2011 Ill. App. (1st) 102854-u

SECOND DIVISION
Order filed on July 26, 2011
Modified upon rehearing October 11, 2011

1-10-2854

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

	)	Appeal from the
	)	Circuit Court of
PEOPLE OF THE STATE OF ILLINOIS,	)	Cook County
	)	
Plaintiff-Appellee,	)	
	)	No. 08 CR 11877
v.	)	
	)	
SELAH LEWIS,	)	Honorable
	)	Neera Lall Walsh,
Defendant-Appellant.	)	Judge Presiding.
	)	

JUSTICE CONNORS delivered the judgment of the court.

Presiding Justice Cunningham concurred and Justice Harris specially concurred in the judgment.

ORDER

> *Held* : *Terry* stop and frisk by police officer unreasonable where the State failed to prove that officer had a reasonable suspicion that defendant had committed or was about to commit a crime, or that defendant was armed and dangerous.

¶1 Following a bench trial, defendant Selah Lewis was convicted of possession of a

controlled substance and aggravated unlawful use of a weapon, and was sentenced to two concurrent terms of two years of intensive probation. Defendant appeals, alleging that (1) the two anonymous tips described by the arresting officer could not have been the basis for reasonable suspicion justifying a *Terry* stop and frisk, and thus the evidence obtained as a result of the unlawful stop and frisk should have been suppressed, and (2) the statute defining aggravated unlawful use of a weapon is unconstitutional under the second and fourteenth amendments to the United States Constitution. For the following reasons, we reverse the judgment of the trial court.

¶2 I. BACKGROUND

¶3 Defendant was arrested on June 2, 2008, and was subsequently charged with armed violence, possession of a controlled substance with intent to deliver, and aggravated unlawful use of a weapon. On August 5, 2008, defendant filed a Motion to Quash Arrest and Suppress Evidence, stating that her conduct prior to her stop was not such that would reasonably be interpreted by the officers as constituting commission of a crime, and thus all evidence obtained as a result of that stop should be suppressed.

¶4 On September 10, 2008, a hearing was held on defendant's motion to quash. Defendant called Officer Kelly McBride, a Chicago Police Department officer. Officer McBride was on duty on June 2, 2008, at approximately 5:45 p.m., with her partner Judith Cortez. They received a call over the radio that there was a "person with a gun" in the area of 3728 South Indiana, in Chicago. They proceeded to that address and approached the apartment complex. A man stuck his head out the front door and stated, "They just went out the back door, a man and a woman."

The officers then got back into their squad car and drove down the alley behind the apartment complex. Officer McBride testified that once in the alley, they saw defendant bent over. Officer McBride and her partner got out of the car and told defendant to stop. Officer McBride did a protective pat-down of defendant, whereupon she felt a "bulge" in defendant's pants by her pocket. As soon as she touched the bulge, defendant stated, "That is not mine, it is my boyfriend's." Officer McBride retrieved a gun from defendant's pocket and put her in custody. The officers eventually performed a custodial search of defendant and found a controlled substance.

¶5 On cross-examination, Officer McBride stated that the call of a person with a gun came over the radio stating that "there was a man and a woman with a gun" at the address in question. As they were approaching the apartment complex, a black man stuck his out of the front door and said "the guy and the girl with the gun went out the back door, and he pointed in the direction of the alley behind the apartment complex." When they got in the alley, they saw defendant bent over off to the east side. She was facing the apartment complex, so they could see the left side of her body. They stopped the squad car a few feet from defendant and exited the vehicle. Officer McBride asked her to stop and then proceeded to do the protective pat-down. Officer McBride started the pat-down at the waistband, and when she got to the pockets, she felt a "hard large bulge that in my experience felt like a weapon." Defendant had her hands up and stated that it was not hers. Officer McBride then recovered the gun and placed defendant in custody.

