2016 IL App (2d) 151001-U
No. 2-15-1001
Order filed December 22, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of De Kalb County.
Plaintiff-Appellant,	)	Nos. 15-CM-618
	)	15-DT-217
v.	)	15-TR-6140
	)	15-TR-6141
JEREMY WILLIAMS,	)	Honorable Robert P. Pilmer,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Jorgensen and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court erred in granting defendant's petition to rescind and motion to quash and suppress: the stop of defendant's vehicle was valid, as the tip supporting it was not anonymous and showed the additional indicia of reliability.

¶ 2 Defendant, Jeremy Williams, was ticketed for driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(1), (a)(2) (West 2014)), operating an uninsured vehicle (625 ILCS 5/3-707 (West 2014)), having only one red tail lamp (625 ILCS 5/12-201(b) (West 2014)), and endangering the life of a child (720 ILCS 5/12C-5(a) (West 2014)). His driving privileges were summarily suspended (625 ILCS 5/11-501.1(e) (West 2014)). Defendant filed a

petition to rescind that suspension (625 ILCS 5/2-118.1(b) (West 2014)) and a motion to quash his arrest and suppress evidence, arguing, *inter alia*, that the arresting officer lacked reasonable grounds to believe that he was driving while under the influence of drugs. The trial court granted the petition and motion, and the State filed a certificate of impairment and timely appealed (see Ill. S. Ct. R. 604(a)(1) (eff. Dec. 11, 2014)). For the reasons that follow, we reverse and remand.

¶ 3 Two witnesses testified at the hearing: Sycamore police officer John Keacher and defendant. Keacher testified that he was at the Sycamore police department during the early morning hours of May 16, 2015, when a call came in from "dispatch" regarding a report of a possible drunk driver. He explained: "Typically dispatch works where there's a call taker who then relays that information to the dispatcher who then relays that information to me." Keacher was asked if he knew who had made the report, and he responded: "I don't recall now, but there was a name provided and a telephone number that they called in on. They requested to be anonymous, however." He stated that he did recall seeing a female's name. She did not want defendant to know who made the complaint. Dispatch advised Keacher that the caller reported that defendant was going to be leaving from a residence located on Fairland Drive in Sycamore, that he would be traveling to his residence on West State Street, and that she could hear people at the residence trying to convince defendant to stay or to let his daughter stay. The caller also reported that defendant was going to be driving a red Oldsmobile. Keacher was asked whether the caller provided any information about defendant's driving performance. He indicated that she did not. Thereafter, the following colloquy occurred:

"Q. It was just somebody saying somebody may be driving a red Oldsmobile—

A. Somebody was going to be driving a red Oldsmobile, they were leaving. Yeah, at some point that was correlated that they were leaving, that that person had been drinking and they believed that this person was intoxicated.

Q. Okay.

A. Or drunk. I don't know what specific words they used, but it was relayed to me that way."

¶ 4 Keacher testified that, after receiving the report, he left the police station in his squad car and drove to the neighborhood from where the call originated, which was about a half mile or a mile away from the police station. As he entered the neighborhood, he observed a red Oldsmobile turn off of Fairland Drive onto Electric Park Drive. He testified that there was not a lot of traffic that night; it was possible that defendant's vehicle was the only one he had seen. Keacher got behind the Oldsmobile and followed it. Keacher observed the Oldsmobile turn right onto Coltonville Road and saw that the Oldsmobile had a broken passenger-side taillight. When defendant activated the turn signal, a bright white light was emitted. Keacher did not observe any problems with defendant's execution of the turn. He did not recall whether the caller had reported a broken taillight. Keacher followed the Oldsmobile for a few blocks, observing defendant make a left turn onto De Kalb Avenue and then stop at the intersection of De Kalb Avenue and Peace Road. Thereafter, when the light turned green and defendant turned left onto Peace Road, Keacher activated his emergency lights and signaled defendant to stop.

¶ 5 Keacher testified that he did not observe defendant commit any moving violations. When asked whether he stopped the vehicle due to the tip he had received or due to the taillight, he stated:

> "More or less a combination of both, but the—I would say that my attention was drawn to the vehicle by the tip that I was given. You know, however, I stopped the vehicle and made the driver aware the reason I was stopping him was because of the broken taillight."

Keacher's squad car was equipped with a video recorder, and a portion of the incident, showing defendant turning left onto Peace Road, is on the video. The video was shown to the court.

