

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellant,

V

TIMOTHY MICHAEL JOHNSON,

Defendant-Appellee.

UNPUBLISHED
November 9, 2001

No. 230938
Oakland Circuit Court
LC No. 99-164251-FH

Before: Griffin, P.J., and Markey and Meter, JJ.

PER CURIAM.

Defendant was charged in district court with two counts of carrying a concealed weapon, MCL 750.227, and possession of marijuana, MCL 333.7403(2)(d). Following defendant's preliminary examination, he was bound over for trial as charged. Defendant filed a motion to suppress the evidence. The circuit court granted the motion and entered an order of dismissal. The prosecution appeals by right. We reverse and remand.

The prosecution's only issue is that the trial court clearly erred in suppressing the evidence seized and dismissing the charges. We agree. We review a trial court's factual findings at a hearing to suppress evidence as improperly seized for clear error. *People v Oliver*, 464 Mich 184, 191; 627 NW2d 297 (2001), cert pending. Clear error exists where this Court is left with a definite and firm conviction that a mistake has been made. *People v Christie (On Remand)*, 206 Mich App 304, 308; 520 NW2d 647 (1994). Questions of law relevant to the suppression issue are reviewed de novo. *People v Sobczak-Obetts*, 463 Mich 687, 694; 625 NW2d 764 (2001).

Brief, investigative stops of vehicles are permitted if a police officer has reasonable suspicion of ongoing criminal activity. *Christie, supra* at 308. While reasonable suspicion is something more than an inchoate or unparticularized suspicion, it is less than the level of suspicion required to establish probable cause. *People v Champion*, 452 Mich 92, 98; 549 NW2d 849 (1996), cert denied 519 US 1081; 1175 Ct 747; 136 L Ed 2d 685 (1997). The reasonableness of an officer's suspicion is determined from an objective observation of the totality of the facts and circumstances. *Oliver, supra* at 192, quoting *People v LoCicero (After Remand)*, 453 Mich 496, 501-502; 556 NW2d 498 (1996). A police officer's reasonable suspicion may be based upon information received from an informant if the information exhibits sufficient indicia of reliability. *United States v Braggs*, 23 F3d 1047, 1049 (CA 6, 1994), cert denied 513 US 907; 115 S Ct 274; 130 L Ed 2d 191 (1994). Reasonable suspicion requires that a

tip be reliable not only in its tendency to identify a particular person, but also in its assertion of illegality. *Florida v JL*, 529 US 266, 272; 120 S Ct 1375; 146 L Ed 2d 254 (2000).

In *United States v Pasquarille*, 20 F3d 682, 684 (CA 6, 1994), cert denied 513 US 986; 115 S Ct 481; 130 L Ed 2d 394 (1994). An informant identifying himself as a person responsible for transporting prisoners, called police and stated that he had seen a man attempting to sell cocaine at a truck stop off an interstate highway. He also stated that the alleged seller was driving a light-colored van with a step-top bearing a Florida license plate ending with “91E.” *Id.* A police officer later stopped the defendant’s vehicle, a light-colored van with a step-top and a license plate number ending in “91E,” at a rest area off the interstate highway. *Id.* In the district court, the defendant challenged the police officer’s search of the van on the basis that the officer lacked probable cause to conduct the search, and was unsuccessful.¹ *Id.* at 685. The United States Court of Appeals for the Sixth Circuit held that probable cause existed to support the officer’s belief that the van contained contraband when considering the evidence under the totality of the circumstances. *Id.* at 687. The Court relied on the fact that although the informant did not give his name, he identified himself as a transporter of prisoners who had recently observed an individual attempting to sell drugs at a particular location. *Id.* The Court found that the above facts distinguished the situation from one where a person gives an anonymous tip, but provides no personal knowledge as to how the information was obtained. *Id.* The Court further found that the informant’s ability to accurately describe the vehicle, identify the state where the license plate was issued, and recount three characters of the license plate number provided additional support that the tip was sufficient to satisfy a finding of probable cause. *Id.* at 688.

In *People v Faucett*, 442 Mich 153, 157; 499 NW2d 764 (1993), the Michigan Supreme Court addressed the issue whether an anonymous tip, together with independent police corroboration, created a reasonable suspicion to support an investigative stop. In *Faucett, supra* at 155, a police dispatcher received an anonymous tip that the defendant was currently transporting a quarter pound of marijuana or cocaine, in a blue pickup truck, possibly a Datsun. The informant stated that the defendant was traveling to Alpena, presently on Werth Road, and that the drugs were in a carrying case behind the front seat of the truck. *Id.* The informant also declared that the defendant would be turning onto Hobbs Drive and then onto either Third or Grant. *Id.* Not long after receiving the information, Officer Michael Roy observed a blue Mazda pickup truck, registered to the defendant, traveling on Hobbs Drive. *Id.* at 155-156. When the defendant turned onto Grant, Roy stopped the vehicle and recovered a black attaché case containing eleven bags of marijuana behind the front seat. *Id.* at 156. The district court suppressed the marijuana on the ground that the anonymous tip did not support the investigative stop that led to the discovery of the evidence. *Id.* The circuit court and the Court of Appeals affirmed the district court’s dismissal. *Id.* at 156-157.