¶6 On redirect examination, Officer McBride testified that defendant was the only civilian

she saw in the alley on the evening in question. Officer McBride confirmed that in her General Offense Case Report, she wrote that the man at the apartment complex stuck his head out the door and stated, "The guy and the girl just ran out the back in the alley now."

¶7 After Officer McBride's testimony, the trial judge noted that she had read the motion, listened to the testimony of Officer McBride, and weighed the credibility of the officer. She denied defendant's motion to quash, stating that there was not a single anonymous caller, but rather there was another individual who was at the location to where the anonymous caller directed the officers. That second individual then gave further information which directed the police officers to the alley, where they found defendant. The trial judge noted that the police officers conducted a pat-down of defendant based on the information that they had received, and that they subsequently found a gun and other items.

¶8 Defendant subsequently filed a motion to reconsider her motion to quash, alleging that neither the stop nor the search of defendant was justified under the Supreme Court's opinion in *Terry v. Ohio*, 982 U.S. 1 (1968). Defendant argued that pursuant to *Terry*, before an officer can conduct a carefully limited search of the outer clothing of a person, the officer must first observe unusual conduct that leads to a reasonable conclusion that criminal activity is afoot and the person may be armed and dangerous. Defendant stated that while an anonymous tip can provide the requisite suspicion to justify the investigatory stop, a stop is only justified in situations where the tip exhibits sufficient indicia of reliability. Defendant argued that there was no such indicia of reliability in this case, and that her motion to reconsider her motion to quash should be granted.

¶9 On November 13, 2008, the trial judge held a hearing on defendant's motion to reconsider. She denied the motion, finding that the anonymous phone call was not the only basis the officers had for stopping defendant. Rather, the man at the apartment complex provided further information. Specifically, the trial judge stated:

> "So, at best, two individuals had called in this incident. At worst, it was the same individual who called in the incident that is still a civilian who had no motive or bias that was brought out to call this in to the police, even though this witness was not known by either side."

¶10 A stipulated bench trial was subsequently held. The parties stipulated to Officer McBride's testimony from the hearing on defendant's motion to quash, and that the officer arrested defendant for possessing a loaded .38 Special revolver. The parties also stipulated that Officer McBride performed a custodial search of defendant and found multiple items of suspect narcotics that were sent to the Illinois State Police Crime Laboratory for testing. The parties stipulated to the testimony of Catherine Frost, a forensic scientist at the Illinois State Police Crime Lab, who analyzed five of the items submitted and determined that they contained 15.5 grams of cocaine. The defense presented no evidence, and defendant chose not to testify.

¶11 The trial judge found defendant guilty of possession of a controlled substance of one to fifteen grams; and found her guilty of aggravated unlawful use of a weapon. The trial court sentenced defendant to two concurrent years of intensive probation. Defendant now appeals.

¶12 II. ANALYSIS

¶13 On appeal, defendant contends that (1) the two vague anonymous tips described by

Officer McBride could not have formed the basis for a reasonable suspicion justifying a *Terry* stop and frisk, and that therefore the evidence obtained as a result of the stop and frisk should have been suppressed, and (2) defendant's aggravated unlawful use charge should be reversed because the statute defining that offense is unconstitutional.

¶14 Defendant argues that the trial court erroneously denied her motion to reconsider her motion to quash arrest and suppress evidence of the gun and the controlled substance that Officer McBride found on her person. "In reviewing a trial court's ruling on a motion to suppress evidence, we apply the two-part standard of review adopted by the Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996)." *People v. Johnson*, 237 Ill. 2d 81, 88 (2010). "Under this standard, we give deference to the factual findings of the trial court, and we will reject those findings only if they are against the manifest weight of the evidence." *Johnson*, 237 Ill. 2d at 88; *People v. Cosby*, 222 Ill. 2d 262, 271 (2008). "However, a reviewing court ' " 'remains free to undertake its own assessment of the facts in relations to the issues,' " ' and we review *de novo* the trial court's ultimate legal ruling as to whether suppression is warranted." *Id*. at 188-89.