¶ 6 On cross-examination Keacher testified that, according to dispatch, the caller saw defendant at a function and felt that he was either intoxicated or drunk. When he drove the route indicated by the caller, he found the red Oldsmobile and could see a male driver. He did not yet see a passenger. When he approached the vehicle, he saw a juvenile female sitting on a booster seat in the front passenger seat. Keacher testified that defendant was driving the most direct route to the address on West State Street that he believed had been provided by the caller.

¶ 7 Defendant testified that, during the early morning hours on May 16, he was pulled over shortly after leaving his friend's house in his vehicle. He testified that his right rear taillight was broken, so he put red translucent tape over it so that it would appear red. Defendant identified defendant's group exhibit No. 1 as pictures of his taillight at night, which were taken the night after the incident. He stated that the light (when illuminated) appeared red as it did on the night he was pulled over. Defendant next identified defendant's group exhibit No. 2 as pictures of his car taken the next morning, which show his right rear taillight covered in red tape.

¶ 8 On cross-examination, defendant testified that his rear taillight had been broken for eight years and that he changes the tape "every year and a half or so." When Keacher told defendant that he had pulled him over because of the taillight, defendant told him that he had more tape at

his house and that he would replace the tape the next day. He did not tell Keacher that the tape had faded.

¶ 9 Following defendant's testimony, the State moved for a directed finding on both the petition and the motion. The trial court denied the State's motion. Thereafter, the State recalled Keacher.

¶ 10 Keacher testified that dispatch described the nature of the call as "10-55," which means "[d]runk driver, intoxicated driver." Keacher testified that the taillight was "almost completely, if not completely broken" and that it was covered in "clear tape." Defendant told him that "he had red tape on it originally but the tape had faded to clear."

¶ 11 Following argument, the trial court granted defendant's petition and motion. The court stated:

> "This case you have a caller who wished to remain anonymous. Apparently went to great efforts to make sure that was known. Nonetheless, calls a number where presumably her identity can be known or discovered at some point and provides information that a person has been drinking. Doesn't indicate that a person is drunk. Doesn't indicate that the person is capable of driving but says that she can hear someone also talking to defendant in this case or pleading with the defendant in this case to let the young child stay here or that he should stay here.
>
> There's no indication as to [*sic*] from the caller that the person was intoxicated or otherwise in some way impaired. There's no indication that as in other cases where Courts have upheld a Terry stop based on an anonymous tip that in those instances where the caller specifically claimed that the driver of the vehicle was intoxicated that they observed specific illegal activity or described other specific issues concerning the

operation of a motor vehicle, and in those cases where that's occurred they've generally held that that's sufficient.

However, there have been other cases where with anonymous tips that there has not been sufficient corroborative evidence, and again, all of the Courts looked at and direct that they consider the totality of the circumstances.

In doing that here in considering the totality of the circumstances including the viewing of the video the Court did observe closely the video that was shown and while the vehicle was making a left turn and not a right turn and that it was the right rear taillight that Officer Keacher observed and testified that he saw observed white from there.

The Court could not see any white coming from the right rear taillight as it was covered by red, and based on again the totality of the circumstances as it pertains to the petition to rescind, I am going to find that the defendant has met his burden in that case to show that there's not a reasonable and articulable suspicion or basis to stop the vehicle."

¶ 12 The State filed a timely notice of appeal and certificate of impairment.

¶ 13 The State argues that defendant's petition to rescind the summary suspension of his driver's license and motion to quash his arrest and suppress evidence should not have been granted. According to the State, the trial court erred in finding that Keacher did not have a reasonable articulable suspicion to stop defendant's car. The State maintains that the tip and the broken taillight supported the stop. According to the State, the trial court made factual findings that were against the manifest weight of the evidence and misapplied relevant case law.

¶ 14 Defendant has not filed an appellee's brief responding to the State's arguments. Nevertheless, we may address the merits of the appeal, because the record is simple and the

claimed error can be easily decided without the aid of an appellee's brief. See *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976); see also *People v. Marcella*, 2013 IL App (2d) 120585, ¶¶ 23, 36 (deciding under *Talandis* whether undisputed facts established probable cause to detain the defendant).

