2019 IL App (3d) 190035-U

Order filed December 30, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
	)	Hancock County, Illinois,
Plaintiff-Appellant,	)	
	)	Appeal No. 3-19-0035
v.	)	Circuit Nos. 17-CF-125 and 17-DT-38
	)	
JUDITH A. PRICE,	)	Honorable
	)	Rodney G. Clark,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justice Lytton concurred in the judgment.
Justice Wright dissented.

ORDER

¶ 1 *Held*: The court did not err in granting defendant's motion to suppress.

¶ 2 The State appeals the Hancock County circuit court's granting of the motion to suppress filed by defendant, Judith A. Price, arguing that defendant's daughter's 911 call was sufficient evidence for the officer to conduct a *Terry* stop. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged by information with aggravated driving under the influence (625 ILCS 5/11-501(d)(1)(A) (West 2016)). Defendant filed a motion to suppress evidence, alleging that the officer lacked reasonable suspicion to conduct a *Terry* stop. The court watched the dash cam video from prior to the stop. Officer Trent Woolson testified that he worked for the Hamilton Police Department and was on duty on June 10, 2017. He received a call from dispatch about a 911 call. Dispatch told him that someone had called 911 and said that a woman had consumed a bottle of Fireball and was driving to Hamilton from Elvaston in a white four-door Kia Sorento. He left the police department, pulled onto the main street, and headed eastbound out of Hamilton when he observed the suspect vehicle traveling westbound. He observed that the driver of the vehicle was a white female. Dispatch did not provide Woolson with any information regarding the identity of the 911 caller or her relationship with the driver. He then turned around and began following the vehicle. Woolson gave the license plate number to the dispatchers to confirm he had the right vehicle and was told the vehicle was registered to defendant. He stated that the vehicle was weaving within the lane, but did not cross the lines. The video does not show the vehicle weaving. Before stopping the vehicle, he called dispatch and asked if there was a safety concern. Dispatch answered in the affirmative. Woolson had never conducted an investigative stop before so he then called a more experienced deputy and told him he had not seen the vehicle commit a traffic violation, but that a call had come in through 911 regarding the vehicle and that dispatch said there was a safety concern. In the dash cam video, Woolson said, "So 911, that's a make your own case, still, right?" The deputy stated, "That's your decision." Woolson stated, "She's driving fucking straight and narrow." Woolson then said, "Should I stop her just in case?" The deputy replied, "I would." Woolson activated his lights. Defendant pulled into a bank parking lot. Woolson pulled behind defendant's vehicle. Defendant exited her

vehicle, but Woolson told her to stay in the vehicle. He attempted to conduct field sobriety tests and ultimately arrested defendant. The court found that defendant had made a *prima facie* case and shifted the burden to the State.

¶ 5 Maria Hopp was the 911 administrator for the Hancock County Sheriff's office and testified as to the accuracy of the recording of the 911 call that came in at 6:51 p.m., which was then played in court.

"CALLER: Hi, um, I, my mom just left my house, uh, the house here. She's really, really, really drunk, and she's gonna go get another bottle and she's, I'm worried about her driving. She does this all the time.

DISPATCHER: Ok, where are you at?

CALLER: I'm in Elvaston. She's going toward Hamilton in a white four door Kia, um, Sorrento.

DISPATCHER: Ok, hold on just a second.

CALLER: She just left. She's really drunk. She's been drinking Fireball.

DISPATCHER: Is she trying to go to Casey's?

CALLER: I'm not sure. She might. I don't know where she's gonna go.

DISPATCHER: Ok, hold on.

CALLER: That's her plan.

DISPATCHER: What's your mom's name?

CALLER: Judy Price. ***

DISPATCHER: What's your name?

CALLER: Alex Price.

DISPATCHER: What's your phone number Alex?

CALLER: [Gave her phone number.] Um, this goes on all the time. She is, she's a horrible drinker, like, when I was coming home—got off of work at 3, right, and she told me to not come home. Um, I just kind go pick up my clothes from my sister because she kicked me out about two weeks ago because she gets so drunk and then she kicked me out. And I'm not supposed to be out of state. I don't have anywhere else to go.

DISPATCHER: Ok.

CALLER: So I came home and I was upstairs napping, everything was fine, and she just comes up there and tells me she's gonna start bashing in my car and this and that and I need to move it. Because I have her keys and my car there and I told her she's not leaving otherwise I'm gonna call the cops and she said just go ahead and do it so. She's gonna end up hurting somebody.

DISPATCHER: She what?

CALLER: She's gonna end up hurting somebody someday.