¶15 On a motion to quash and suppress, the defendant bears the burden of establishing a *prima facie* case that she was doing nothing unusual to justify the intrusion of a warrantless search or seizure. *People v. Beverly*, 364 Ill. App. 3d 361, 369 (2006). If the defendant makes the required showing, the burden shifts to the State to present evidence to justify the search or seizure. *Beverly*, 364 Ill. App. 3d at 369. There appears to be no dispute that defendant made a *prima facie* case that she was doing nothing unusual to justify a warrantless search or seizure, thus obliging the State to establish its justification for detaining and patting down defendant.

The parties are also in agreement that *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny supply the legal framework for determining the validity of the detention.

¶16 The fourth amendment to the United States Constitution guarantees the "right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures." U.S. Const., amend. IV. The fundamental purpose of the fourth amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. *People v. Dilworth*, 169 Ill. 2d 195, 201 (1996). The fourth amendment, through the due process clause of the fourteenth amendment, prohibits unreasonable searches and seizures by state officers. *Dilworth*, 169 Ill. 2d at 202. "Reasonableness under the fourth amendment generally requires a warrant supported by probable cause." *Id*. (citing *Katz v. United States*, 389, U.S. 347, 357 (1989)).

¶17 "The Supreme Court recognized a limited exception to the traditional warrant requirement in *Terry v. Ohio*, 392 U.S. 1 (1968)." *Id*. In *Terry*, the United States Supreme Court held that the public interest in effective law enforcement makes it reasonable in some situations for law enforcement officers to temporarily detain and question individuals even though probable cause for an arrest is lacking. *Id*.; *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009); see also *Terry*, 392 U.S. at 22. "*Terry* authorizes a police officer to effect a limited investigatory stop where there exists a reasonable suspicion, based upon specific and articulable facts, that the person detained has committed or is about to commit a crime." *Linley*, 388 Ill. App. 3d at 749 (citing *Terry*, 392 U.S. at 21-22); 725 ILCS 5/107-14 (West 2010) (peace officer may stop any person in a public place for a reasonable period of time when the officer reasonably infers from

the circumstances that person is committing, is about to commit, or has committed an offense).

¶18 During a *Terry* stop, an officer may frisk a person for weapons where the officer "reasonably believes that he is dealing with an armed and dangerous individual." *Linley*, 388 Ill. App. 3d at 749 (citing *People v. Davis*, 352 Ill. App. 3d 576, 580 (2004)); 715 ILCS 5/108-1.01 (West 2010) (when a peace officer has stopped a person for temporary questioning pursuant to Section 107-14 of this Code and reasonably suspects that he or another is in danger of attack, he may search the person for weapons). "This reasonable belief is met if a reasonably prudent person, when faced with the circumstances that the police confronted, would have believed that his safety or the safety of others was in danger." *Davis*, 352 Ill. App. 3d at 580.

¶19 We first look at whether Officer McBride's investigatory stop was reasonable, that is, whether there existed a reasonable suspicion prior to the stop that defendant had committed or was about to commit a crime. See 725 ILCS 5/107-14 (West 2010). "Whether an investigatory stop is reasonable is determined by an objective standard, and only facts known to the officer at the time of the stop may be considered." *People v. Nitz*, 371 Ill. App. 3d 747, 751 (2007). "An investigatory stop need not be based on the officer's personal observation but may instead be based on information from members of the public." *Nitz*, 371 Ill. App. 3d at 751. "However, '[a]n informant's tip to police must bear some indicia of reliability to provide a sufficient basis for a *Terry*-type seizure.' " *Id*. (quoting *Village of Mundelein v. Thompson*, 341 Ill. App. 3d 842, 850 (2003)). "[A] reviewing court should consider the informant's veracity, reliability, and basis of knowledge." *People v. Sparks*, 315 Ill. App. 3d 786, 792 (2000). There is no rigid test for determining whether an informant's tip will support an investigatory stop. Rather, courts

consider the totality of the circumstances. *Nitz*, 371 Ill. App. 3d at 751; *Thompson*, 341 Ill. App. 3d at 850.

