

NOTICE

Decision filed 04/05/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 5-10-0264

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff,)	Richland County.
)	
v.)	No. 10-DT-26
)	
DAVID W. STEWART,)	
)	
Defendant.)	
)	Honorable
(David W. Stewart, Petitioner-Appellant, v.)	Christopher L. Weber,
The State of Illinois, Respondent-Appellee).)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Goldenhersh and Wexstten concurred in the judgment.

RULE 23 ORDER

Held: A petition to rescind a statutory summary suspension because the vehicle stop was not based on a reasonable suspicion of criminal activity was properly denied where the vehicle stop was based on a 9-1-1 call from an informant who was following the petitioner's vehicle and reporting his erratic driving as well as a description of the vehicle, its license plate number, and its location.

David W. Stewart, the petitioner, appeals from the denial by the circuit court of Richland County of his petition to rescind the statutory summary suspension of his driver's license following his arrest for driving under the influence of alcohol. He argues on appeal that the suspension was unlawful because the initial stop of his vehicle was not a valid investigatory stop where it was based on an anonymous tip of erratic driving that was not independently corroborated by the arresting officer prior to making the stop. The petitioner argues that the officer never corroborated the tip by either observing for himself the petitioner's erratic driving or determining the reliability or credibility of the anonymous

informant. He argues that there was no other suspicious circumstance or corroborating evidence to justify the stop other than the anonymous tip. The propriety of an underlying stop may always be considered at a statutory summary suspension hearing. *People v. Safiran*, 229 Ill. App. 3d 639, 650 (1992).

At the hearing on the petitioner's petition the following evidence was adduced. We are cognizant that only facts known to the officer prior to the stop are relevant to a determination of the propriety of the stop, and we therefore set forth only those pertinent facts. See *People v. Moraca*, 124 Ill. App. 3d 561, 567 (1984) (only corroborative facts known to the officer prior to the stop should justify a *Terry* stop (*Terry v. Ohio*, 392 U.S. 1 (1968))).

The arresting officer, Larry Knowlton, testified that on the afternoon of April 6, 2010, he was on routine patrol for the City of Olney in full uniform and in a marked police car. At approximately 12:40 that afternoon he received a report from the police dispatcher, whose name he could not recall, regarding a red Ford vehicle that was driving erratically. The dispatcher had received a call that there was an erratic driver on the road. The vehicle was reportedly "all over the road" and was described as a red Ford pickup with a license plate of 18CUPS.¹

The informant was following the suspect vehicle, giving the dispatcher updated reports on the vehicle's location and conduct. The informant followed the vehicle for a

¹We are aware that the traffic citation issued to the defendant indicates that his vehicle's license plate number was 18CUBS, not 18CUPS. Nevertheless, this discrepancy was never brought to the attention of the circuit court either in evidence or in argument, and the traffic citation was not admitted into evidence at the hearing. Indeed, it appears the discrepancy may be a result of a transcription error by the court reporter. In any event, the discrepancy is so minor as to be insignificant.

significant distance. Based on this information, Knowlton turned west onto Cherry Street looking for the red Ford vehicle.

Knowlton observed a red Ford vehicle either parked or moving very slowly on the south side of Cherry Street. Knowlton got close enough that he could tell that the vehicle was actually moving, though very slowly. The vehicle was hugging the curb and going well under the speed limit. Knowlton identified the vehicle as the red Ford pickup with license number 18CUPS. He then pulled in front of the vehicle, activating his lights.

The informants stopped and waited while Knowlton made the stop and arrest. They were thereafter identified and interviewed. However, at the time Knowlton made the stop he did not know the identity of the informants.

This court will not reverse a circuit court's judgment on a petition to rescind a statutory summary suspension unless it is against the manifest weight of the evidence. *People v. Keithley*, 399 Ill. App. 3d 850, 852 (2010). Initially, the petitioner has the burden of proving by a preponderance of the evidence a *prima facie* case for a rescission. *Keithley*, 399 Ill. App. 3d at 852. If the petitioner establishes a *prima facie* case, the burden then shifts to the State to present evidence justifying the suspension. *Keithley*, 399 Ill. App. 3d at 852.

An informant's tip received by telephone may form the basis of a lawful investigatory stop if the tip is reliable and the tip allows the officer to reasonably infer that a person was involved in criminal activity. *People v. Ewing*, 377 Ill. App. 3d 585, 595 (2007). The factors to consider include (1) the quantity and detail of the information so that the officer may be certain that the vehicle stopped is the one identified by the caller, (2) the time interval between the tip and the police locating the vehicle, (3) whether the tip is based on contemporaneous eyewitness observations, and (4) whether the tip has sufficient detail to permit the reasonable inference that the tipster actually witnessed what he described. *Ewing*, 377 Ill. App. 3d at 595. A tip from an eyewitness is given particularly great weight in

determining whether an officer has a reasonable suspicion to justify a stop. *People v. Shafer*, 372 Ill. App. 3d 1044, 1045 (2007). Further, informants' tips regarding possible incidents of drunk driving require less rigorous corroboration than tips concerning matters presenting less imminent danger to the public. *Shafer*, 372 Ill. App. 3d at 1053. Finally, an emergency call to police should not be viewed as an "anonymous" tip or with the skepticism applied to tips provided by confidential informants. *Shafer*, 372 Ill. App. 3d at 1054.

The circuit court found that the police officer had sufficient facts on which to form a reasonable suspicion that the petitioner was driving under the influence to justify the initial stop of the vehicle. This finding is not contrary to the manifest weight of the evidence. The tip on which the officer relied was sufficiently reliable and detailed and allowed officer Knowlton to reasonably infer that the petitioner was involved in criminal activity. The informant's tip contained enough information that Knowlton could be certain that the vehicle he stopped was the one identified by the caller: it was identified as a red Ford pickup with a license plate of 18CUPS. The time interval between the tip and the police locating the vehicle was very short, if not contemporaneous: the informant was actually following the vehicle and reporting to police at the time Knowlton stopped it. The tip was clearly based on contemporaneous eyewitness observations. While the record does not reflect that Knowlton knew the details of the informant's information, it is clear that the police dispatcher was getting information detailed enough to permit a reasonable inference that the informant was actually witnessing what he described. As we have stated, informants' tips regarding drunk driving require less rigorous corroboration than tips presenting less imminent danger to the public. *Shafer*, 372 Ill. App. 3d at 1053.

Erratic drivers are likely impaired, and those drivers present an imminent danger to other motorists. *Ewing*, 377 Ill. App. 3d at 597. A police officer should not have to wait to observe an erratic driver commit a traffic violation or obtain specific details supporting the

caller's conclusion before stopping the reported vehicle. *Ewing*, 377 Ill. App. 3d at 597.

The circuit court's denial of the petition to rescind the statutory summary suspension of the petitioner's driving privileges is not contrary to the manifest weight of the evidence. Accordingly, we affirm.

For the foregoing reasons, the judgment of the circuit court of Richland County is hereby affirmed.

Affirmed.