DISPATCHER: Yeah. Yep. Do you know how much she's had to drink today?

CALLER: Yea, she's had at least a bottle, a full big bottle, of Fireball.

DISPATCHER: Ok, and what is she going to go pick up, do you know?

CALLER: She'll probably get another bottle of Fireball. That's all she drinks."

There were two dispatchers on duty. One dispatcher took the call, and the other called Woolson.

¶ 6 The State recalled Woolson and asked why he initiated the stop. Woolson stated,

> "On a 9-1-1 call that goes into dispatch, people call 9-1-1 for—due to their concern about something. It's an emergency situation. So in such, with them being—they obviously have more information than I do. I stop and detain to where I could build more of a case and see if it was viable information."

He was concerned about initiating the stop because he had never done an investigative stop before. Therefore, he took extra steps to make sure conducting the traffic stop was the correct action, including calling dispatch and the deputy. After doing so, he determined that he "needed to make the stop due to safety concerns."

¶ 7 The court issued a written opinion granting the motion to suppress. In doing so, the court said,

> "As directed, the nature of the informant is relevant. First, this informant specifically identified herself and even gave her phone number. She in no way tried to conceal her identity. She, however, was not just a concerned citizen. She may have had a motive behind making her call to 911. She tells the dispatcher that 'um, this goes on all the time. She is—she's a horrible drinker. Like, when I was coming home—got off work at three, right, and she told me not to come home. I just had to go pick up my clothes from my sister because she kicked me out about two weeks ago because she gets so drunk…and then she kicks me out. And I'm not supposed to be out of state. I don't have anywhere else to go.' So, the question becomes whether her tip is somewhat suspect because she might have been mad at her mom or hoping her mom would go to jail and she could stay in the house. The dispatcher never follows up with more questions as to Alex's motivation.

The next comment from Alex is also concerning to the Court. She says, 'So I came home, and I was upstairs napping; everything was fine and she just comes up there, tells me she's going to start bashing in my car and this and that, wanting me to move it, because I had her keys in my car there…' So, once again, the informant is telling dispatch about an argument and also that she had not been around her mom as she was napping. The dispatcher never questions Alex on how she knows her mom drank a bottle of Fireball if she had been napping upstairs. Alex says everything was fine. She never tells the dispatcher, and the dispatcher never asked, 'How do you know she is intoxicated?' Despite the fact Alex is not anonymous, her statements give this Court pause. Further, there still needs to be a 'minimum of corroboration or other verification of the reliability of the information.' See *Linley* citing to *Thompson*, 793 N.E.2d 996. Now, this corroboration is relaxed because of this being a potential drunk driver scenario. However, there needs to be something.

Another question in all of this is whether all of Alex's comments are imputed to the officer via the dispatcher? The State argued for the admission of the 911 call based on the case of *People v. Ewing*, 880 N.E. 2d 587, in which the Fourth District Appellate Court concluded that 'cases that hold the imputed knowledge doctrine includes information contained in calls to 911 operators are more persuasive than those holding to the contrary.' The *Ewing* Court never specifically adopted the imputed knowledge doctrine but said it found the doctrine persuasive. This Court allowed the 911 call to come in based on this doctrine and finds the doctrine to be well-taken. Thus, Alex's call was imputed to Officer

Woolson. Including the concern that Alex was upset with her mom for kicking her out or telling her to not come home; including the fact that Alex had been napping and everything was fine until her mom wanted Alex to leave.

This Court is well aware of the factors outlined in the *People v. Shafer* and referenced in *Linley*. The first factor according to *Shafer* is 'whether there was a sufficient quantity of information to allow the officer to be certain that the vehicle stopped was the one identified by the tipster.' Officer Woolson knew he was looking for a four-door, white Kia Sorento heading westbound toward Hamilton. This Court believes this was sufficient information for the officer to identify the vehicle. The second factor is the time interval between the police locating the suspect vehicle and when the information was first relayed to the police. The time delay was short in duration. Officer Woolson received the call from dispatch and was at the Hamilton Police Department. He immediately headed to the east side of Hamilton and encountered the vehicle in question just coming into Hamilton. The third factor is whether the tip was 'based upon contemporaneous eyewitness observations.' Alex Price describes a conversation she had with her mom. Alex observed her mom before her mom left in the described vehicle. The fourth factor is whether the tip was 'sufficiently detailed to permit the reasonable inference that the tipster has actually witnessed an ongoing motor vehicle offense.' The Court does not find that this factor is met. Alex says she was napping and that her mom came upstairs wanting her to move her car. Alex claims her mom is intoxicated but does not say how she knows this information. There is nothing objective to allow the officer the ability to know that a traffic offense is taking place. All the

officer knows is that the tipster is the daughter and she and her mom had an argument and that Alex has no other place to go. The officer has no idea how Alex knows her mom is intoxicated. The officer has no idea how Alex even knows a bottle of Fireball was consumed and over what time period.

