

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

STATE OF WASHINGTON,	)	
	)	No. 65922-7-1
Respondent,	)	
	)	DIVISION ONE
v.	)	
	)	
BLAINE OLDS,	)	UNPUBLISHED OPINION
	)	
Appellant.	)	FILED: <u>March 12, 2012</u>
	)	

Spearman, J. — Acting in part on information from a confidential informant, the Seattle Police arrested Blaine Olds after he agreed to sell handguns to an undercover officer. Because the officers relied on information establishing both the basis of the informant’s knowledge and her veracity, the trial court properly concluded that they had probable cause to arrest Olds. We also conclude that the trial court did not abuse its discretion in allowing references to a “cop killer” gun and the recent murders of police officers. We therefore affirm Olds’s convictions for being a felon in possession of a firearm and possessing a stolen firearm.

FACTS

The State charged Blaine Olds with two counts of being a felon in possession of a firearm and two counts of possessing a stolen firearm. Prior to trial, he moved

to suppress the handguns seized after his arrest, alleging that the arresting officers lacked probable cause. Seattle Police Detective Samuel DeJesus testified at the suppression hearing. The trial court's unchallenged findings of fact established the following sequence of events.

Detective DeJesus had worked with Rose Evangelista, a confidential informant, for about three years. During the first year, Evangelista supplied information for a single investigation on an almost daily basis. DeJesus found all of the information, which led to the prosecution and conviction of individuals, to be reliable and never false. Initially, Evangelista provided information in exchange for the State's agreement not to file a criminal charge. At some point, she also worked as a contractual confidential informant. DeJesus considered Evangelista to be a very reliable source and had never known her to supply false information.

In December 2009, Evangelista called DeJesus and said that Olds had left an article about "cop killer" guns on her computer printer. DeJesus explained that the article referenced handguns, such as a 5.7 millimeter (mm) weapon, that used "a rifle round [that] will go through a bulletproof vest." The article disturbed Evangelista because of the recent Lakewood Police shootings. After Evangelista's call, DeJesus learned that Olds had two outstanding warrants.

In response to DeJesus's request, Evangelista ascertained that Olds was interested in selling guns. Olds emailed Evangelista pictures and information about some of the available guns, which Evangelista forwarded to DeJesus. Evangelista persuaded Olds that she had found a buyer for the 5.7mm gun and a .44 Colt Anaconda and arranged the transaction for a specific date, time, and location. Olds

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and his girlfriend planned to drive to Evangelista's house from North Bend, pick her up, and then drive to a nearby Fred Meyer to meet the buyer.

On the day of the sale, Evangelista repeatedly called DeJesus, advising him about Olds's planned arrival. Surveillance officers near Evangelista's house confirmed Olds's arrival in a red Honda that matched Evangelista's description. As part of the plan, Evangelista called DeJesus while Olds was in her house and pretended to be talking to the buyer. DeJesus heard a man in the background confirm that he had brought "the Anaconda and the 5.7."

Olds, his girlfriend, and Evangelista got into the Honda and drove to the prearranged location. Upon arrival, police arrested Olds.

Based on the evidence at the suppression hearing, the trial court found that Evangelista had obtained her information directly from Olds and that she was credible. Concluding that the police officers had probable cause to arrest, the court denied Olds's motion to suppress.

In a recorded interview, Olds told police officers that they would find the 5.7 mm and the Anaconda in the locked glove box of the Honda. He explained that he got the guns from a friend named Johnny and that he knew the 5.7 mm gun was stolen. After obtaining a search warrant, the officers recovered two guns from the glove box.

At trial, Evangelista testified in detail about her relationship with Olds and her role in the investigation. She explained that she met Olds in October 2009 and that she allowed him, as well as other homeless acquaintances, to spend time in her home. Olds generally visited Evangelista several times a week and used her printer

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with his laptop.

Evangelista acknowledged that she had a 1997 forgery conviction and that when she first began providing information to DeJesus, she was “working off” a pending criminal charge. She maintained, however, that she provided the information about Olds because she was disturbed about the apparent subject of the article. She denied that there was any discussion with DeJesus about a potential benefit during the current investigation. Several days after Olds’s arrest, DeJesus gave her an envelope with \$400.

The defense argued that although Olds was aware of the guns in the locked glove box, the State had failed to establish that he had ever possessed them.

The jury found Olds not guilty of one count of possessing a stolen firearm, but guilty as charged of two counts of first degree unlawful possession of a firearm and one count of possessing a stolen firearm. The court imposed a standard range sentence.

#### DECISION

Olds contends that the trial court erred in denying his motion to suppress. He argues that Evangelista’s information was insufficient to establish either the basis of her knowledge or her veracity.

When determining probable cause to arrest based on an informant’s tip, Washington courts apply the two-pronged Aguilar-Spinelli<sup>1</sup> test. See State v. Jackson, 102 Wn.2d 432, 433, 688 P.2d 136 (1984). To satisfy this requirement, the State must demonstrate the informant’s (1) basis of knowledge and (2) veracity. Id.

