presently dangerous.'" *Id.* (quoting *Terry*, 392 U.S. at 21-24). A reasonable belief that the suspect is armed and presently dangerous requires "some basis from which the court can determine that the detention was not arbitrary or harassing." *Setterstrom*, 163 Wn.2d at 626 (internal quotation marks omitted) (quoting *State v. Belieu*, 112 Wn.2d 587, 601-02, 773 P.2d 46 (1989)). A court should consider the entirety of the circumstances to determine the validity of a protective search. *State v. Glossbrener*, 146 Wn.2d 670, 679, 49 P.3d 128 (2002). But, there is no threshold number of circumstances required before the officer, and ultimately the court, must be able to conclude that the officer's concerns are reasonable.

There are a myriad of circumstances that courts have concluded prompt reasonable safety concerns. *See State v. Harper*, 33 Wn. App. 507, 511, 655 P.2d 1199 (1982) (finding a reasonable safety concern where suspect repeatedly and nervously jammed hand into pocket); *State v. Holbrook*, 33

Wn. App. 692, 696, 657 P.2d 797 (1983) (finding a reasonable safety concern when another officer informed the searching officer of an informant's "hot-sheet" information about a hidden gun); *Collins*, 121 Wn.2d at 173 (finding a reasonable safety concern where stop occurred in darkness, officer had previously arrested the suspect on an unspecified felony warrant, and where ammunition and a holster were seen in a vehicle associated with the suspect at the time of the prior arrest). We are reluctant to substitute our judgment for the judgment of an officer in the field. *Belieu*, 112 Wn.2d at 601.

Mr. McEachran relies on *Collins* to argue that an officer cannot rely exclusively on information from a juvenile probation counselor to justify a frisk. He argues that the information must always be combined with "other circumstances" showing the existence of a reasonable safety concern. *Collins*, 121 Wn.2d at 177. That is not the way we read *Collins*. An officer's objectively reasonable belief that a suspect is armed and dangerous may be based on any number of circumstances. And courts will consider all the circumstances when considering whether there is "some basis" for the officer's belief that the suspect is armed and dangerous and whether that belief is reasonable. *Setterstrom*, 163 Wn.2d at 626. The question is whether the circumstances make the officer's concerns reasonable.

In *Collins*, the Supreme Court considered whether apparent prior access to a weapon would make a reasonably careful officer more likely to believe that his or her safety or the safety of others is threatened.

*Collins*, 121 Wn.2d at 177. There, the officer had personally observed ammunition in the vehicle of the suspect during an arrest two months earlier. *Id.* at 171. The Supreme Court recognized that an officer's assessment of the dangers involved in a stop would be significantly affected by information that someone might have a gun. *Id.* at 177. The court also considered additional circumstances, including the time of day and a prior felony arrest, before concluding the protective pat down was proper. *Id.* But, those additional circumstances were not required to find an objectively reasonable belief that the individual stopped might have a gun because the prior personal observation of the officer was reliable. *But see Holbrook*, 33 Wn. App. at 695 (additional circumstances are required when the reliability of the information has not been established).

The facts here are similar to those in *Collins*. The information was from a reliable source. Officer Hintz had dealt with Mr. Hake in the past and found his information credible. Mr. McEachran does not disagree. Mr. Hake warned Officer Hintz to use caution because Mr. McEachran had been involved in a recent burglary where firearms were stolen. That alone supports the conclusion that Officer Hintz's safety concerns were reasonable. *Holbrook*, 33 Wn. App. at 695. Additional circumstances were not required. The reliable information that Mr. McEachran might have had a gun provides "some basis" from which this court can decide whether Officer Hintz had an objectively reasonable belief that Mr. McEachran might be armed and dangerous. *Setterstrom*, 163

Wn.2d at 626.

And, even assuming that the information from Mr. Hake is insufficient by itself to justify the protective pat down, it was not the only factor in play here. The reliable information that Mr. McEachran might have had a gun combined with the fact that the stop occurred at 11 p.m. and the fact that two other individuals were still standing by the vehicle certainly gave Officer Hintz objectively reasonable grounds to be concerned for his personal safety and the safety of others, including the other officers. We are reluctant to require more from an officer in the field. *Belieu*, 112 Wn.2d at 601.

We conclude that the officer acted on facts justifying the trial court's conclusion that a reasonable officer safety concern existed. And we therefore affirm the conviction.

A majority of the panel has determined that this opinion will not be printed in the Washington Appellate Reports but it will be filed for public record pursuant to RCW 2.06.040.

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Sweeney, J.

WE CONCUR:

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Kulik, C.J.

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Korsmo, J.