Now, the Court in the *Ewing* case states that 'Where 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 of reliability.' *People v. Ewing*, 880 N.E. 2d 587. Once again, this is where this Court has a problem. Alex Price's reliability is suspect based on the additional information she provided the dispatcher."

¶ 8 II. ANALYSIS

¶ 9 On appeal, the State argues that the court erred in granting defendant's motion to suppress. "When a trial court's ruling on a motion to suppress involves factual determinations or credibility assessments, the court's findings will not be disturbed on review unless they are against the manifest weight of the evidence. [Citation.] However, we review *de novo* the court's ultimate legal ruling to grant or deny the motion." *People v. Lopez,* 2018 IL App (1st) 153331, ¶ 10 (citing *People v. Grant*, 2013 IL 112734, ¶ 12).

¶ 10 Based on *Terry v. Ohio*, 392 U.S. 1 (1968), an officer may briefly detain and question individuals to investigate potential criminal behavior if the officer can point to specific, articulable facts that, when considered with natural inferences, make the intrusion reasonable. *People v. Ledesma*, 206 Ill. 2d 571, 583 (2003), *overruled in part on other grounds by People v. Pitman*, 211 Ill. 2d 502 (2004). To determine whether reasonable suspicion exists, we use a

totality of the circumstances approach and consider whether the information known to the officer at the time of the stop would lead a reasonable and prudent person to believe the stop was necessary to investigate criminal activity. *People v. Shafer*, 372 Ill. App. 3d 1044, 1048 (2007). Courts "should consider the quality and content of information known to officers as well as the reliability of the source of the information." *People v. Lampitok*, 207 Ill. 2d 231, 257 (2003).

¶ 11 An officer may initiate a *Terry* stop based on a third-party tip, so long as the tip is suitably corroborated and exhibits sufficient indicia of reliability. *People v. Ewing*, 377 Ill. App. 3d 585, 597 (2007). Stated another way, "An informant tip by received telephone may form the basis of a *Terry* stop if the tip is reliable and the tip allows the officer to reasonably infer that a person was involved in criminal activity." *Id.* at 594.

> "[T]ips may vary greatly in their value and reliability and *** one simple rule will not cover every situation. Where some tips, completely lacking in indicia of reliability, would warrant either no police response or require further investigation before a stop would be justified, other situations, such as when a victim of a crime seeks immediate police aid and describes his assailant or when a credible informant warns of a specific impending crime, would justify the police making an appropriate response." *In re J.J.*, 183 Ill. App. 3d 381, 385-86 (1989).

"[T]he totality of the information available to the police must have a degree of reliability, of quality, and of sufficiency that will sustain a finding of a reasonable and articulable suspicion for the stop." *People v. Ertl*, 292 Ill. App. 3d 863, 869 (1997). Some factors to consider include: "(1) the quantity and detail of the information such 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 she described." *Ewing*, 377 Ill. App. 3d at 594.

¶ 12 After considering the factors enumerated in *Ewing*, we agree with the court that the first two factors were met. Alex identified the make and model of defendant's car and the direction she was heading, and a short period of time had passed between when she called and the officer responded. However, we agree with the court in *Ertl* that these are "innocent" facts that do not provide evidence of criminal conduct. *Ertl*, 292 Ill. App. 3d at 874. Factors three and four both concern the basis and detail of the tip. We find both of these factors are not met based on the inconsistencies in Alex's statement to the dispatcher and the court's credibility determination.

¶ 13 Here, the court found Alex not credible. Specifically, it stated that Alex's "reliability is suspect." Alex's 911 call made it clear that she was potentially biased and had other motivations for making the call. Alex stated that defendant had kicked her out of the house and she did not have anywhere else to go. Much of Alex's concern stemmed from the fact that defendant "[did] this all the time." She spent much of the call talking about past instances, including defendant kicking her out of the house while she was intoxicated. Moreover, it was suspect how Alex knew defendant had consumed a full bottle of Fireball and was intoxicated. Alex told the dispatcher that she was napping when defendant came upstairs and told her to move her car. She, thus, would not have seen her consuming the alcohol. It seems likely that her conclusions about defendant's behavior instead stemmed from her previous observations that Fireball was "all [defendant] drinks" and that she was often intoxicated. Therefore, the court correctly questioned the reliability of the tip, and the record supports the court's finding that Alex was not credible. The court did not err in granting the motion to suppress.

