IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

STATE OF WASHINGTON,	)	**No. 28266-0-III**
	)	
Respondent,	)	
	)	
v.	)	**Division Three**
	)	
STEPHEN CHARLES BRANDMIRE,	)	
	)	
Appellant.	)	**UNPUBLISHED OPINION**

Korsmo, J. — Appellant Stephen Brandmire challenges his conviction for possession of methamphetamine, arguing that the informant's tip lacked reliability. We disagree and affirm the conviction.

FACTS

Drug and alcohol counselor Paul Jepson pulled into a gas station in Grandview to refuel his vehicle. While doing so, he noticed a sport utility vehicle (SUV) occupied by Stephen Brandmire sitting at a nearby pump. Brandmire was seated in the driver's seat. The car remained parked at the pump; Brandmire did not get out while Jepson was present. Over the next five minutes, Jepson repeatedly heard and saw Brandmire make

snorting noises after bringing his hands to his nose. Brandmire would then check his nostrils in his rearview mirror.

Jepson drove away while Brandmire remained parked at the gas pump. Jepson called 911, identified himself, and reported his observations. Grandview Police Department Officer Kevin Glasenapp was dispatched to the gas station. En route, the officer telephoned Jepson and discussed the situation.

Officer Glasenapp arrived at the gas station two to three minutes after being dispatched. The SUV was still parked at the pump. The officer pulled in behind the SUV. He saw Brandmire lower his arm and shift his body forward. The officer got out of his car and approached Brandmire's vehicle on the passenger side. Mr. Brandmire did not open his window or otherwise respond to the officer, so the officer opened the door and conversed with him. Officer Glasenapp explained the report that brought about the contact and also asked what Mr. Brandmire had hidden under the front seat. Mr. Brandmire denied any wrongdoing and indicated that he was just putting his shoes on in case the officer had him get out of the car.

Officer Glasenapp believed that Mr. Brandmire's speech and actions indicated he was under the influence of drugs. A second officer reported that Mr. Brandmire's pupils were not reacting to light. Officer Glasenapp then telephoned Mr. Jepson a second time

to obtain more information about Jepson's background and knowledge regarding drugs.

Officer Glasenapp used this information to obtain a search warrant limited to the driver's area of the SUV. Mr. Brandmire was placed in a patrol car while the warrant was obtained. The search uncovered marijuana in a cigarette carton. A second search warrant was issued for the entire vehicle. The second search revealed methamphetamine, a glass pipe, and two prescription pills.

A single charge of possession of methamphetamine was filed. Mr. Brandmire moved to suppress the evidence. The trial court denied the motion, reasoning that Mr. Jepson's report provided articulable suspicion to seize Mr. Brandmire, and that it was thereafter reasonable to immobilize him and the SUV while awaiting the search warrants.

Mr. Brandmire was then convicted at a stipulated facts trial. He then timely appealed to this court.

ANALYSIS

This appeal presents two challenges.[1] Mr. Brandmire first argues that the officers had no basis to seize him at the gas station. He also argues the search warrants lacked probable cause.

Seizure. Mr. Brandmire argues that the officer lacked articulable suspicion of

[1] Mr. Brandmire also filed a Statement of Additional Grounds. It raises claims outside the scope of the record presented in this appeal and/or issues that are foreclosed by the stipulated facts presented at trial. We will not further discuss it.

wrongdoing to seize him. The evidence supports the trial court's view of the situation.

An officer may seize a person to investigate possible criminal activity if the officer has an articulable suspicion, based on objective facts, that a person has or is about to commit a crime. *Terry v. Ohio*, 392 U.S. 1, 21, 20 L. Ed. 2d 889, 88 S. Ct. 1868 (1968); *State v. Kennedy*, 107 Wn.2d 1, 6, 726 P.2d 445 (1986). An officer also has the ability to maintain his personal safety and can frisk a subject or conduct a brief search for weapons if there is an articulable reason for believing they may be present. *Id.*

Reasonable suspicion for a stop may be supplied by a citizen's report of criminal activity to an officer. *State v. Lee*, 147 Wn. App. 912, 918, 199 P.3d 445 (2008), *review denied*, 166 Wn.2d 1016 (2009). Courts consider the totality of the circumstances surrounding the report, with particular emphasis on the reliability of the informant, whether the information was obtained in a reliable manner, and whether officers can corroborate any details. *Id*. at 917-918. An eyewitness account enhances credibility. *Id*. at 918 (citing *State v. Vandover*, 63 Wn. App. 754, 759, 822 P.2d 784, *review denied*, 120 Wn.2d 1018 (1992)).

