2011 IL App (3d) 090371-U

Order filed July 28, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Plaintiff-Appellee,	)	Will County, Illinois.
	)	
	)	Appeal No. 3–09–0371
v.	)	Circuit No. 08–TR–78362
	)	
EDUARDO CARRASCO,	)	Honorable
	)	Sarah F. Jones,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justice Schmidt concurred in the judgment.
Justice Wright specially concurred.

ORDER

¶ 1 *Held*: Tip from a citizen informant who claimed to have personally witnessed a specific crime and who identified the defendant in person to a police officer was sufficiently detailed and otherwise sufficiently reliable to justify an investigatory stop of the defendant under the fourth amendment.

¶ 2 Following a bench trial, the defendant, Eduardo Carrasco, was found guilty of driving while license revoked (625 ILCS 5/6-303(a) (West 2008)) and sentenced to 180 days imprisonment. In this appeal, the defendant argues that his conviction should be reversed

because the investigatory stop that led to the discovery of evidence against him violated the fourth amendment. Specifically, the defendant maintains that the informant's tip that prompted his seizure by the police was insufficiently detailed and was not independently corroborated by the investigating officer prior to the seizure.

¶ 3 BACKGROUND

¶ 4 The defendant was charged by traffic citation complaints with: (a) failure to properly secure a child in seat belts, a petty offense (625 ILCS 25/4, 6 (West 2008)); (b) driving while license revoked, a Class A misdemeanor (625 ILCS 5/6-303(a) (West 2008)); and (c) operation of an uninsured motor vehicle, a business offense (625 ILCS 5/3-707(a), (c) (West 2008)). The defendant filed a motion to quash his arrest and suppress evidence discovered as a result of his seizure by police.

¶ 5 During a hearing on the defendant's motion, Officer Benjamin Grant of the Joliet police department testified that he was dispatched to the area of Northbound Chicago Street and Laraway Road on the evening of July 5, 2008, because a citizen caller claimed to be following a Dodge Ram pickup truck with flames painted on the hood that was driving erratically with an unsecured child in the truck. Officer Grant headed toward that area. When he reached Chicago Street and Fifth Avenue, he saw a silver pickup truck following a red Dodge Ram pickup truck with "a lot of junk in the back." He later received additional dispatches informing him that the caller had reported that the driver who was driving erratically was in the Dodge Ram truck with junk in the back and that the truck was now at Morgan and Center Streets. Officer Grant proceeded in that direction.

¶ 6 Shortly thereafter, the informant, who was standing in front of a silver pickup truck, flagged down Officer Grant and told him that the defendant had just turned into a nearby driveway. Officer Grant went directly to that driveway where he saw the defendant exiting the same red Dodge Ram truck that the officer had seen earlier on Chicago Street. Officer Grant, who was in a marked squad car, turned his spotlight on the defendant. He testified that could not recall whether he turned on his MARS lights, but he did not think that he did so because "it was in a driveway" and because he had already issued "voice commands" to the defendant at that time. Specifically, Officer Grant testified that, while shining his spotlight on the defendant, he told the defendant that he was investigating a complaint of an intoxicated driver and that he suspected it was the defendant because he saw the defendant's vehicle operating near the area to which he was dispatched. Officer Grant then approached the defendant and demanded identification. He testified that the defendant was not free to leave at that point. As Officer Grant approached the defendant, he looked at the pickup truck parked in the driveway and noticed that it had flames painted on the hood. He also saw a small child sitting on the floor of the passenger side in the front seat of the truck. There was no restraining device in the front seat aside from seat belts.

¶ 7 At the conclusion of Officer Grant's testimony, the State filed a motion for a directed finding. During oral argument, the defendant's counsel expressly waived any argument challenging the reliability of the informant's tip and argued instead that the tip was insufficiently detailed to justify Officer Grant's investigatory stop of the defendant. The circuit court denied the defendant's motion to quash arrest and suppress evidence, ruling that no seizure had occurred and that there were "reasonable and articulable facts" which warranted an investigatory stop of

the defendant. The defendant filed a motion to reconsider the circuit court's ruling, which the circuit court denied.

¶ 8 A stipulated bench trial was held following the denial of the defendant's motion. During the trial, the parties stipulated that Officer Grant had observed the defendant's vehicle being driven shortly before he asked the defendant to identify himself and that, when Officer Grant checked the information furnished by the defendant, he discovered that the defendant's license was revoked. The circuit court found the defendant guilty of driving while license revoked and sentenced him to 180 days imprisonment. Because the State presented no evidence supporting the charges of operation of an uninsured motor vehicle or failure to properly secure a child in seat belts, the circuit court acquitted the defendant of those charges. This appeal followed.