¶20 In the case at bar, Officer McBride received a call over the radio that there was a "person with a gun" or a "man and a woman with a gun" in the area of the apartment building in question. Officer McBride had no personal knowledge that someone was carrying a gun in the specified area. Because she was merely responding to a dispatch or call over the radio, the "State was obliged to show that whoever ordered the dispatch acted based on reliable information." *Linley*, 388 Ill. App. 3d at 751 (citing *People v. Ewing*, 377 Ill. App. 3d 585, 593-94 (2007). Here, the State failed to meet that burden. It offered no evidence whatsoever concerning the source or nature of the information underlying the dispatch. See *Linley*, 388 Ill. App. 3d at 751. It is likely that the information came from a civilian; however, his or her identity and the circumstances under which the information was given are unknown.

¶21 In *Linley*, a similar fact pattern was presented. An officer was dispatched to a certain area to investigate a report of shots fired in the vicinity of an establishment. When the officer got to the establishment, he observed the defendant and another person standing outside of a running truck, talking to someone inside the truck. The officer testified that it appeared that defendant was going to run, so the officer approached defendant quickly and patted him down, finding cocaine in one pocket. The trial court denied defendant's motion to quash and suppress evidence, but the appellate court reversed. The appellate court noted that an anonymous tip must provide "some indicia of reliability." *Linley*, 388 Ill. App. 3d at 750. The court found that the State failed to meet that burden because it offered no evidence whatsoever regarding the

broadcast that dispatched the officer to the scene. The court determined that even if it was a civilian who gave the tip, the identity and circumstances under which the information was given remained unknown. Specifically, the court in *Linley* stated:

> "We do not know whether the informant was a concerned citizen or a member of the criminal milieu; whether the report was made in person or by telephone; whether the informant identified himself or herself; whether the informant had a history of providing reliable information or a reputation for giving false reports; whether the report, if made by telephone, was made to an emergency telephone number; whether the informant personally heard gunshots or was relaying secondhand information; and whether the report was contemporaneous with the gunfire." *Linley*, 388 Ill. App. 3d at 751-52.

¶22 Likewise in the case at bar, the State offered no evidence whatsoever concerning the source of the call over the radio. Even if we are to assume it was a civilian, we do not know anything about that civilian's reliability: whether he or she was a concerned citizen or a member of the criminal milieu, whether he or she had a history of providing false or reliable reports, and whether he or she personally saw a person with a gun or was just relaying information. Thus, the mere fact that Officer McBride was dispatched to investigate a report of a person with a gun "carries little or no weight in the application of the totality-of-the-circumstances test." *Id*. at 752.

¶23 The question now becomes whether what Officer McBride personally observed and other facts personally known to Officer McBride gave rise to: (1) a reasonable suspicion that

defendant had committed or was about to commit a crime (justifying an investigatory stop), and (2) a reasonable inference that defendant was armed and dangerous (justifying a limited search for weapons). *Id.*

¶24 The record indicates that once Officer McBride arrived at the apartment complex in question, a man (who we will interchangeably refer to as the "citizen-informant" or the "informant") stuck his head out of the front door and communicated with the officers. What exactly this informant said is not clear from the contradictory testimony in the record. On direct examination, Officer McBride testified that the informant stated, "They just went out the back door, a man and a woman." On cross-examination, Officer McBride testified that the informant stated, "the guy and the girl with the gun went out the back door." In her General Offense Case Report, generated after defendant's arrest, Officer McBride reported that the informant stated, "The guy and the girl just ran out the back in the alley now." Based on this testimony, it is unclear to us whether the informant stated whether the man and woman had a gun.

