IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	
	)	DIVISION ONE
Respondent,	)	
	)	No. 65951-1-I
v.	)	
	)	UNPUBLISHED OPINION
PAUL CLIFFORD MICHAELS,	)	
	)	
Appellant.	)	FILED: January 23, 2012
_____	)	

Dwyer, C.J. — After a trial based on stipulated evidence, the trial court found Paul Michaels guilty of one count of possession of a controlled substance and one count of possession of a controlled substance with intent to deliver, arising out of Michael's possession of a large amount of marijuana. Michaels appeals, contending that the trial court erred by denying his motion to suppress the evidence of the marijuana found in his motor vehicle. Finding no error, we affirm.

I

Michaels does not assign error to the trial court's findings of fact, entered after the suppression hearing. Accordingly, they are verities on appeal. State v. Marcum, 149 Wn. App. 894, 898, 205 P.3d 969 (2009).

The trial court's findings are as follows:

> 1. On May 21, 2009, detective Kent Poortinga of the Bellingham Police Department Special Investigations Unit was

contacted by a confidential informant (CI). The CI stated he/she was aware that Paul Michaels was going [to] pick up money from people at a residence in Bellingham, drive to the "Seattle area" to purchase several pounds of marijuana today, and then return to Bellingham with the marijuana that same day.

2. The CI in question had entered into an agreement to cooperate with SIU investigations in exchange for an agreement not to refer the CI's suspected criminal behavior to a prosecuting authority.

3. As of May 21, 2009, the CI had participated in four successful controlled purchases under the supervision of the SIU detectives. During this period the CI had provided accurate information to the SIU. Some of these charges led to successful criminal prosecution.

4. On May 21, 2009, SIU Detectives, with the assistance of an Immigration and Customs Enforcement Agent, set up surveillance and observed Paul Michaels approach the residence in question.

5. Michaels was surveilled as he drove southbound on Interstate Five to Everett. Michaels parked at a restaurant called the "Alligator Soul," located at 3121 Broadway, Everett, where he met a while male and entered the restaurant.

6. After approximately an hour both individuals exited the restaurant, walked to their vehicles, and opened the trunks to their vehicles. The other male produced a blue duffle bag [that] was taken from his trunk and placed into the trunk of Michaels' vehicle. Michaels gave the other male a laptop type bag which was placed in the other male's trunk. Both closed their trunks, "bumped fists" and left the lot in their own directions.

7. Based on their training and experience, the bag transfer detectives observed was consistent with individuals engaged in a drug transaction.

8. PAUL MICHAELS (A1) was followed back to Bellingham where he was stopped on a traffic stop near 40th Street and Samish Way. The sole reason for the traffic stop was the investigation of his drug activity.

9. Michaels was contacted in the car and placed [in] handcuffs.

10. A certified canine handler and narcotics canine responded to the area. The canine was applied to the exterior of the vehicle. When the canine barked, Michaels said "that's not a good sign." The canine's reaction to the exterior of the vehicle was consistent with the presence of certain controlled substances.

11. Michaels then told officers that he had "weight" in the trunk. This is slang for a quantity of marijuana. Michaels gave the officers permission to enter the car and retrieve the marijuana. The marijuana is the subject of the instant charge.

> 12. Police then retrieved approximately 4.5 pounds of marijuana from Michaels' trunk.

Clerk's Papers (CP) at 32-33.

The court entered the following conclusions of law:

> 1. The traffic stop of Michaels' car once it returned to Bellingham constituted a seizure.
> 2. Based on the totality of circumstances known to police at the time Michaels' car was stopped, the Bellingham Police Department possessed reasonable, articulable suspicion that criminal activity was occurring or had occurred.
> 3. After the positive reaction by the narcotics canine, probable cause existed to arrest Michaels.
> 4. The initial stop of Michaels' vehicle to investigate criminal activity was lawful.
> 5. Michaels' subsequent arrest after the canine alert was lawful.
> 6. Michaels' motion to suppress is denied.

CP at 33.

Following denial of the suppression motion, Michaels agreed to a bench trial on stipulated evidence. The trial court found him guilty on both charges.

Michaels appeals.

II

Michaels first contends that the police acted unlawfully by stopping his car and detaining him. This is so, he asserts, because the police did not have probable cause to stop his vehicle. He is entirely wrong as to the legal standard applicable to the actions of the police.