¶ 9 ANALYSIS

¶ 10 In deciding an appeal from a trial court's ruling on a motion to suppress, we review the trial court's factual findings for clear error and will reverse such findings only if they are against the manifest weight of the evidence. *People v. Luedemann*, 222 Ill. 2d 530, 542 (2006); *People v. Sorenson*, 196 Ill. 2d 425, 431, 256 (2001); *People v. Salinas*, 383 Ill. App. 3d 481, 490 (2008). However, we review the trial court's ultimate decision as to whether suppression is warranted *de novo*. *Sorenson*, 196 Ill. 2d at 431; *Salinas*, 383 Ill. App. 3d at 490.

¶ 11 The defendant argues that the seizure that led to the discovery of evidence against him (*i.e.*, Officer Grant's investigatory stop of the defendant in his driveway) violated the fourth amendment because the informant's tip that prompted the seizure was insufficiently detailed and was not independently corroborated by the investigating officer prior to the seizure. The State argues that no seizure occurred because the defendant's encounter with the police was

consensual. In the alternative, the State contends that the police officer's investigatory stop of the defendant was a lawful seizure because it was supported by a reliable and detailed tip which gave the investigating officer sufficient grounds to suspect that the defendant had committed a crime.

¶ 12 We agree with the State's second argument. Even assuming that a seizure occurred in this case,[1] the seizure was lawful. Under *Terry v. Ohio*, 392 U.S. 1 (1968), a police officer may briefly stop a person for temporary questioning if the officer has knowledge of sufficient articulable facts at the time of the encounter to create a reasonable suspicion that the person in question has committed or is about to commit a crime. *People v. Lee*, 214 Ill. 2d 476, 487 (2005). An informant's tip may form the basis for a lawful *Terry* stop if the tip bears some

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[1] For purposes of the fourth amendment, an individual is "seized" when an officer has, in some way, restrained the liberty of a citizen by means of physical force or show of authority. *Luedemann*, 222 Ill. 2d at 550. A seizure occurs when a reasonable person would not feel free to leave under the circumstances. *Id.* In situations in which the person's freedom of movement is restrained by some factor independent of police conduct, the appropriate inquiry is whether a reasonable person would feel free to decline the officer's requests or otherwise terminate the encounter. *Id.* Here, Officer Grant shined his spotlight on the defendant and issued "voice commands" telling the defendant that he was investigating a claim of drunk driving and that the defendant was a suspect. Officer Grant testified that the defendant was not free to leave at that point. Under these circumstances, we do not believe that a reasonable person in the defendant's position would have felt free to leave or to decline Officer Grant's requests and terminate the encounter.

indicia of reliability and the information upon which the police act establishes the requisite quantum of suspicion. *Id.* In determining whether the substance of a tip provides reasonable suspicion to support a lawful *Terry* stop, courts consider "the detail 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." *People v. Kline*, 355 Ill. App. 3d 770, 776 (2005). Courts also consider whether any details of the tip were corroborated by the investigating officer prior to the *Terry* stop. *Lee*, 214 Ill. 2d at 487; *Village of Mundelein v. Thompson*, 341 Ill. App. 3d 842, 851 (2003); *People v. Rivera*, 304 Ill. App. 3d 124, 127 (1999).

¶ 13 In this case, Officer Grant was dispatched to the area of Northbound Chicago Street and Laraway Road because a motorist called the police claiming that he was following a Dodge Ram pickup truck with flames painted on the hood that was driving erratically with an unsecured child in the car. When Officer Grant reached Chicago Street and Fifth Avenue, he saw a silver pickup truck following a red Dodge pickup truck which had "a lot of junk in the back." He later received additional dispatches informing him that the informant had reported that the driver who was driving erratically was in the Dodge Ram truck with junk in the back and that the truck had proceeded to Morgan and Center Streets. After Grant drove toward that location, he personally encountered the informant, who flagged down Officer Grant while standing in front of a silver pickup truck. The informant told Officer Grant that the defendant had just turned into a nearby driveway. Officer Grant went directly to that driveway where he saw the defendant exiting the same red Dodge Ram truck that the officer had seen earlier on Chicago Street. These facts rendered the informant's tip sufficiently reliable to justify a *Terry* stop of the defendant in the

driveway. See, *e.g.*, *Adams v. Williams*, 407 U.S. 143, 146-47 (tip from an informant known to police carried enough indicia of reliability to justify the officer's forcible stop of the defendant where the informant "came forward personally to give information" to the investigating officer that was "immediately verifiable at the scene"); *People v. DiPace*, 354 Ill. App. 3d 104, 108-11 (2004) (tip from two eyewitness informants provided sufficient reasonable suspicion of criminal activity to justify *Terry* stop where the informants told police in person that they witnessed the defendant driving recklessly and the police corroborated some of the information provided by the informants, such as the description of the car and the license plate number that the informants had earlier relayed to the dispatcher); *People v. Miller*, 355 Ill. App. 3d 898, 902-04 (2005) (informant's tip supplied reasonable suspicion for investigatory stop even though the informant was not known to the police beforehand where the informant told police officers in person that he observed a man displaying a gun nearby); see also *In re A.V.*, 336 Ill. App. 3d 140, 144 (2002).[2]