Mr. Jepson's report certainly supplied articulable suspicion of wrongdoing by Mr. Brandmire. His car had remained parked at a gas pump, with no apparent interest in refueling, while Mr. Brandmire repeatedly snorted something into his nose and then

checked his nostrils in the mirror. Officers knew that Mr. Jepson was a drug and alcohol counselor whom they could reasonably believe would recognize drug usage.

When officers arrived, they confirmed Mr. Jepson's report about the SUV's location and identity, and saw that the occupant was still parked without being engaged in refueling. Mr. Brandmire then made a movement that suggested he was hiding something under his seat. These facts all suggested drug use and/or impaired driving, as well as the probability that more drugs were hidden in the SUV. Officer Glasenapp had an articulable suspicion to detain Mr. Brandmire.[2] The trial court correctly determined that the seizure was lawful.

After contacting Mr. Brandmire and observing his speech and behavior, as well receiving the report from the second officer that his eyes were not responsive to light, the suspicion had ripened and Officer Glasenapp then had probable cause to arrest Mr. Brandmire for possession of a controlled substance and physical control of an automobile while under the influence.

The trial court correctly denied the motion to suppress based on the seizure at the gas station.

Search Warrants. Mr. Brandmire also argues that the search warrants lacked

[2] The parties and the findings do not identify when Mr. Brandmire was seized by the police. For our purposes, we will treat the opening of the passenger door by Officer Glasenapp as the moment of seizure.

probable cause. We again disagree.

Probable cause to issue a warrant is established if the supporting affidavit sets forth "facts sufficient for a reasonable person to conclude the defendant probably is involved in criminal activity." *State v. Huft*, 106 Wn.2d 206, 209, 720 P.2d 838 (1986). The affidavit must be tested in a commonsense fashion rather than hypertechnically. *State v. Partin*, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977). The existence of probable cause is a legal question which a reviewing court considers *de novo*. *State v. Chamberlin*, 161 Wn.2d 30, 40, 162 P.3d 389 (2007). However, "[g]reat deference is accorded the issuing magistrate's determination of probable cause." *State v. Cord*, 103 Wn.2d 361, 366, 693 P.2d 81 (1985). Even if the propriety of issuing the warrant were debatable, the deference due the magistrate's decision would tip the balance in favor of upholding the warrant. *State v. Jackson*, 102 Wn.2d 432, 446, 688 P.2d 136 (1984). In light of the deference owed the magistrate's decision, the proper question on review is whether the magistrate *could* draw the connection, not whether she *should* do so.

Washington continues to apply the former *Aguilar-Spinelli*[3] standards to assess the adequacy of a search warrant affidavit. *Jackson*, 102 Wn.2d at 446.[4] As applied in

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

[4] Federal courts now apply a totality of the circumstances test in evaluating the sufficiency of a search warrant. *Illinois v. Gates*, 462 U.S. 213, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983).

Washington, probable cause based upon an informant's information requires that an affidavit establish both the informant's reliability and basis of knowledge. *Id*. at 443. Where one or both of those factors is weak, independent police investigation can supply corroboration. *Id*. at 445. A named citizen informant is presumptively reliable. *State v. Wible*, 113 Wn. App. 18, 24, 51 P.3d 830 (2002); *State v. Northness*, 20 Wn. App. 551, 557-558, 582 P.2d 546 (1978).

Mr. Brandmire focuses primarily on the sufficiency of the information supplied to the magistrate rather than on the reliability of the informant or his basis of knowledge. The latter two issues are quite clear. As a named citizen who described his firsthand experiences, Mr. Jepson was presumptively reliable and his basis of knowledge was explained to the magistrate. The remaining question is whether the information established probable cause.

Mr. Brandmire argues that Mr. Jepson's observations only established innocent behavior—he was parked at a service station blowing his nose. Thus, he argues, probable cause was lacking because the evidence did not establish criminal activity. *State v. Neth*, 165 Wn.2d 177, 196 P.3d 658 (2008). We believe the evidence is not so limited.

Jepson's information established to the magistrate that it was drug use that was taking place. Mr. Brandmire put his hands to his nose and ingested, rather than expelled,

and there was no evidence of the use of a handkerchief or tissue. The SUV was also parked at a fuel pump without any refueling taking place. Finally, the officer's observations of both an attempt to hide something under the seat and apparent drug intoxication supported Mr. Jepson's description of the activities. There was ample evidence to suggest that Mr. Brandmire was using drugs in his car and it was reasonable for a search warrant to issue in order to discover what it was that he had placed under his car seat.

Sufficient evidence of criminal activity existed to support the magistrate's discretionary decisions to issue the two search warrants. The conviction is affirmed.

A majority of the panel has determined 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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Korsmo, J.

WE CONCUR:

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Kulik, C.J.

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Siddoway, J.