¶25 However, we find that even if the informant definitively stated the man and the woman had a gun, we would still find that the informant was not reliable. Although the officers saw the informant's face, they did not talk to him, they did not ask how he knew the information he provided, they did not ask what the suspects looked like, and they did not ask the informant to identify himself. Accordingly, we find that the informant was essentially an anonymous informant for purposes of our analysis.

¶26 In *Florida v. J.L.*, the United States Supreme Court held that an anonymous tip reporting that a man wearing a plaid shirt and standing at a bus stop was carrying a gun, was insufficient,

without further indicia of reliability, to justify a *Terry* stop. There, officers received an anonymous phone tip stating that a young black male standing at a particular bus stop and wearing a plain shirt was carrying a gun. The majority pointed out:

> "The anonymous call *** provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting [defendant] of engaging in unlawful conduct: The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search." *J.L.*, 529 U.S. at 271.

¶27 The Court found that an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity, although there are situations in which an anonymous tip, suitably corroborated, exhibits " 'sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.' " *J.L.*, 529 U.S. at 270 (quoting *Alabama v. White*, 496 U.S. 325, 327 (1990)). The Court noted that an accurate description of the subject's readily observable location and appearance is reliable in the limited sense that police correctly identify the person whom the tipster means to accuse, but such a tip does not show that the tipster has knowledge of concealed criminal activity just because the tipster says the subject is carrying a gun. The Court stated: "The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." *J.L.*, 529 U.S. at 272.

¶28 In the case at bar, far fewer details were given about the description of the suspects than

were given in the tip that the Supreme Court found insufficient in *J.L.* In *J.L.*, the anonymous tip gave a detailed description of where the defendant was standing and what he was wearing, and stated that he had a gun on his person. The Court found that the tip was not reliable enough to justify a *Terry* stop. Here, the informant stated, at best, that a man and a woman had gone towards the back of the apartment complex with a gun. No description of the man and the woman was given, and no specific location was given as to where the man and the woman went. Furthermore, only a woman was in the alley when the police officers went to the back of the apartment complex. Accordingly, we are not confident that defendant, the woman apprehended in the alley, was the same woman that the informant had "identified" to the police officers. The fact that a gun was indeed found on defendant's person after her detention, does not make the informant's tip more reliable or the officer's suspicion just prior to the stop more reasonable.

¶29 We find the analysis in *Village of Mundelein v. Minx*, 352 Ill. App. 3d 216 (2004), to be helpful as a contrast to the case at bar. In *Minx*, an individual contacted the Mundelein police department on December 30, 2002, and said that the defendant's car, a Mercury Marquis, with registration number 3836, was "driving recklessly." The caller, who was driving behind the defendant's car, was willing to sign a complaint. An officer stopped the defendant and the defendant failed all the field sobriety tests. The defendant was arrested for DUI. The *Minx* court recognized that while a citizen-informant has a greater indicia of reliability than the typical criminal informant, a limited list of factors add to the indicia of reliability of that citizen-informant. Such factors include whether the citizen-informant identified himself, offered to sign a complaint, and witnessed the alleged offense, or whether the information was independently

corroborated. *Minx*, 352 Ill. App. 3d at 221. The court found that the citizen-informant in that case was reliable because he witnessed a crime, reported the crime, did not conceal his identify, and indicated he would sign a complaint. *Id*.

¶30 Here, the citizen-informant did not have an indicia of reliability because he did not identify himself, did not offer to sign a complaint, did not claim to have witnessed the alleged offense, and his statement was not subsequently corroborated. He stated that a man and a woman went out the back of the apartment, but only a woman was seen in the alley. Moreover, the informant gave no specific facts about the man and the woman with the alleged gun. Accordingly, the informant was not reliable.