¹ Because the defendant challenged the search of his van rather than the officer’s stop of the vehicle, the Court applied the probable cause standard, as opposed to the reasonable suspicion standard. *Pasquarille, supra* at 685-686; *Christie, supra* at 308. Because the instant case involves the stop of defendant’s vehicle rather than the search of the Jimmy, the lower standard of reasonable suspicion applies in this case. *Braggs, supra* at 1049; *Champion, supra* at 98.

The Michigan Supreme Court found that the informant identified the defendant, knew that the defendant was on the road at the time of the call, correctly described the pickup truck, and specified the route that the defendant was traveling. *Id.* at 167, 170. The Court concluded that this information provided by the anonymous tipster, together with independent police corroboration,² created a reasonable suspicion that supported an investigative stop in accord with the totality of the circumstances. *Id.* at 157, 167, 171.

In contrast, in *JL, supra*, 529 US 268, the United States Supreme Court found that an anonymous tip, without more,³ was insufficient to justify the stop of the defendant. In *JL, supra*, 529 US 268, an anonymous informant called the Miami-Dade Police Department and stated that a young, black male wearing a plaid shirt and standing at a certain bus stop was carrying a gun. After receiving the tip, two officers traveled to the bus stop, where they observed three black males, one wearing a plaid shirt, the defendant. *Id.* The officers approached the defendant, stopped and frisked him, and recovered a gun from his pocket. *Id.* The defendant moved to suppress the gun as the fruit of an unlawful search, and the trial court granted his motion. *Id.* at 269. The intermediate appellate court reversed, but the Florida Supreme Court held the search invalid. *Id.*

The United States Supreme Court found the tip insufficient to justify the officers' stop of the defendant. *Id.* at 274. The Court declared that the tip came from an unknown informant from an unknown location, unlike a tip from a known caller whose reputation can be assessed and who can be held accountable if the tip is bogus. *Id.* at 270. The Court found important the fact that the informant did not explain how he knew about the gun or supply any basis for the officers' belief that the informant had inside information concerning the defendant. *Id.* at 271. The Court stated that the tip did not provide any predictive information from which the police could corroborate the tip and, in essence, test the informant's credibility. *Id.* at 271. The Court found the informant's ability to describe the defendant and his location as reliable, but only in a limited sense, because it assisted the police in identifying the defendant; however, it did not show that the informant had specific knowledge of criminal activity. *Id.* at 272. The Court further stated that reasonable suspicion requires that a tip be reliable not only in its tendency to identify a particular person, but also in its assertion of illegality. *Id.*

Here, the evidence at the evidentiary hearing established that on November 5, 1998, off duty Pontiac Police Officer William Wells responded to an electronic page from an acquaintance he had known for approximately fifteen years. The acquaintance told Wells that the a male working at a beeper store located at the corner of Huron and Henderson in Pontiac would leave the store around 7:00 p.m. that day and would be driving a red GMC Jimmy with license plate number KRB 374 and had several handguns for sale that were kept behind the rear seat in side pockets inside the Jimmy. The acquaintance giving the tip had given information of a police

² The Court stated that Officer Roy corroborated the defendant's identity through a LIEN search of the vehicle's license plate, the defendant's travel on Hobbs Drive, and the predicted turn onto Grant Avenue before making the stop. *Id.* at 167, 171.

³ Compare *Faucett, supra*, where the Michigan Supreme Court concluded that an anonymous tip, "together with independent police corroboration," was sufficient to justify an investigative stop.

nature to Wells on one prior occasion that resulted in the recovery of a stolen car. Wells called the Pontiac police department and relayed the information he received from the acquaintance.

After receiving the information, Officers Lasseigne and Harris went to the corner of Huron and Henderson, drove by a red GMC Jimmy with a license plate number that matched the number given in the tip, and then, at approximately 6:45 p.m., parked the patrol vehicle where they could watch the parking lot where the Jimmy was located. Defendant came out of the beeper store and got into the red Jimmy at approximately 7:15 p.m. and pulled away. The officers stopped the vehicle, and Lasseigne looked throughout the inside of the vehicle and saw bulges in the rear seat armrest pockets where the guns were supposed to be according to the tip. Harris searched defendant's person and found four forty-caliber bullets in his left jacket pocket. Lasseigne entered the vehicle, patted the armrest pockets, then unzipped one of them revealing two black forty-five-caliber pistols. He then unzipped the other pouch and removed a clear baggie of marijuana and a scale used for weighing marijuana.