¶ 14 In coming to this conclusion, we find *Ertl*, 292 Ill. App. 3d at 865, helpful regarding the reliability of a tip from a biased witness. In *Ertl*, the defendant and his wife were in the midst of divorce proceedings. *Id.* The wife had purchased the defendant's interest in the house, but the defendant was entitled to use the shed on the property for a few more months. *Id.* The wife called 911 and advised the dispatcher that she and the defendant had an altercation at the house, and the defendant was sitting in the driveway and would not leave. *Id.* The wife informed the dispatcher that the defendant owned several guns, one of which her father had found loaded in the shed and unloaded it. *Id.* at 866. She indicated that the defendant sometimes kept a gun in his vehicle, but she did not know if he had one on him at the time. *Id.* The defendant left the driveway and was pulled over by the police based on the wife's description of the vehicle. *Id.* A loaded gun was found in the defendant's glove compartment after the defendant consented to a search. *Id.* The circuit court granted the defendant's motion to suppress evidence. *Id.* at 867.

¶ 15 On appeal, the appellate court affirmed. In doing so, it reasoned that "[t]hough a degree of veracity or credibility would normally attach to the information provided by an identified citizen-informant, the information supplied here was based on limited and somewhat speculative observations and consisted largely of the informant's subjective fears." *Id.* at 873. The court stated that the wife's call "was preemptive and anticipatory and did not impart the type of urgency that would arise from witnessing a crime in progress and thereby suggest a greater degree of reliability." *Id.* Moreover, the court stated that the quality and basis of the information provided to the police was insufficient to warrant the stop because it was speculative and "tended to rely on information from prior events rather than direct observation of actual criminal conduct." *Id.* The court also noted the wife's credibility issues and potential bias because she was concerned that the defendant had called the police because her father had broken into the shed.

Id. Further, while there was some corroboration of the vehicle's description and location, there was insufficient facts to corroborate that the defendant had engaged or was engaging in criminal conduct, as the officer did not observe any unlawful behavior prior to stopping him. *Id.* at 874.

¶ 16 III. CONCLUSION

¶ 17 The judgment of the circuit court of Hancock County is affirmed.

¶ 18 Affirmed.

¶ 19 JUSTICE WRIGHT, dissenting:

¶ 20 In this case, the officer responded to a dispatcher's message regarding a 911 emergency call about a drunk driver travelling on the roadway. The officer located the vehicle and conducted an investigatory stop and eventually placed the driver under arrest for driving under the influence of alcohol. The trial court found the officer did not have a reasonable basis for the investigatory stop and granted defendant's motion to suppress. I would reverse the trial court's ruling based upon my view that the investigatory stop was both proper and necessary.

¶ 21 Under a narrow set of circumstances, a lawful investigatory stop may be based entirely upon information provided by a third party. I observe that those narrow circumstances are present in this record.

¶ 22 Here, it is undisputed that the officer, in a short amount of time, located a vehicle matching the general description of the suspect's vehicle. The officer also visually confirmed that the vehicle was being driven by a white female. Before activating his lights, the officer independently confirmed every detail of the 911 call, namely, the make of the vehicle, the model of the vehicle, the driver's gender, and the direction of the vehicle's travel. The officer ran a check of the license plate and found that the registered owner of the vehicle was a female. Out of

an abundance of caution, the officer consulted with another officer before initiating an investigatory stop.

¶ 23 After activating his emergency lights, the officer noticed and felt it was odd that the driver of the vehicle passed numerous available places where she could have safely stopped her vehicle. The officer also found it odd that defendant drove into a parking lot behind a local bank, parked in a parking spot, stepped out of her vehicle before being asked to do so by the officer, and volunteered that she was meeting a friend at a local bar.

¶ 24 I consider these corroborative observations, resulting from the officer's independent police work, to represent a sufficient indicia of reliability supporting the officer's reasonable *suspicion* that the 911 caller's information warranted a brief investigatory stop. See *Alabama v. White*, 496 U.S. 325, 330 (1990) (instructing that reasonable suspicion to conduct an investigatory stop is a less demanding standard than probable cause and that a reasonable suspicion can arise from information that is less reliable than that required to show probable cause).

