2011 IL App (2d) 110352-U
No. 2-11-0352
Order filed December 30, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE CITY OF CRYSTAL LAKE, Plaintiff-Appellant, v. MICHELLE L. HURLEY, Defendant-Appellee.	))))))))))	Appeal from the Circuit Court of McHenry County. Nos. 09-DT-1324 09-TR-64136 Honorable Charles P. Weech, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Schostok concurred in the judgment.

ORDER

Held: The trial court properly granted defendant's motion to quash her arrest and suppress evidence: an informant's tip that defendant was driving while intoxicated was insufficient to justify a traffic stop, as the only supporting fact that the informant related was that defendant had cut him off in a busy parking lot, which standing alone did not support a reasonable suspicion that defendant was intoxicated.

¶ 1 The City of Crystal Lake (City) appeals from an order of the circuit court of McHenry County granting the motion of defendant, Michelle L. Hurley, to quash her November 26, 2009, arrest for driving under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2008)) and to suppress evidence. We affirm.

¶ 2 Judge Charles P. Weech presided over the hearing on defendant's motion. At defendant's request, Judge Weech took notice of the testimony of Crystal Lake police officer Steve Renje at a hearing before Judge Robert K. Beaderstadt on defendant's petition to rescind the statutory summary suspension of her driving privileges (see 625 ILCS 5/11-501.1 (West 2008)). At the hearing before Judge Beaderstadt, Renje testified that at about 2 a.m. on November 26, 2009, he learned from a dispatcher that an individual named Jonathan Schwan "was reporting an intoxicated female motorist who had drove his [*sic*] vehicle, cutting off Mr. Schwan in the parking lot of 402 Virginia Street, which is the Taco Bell." Renje learned from the dispatcher that the vehicle that cut Schwan off was a 2008 Mazda. The dispatcher also relayed the vehicle's license plate number. Renje observed a vehicle fitting that description exiting the Taco Bell parking lot and proceeding west on Route 14. Renje conducted a traffic stop. He identified defendant as the driver. Renje testified that he spoke to Schwan, but only after pulling defendant's vehicle over.

¶ 3 At the hearing on the motion to quash and suppress, Judge Weech ruled that Renje's testimony before Judge Beaderstadt shifted the burden to the State to establish that the traffic stop was lawful. The City then called Renje to provide additional testimony. He testified that Schwan had reported that he had been cut off in the Taco Bell's drive-through lane. According to Renje, there is roughly 15 to 20 feet of space separating the drive-through lane from the parking spaces. When Renje arrived at the Taco Bell, the drive-through lane was busy and the vehicles were roughly one to five feet apart. On cross-examination, Renje acknowledged that, according to his police report, Schwan stated that he had been cut off in the parking lot, not the drive-through lane.

¶ 4 Judge Weech granted defendant's motion and denied the City's motion to reconsider. This appeal followed.

¶ 5 On appeal from a trial court's ruling on a motion to quash and suppress, the reviewing court "will accord great deference to the trial court's factual findings and will reverse those findings only if they are against the manifest weight of the evidence." *People v. Close*, 238 Ill. 2d 497, 504 (2010). However, the trial court's ultimate decision to grant or deny the motion is subject to *de novo* review. *Id.* At the hearing on a motion to quash an arrest and suppress evidence, the defendant bears the initial burden of establishing a *prima facie* case that he or she was doing nothing unusual to justify the intrusion of a warrantless search or seizure. *People v. Linley*, 388 Ill. App. 3d 747, 749 (2009). "If the defendant makes the required showing, the burden shifts to the State to present evidence to justify the search or seizure." *Id.*

¶ 6 In *Terry v. Ohio*, 392 U.S. 1 (1968), 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. *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. The facts need not be personally known to the officer conducting the stop; a tip from a member of the public may suffice if, in view of the totality of the circumstances, including the informant's veracity, reliability, and basis of knowledge, there are some indicia of the tip's reliability. *Linley*, 388 Ill. App. 3d at 750. It is important to recognize that this inquiry into a tip's reliability determines only whether the tip may substitute for an officer's personal knowledge; whether the tip, along with whatever facts are personally known to the officer, otherwise satisfy *Terry*'s "reasonable suspicion" standard is a separate question. See *Village of Mundelein v. Minx*, 352 Ill. App. 3d 216, 222 (2004). As explained below, we conclude that the answer to the latter question favors defendant here.