In the instant case, the informant's tip provided the reasonable suspicion necessary to justify the stop of defendant's vehicle. Although the present case is similar to *JL*, there are distinguishing factors. The Court in *JL, supra*, 529 US 270, relied heavily on the fact that the tip came from an unknown informant from an unknown location.⁴ Here, however, the tip came from an acquaintance Officer Wells had known for approximately fifteen years. The informant had given information of a police nature to Wells on one prior occasion that resulted in the recovery of a stolen car. In this case, because the informant was known, his reputation can be assessed, and he can be held accountable if the tip is fabricated. *Id.* at 270. Furthermore, the informant paged Officer Wells, thus leaving a telephone number where Officer Wells could and did reach him. This scenario also differs from *JL* where the informant's location was unknown. Here, the police could ascertain the informant's whereabouts using the phone number from Officer Wells' pager.⁵

In *JL, supra*, 529 US 271, the Court found important the fact that the informant did not explain how he knew about the gun or supply any basis for the officers' belief that the informant had inside information concerning the defendant. Nor did the tip provide any predictive information. *Id.* The Court stated that such information is important because, in anonymous tip situations, these tips must be "suitably corroborated" in order for the tip to be sufficiently reliable, and therefore, provide reasonable suspicion to make the stop. *Id.* at 270. As in *JL*, the informant here did not provide the police with a basis for his knowledge or any predictive information. However, this case is distinguishable from *JL* because the police needed this information in *JL* to corroborate the tip to test the informant's credibility. *Id.* at 271. This type of corroboration is less necessary in the instant case because the tip was not anonymous and the

⁴ Like *JL*, the tipster in *Faucett, supra* at 157, was also anonymous.

⁵ The ability to trace the identity of anonymous telephone informants may lend reliability to those anonymous tips that have been considered unreliable tips in the past. *JL, supra*, 529 US 276 (Kennedy, J, concurring.)

police were otherwise able to assess the reputation and veracity of the informant because the police knew his identity, and he had provided useful police information in the past.⁶

In *JL, supra*, 529 US 272, the Court emphasized that, to establish reasonable suspicion, a tip must be reliable in its assertion of illegality as well as its tendency to identify a particular individual. Here, the informant told Wells that a male working at a beeper store located at the corner of Huron and Henderson in Pontiac would leave around 7:00 p.m. and walk to his vehicle, a red GMC Jimmy with license plate number KRB 374, and had several handguns for sale that were kept behind the rear seat in side pockets inside the Jimmy. Like *JL*, the information given allowed the officers to identify defendant; however, unlike *JL*, the tip also asserted specific knowledge of criminal activity when the informant specifically pin-pointed the location of the guns behind the rear seat in side pockets inside defendant's vehicle, wherein in *JL*, the tip merely asserted that the defendant was carrying a gun. In contrast to *JL*, here, while the informant's tip was reliable in its tendency to identify defendant, the information that more than one gun was located in side pockets behind the rear seat also showed the informant's reliability with respect to his assertion of illegality. *Id.*

Because all evidence must be considered based on an objective observation of the totality of the facts and circumstances, we believe the reasonableness of the officer's suspicion has been established. *Oliver, supra* at 192. Therefore, we find the police had reasonable suspicion to justify the stop of defendant's vehicle. Accordingly, the circuit court's order must be reversed.

We reverse and remand for further proceedings. We do not retain jurisdiction.

/s/ Jane E. Markey

/s/ Patrick M. Meter

⁶ The police attempted to corroborate the portion of the tip that alleged that the guns were located in pockets behind the rear seat by looking in the windows of the vehicle after they had stopped defendant. There is some uncertainty in the record about whether the officers could actually see inside the windows of defendant's vehicle. Officer Lasseigne testified that he was able to see bulges in the armrest pockets where the guns were supposed to be from outside the vehicle. The lower court actually viewed the vehicle and declared that in the court's opinion the bulges in the pockets could not be seen from the outside of the vehicle because of tinted windows, the black color of the pockets, and the position of the pockets within the vehicle. The divergence need not be addressed for two reasons: first, the informant was known; and, second, the corroboration would have been moot because the reasonableness of the officers' suspicion must be measured by what the officers knew before the search, not during the conduct of the search. *JL, supra*, 529 US 271.