¶ 25 Interestingly, after *White*, Illinois jurisprudence recognized that the level of sufficient corroboration needed to justify an investigatory stop may vary from case to case. In Illinois, when the third-party tip comes from a person known to law enforcement, a minimum level of corroboration is sufficient to justify an investigative stop. *People v. Nitz*, 371 Ill. App. 3d 747, 751-52 (2007). Similarly, the applicable case law provides that less or minimal corroboration is needed when a third-party tip concerns an intoxicated driver on the highway. *People v. Shafer*, 372 Ill. App. 3d 1044, 1052-53 (2007) (instructing that less rigorous corroboration of a tip is necessary when the tip concerns suspected drunk driving because of the danger posed to public safety).

¶ 26 Both considerations for minimal corroboration of the 911 caller's information are present in this record. Here, the 911 caller provided her phone number for the dispatcher and also identified herself as the daughter of the impaired driver. Further, the 911 caller reported a significant risk to public safety, namely, a drunk driver.

¶ 27 In my view, the officer's failure to independently observe erratic driving, other than weaving within the lane, does not negate the reasonableness of the officer's decision to conduct an investigatory stop. The 911 caller did *not* report erratic driving. However, the officer remarked that the driver did not respond quickly to his emergency lights. The officer felt it was odd for the driver to pass up numerous safe places to stop before parking in a parking lot behind a local bank. At the very least, I submit a sluggish response to the emergency lights constitutes some indicia of impaired driving.

¶ 28 Aside from the corroboration I have identified above, I also point out that the 911 caller's information carried other independent, but equally important, indicia of reliability. For example, the 911 caller described her personal observations of her mother's demeanor just before her mother drove away. In other words, the tip came from an eyewitness who had a close relationship to the driver and who expressed her familiarity with the driver's behavior when highly intoxicated.

¶ 29 In addition, the case law indicates that calls to emergency numbers are generally considered to be more reliable than other anonymous tips. See *id*. at 1050-52. Further, I note that placing a false 911 call is a criminal offense. See 720 ILCS 5/26-1 (West 2016). Therefore, it would be against the 911 caller's best interest to make a false report.

¶ 30 These additional indicia of reliability solidify my view that the officer formulated a reasonable suspicion that the 911 caller was being truthful, her mother was intoxicated, and the

caller was justifiably concerned for the safety of the public. Nothing in this record supports the view that the officer's conclusions about the accuracy of the tip from the driver's daughter were off base.

¶ 31 Finally, I do not share the trial court's view that the officer should have discredited the reliability of the 911 caller's information due to a strained family relationship. I am unaware of case law from this district that allows a trial court to assign a speculative motive to this 911 caller's decision to report an ongoing crime. Further, I am not convinced that the Second District's decision in *People v. Ertl* allowed the trial court to attribute either a good or bad motive to the 911 caller. See 292 Ill. App. 3d 863, 873 (1997).

¶ 32 Respectfully, *Ertl* is distinguishable. In that case, the caller did *not* report any criminal misconduct or threatening behavior. *Id.* Since the caller did not claim her ex-husband was breaking the law by being present or in close proximity to the property, the court labeled the conduct at issue to be "innocent." *Id*. The caller in that case reported that she intended to obtain an order of protection to keep her ex-husband away but had not done so before the call. *Id*. The court specifically noted that the "tenor" of the phone call was "preemptive and anticipatory and did not impart the type of urgency that would arise from witnessing a crime in progress." *Id*. Ultimately, the Second District did not focus on the caller's ill will but rather determined that the speculative nature of whether the caller's ex-husband's car *might* contain a firearm was problematic. *Id*. at 874-75.

¶ 33 Unlike the situation in *Ertl*, the 911 caller in this case was feverishly describing exigent circumstances arising from her personal observation of a crime in progress that created a risk of public harm. After locating the vehicle, I submit that this officer would have been remiss if he had *not* conducted an investigative stop. Regardless of the outcome of this appeal, due to the

coordination of efforts between the 911 dispatcher and the officer on the street, an intoxicated driver did no harm to the public.

¶ 34 In conclusion, the totality of the following circumstances cause me to conclude this officer had a *reasonable* suspicion that defendant was engaged in criminal activity: (1) the 911 caller identified herself and provided a phone number to the dispatcher; (2) the 911 call was made to law enforcement using an emergency number; (3) the 911 caller provided personal observations of the driver's irrational behavior and reported her mother "just left" by driving away; (4) the 911 caller was a family member who was familiar with defendant's behavior when intoxicated; (5) the reported criminal activity posed an urgent danger to public safety; and (6) the officer independently corroborated the make of the vehicle, the model of the vehicle, and the direction of travel of the motor vehicle as reported by the 911 caller.

¶ 35 For these reasons, I respectfully dissent and would reverse the trial court's decision to suppress the evidence gathered after the investigatory stop.