¶ 7 In support of its argument that the information Schwan supplied to police gave rise to a reasonable suspicion that defendant was engaging in criminal activity, the City relies on two Fourth District cases, *People v. Ewing*, 377 Ill. App. 3d 585 (2007), and *People v. Shafer*, 372 Ill. App. 3d 1044, 1052-53 (2007). Both cases stand for the proposition that an informant who is in a position to determine whether a motorist is intoxicated need not supply the details leading to his or her conclusion about the motorist's condition. In *Ewing*, the court upheld a traffic stop based on a tape-recorded 9-1-1 call. The *Ewing* court described the recording as follows:

> "On the tape, a female states she is calling to report a drunk driver. The caller stated the driver, who is in a green Chevy 4x4 with license plates 2377GJ, is 'going to be on Route 16' heading east. The caller then states, 'They are drunk!' The caller indicated 'they just [*sic*] actually just left here.' The 9-1-1 operator, Brazzell, asked for the caller's identity. The caller gave her name as Melissa from Crestline. Melissa stated 'they' dropped off a dog that was 'put down.' Melissa again stated, 'They are drunk!' and that they did not need to be driving. Brazzell asked Melissa whether she knew the persons' identities. Melissa stated the driver was James Ewing and that 'they' lived in Paris or around that area. Melissa then stated that they were getting ready to turn onto Route 16 and repeated that they did not need to be driving. Melissa also repeated the car identification information." *Ewing*, 352 Ill. App. 3d at 588-89.

In holding that the information relayed by the caller gave rise to "the requisite quantum of suspicion to justify the *Terry* stop" (*id.* at 597), the *Ewing* court noted that, although the caller did not specifically indicate what observations led her to conclude that the motorist was intoxicated, "she would have been in a position to observe defendant's speech, odor, and gait" (*id.* at 596). The *Ewing* court relied on its earlier decision in *Shafer*, which upheld a *Terry* stop based on a report by

an employee of a fast-food restaurant that a patron " 'was causing a disturbance and was intoxicated' while ordering food at the restaurant's drive-thru." *Shafer*, 372 Ill. App. 3d at 1047.

¶ 8 These decisions cannot easily be reconciled, however, with our decision in *Minx*. In that case, the defendant was stopped based on a witness's report that the defendant was driving recklessly. The witness had been following the defendant's vehicle, but because he "simply reported that defendant was 'driving recklessly,' without indicating what observations led him to this conclusion, *e.g.*, whether defendant was speeding, running red lights, weaving between lanes, etc.," we held that the tip "did not provide the specificity necessary to justify an investigatory stop." *Minx*, 352 Ill. App. 3d at 222. We relied, in part, on our decision in *City of Lake Forest v. Dugan*, 206 Ill. App. 3d 552, 555-56 (1990), which held that, because an anonymous informant did not mention specific facts that led to his conclusion that a driver was intoxicated, the informant's tip did not justify a *Terry* stop. *Minx*, 352 Ill. App. 3d at 222.

¶ 9 Perhaps the Fourth District cases can be distinguished from *Dugan* on the basis that it is not clear whether the informant in *Dugan* had an opportunity to closely observe the defendant and reach an informed opinion as to whether the defendant was under the influence of alcohol. In contrast, although *Minx* involved a report of reckless driving rather than intoxicated driving *per se*, *Minx* cannot be distinguished from *Shafer* and *Ewing* on the basis of the informants' opportunities to observe the conduct or conditions that they reported to police. The informant in *Minx* was in an ideal position to evaluate the defendant's driving. *Shafer* and *Ewing* can be harmonized with *Minx* only by holding that a report of reckless driving must satisfy some standard of specificity, whereas a report of possible intoxicated driving may be wholly conclusory. We see no reason to adopt such a dual standard. Indeed, although the *Ewing* court made a hair-splitting attempt to distinguish *Minx*, the court ultimately declared that *Minx* was "simply wrong" and that "[w]here a nonanonymous

caller reports a reckless, erratic, or drunk driver, the police must be permitted to stop the reported vehicle without having to question the caller about the specific details that led him or her to call so long as the nonanonymous tip has a sufficient indicia [*sic*] of reliability." *Ewing*, 377 Ill. App. 3d at 597. We disagree. 9-1-1 operators and police personnel manning nonemergency telephone lines can certainly ask for such information.[1] It would not be burdensome for them to simply ask a caller why he or she believes that a particular motorist might be impaired, or in what manner a motorist's driving was erratic or reckless. Thus, we adhere to the reasoning in *Minx* and conclude that, even where there are indicia of reliability that permit an informant's report to substitute for a police officer's personal knowledge, the bare assertion that a motorist is intoxicated will not substitute for at least a modicum of information explaining the basis for the assertion.

¶ 10 The remaining question, then, is whether the specific facts that Schwan related to police were sufficient to create a reasonable suspicion that defendant was impaired. According to Renje's testimony, Schwan reported that he was "cut off" by defendant in either the parking lot or the drive-through lane of a busy Taco Bell restaurant. The record does not disclose any additional details of what occurred. In our view, this information, which is not any more specific than the report of "reckless driving" in *Minx*, is simply not enough to justify a *Terry* stop. The incident could have been the result of rudeness or impatience on defendant's part, or it might have merely been the type of minor mishap that is not uncommon in parking lots as vehicles pull into and out of parking spaces and drivers and passengers walk to and from their vehicles. Without more, a vague report that one

[1]We do agree with *Ewing* that these details need not always be relayed to the particular officer who conducts the *Terry* stop. *Ewing*, 377 Ill. App. 3d at 593-94; see also *Linley*, 388 Ill. App. 3d at 749.

motorist "cut off" another in a parking lot does not give rise to a reasonable suspicion that the first motorist was intoxicated.

¶ 11 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 12 Affirmed.