

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON  
DIVISION ONE

STATE OF WASHINGTON,	)	No. 66036-5-I
	)	
Respondent,	)	
	)	
v.	)	UNPUBLISHED OPINION
	)	
I.T.,	)	
DOB 07/25/93,	)	
	)	
Appellant.	)	FILED: September 19, 2011

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Schindler, J. — I.T. appeals his adjudication as a juvenile for misdemeanor violation of a no-contact order. I.T. contends the court erred in ruling that the police had reasonable suspicion to conduct an investigatory stop. We affirm.

FACTS

On the afternoon of July 25, 2010, a driver called 911. The driver identified himself by name and provided his telephone number. The driver told the 911 operator that a person driving a black Acura with Washington license plate number 548SPG was driving erratically on Interstate 5 (I-5). The driver reported that the black Acura was speeding, swerving in and out of traffic lanes, and had possibly hit another vehicle. The driver said the car exited the freeway heading south on Military Road.

Kent Police Officer Jason Panuccio and Officer Daniel Butenschoen responded

to the 911 call. A Department of Licensing (DOL) inquiry showed that a black Acura with the license plate number reported by the 911 caller had recently been sold to I.T. According to the DOL records, I.T.'s address was located in the area where the caller reported that the vehicle left the freeway.

Less than ten minutes after receiving the 911 report, the officers turned onto the street where I.T. lived and observed the driver of the black Acura driving in reverse down the street in an "erratic" and "peculiar" manner. After driving in reverse for several feet, the driver of the Acura "seemed to notice the officers" and drove forward into the parking lot of an apartment complex.

The officers activated the emergency lights of the patrol car and parked behind the Acura. The officers ordered the driver, later identified as I.T., to step out of the car. When he did so, a young female who was sitting in the front passenger seat also got out of the car and walked into the apartment complex office. The officers did not observe any damage to the body of the car.

The officers told I.T. about the 911 report. I.T. said he knew nothing about the incident reported by the 911 caller. When the officers asked for I.T.'s identification, he could not locate his license but identified himself by name. I.T.'s father, who was standing on the parking lot curb at the apartment complex, confirmed that the driver was I.T.

When the officers ran a check on I.T.'s name, they learned a protection order entered in June 2010 prohibited I.T. from having contact with Mary J. Estoque. I.T. denied that the young woman who got out of the car was Estoque. But I.T.'s father said

the passenger was Estoque. The young woman who got out I.T.'s car admitted that she was Estoque, that she had been in the car, and confirmed that the protection order was in effect.

The State charged I.T. with misdemeanor violation of the no-contact order. The court denied I.T.'s motion to suppress.<sup>1</sup> The court rejected I.T.'s argument that the investigatory detention of I.T. was not supported by reasonable suspicion. Conclusion of Law III states, in pertinent part:

Officers Panuccio and Butenschoen had the requisite reasonable suspicion to temporarily detain [I.T.] for investigatory purposes, pursuant to Terry and its Washington progeny. The fact that the citizen report indicated a black Acura with license plates 548SPG, and that this report matched-up to current DOL records of the same vehicle, registered to an owner living in the same area where the report was made—and the fact that the officers observed this same vehicle driving in reverse down a residential street—provided the officers with sufficient corroborating information to order [I.T.] out of the vehicle.

The juvenile court found I.T. guilty of misdemeanor violation of the no-contact order.

### ANALYSIS

I.T. challenges denial of his motion to suppress. I.T. contends that the information provided by the 911 caller did not possess sufficient indicia of reliability to allow the police officers to stop his vehicle.

We review the findings of fact to which error has been assigned to determine whether substantial evidence in the record supports the findings and, in turn, whether

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<sup>1</sup> The court admitted the computer aided dispatch (CAD) report into evidence as an exhibit at the CrR 3.6 hearing. The CAD report states the name and telephone number of the citizen-witness who called 911. However, the record is unclear as to whether the police officers knew that this information was provided. Accordingly, the court's findings refer to an "anonymous caller."

those findings support the conclusions of law. State v. Mendez, 137 Wn.2d 208, 214, 970 P.2d 722 (1999), overruled on other grounds by Brendlin v. California, 551 U.S. 249, 127 S. Ct. 2400, 168 L. Ed. 2d 132 (2007); State v. Ross, 106 Wn. App. 876, 880, 26 P.3d 298 (2001). Unchallenged findings are verities on appeal. State v. Hill, 123 Wn.2d 641, 644, 870 P.2d 313 (1994). We review conclusions of law de novo. Mendez, 137 Wn.2d at 214.<sup>2</sup>