¶ 15 When reviewing a trial court's decision on a petition to rescind or a motion to suppress, we grant great deference to the court's findings of historical fact and will not disturb those findings unless they are against the manifest weight of the evidence. *People v. Wear*, 229 Ill. 2d 545, 561-62 (2008); *People v. Hackett*, 2012 IL 111781, ¶ 18. However, we are free to undertake our own assessment of the facts as they relate to the legal issues presented by the case, and, therefore, we review the trial court's ultimate ruling on the petition or motion under the *de novo* standard. *Wear*, 229 Ill. 2d at 562; *Hackett*, 2012 IL 111781, ¶ 18.

¶ 16 Vehicle stops are subject to the fourth amendment's reasonableness requirement. *Hackett*, 2012 IL 111781, ¶ 20 (citing U.S. Const., amend. IV). A traffic stop may be justified on something less than probable cause. *Id.* ¶ 28. A traffic stop is more analogous to a *Terry* stop than to a formal arrest. See *Terry v. Ohio*, 392 U.S. 1 (1968). "*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 this standard has been met, we use a totality-of-the-circumstances approach to achieve a fair balance between the legitimate aims of law enforcement and the rights of citizens to be free from unreasonable government intrusion. *People v. Ledesma*, 206 Ill. 2d 571, 582 (2003).

¶ 17 A *Terry* stop can be based on information received from an informant. *People v. Linley*, 388 Ill. App. 3d 747, 751 (2009). "However, the informant's tip must bear some indicia of

reliability in order to justify the stop. [Citation.] [A] reviewing court should consider the informant's veracity, reliability, and basis of knowledge. [Citation.] Whether a tip is sufficient to support a stop is not determined according to any rigid test but rather depends on the totality of the circumstances." (Internal quotation marks omitted.) *Smulik*, 2012 IL App (2d) 110110, ¶ 7.

¶ 18 The State relies primarily on three cases in support of its argument that the trial court erred in finding that Keacher did not have a reasonable articulable suspicion to stop defendant's car. We will review each in turn.

¶ 19 In *People v. Shafer*, 372 Ill. App. 3d 1044 (2007), a police officer was on patrol when he received a call from dispatch informing him that an employee of a Wendy's restaurant had called regarding a person who " 'was causing a disturbance and was intoxicated' " while at the drive-thru window of the restaurant. *Id.* at 1047. The officer quickly responded and arrived at the only Wendy's location in the area, where he saw a car leaving the parking lot. *Id.* The officer activated his overhead lights and stopped the vehicle. *Id.* The officer observed a Wendy's bag in the front seat of the car and encountered the strong smell of alcohol. *Id.* The officer subsequently arrested the defendant for DUI. *Id.* The defendant petitioned to rescind his statutory summary suspension. *Id.* at 1046. The trial court denied the defendant's petition, finding that the officer had a reasonable suspicion to justify the stop. *Id.* at 1048-49. The defendant appealed.

¶ 20 On appeal, the defendant argued that the statement of the Wendy's employee did not bear sufficient indicia of reliability to justify the stop. *Id.* at 1053. The Fourth District disagreed. In evaluating the reliability of the telephone tip, the court first found relevant the fact that the call was made to a police emergency number. *Id.* at 1050. Citing case law from other jurisdictions, the court endorsed the proposition that

> "a 9-1-1 call carries a fair degree of reliability inasmuch as 'it is hard to conceive that a person would place himself or herself at risk of a criminal charge by making such a call.' The police maintain records of 9-1-1 calls not only for the purpose of responding to emergency situations but to investigate false or intentionally misleading reports. *** On balance, we are satisfied that in an expanding number of cases[,] the 9-1-1 system provides the police with enough information so that users of that system are not truly anonymous even when they fail to identify themselves by name." *Id.* (quoting *State v. Golotta*, 837 A. 2d 359, 367 (N.J. 2003)).

The court agreed that " '[t]he fact that the police agency either knew the identity of the caller or had the means to discover the caller's indentify enhances the caller's credibility.' " *Id.* at 1051 (quoting *State v. Williams*, 623 N.W.2d 106, 124 (Wis. 2001) (Prosser, J., concurring)). Applying these principles, the court found that the informant's tip bore an initial degree of reliability based solely on the fact that it was not anonymous. *Id*. at 1054.