¶31 In *People v. Kline*, 355 Ill. App. 3d 770 (2005), an officer received a tip from Crime Stoppers regarding alleged cannabis possession at Moline High School. The anonymous tip stated that the defendant was in possession of approximately half an ounce of cannabis, and was carrying the cannabis in his left front pants pocket. The tip additionally stated that the cannabis was viewed just prior to the tip's receipt by Crime Stoppers. *Kline*, 355 Ill. App. 3d at 771. An officer went to the school and found the cannabis in the defendant's left front pants pocket. Kline moved to suppress the evidence before trial, and the trial court granted the motion. On appeal, the appellate court noted that in determining whether the substance of an anonymous tip may provide reasonable suspicion, courts will consider the details of the tip, whether the tip established the informant's basis of knowledge, whether the informant indicated he or she witnessed any criminal activity, and whether the tip accurately predicts future activity of the suspect. *Id*. at 776. The court found that although the informant did indicate that he or she

witnessed the criminal activity at issue, he or she provided no other information that exhibited any indicia of reliability. *Id*.

¶32 The information provided in the case at bar exhibits an even weaker indicia of reliability than the tip in *Kline*. The informant here gave no details about the man or woman, he did not establish his basis of knowledge, he did not indicate whether he was witness to any criminal activity, and he did not accurately predict the future activity of the suspects. Accordingly, we cannot say that the informant provided information that exhibited an indicia of reliability in this case.

¶33 We note that even if we considered the informant to be an identified informant, rather than an anonymous informant, despite the fact that he was never identified, we would nevertheless find him unreliable. In *People v. Sparks*, 315 Ill. App. 3d 786 (2000), officers from the Springfield police department set up surveillance along Interstate 55 after a confidential source told police that the defendants would be traveling back from Texas with contraband in their car. Officers spotted the car and initiated a *Terry* stop. Thereafter, officers found a duffel bag containing cannabis in the trunk of the car. At the suppression hearing, a detective testified that a confidential informant gave defendants' names, their race, and approximate ages; the make, model, color, and license plate number of the car; and the date and approximate time defendants would be arriving in Springfield. The detective knew the informant based on unrelated charges pending against he informant. *Sparks*, 315 Ill. App. 3d at 788-89. The evidence was not suppressed. On appeal, the appellate court found that, because this was the detective's first time using the informant as such, he could not accurately judge the informant's

veracity. *Id*. at 794. The informant did not indicate that he had witnessed any criminal activity by defendants, and the identity of the informant was only "known" by the police. The court found, "As far as defendants are concerned, the informant is anonymous because defendants were unable to cross-examine or otherwise assess the informant's credibility. *Id*. at 795.

¶34 Similarly here, even though the man who came to the front door of the apartment complex was "identifiable," he was essentially anonymous because no one interviewed him to find out his motive or to assess his reliability, and the defense was not able to cross-examine him. We are aware that the trial court concluded that the informant was a civilian with no motive or bias, but we cannot find any support for that in the record and therefore reject such findings. See *Johnson*, 237 Ill. 2d at 88.

¶35 The State heavily relies on *In re A.V.*, 336 Ill. App. 3d 140 (2002), in support of its position that Officer McBride had a reasonable suspicion that defendant had committed a crime or was about to commit a crime, thus justifying the *Terry* stop. In *A.V.*, an officer and his partner were patrolling a neighborhood when a teenager approached the police car and told the officers that there was "a kid" in the park who was showing a gun to other young people. The witness told the officer that the "kid" was a husky Hispanic 16-year-old youth, wearing black jeans, a blue shirt, and white gym shoes, and carrying a gun. The witness pointed southwest towards May Street when he showed the police where the suspect went. The police did not get the witness's name. About five or six other "kids" also approached the officer and "told them the same thing." The subsequent kids pointed toward the defendant and said that he was "showing off" a gun. The officer prepared a report in which he only mentioned the first witness. The

officer then kept driving and less than a minute later saw defendant, who matched the description given and was at the designated location. The officer approached him and asked if he had anything on him, and the defendant said no. The officer performed a protective pat down and retrieved a gun from defendant's pocket. The trial court denied defendant's motion to quash and suppress the gun at trial. *A.V.*, 336 Ill. App. 3d at 141.