The pertinent law is well established:

> "Police may conduct an investigatory stop if the officer has a reasonable and articulable suspicion that the individual is involved in criminal activity." State v. Walker, 66 Wn. App. 622, 626, 834 P.2d 41 (1992). A reasonable suspicion is the "substantial

possibility that criminal conduct has occurred or is about to occur." State v. Kennedy, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). For over 25 years, when determining whether police have a reasonable suspicion sufficient to justify an investigatory detention, or Terry [v. Ohio, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968)] stop, under the Fourth Amendment to the United States Constitution and article I, section 7 of our state constitution, courts have applied the totality of the circumstances test, rather than the Aguilar-Spinelli[1] test. See Illinois v. Gates, 462 U.S. 213, 103 S. Ct. 2317, 76 L. Ed. 2d 527 (1983); [State v.] Randall, 73 Wn. App. [225,] 228-29 [868 P.2d 207 (1994)]. As such, "[w]ith the Supreme Court's adoption of the 'totality of the circumstances' approach to probable cause in Illinois v. Gates, the veracity element does not have the independent significance it once had." 2 Wayne R. LaFave, Search and Seizure: A Treatise on the Fourth Amendment § 3.4(a), at 223 (3d ed. 1996) (footnote omitted). In fact, a reasonable suspicion can arise from information that is less reliable than that required to establish probable cause. Alabama v. White, 496 U.S. 325, 330, 110 S. Ct. 2412, 110 L. Ed. 2d 301 (1990).

Specifically, "[t]he reasonableness of the officer's suspicion is determined by the totality of the circumstances known to the officer at the inception of the stop." State v. Rowe, 63 Wn. App. 750, 753, 822 P.2d 290 (1991). The totality of the circumstances test allows the court and police officers to consider several factors when deciding whether a Terry stop based on an informant's tip is allowable, such as the nature of the crime, the officer's experience, and whether the officer's own observations corroborate information from the informant. Kennedy, 107 Wn.2d at 8; State v. Sieler, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980); State v. Lesnick, 84 Wn.2d 940, 944, 530 P.2d 243 (1975). Moreover, "the determination of reasonable suspicion must be based on commonsense judgments and inferences about human behavior." Illinois v. Wardlow, 528 U.S. 119, 125, 120 S. Ct. 673, 145 L. Ed. 2d 570 (2000).

As we stated in Randall,

> "Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors—quantity and

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

> quality—are considered in the 'totality of the circumstances—the whole picture,' United States v. Cortez, 449 U.S. 411, 417[, 66 L. Ed. 2. 621, 101 S. Ct. 690] (1981), that must be taken into account when evaluating whether there is reasonable suspicion."

73 Wn. App. at 229 (alteration in original) (quoting Alabama v. White, 496 U.S. at 330).

Moreover,

> [N]o single rule can be fashioned to meet every conceivable confrontation between the police and citizen. Evaluating the reasonableness of the police action and the extent of the intrusion, each case must be considered in light of the particular circumstances facing the law enforcement officer.

Lesnick, 84 Wn.2d at 944.

It is well established that, "[i]n allowing such detentions, Terry accepts the risk that officers may stop innocent people." Wardlow, 528 U.S. at 126. However, despite this risk, "[t]he courts have repeatedly encouraged law enforcement officers to investigate suspicious situations." State v. Mercer, 45 Wn. App. 769, 775, 727 P.2d 676 (1986).

Furthermore, it is clear that an officer's reasonable suspicion may be based on information supplied by an informant. Kennedy, 107 Wn.2d at 7-8. But "[a]n informant's tip cannot constitutionally provide police with such a suspicion unless it possesses sufficient 'indicia of reliability.'" Sieler, 95 Wn.2d at 47 (quoting Adams v. Williams, 407 U.S. 143, 147, 92 S. Ct. 1921, 32 L. Ed. 2d 612 (1972)). When deciding whether this "indicia of reliability" exists, the courts will generally consider several factors, primarily (1) whether the informant is reliable, (2) whether the information was obtained in a reliable fashion, and (3) whether the officers can corroborate any details of the informant's tip. Sieler, 95 Wn.2d at 74; Lesnick, 84 Wn.2d at 944.

State v. Lee, 147 Wn. App. 912, 916-18, 199 P.3d 445 (2008).

An informant's tip, when coupled with the corroborating observations of

police officers, can be sufficient to justify a temporary detention. Marcum, 149 Wn. App. at 905.