¶ 21 The *Shafer* court also adopted a four-factor test applicable to anonymous tips that would further assist trial courts in determining when a tip has "sufficient indicia of reliability to establish the requisite quantum of suspicion" to justify a *Terry* stop. *Id.* at 1053-54. Those factors included (1) 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; (2) the time interval between when the information was first relayed to the police and when the police located the suspect vehicle; (3) whether the tip was " 'based upon contemporaneous eyewitness observations' "; and (4) whether the tip was " 'sufficiently detailed to permit the reasonable inference that the tipster has actually witnessed an ongoing motor vehicle offense.' " *Id.* at 1050 (quoting *State v. Sousa*, 855 A.2d 1284, 1290 (N.H. 2004)).

¶ 22 After reviewing these factors, the court concluded that the tip in *Shafer*, beyond not being anonymous, was reliable. *Id.* at 1054. First, the timing of the tip provided a sufficient basis for the officer to believe that he had identified and stopped the correct vehicle. *Id.* Second, the time between the officers receiving the tip and stopping the defendant's vehicle was short. *Id.* The tip was based on a contemporaneous eyewitness observation by a Wendy's employee who had a hand-to-hand exchange with the defendant. *Id.* Finally, the tip was sufficiently detailed to permit a reasonable inference that the tipster had actually witnessed the defendant create a disturbance at the drive-thru window and that he was intoxicated. *Id.* The court further held that "informant's tips regarding possible incidents of drunk driving require less rigorous corroboration than tips concerning matters presenting less imminent danger to the public." *Id.* at 1053. The court rejected the defendant's argument that the officer should have followed the defendant's vehicle until he observed evidence of impaired driving. *Id.* at 1055.

¶ 23 In *People v. Ewing*, 377 Ill. App. 3d 585, 587 (2007), a police officer overheard a 911 dispatch call come into the police department. The caller provided the name of the defendant, a description of the vehicle, the license plate number, which direction the defendant was driving, that the defendant was drunk, and that there was another male in the vehicle with the defendant. *Id*. at 588-89. The caller identified herself as Melissa, an employee of Crestline Veterinary Clinic, and explained that the defendant had just left her place of employment. *Id.* at 589. The defendant was arrested for DUI and filed a motion to suppress evidence and a petition to rescind his statutory summary suspension. *Id*. at 586. The trial court granted the defendant's motion and petition and found that the information provided by the tipster was not specific enough to justify a *Terry* stop, even though the caller " 'ha[d] an indicia of reliability.' " (Internal quotation marks omitted.) *Id.* at 589. The State appealed.

¶ 24 After applying the factors outlined in *Shafer*, the Fourth District reversed the trial court's decision, concluding that the tip was reliable and that the officers had reasonable suspicion to justify a stop. *Id.* at 595. Specifically, the court concluded that the caller was not anonymous, given that she called a police emergency number, gave her name, and provided her location. *Id.* Moreover, the caller provided sufficient details—the truck's color, make, model, and plate number, where the truck was going, and the number of occupants—to conclude that the officers had a sufficient basis to believe that they were stopping the identified vehicle. *Id.* The time interval between the call and the stop, approximately 11 minutes, was short. *Id.* The tip was based on a contemporaneous eyewitness observation by the caller, and the "tip was sufficiently detailed to permit a reasonable inference that [she] actually witnessed what she described." *Id.* at 596.

¶ 25 In *Smulik*, 2012 IL App (2d) 110110, this court upheld a trial court's grant of a motion to quash his arrest and suppress evidence. *Id.* ¶ 1. In that case, an officer received a dispatch concerning a possible DUI. *Id.* ¶ 3. The officer was advised that the caller reported that she had seen the defendant drinking, that she thought the defendant was drunk, and that she was presently following the defendant's vehicle. *Id.* The caller also relayed the vehicle's make and model, license plate number, and location. *Id.* The officer located the defendant's vehicle parked at a gas station. *Id.* The officer activated her emergency lights, entered the gas station parking lot, and parked behind the defendant's vehicle. *Id.* The officer approached the defendant's vehicle, observed that he had bloodshot eyes, and detected the smell of alcohol. *Id.* The officer then spoke with the caller, who had followed the defendant to the gas station. *Id.* After speaking with the caller, the officer returned to the defendant's vehicle and questioned whether he had been drinking. *Id.* The defendant was arrested and charged with DUI. The defendant filed a motion to

quash the arrest and suppress evidence. *Id.* ¶ 1. The trial court granted the defendant's motion, and the State appealed. *Id.*