¶36 On appeal, this court found that the indicia of reliability of the information received by the officer was not lacking. Although their names were not known, the informants were not anonymous in the same sense as the caller in *J.L.* because they approached the police and spoke to them in person. The court noted that "where information was provided by eyewitnesses who were still at the scene of the incident, it was reasonable to infer that the information was reliable." The court found that the trial court properly determined that the stop, which was based on a reasonable suspicion, was justified. *Id.* at 144.

¶37 The case at bar is distinguishable to *A.V.* Here, there is no indication that the informant who stuck his head out of the front door was an eyewitness to the man and the woman who allegedly had a gun, or whether it was second-hand information that he was relaying to the officers. He did not stay at the scene, and we do not know where he went after providing his statement to police. He was not able to confirm the identity of the woman after she was apprehended. Accordingly, we find that the informant in the case at bar was less reliable than the informants in *A.V.*

¶38 Moreover, even if the initial stop of defendant could be upheld, the protective pat-down of defendant's clothing cannot be. "Authority to effect a *Terry* stop does not automatically

confer authority to frisk an individual." *Linley*, 388 Ill. App. 3d at 53. Rather, the officer "must have reason to believe that the detained individual is armed and dangerous," and "must be able to point to particular facts that justify the search. *Id*. Thus, even if we assume, for the sake of argument, that the anonymous tip gave rise to suspicion of criminal activity, without reliable information that a woman matching defendant's description was carrying a gun, there were no particular facts that would have led Officer McBride to reasonably believe that defendant was armed and dangerous. See *People v. Jackson*, 348 Ill. App. 3d 719, 731 (2004) ("the information must be reliable 'in its assertion of illegality, not just in its tendency to identify a determinate person.' " (quoting *People v. Sparks*, 315 Ill. App. 3d 786, 794 (2000)).

¶39 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County denying defendant's motion to quash and suppress the evidence of the gun and the controlled substance. Without the suppressed evidence, the State cannot prove beyond a reasonable doubt that defendant possessed a gun, or that she possessed a controlled substance with intent to deliver. Accordingly, we reverse and remand for a new trial (see *People v. Olivera*, 164 Ill. 2d 382, 393 (1995)), and need not address defendant's second issue on appeal.

¶41 III. CONCLUSION

¶42 For the foregoing reasons, we reverse the judgment of the circuit court of Cook County and remand for a new trial.

¶43 Reversed and remanded.

¶44 Justice SHELDON HARRIS, specially concurring:

¶45 I concur with the outcome of this case. An investigatory stop may be based on an informant's tip if the tip bears some indicia of reliability justifying the stop. *Village of Mundelein v. Thompson*, 341 Ill. App. 3d 842, 850 (2003). A minimum of corroboration is required when the informant is identifiable. *People v. Nitz*, 371 Ill. App 3d 747, 751 (2009). However, "[c]orroboration is especially important when the informant is anonymous *** or is given by telephone rather than in person." *Id.*

¶46 I specially concur to briefly identify the specific facts which in my opinion render this *Terry* stop unreasonable. After receiving an unidentified call that there was a "man and a woman with a gun" in the area of 3728 South Indiana, Officer McBride testified that she and her partner went to the address. As they approached the apartment complex, a man poked his head out of the front door and said either, "They just went out the back door, a man and a woman" or "the guy and the girl with the gun went out the back door." The man never identified himself to police. Officer McBride acknowledged that in her General Offense Case Report, she wrote that the man said, "The guy and the girl just ran out the back in the alley now." No further descriptions of the suspects were given. Had there been both a man and a woman in the alley, the stop would have been reasonable. When the police went to the back of the complex they found only a woman, defendant here, who was not engaged in any suspicious activity at the time. In this case, there is not even a minimum of corroboration that would support a justifiable stop

and frisk of defendant. Therefore, I concur in reversing and remanding.