¶ 14 Moreover, contrary to the defendant's argument, the informant's tip in this case was sufficiently detailed to support a lawful *Terry* stop. The initial police dispatch indicated that a motorist reported that he saw a Dodge Ram pickup truck with flames painted on the hood driving "erratically" on Chicago Street approaching Laraway Road and that there was an unsecured child in the truck at that time. The informant later personally identified the truck to the investigating officer just after the defendant had parked it in a nearby driveway. Thus, the informant in this case did not merely make a vague and anonymous allegation of conduct that might or might not

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[2] In any event, as the defendant acknowledges in his brief on appeal, the defendant waived any challenge to the reliability of the informant during oral argument on his motion before the circuit court.

have involved the commission of a crime. See, *e.g.*, *Village of Mundelein v. Minx*, 352 Ill. App. 3d 216, 222 (2004) (unidentified citizen informant's claim that he saw the defendant's car driving "recklessly" was insufficient to justify a *Terry* stop where the investigating officer did not speak to the informant or know his identity prior to making the stop and the informant did not indicate what observations led him to conclude that the defendant was driving "recklessly"); see also *Village of Gurnee v. Gross*, 174 Ill. App. 3d 66, 69-70 (1988) (ruling that a motorist's complaint of alleged reckless driving by another motorist, standing alone, would "not provide articulable facts sufficient to justify an investigatory stop"); *People v. Lockhart*, 311 Ill. App. 3d 358, 362-63 (2000) (claims of alleged "drug activity" at a residence made by unidentified complainants who provided no specific details regarding the nature or time of the alleged "drug activity" did not support a *Terry* stop of a person walking away from the residence); *People v. Messamore*, 245 Ill. App. 3d 627, 630 (1993) ("vague" tip by anonymous informant who claimed to have seen a "suspicious" dark green or blue Oldsmobile in a particular area "did not describe any activity from which the [police] officers could form a reasonable suspicion [of criminal activity] justifying a stop"). Rather, the informant in this case claimed to have personally observed the commission of a crime—namely, the pickup truck driver's failure to properly secure a child (see 625 ILCS 25/4, 6 (West 2008))—and he later personally identified the offending pickup truck in the presence of the investigating officer immediately before the defendant exited that truck. Thus, unlike the tips involved in *Minx* and the other cases cited above, the tip in this case was sufficiently detailed and otherwise sufficiently reliable to give rise to an articulable suspicion that a crime had been committed.

¶ 15 In addition, Officer Grant corroborated certain details of the informant's tip prior to the *Terry* stop, such as the make and model of the defendant's truck, the fact that the truck had a lot of junk in the back, the truck's location near where the informant initially reported it to be on Chicago Street, and its subsequent location in the driveway identified by the defendant. Moreover, when the informant flagged Officer Grant down and pointed out the defendant, the informant was standing in front of a silver pickup truck. Earlier, shortly after he had received the initial dispatch, Officer Grant saw a silver pickup truck following the defendant's truck on Chicago Street. This tended to corroborate the informant's claim that he had been following the defendant when he called the police and claimed to have seen the defendant driving erratically with an unsecured child in the truck.

¶ 16 CONCLUSION

¶ 17 For the foregoing reasons, we affirm the judgment of the circuit court of Will County.

¶ 18 Affirmed.

¶ 19 JUSTICE WRIGHT, specially concurring:

¶ 20 I agree with the result reached by the majority, but write separately to emphasize that the totality of the circumstances clearly established the officer's swift response was warranted, if not required, in this case.

¶ 21 As the majority notes, a police officer may conduct a *Terry* stop based on information provided by a third party when the information is reliable and allows "an officer to reasonably infer that a person was involved in criminal activity." *People v. Ewing*, 377 Ill. App. 3d 585, 593 (2007) (quoting People *v. Jackson,* 348 Ill. App. 3d 719, 729 (2004)). When considering whether

an informant's tip supports an investigatory stop, courts should look at the totality of the circumstances. *People v. Ewing*, 377 Ill. App. 3d at 591.

¶ 22 In this case, the informant was not a tipster with a hidden agenda, but rather a concerned citizen contemporaneously reporting events which he was personally witnessing. The eyewitness account included details of an unsecured child being transported by a driver who was driving erratically. The informant's tip detailed the unusual appearance of the truck and the route of travel. The details regarding the route of travel and the appearance of the truck were corroborated by the officer's own observations. Although the officer did not witness erratic driving because the truck was parked in a driveway when the officer approached defendant, the citizen informant was present on the scene. Thus, once the officer located the vehicle, he also found the citizen informant, such that the tipster was no longer anonymous but was available to speak to the officer.

¶ 23 Thus, based on the totality of the circumstances, I specially concur.