An investigatory stop must be supported by reasonable suspicion of criminal activity based on objective, articulable facts. Terry v. Ohio, 392 U.S. 1, 21, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968); State v. Walker, 66 Wn. App. 622, 626, 834 P.2d 41 (1992). “If the initial stop was unlawful, the subsequent search and fruits of that search are inadmissible.” State v. Kennedy, 107 Wn.2d 1, 4, 726 P.2d 445 (1986) (citing Wong Sun v. United States, 371 U.S. 471, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963)).

A report of criminal activity from a citizen-witness may provide reasonable suspicion to justify an investigatory detention. State v. Lee, 147 Wn. App. 912, 918-19, 199 P.3d 445 (2008); State v. Sieler, 95 Wn.2d 43, 47, 621 P.2d 1272 (1980). In contrast to tips provided by paid informants, police officers may presume that citizen-witness reports are credible. Lee, 147 Wn. App. at 919; State v. Wakeley, 29 Wn. App. 238, 241, 628 P.2d 835 (1981).<sup>3</sup>

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<sup>2</sup> In an assignment of error, I.T. asserts that to the extent the challenged Conclusion of Law III contains findings of fact, those findings are not supported by substantial evidence. However, because I.T. fails to support this assignment of error with argument or citation to the record, we do not address it. RAP 10.3(a)(6).

<sup>3</sup> A citizen-witness's credibility is enhanced when he or she is an eyewitness to the events described. State v. Vandover, 63 Wn. App. 754, 759, 822 P.2d 784 (1992); United States v. Colon, 111 F. Supp. 2d 439, 443 (S.D.N.Y. 2000) (“crystal clear that the caller had firsthand knowledge of the alleged criminal activity”), rev'd on other grounds, 250 F.3d 130 (2nd Cir. 2001); Lee, 147 Wn. App. at 918.

I.T. contends that where an informant's tip forms the basis for a Terry stop, it must satisfy the two-part reliability inquiry derived from Aguilar v. 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). But in Lee, we addressed the legal standard for determining whether police suspicion resulting from an informant's tip is sufficiently reasonable to support a Terry stop and determined that the "totality of the circumstances" standard, not the Aguilar-Spinelli test, applies. Lee, 147 Wn. App. at 916-17; State v. Marcum, 149 Wn. App. 894, 904-05, 205 P.3d 969 (2009).

Under a totality of the circumstances standard, "[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." Lee, 147 Wn. App. at 917 (alteration in original) (quoting State v. Rowe, 63 Wn. App. 750, 753, 822 P.2d 290 (1991)). In order to provide the reasonable suspicion necessary to justify an investigatory stop, the circumstances of the informant's tip must provide "indicia of reliability." Marcum, 149 Wn. App. at 903-04.

An accurate description of a vehicle together with a conclusory statement of criminal activity does not establish the indicia of reliability. Sieler, 95 Wn.2d at 47. In deciding whether this indicia of reliability exists, the court considers "(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." Lee, 147 Wn. App. at 918 (citing Sieler, 95 Wn.2d at 47).

I.T. claims the 911 caller's tip did not provide the necessary indicia of reliability

because the police officers were only able to corroborate the fact that the license plate number provided by the 911 caller was registered to a black Acura. We disagree.

The 911 caller reported the erratic driving of the driver of a black Acura who was speeding, swerving across lanes, and had possibly hit another vehicle. In addition to a detailed description of the reckless driving the 911 caller observed, he provided a description of the vehicle, its license plate number, location, and direction of travel. The police verified that the license was registered to a black Acura. The police officers also confirmed through DOL records that the registered owner's address was close to where the vehicle left the freeway. And importantly, before stopping the driver of the Acura, the police officers observed the driver reversing down a residential street in an erratic manner. The officers' observation was consistent with and corroborated the 911 caller's report of erratic driving on I-5 that occurred just minutes beforehand. Under the totality of the circumstances, the police reasonable suspicion supported the Terry stop, and the juvenile court did not err in denying the motion to suppress.

We affirm.

WE CONCUR:

Leach, a.c.j.

Schiveller, J.

Becker, J.