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<sup>1</sup> See Spinelli v. United States, 393 U.S. 410, 413, 21 L.Ed.2d 637, 89 S.Ct. 584 (1969); Aguilar v. Texas, 378 U.S. 108, 12 L.Ed.2d 723, 84 S. Ct. 1509 (1964).

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When, as here, the factual findings entered after a suppression hearing are unchallenged on appeal, we review de novo whether the findings support the trial court's legal conclusion that officers had probable cause to arrest Olds. See State v. Vasquez, 109 Wn. App. 310, 318, 34 P.3d 1255 (2001); see also State v. O'Neill, 148 Wn.2d 564, 571, 62 P.3d 489 (2003) (unchallenged findings of fact entered after suppression hearing are verities on appeal).<sup>2</sup>

Generally, a showing that the informant has personal knowledge or is passing on firsthand information will satisfy the basis of knowledge prong. Jackson, 102 Wn.2d at 437; State v. Vickers, 148 Wn.2d 91, 112, 59 P.3d 58 (2002). "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." Jackson, 102 Wn.2d at 437-38 (citing, United States v. Carmichael, 489 F.2d 983 (7th Cir. 1973)).

Here, Evangelista provided information that was clearly based on her personal observations and her direct interactions and conversations with Olds. Evangelista retrieved the article on guns after Olds had printed it out. Olds told Evangelista of his interest in selling the guns and provided her with information and pictures of the guns he wanted to sell. Olds then told Evangelista that he was willing to sell the guns to the buyer she had found. The evidence was sufficient to satisfy the basis of knowledge test. See Vickers, 148 Wn.2d at 113 (informant's personal

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<sup>2</sup> Olds's reliance on State v. Walker, 66 Wn. App. 622, 834 P.2d 41 (1992), for the proposition that an appellate court will make an independent evaluation of the record following a suppression hearing is misplaced. Our supreme court effectively overruled Walker and similar cases in State v. Hill, 123 Wn.2d 641, 647, 870 P.2d 313 (1994) (findings entered following a suppression hearing are reviewed for substantial evidence).

knowledge of defendants' conversations concerning commission of a robbery and observation of defendants' departure sufficient to satisfy basis of knowledge test).

The veracity prong is usually satisfied by showing that the informant has a "track record" of providing accurate information to the police. Jackson, 102 Wn.2d at 437. Evangelista was a named informant who had regularly provided accurate information to DeJesus for several years. DeJesus had never found Evangelista to provide false information, and the information she provided during a past investigation had led to arrests and convictions. The evidence was sufficient to establish Evangelista's credibility. See Jackson, 102 Wn.2d at 443.

In summary, Evangelista's information satisfied both prongs of the Aguilar-Spinelli test. The trial court did not err in concluding that probable cause supported Olds's arrest. Consequently, we need not decide the State's contentions that independent police investigation corroborated Evangelista's information and that the absence of probable cause would not necessarily have resulted in the suppression of the guns.

Olds next contends that the trial court erred in denying his motion to exclude references to the "cop killer" gun and the recent murder of four Lakewood police officers. He argues that the evidence was irrelevant to prove the elements of the charged offenses and that, in any event, the danger of unfair prejudice substantially outweighed any probative value. See ER 402, 403. We review the trial court's evidentiary rulings for an abuse of discretion. State v. Lormor, 172 Wn.2d 85, 94, 257 P.3d 624 (2011).

In making its ruling, the trial court was well aware that Evangelista would be a

key State witness and that the defense would attempt to undermine her credibility. And defense counsel vigorously cross-examined Evangelista about her interaction with Olds and her reasons for contacting the police. During closing, defense counsel maintained that Evangelista had lied throughout her testimony and that she had called DeJesus not out of a concern for the public welfare, but rather to obtain financial and personal benefit.

As the trial court noted, Olds himself had referred to the 5.7 mm as a “cop killer” when explaining its significance to officers during his interview. The reference was therefore relevant to demonstrate Olds’s familiarity with the specific weapon later found in the glove box and the claim he was offering it for sale. The reference also tended to corroborate Evangelista’s testimony that Olds was the source of the article that she found in her printer. Similarly, the trial court admitted the reference to the police murders solely to explain Evangelista’s reason for calling the police, a claim that the defense repeatedly and hotly contested. Under the circumstances, the trial court did not abuse its discretion in admitting the evidence.

Moreover, even if the some of the references to the “cop killer” gun and the recent police murders were improper under ER 403, the error was harmless. The State’s unchallenged evidence in this case was strong. Evangelista provided a detailed account of the events leading up to Olds’s arrest, and the jury was able to assess her credibility in light of the defense’s extensive cross examination. Significantly, in his interview, Olds admitted he knew the 5.7 mm was stolen and explained how he came into possession of the guns and where officers would find them. Under the circumstances, there is no reasonable probability the outcome of

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the trial would have been different had the trial court excluded the references to the “cop killer” gun and the police murders. See State v. Brown, 113 Wn.2d 520, 554, 782 P.2d 1013 (1989), 787 P.2d 906 (1990).

Affirmed.

Spencer, J.

WE CONCUR:

Edenfor, J.

Cox, J.