> Indeed, a straightforward application of Kennedy itself mandates this conclusion. In Kennedy, there was a tip by a confidential informant that the defendant "regularly purchased marijuana" from a certain residence, and that he drove a car registered to a certain owner. 107 Wn.2d at 3. The informant providing the information had been working with the police for several months, "was reliable," and had provided information leading to the "issuance of a warrant and subsequent conviction." Kennedy, 107 Wn.2d at 8. This *alone* "satisfie[d] the 'indicia of reliability' test set forth in Adams, Sieler, and Lesnick. Kennedy, 107 Wn.2d at 8. "[*I*]*n addition*," the informant's tip was corroborated by the informant's description of the defendant's car and "neighbors' complaints about the frequent foot traffic" around the residence. Kennedy, 107 Wn.2d at 8 (emphasis added).

Marcum, 149 Wn. App. at 905.

Moreover, an informant's motive to inform is a relevant factor in the totality of the circumstances inquiry.

> [O]ur Supreme Court has held, in circumstances of even greater uncertainty than are present here, that a confidential informant's motive for providing the police with truthful information—the desire to avoid criminal consequences—is sufficient to support a finding that the informant is reliable. See State v. Bean, 89 Wn.2d 467, 471, 572 P.2d 1102 (1978) ("[b]ecause of the strong motive [the informant] had to be accurate in the information he provided the officers [he] qualifies as a reliable informant" where "previously furnished details concerning" the defendant had been verified). Here, as in Bean, the informant's motive supported the conclusion that he was reliable.

Marcum, 149 Wn. App. at 908 (footnote omitted).

Finally, "the level of articulable suspicion required for a car stop is no greater than required for a pedestrian stop." Kennedy, 107 Wn.2d at 6.

Michaels is just plain wrong when he contends that the police needed

probable cause to stop his car and detain him. The trial court wisely saw the error in the argument advanced.

The trial court's findings of fact, viewed in the light of the applicable law, correctly established that the police had a lawful basis to stop and detain Michaels. The findings set forth the facts known to the officers and the officers' basis for concluding that the informant had likely provided reliable information. The search was conducted lawfully. The motion to suppress was correctly denied.

III

Michaels next argues that he was the victim of a pretext stop and that, accordingly, his motion to suppress should have been granted. Again, he is wrong.

Initially, we note that the concept of a "pretext stop" is not an element of Fourth Amendment jurisprudence. Because Fourth Amendment reasonableness is predominantly an objective inquiry, the relevant concern is

> whether "the circumstances, viewed objectively, justify [the challenged] action." Scott v. United States, 436 U.S. 128, 138, 98 S. Ct. 1717, 56 L. Ed. 2d 168 (1978). If so, that action was reasonable "*whatever* the subjective intent" motivating the relevant officials. Whren v. United States, 517 U.S. 806, 814, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996). This approach recognizes that the Fourth Amendment regulates conduct rather than thoughts.

Ashcroft v. al-Kidd, ____ U.S. ____, 131 S. Ct. 2074, 2080, 179 L. Ed. 2d 1149 (2011).

In Whren, the Supreme Court "held that we would not look behind an

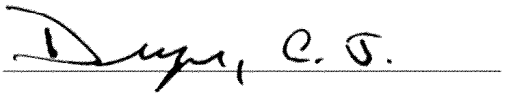
objectively reasonable traffic stop to determine whether racial profiling or a desire to investigate other potential crimes was the real motive." Ashcroft, 131 S. Ct. at 2082. Thus, there is no such thing as a "pretext stop" in Fourth Amendment parlance.

However, a "pretext stop" may violate article I, section 7 of our State's Constitution. State v. Ladson, 138 Wn.2d 343, 979 P.2d 833 (1999). Such a situation can arise where the police use traffic code enforcement as a "pretext" to stop a motorist while secretly harboring some other motivation for the stop. This is not such a case.

Here, the trial court found that, "[t]he sole reason for the traffic stop was the investigation of [Michaels'] drug activity." CP at 33 (Finding of Fact 8). Indeed, the police never claimed there to be any other motivation for the stop.

Michaels' claim to the contrary is frivolous.[2] There was no error.

Affirmed.



We concur:

[2] Similarly baseless is Michaels' apparent contention that police can *only* stop a vehicle if they are enforcing the traffic code: "[T]he decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred." Br. of Appellant at 3 (emphasis omitted). To the extent that Michaels is contending that police may stop a vehicle to enforce traffic laws, but not to enforce other laws, the argument is too silly to warrant further discussion. Cf. Marcum, 149 Wn. App. 894 (lawful vehicle stop of drug dealer in absence of traffic code enforcement).

Leach, A.C.J. Grau, J.