

NOTICE

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2014 IL App (5th) 130590-U

NO. 5-13-0590

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-Appellant,)	Clay County.
)	
v.)	No. 12-CF-85
)	
MEREL D. GREENWOOD,)	Honorable
)	Daniel E. Hartigan,
Defendant-Appellee.)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Justices Goldenhersh and Chapman concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court erred in granting the defendant's motion to suppress evidence where the arresting officer had reasonable suspicion of criminal activity after receiving information from a 9-1-1 caller to justify the investigative stop.

¶ 2 The defendant, Merel D. Greenwood, was charged with aggravated driving under the influence (third or subsequent offense), a Class 4 felony, in violation of section 11-501(d) of the Illinois Vehicle Code (625 ILCS 5/11-501(d) (West 2012)), and driving while license revoked (fifth or subsequent offense), a Class 4 felony, in violation of section 6-303(a) of the Illinois Vehicle Code (625 ILCS 5/6-303(a) (West 2012)). The defendant moved to suppress the evidence against him and the statements he made to law

enforcement officers; he alleged that they were obtained as a result of an unlawful stop. Following a suppression hearing, the circuit court granted the defendant's motion. The State then filed an amended motion to reconsider, which the circuit court denied after a hearing. The State certified to the circuit court that the suppression substantially impaired the State's ability to prosecute the case and filed a timely notice of appeal. We reverse.

¶ 3

BACKGROUND

¶ 4 Officer Bruce Cook, who had been a police officer with the city of Flora for 33 years, testified at the suppression hearing. On October 28, 2012, at approximately 12:23 a.m., Officer Cook received information from the police dispatcher that a 9-1-1 caller had reported that a white pickup truck was traveling eastbound on U.S. Highway 50 "at a very high rate of speed." The caller reported the license plate number and advised dispatch that the white pickup truck was traveling approximately 70 miles per hour on the two-lane highway which had a speed limit of 55 miles per hour. Officer Cook testified that the information he received from dispatch was that the driver of the white pickup truck had passed a semitruck, pulled over onto the shoulder of the road, turned off the lights, exited the pickup truck, and proceeded to urinate while standing on the driver's side of the pickup truck closest to the lane of traffic. The driver then got back into the pickup truck and once again passed the semitruck. Officer Cook testified that the caller expressed concern about the reckless driving and about the driver standing so close to the edge of the road. He had no further information about the caller, nor did he know the

identity of the person who had called in the report. However, Officer Cook testified that calls made to the 9-1-1 emergency line can be traced.

¶ 5 When the 9-1-1 call came in, Officer Cook and Officer Matt Irmien were at the police department. Officer Cook testified that officers are required to investigate all 9-1-1 calls. Both officers responded to the call, although Officer Irmien left a minute or two ahead of Officer Cook to attempt to intercept the white pickup truck. Although Officer Cook was not certain exactly where the pickup truck was located at the time of the 9-1-1 call, the report was that it was on the west side of Flora before U.S. Highways 45 and 50 merge traveling east toward Flora.

¶ 6 Officer Irmien reported to Officer Cook by radio that he had observed a pickup truck matching the description from the 9-1-1 call at the intersection of U.S. Highway 45/50 and North Worthy Street. Officer Cook testified that Officer Irmien kept him advised of the location and direction of the white pickup truck. Officer Irmien advised a short time later that he observed the white pickup truck turning south off of U.S. Highway 45/50 onto North State Street. Officer Cook pulled into the parking lot of a church from where he could see the intersection of U.S. Highway 45/50 and North State Street. He testified that he saw one set of headlights heading south which turned out to be a white pickup truck.

¶ 7 As the white pickup truck continued south, Officer Cook got behind it. He followed the pickup truck for approximately seven blocks. The officer testified that as he followed, he observed the white pickup truck turn on its left turn signal and slow down as if to turn. Instead of turning, however, the pickup truck turned off its signal and

continued driving south. He also observed the white pickup truck "weave, weaving back and forth inside the lane from the center line to the edge of the street." As he was behind the pickup truck, Officer Cook observed it enter the parallel parking area on the right side of the road and then reenter the roadway to make a wide left turn into the V.F.W. parking lot. As Officer Cook was preparing to activate his red lights, the white pickup truck stopped. At that point Officer Cook turned his spotlight on the white pickup truck and made contact with the driver. He testified that although his patrol car was equipped with a video camera, Officer Cook had not been trained on the use of the camera and had been advised not to use it until a policy on its use had been written.

¶ 8 After the stop, Officer Cook ran the vehicle's license plate number. The officer noted that all of the numbers reported by the 9-1-1 caller were present, but two of the numbers were transposed, which he thought could have been a typographical error.

¶ 9 Officer Cook arrested the defendant based on his observations after the stop, and the State charged him with aggravated driving under the influence and driving while license revoked.

¶ 10 On February 13, 2013, the defendant filed a motion to suppress the evidence against him as well as statements he made to law enforcement officers, alleging that the evidence and statements were obtained after an unlawful stop. Following a suppression hearing, the circuit court found that the anonymous 9-1-1 call did not provide sufficient detail to justify the stop. The court further found that although the officer testified that he observed the defendant's vehicle weaving, Officer Cook did not indicate that the defendant committed a motor vehicle violation. The circuit court granted the defendant's

motion and ordered the evidence and statements suppressed. The State filed an amended motion to reconsider, which the circuit court denied after a hearing. In its written order, the circuit court found that an uncorroborated telephone call made by an unknown or anonymous caller to 9-1-1 does not by itself constitute reasonable, articulable suspicion to effectuate the stop.