¶ 26 On appeal, we concluded that the tip was anonymous, because the information was not provided through an emergency police number and the informant did not relay her name. *Id.* ¶ 8. Thus, we found that the reliability of the informant's tip depended upon the existence of corroborative details observed by the police, which we concluded were lacking. *Id.* The officer's "personal observations corroborated only noninculpatory aspects of the tip—that a vehicle fitting a certain description would be found at a particular location." *Id.* ¶ 9. Although we recognized that the corroboration standard has been relaxed in cases of drunk drivers because of the threat that such drivers pose to public safety, we found that the relaxed standard did not apply in *Smulik* because the defendant's vehicle was parked. *Id.* ¶ 11.

¶ 27 Here, the trial court, in granting defendant's petition and motion, found that the totality of the circumstances did not support a reasonable suspicion on the part of Keacher. We disagree. First, as in *Schafer* and *Ewing*, and unlike in *Smulik*, the tip in the present case was not anonymous. Although it does not appear that the call was made to a 911 emergency line, Keacher testified that "there was a name provided and a telephone number that they called in on." Keacher further testified that he had seen the caller's name written down but that he could not recall it. Although the caller requested to remain anonymous to defendant, she identified herself to the police. See *Shafer*, 372 Ill. App. 3d at 1050-51. This fact distinguishes the present case from *Smulik*, where we found that "[t]here is no evidence that the informant provided her name or that she contacted the police through an emergency number." *Smulik*, 2012 IL App (2d) 110110, ¶ 8. Accordingly, the tip here should not be viewed "with the skepticism applied to tips provided by confidential informants." *Shafer*, 372 Ill. App. 3d at 1054.

¶ 28 In addition, a review of the factors considered when assessing the reliability of an anonymous tip provides additional support to find that Keacher reasonably inferred that defendant was involved in criminal activity. See *Schafer*, 372 Ill. App. 3d at 1054. First, the caller provided information that would allow Keacher to be certain that he stopped the correct vehicle. The caller identified the color and make of the vehicle that defendant was driving. She advised that defendant would be leaving a gathering at one location and that he would be heading toward his own home. She also indicated the route that defendant would be driving. Second, the time interval between the call and Keacher's location of the vehicle was short. Keacher testified that after receiving the call he drove to the area from where the call originated, which was about a half mile from the police station, and located the vehicle. He testified that traffic was light and that defendant's vehicle might have been the only vehicle he had seen. Third, the tip was based on contemporaneous eyewitness observation. The caller stated that she could hear others at the gathering asking defendant to stay, which allowed for a reasonable inference that she was well within the vicinity of defendant. Finally, the tip was sufficiently detailed to permit a reasonable inference that the caller actually witnessed what she described. We note that, although the trial court found that the caller did not indicate that defendant was "drunk" or "intoxicated," this conclusion is against the manifest weight of the evidence. Keacher testified that, while he did not know the specific words that the caller used to describe defendant, dispatch relayed to him that defendant was "drunk" or "intoxicated." He also testified that the call was reported as a "10-55," which means "[d]runk driver, intoxicated driver." Thus, the caller must have described defendant as "drunk" or "intoxicated." In addition, she was able to describe that defendant was leaving with his daughter.

¶ 29 As we acknowledged in *Smulik*, "the threat that intoxicated drivers pose to public safety justifies some relaxation of the corroboration requirement." *Smulik,* 2012 IL App (2d) 110110, ¶ 11. In *Smulik*, we found that such relaxation was not warranted, because in addition to the informant being anonymous, the defendant's vehicle was parked when the officer confronted him and thus there was no immediate threat to public safety. *Id.* Here, the informant was not anonymous. Moreover, defendant was in a moving vehicle reportedly with a young child. Thus, he was posing an immediate threat not only to public safety but also to an innocent child. Certainly, this is a case where some relaxation of the corroboration requirement is warranted.

¶ 30 Given the slightly relaxed standard, the fact that the informant was not anonymous, and the additional factors weighing in favor of finding the tip reliable, we find that the tip provided reasonable suspicion to justify the stop. As such, we need not decide whether the broken taillight provided a sufficient basis for the stop.

¶ 31 III. CONCLUSION

¶ 32 For these reasons, the judgment of the circuit court of De Kalb County is reversed, and the cause is remanded.

¶ 33 Reversed and remanded.