¶ 11 Thereafter, the State filed a timely notice of appeal and certified to the circuit court that the suppression substantially impaired the State's ability to prosecute the case.

¶ 12 ANALYSIS

¶ 13 On appeal, the State argues that the circuit court erred in granting the defendant's motion to suppress and in denying its motion to reconsider because the arresting officer had reasonable suspicion of criminal activity after receiving information from a 9-1-1 caller to justify the investigative stop. As we find this issue dispositive, we elect not to address the remainder of the State's alternative arguments.

¶ 14 "When reviewing a trial court's suppression ruling, this court applies a two-part standard of review." *People v. Sanders*, 2013 IL App (1st) 102696, ¶ 12. "The trial court's factual findings and credibility determinations are entitled to great deference and will be reversed only if they are against the manifest weight of the evidence." *Id.* "However, the trial court's ultimate legal ruling as to whether suppression was warranted is reviewed *de novo*." *Id.*

¶ 15 A vehicle stop is analyzed under the principles set forth in *Terry v. Ohio*, 392 U.S. 1 (1968). *People v. Henderson*, 2013 IL 114040, ¶ 25. "*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." *People v. Smulik*, 2012 IL App (2d) 110110, ¶ 5. In evaluating whether reasonable suspicion existed, a reviewing court should objectively consider whether information known to the officer at the time of the stop would warrant a person of reasonable caution to believe a stop was necessary to investigate the possibility of criminal activity. *People v. Shafer*, 372 Ill. App. 3d 1044, 1048-49 (2007). We note that reasonable suspicion justifying a *Terry* stop is a less exacting standard than probable cause to make an arrest. *Id.* at 1048.

¶ 16 "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." *People v. Nitz*, 371 Ill. App. 3d 747, 751 (2007). "[U]nder appropriate circumstances, an anonymous tip can demonstrate 'sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop.'" *Navarette v. California*, ___ U.S. ___, ___, 134 S. Ct. 1683, 1688 (2014) (quoting *Alabama v. White*, 496 U.S. 325, 327 (1990)). "An informant tip received by 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." *People v. Ewing*, 377 Ill. App. 3d 585, 595 (2007). "The inquiry into whether an informant's tip is reliable cannot be reduced to a bright-line test and requires a careful consideration of the specific circumstances of each particular case." *City of East Peoria v. Palmer*, 2012 IL App (3d) 110904, ¶ 42.

¶ 17 "One factor that affects the reliability of a tip is whether the tip is anonymous or nonanonymous." *People v. Hansen*, 2012 IL App (4th) 110603, ¶ 20. When a tip is

anonymous, its reliability depends upon the existence of corroborative details observed by the police. *Id.* ¶ 59. The court in *People v. Shafer* adopted four factors to be considered when evaluating whether an anonymous tip gives rise to reasonable suspicion: whether a sufficient quantity of information exists such that the officer may be certain that the vehicle stopped was the one identified by the caller; the time interval between the police receiving the tip and the police locating the suspect vehicle; whether the tip was based on contemporaneous eyewitness observations; and whether the tip was sufficiently detailed to permit reasonable inferences that the caller actually witnessed an ongoing motor vehicle offense. *Shafer*, 372 Ill. App. 3d at 1050.

¶ 18 In applying the *Shafer* factors, we first note that the caller provided a sufficient quantity of information such that Officer Cook could be certain that the vehicle he stopped was the one identified by the caller. The caller identified a white pickup truck, reported its license plate number (albeit possibly with two numbers transposed), and reported that the truck was on the west side of Flora before U.S. Highways 45 and 50 merge. Based on this information, the officers left the police department in an attempt to intercept the white pickup truck.

¶ 19 Second, although there was no testimony as to the time interval between the police receiving the 9-1-1 call and the police locating the suspect vehicle, an inference can be made that the time interval was small. Officer Cook testified that Officer Irmen left a minute or two ahead of him and a "short time later" Officer Irmen advised that he had observed the white pickup truck turning south off of U.S. Highway 45/50 onto North State Street. In response to this information, Officer Cook pulled into a parking lot from

where he could see the intersection, and he testified that he saw one set of headlights heading south which turned out to be the white pickup truck.

¶ 20 Third, the call was based on contemporaneous eyewitness observations where the caller not only identified the white pickup truck and its license plate number, but also described the truck's location and the direction it was headed such that the officers were able to go to the general area and locate the vehicle.

¶ 21 Finally, the call was sufficiently detailed to permit a reasonable inference that the caller actually witnessed the incident reported on the 9-1-1 call. The caller described how the driver of the white pickup truck speeded past a semitruck, pulled over onto the shoulder of the road, turned off the lights, and exited the pickup truck. The caller then reported that the driver urinated while standing on the side of the roadway closest to the lane of traffic before getting back into the pickup truck and once again passing the semitruck.

¶ 22 In addition to the reasonable suspicion provided by the 9-1-1 call, Officer Cook's observation of the defendant weaving back and forth inside of his lane was sufficient to justify the traffic stop. See *People v. Greco*, 336 Ill. App. 3d 253, 257 (2003) ("The well-accepted rule in this state is that erratic driving, including weaving within a single lane, is sufficient to justify a traffic stop."). We find that the circuit court erred in granting the defendant's motion to suppress and in denying the State's motion to reconsider.

¶ 23

CONCLUSION

¶ 24 For the reasons stated, we reverse the order of the circuit court of Clay County suppressing the evidence and the defendant's statements and remand this cause for further proceedings.

¶ 25 Reversed and remanded.