Terry Stops, Anonymous Tips, and Driving Under the Influence: A Study of Illinois Law

The Honorable Charles Burns and Michael Conte***

In the recent case of Navarette v. California*, No. 12-9490 (U.S. Apr. 22, 2014)*, *the United States Supreme Court held that an anonymous tip can support an investigatory stop in the absence of independent corroboration by the arresting officer under the Fourth Amendment to the United States Constitution. In the fourteen years between* Navarette *and* Florida v. J.L.*, 529 U.S. 266 (2000), in which the Court last addressed anonymous tips, lower courts across the country struggled to determine how United States Supreme Court precedents on anonymous tips apply in the context of drunk or reckless driving. Illinois courts in particular struggled with this question in the absence of any direct guidance from the Illinois Supreme Court or the United States Supreme Court. This Article will examine how Illinois courts facing the question of the propriety of a* Terry *stop based on an anonymous tip of drunk driving have relied on cases in the slightly different context of anonymous tips of possession of contraband such as guns and drugs, but have adapted the analysis of these cases to apply to a situation such as drunk driving in which the crime being committed presents an immediate danger to public safety. The Article will show what other factors—namely, (1) the degree to which the tip was truly anonymous and whether a means exists of puncturing the tipster's shield of anonymity, (2) the specificity of the tip and the level of factual detail provided, and (3) the level of immediate danger to the public presented by the conduct described in the tip—courts must consider in order to determine whether an officer properly relied on an anonymous tip of drunk driving in making an investigatory stop. In light of the fact that courts have held that less rigorous corroboration of the tip is required where the tip describes drunk driving, an act that poses a grave and immediate danger to the public, officers may act quickly to protect the public from potentially drunk drivers so long as the tip contains some*

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minimal indicia of reliability.

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INTRODUCTION

On August 23, 2008, California Highway Patrol dispatchers received an anonymous tip, via 911, that a silver Ford F-150, license plate 8D949925, had run someone off the roadway on California's Highway 1 and was last seen heading south on Highway 1 at mile marker 88.[1] A Highway Patrol dispatcher broadcast the information over the radio, and

1. People v. Navarette, No. A132353, 2012 WL 4842651, at *1 (Cal. Ct. App. Oct. 12, 2012).

officers in the area heard the dispatch, located the suspect vehicle, and initiated a traffic stop, without independently observing any reckless or erratic driving.[2] The officers detected the smell of marijuana and searched the car.[3] They found four large bags of marijuana in the bed of the truck.[4]

The driver of the truck, Lorenzo Prado Navarette, and a passenger, Jose Prado Navarette, charged with transporting marijuana and possessing marijuana for sale, filed a motion to suppress the marijuana recovered during the search, arguing that the arresting officers did not have reasonable suspicion that a crime was being committed because the officers did not independently corroborate the tip of reckless driving.[5] The Court of Appeal of California, reviewing the trial court's denial of the motion to suppress, held that the traffic stop did not violate the Fourth Amendment because the tip was reliable, the officers promptly corroborated innocent details of the tip, and a reckless, possibly intoxicated driver represents a serious danger to public safety.[6]

Did the court rule correctly in this case? Was the traffic stop a legitimate exercise of the State's power to investigate crimes and protect the safety of the public? Or was it an unfair invasion of a motorist's privacy?

On October 1, 2013, the United States Supreme Court demonstrated the importance of this issue by granting the Navarettes' petition for certiorari[7] in *Navarette v. California* to answer the question of whether "the Fourth Amendment require[s] an officer who receives an anonymous tip regarding a drunken or reckless driver to corroborate dangerous driving before stopping the vehicle."[8] On April 22, 2014, the Court answered that questioned in the negative, affirming the decision of the California Court of Appeal.[9] This Article will examine what Illinois courts have had to say about this important issue, prior to the Supreme Court's decision in *Navarette* and without any direct guidance from the Supreme Court, and consider how Illinois courts should address the issue in the future.

It is beyond question that drunk drivers represent a serious threat to

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2. *Id.* at *2.
3. *Id.*
4. *Id.*
5. *Id.* at *1.
6. *Id.* at *6–7.
7. Navarette v. California, 134 S. Ct. 50 (2013) (mem.) (order granting certiorari).
8. Petition for Writ of Certiorari at i, Navarette v. California, No. 12-9490 (U.S. Apr. 22, 2014).
9. *Navarette*, No. 12-9490.

public safety. A driver with blood alcohol concentration of between .08 and .10, or just over the legal limit, is eleven times more likely to be involved in a single-vehicle crash.[10] In 2011, the most recent year for which figures are available, the number of people killed in the United States in traffic accidents involving a drunk driver was 9878—31% of the total traffic deaths that year.[11]

Public service announcements and other efforts to prevent drunk driving by alerting the public of its dangers abound. Organizations ranging from those specifically dedicated to fighting driving under the influence ("DUI"), such as Mothers Against Drunk Driving,[12] to federal and state government agencies have reached out to the public in an effort to prevent drunk driving. For example, the Illinois Secretary of State's office has produced "Faces of DUI," a twenty-minute video of interviews with DUI victims and victims' families, DUI offenders, law enforcement officers, and representatives of the legal and medical communities, along with several shorter public service announcements.[13] The Illinois Secretary of State's office has also created a DUI Victim Wall, which displays pictures and testimonials from victims and their families on the deadly effects of drunk driving, and it gives presentations on traffic safety, often aided by Fatal Vision goggles, which simulate the effects of alcohol and other drugs to demonstrate how they impair a person's ability to drive.[14]

In recent years, in addition to making such educational efforts, state and local governments have also reached out to the public for assistance in the enforcement of DUI laws by encouraging citizens to report drunk drivers to police.[15] Some of these efforts have been both creative and elaborate. For example, Montgomery County, Maryland developed the Operation Extra Eyes program, which trained pairs of citizen volunteers to patrol the roads of the county and report suspected drunk drivers to

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10. *The ABCs of BAC: A Guide to Understanding Blood Alcohol Concentration and Alcohol Impairment*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., http://www.nhtsa.gov/links/sid/ABCsBACWeb/page2.htm (last visited Feb. 21, 2014).

11. NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., TRAFFIC SAFETY FACTS 2011 DATA 1 (2012), *available at* http://www-nrd.nhtsa.dot.gov/Pubs/811700.pdf.

12. *About Us*, MOTHERS AGAINST DRUNK DRIVING, http://www.madd.org/about-us/ (last visited Feb. 21, 2014).

13. JESSE WHITE, 2014 ILLINOIS DUI FACT BOOK 26 (2014), *available at* https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a118.pdf (referencing Secretary of State DUI programs, including the "Faces of DUI" video).

14. *Id.*

15. *See* DARY FIORENTINO ET AL., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., PROGRAMS ACROSS THE UNITED STATES THAT AID MOTORISTS IN THE REPORTING OF IMPAIRED DRIVERS TO LAW ENFORCEMENT 1 (2007), *available at* http://www.nhtsa.gov/links/sid/3674ProgramsAcrossUS/index.htm (describing the state cellular reporting programs being evaluated).

law enforcement via police-issued radios.[16] In Illinois, the Alliance Against Intoxicated Motorists, a community organization formed by citizens whose loved ones have suffered death or injury in drunk driving accidents, initiated the Drunkbusters program in partnership with police, the State of Illinois, and various Illinois county governments.[17] Funded with fines paid by DUI offenders, Drunkbusters encourages citizens to report drunk drivers with their cell phones and, during holidays statewide and year-round in select counties, rewards tipsters whose information leads to an arrest with a $100 honorarium.[18] Since 1990, Drunkbusters has paid out more than $480,000 for the arrest of more than 4800 motorists.[19]

Many additional states, such as Idaho, New Mexico, Ohio, and Vermont, among others, have sought to boost citizen reporting of drunk driving simply by creating a DUI reporting hotline and publicizing the number with a media campaign.[20] Similarly, the Illinois State Police website encourages citizens to call state police from their cell phones to report drunk driving as it occurs.[21] A "Tip Sheet" for "Spotting & Reporting Drunk Drivers" on the California Department of Alcoholic Beverage Control website directs citizens to call 911 to report drunk drivers and explicitly tells them, "You do not have to give your name."[22]

Implicit in these programs, however, is a key assumption: that the information citizens provide over these hotlines, which may be incomplete or anonymous, can properly lead to an arrest and

16. TARA KELLEY-BAKER ET AL., NAT'L HIGHWAY TRAFFIC SAFETY ADMIN., CITIZEN REPORTING OF DUI—EXTRA EYES TO IDENTIFY IMPAIRED DRIVING 9–10 (2006), *available at* http://www.nhtsa.gov/people/injury/alcohol/ExtraEyes/index.html.

17. *Drunkbusters*, ALLIANCE AGAINST INTOXICATED MOTORISTS, http://www.aaim1.org/drunkbusters.asp (last visited Feb. 22, 2014).

18. *Id.*; *see* FIORENTINO, *supra* note 15, at 18 (describing the "Drunk Buster" program as an additional public reporting program); Graydon Megan & Andrea L. Brown, *Cellphone Patrol: More Citizens Are Reporting DUIs to Police*, CHI. TRIB., June 8, 2011, http://articles.chicagotribune.com/2011-06-08/news/ct-xnvigilantemotorists20110608_1_alliance-against-intoxicated-motorists-report-unsafe-drivers-arrests (explaining the cash reward component of Drunkbusters).

19. Press Release, Alliance Against Intoxicated Motorists, Fines From Drunk Drivers Make Roads Safer in Grundy County (May 14, 2013), *available at* http://www.aaim1.org/pdf/Drunkbusterspressrelease.pdf.

20. *See* FIORENTINO, *supra* note 15, at 3–4 (describing states that have a "DWI Dedicated Program").

21. *Influenced Driving*, ILL. STATE POLICE, http://www.isp.state.il.us/traffic/drnkdriving.cfm (last visited Feb. 22, 2014).

22. *Spotting and Reporting Drunk Drivers: Tip Sheet*, CAL. DEP'T ALCOHOLIC BEVERAGE CONTROL (2007), http://www.abc.ca.gov/news/dui_prevention/report_drunk_drivers_tip_sheet.pdf.

conviction.[23] Of course, a law enforcement officer's ability to stop a suspected drunk driver and test for sobriety, like all searches and seizures, is limited by the Fourth Amendment and article I, section 6 of the Illinois Constitution.[24] To perform an investigatory stop, police need only have reasonable suspicion that a crime has been or is about to be committed.[25] Some courts have held that a lower threshold of reasonable suspicion applies in cases of suspected drunk driving, due to the great danger to public safety that drunk drivers represent.[26] Courts in a number of states, including some courts of last resort, have weighed in on whether an anonymous tip, uncorroborated by a police officer's own independent observations, may raise reasonable suspicion of drunk driving that would permit an investigatory stop.[27] Prior to the *Navarette* case, although both the United States Supreme Court and the Supreme Court of Illinois had acknowledged the danger to public safety of drunk driving,[28] neither had yet addressed this precise issue.

This Article will explore to what extent law enforcement in Illinois may act on tips of drunk driving, particularly anonymous tips. The Article will discuss two United States Supreme Court cases involving investigatory stops based on anonymous tips that a suspect is in possession of illegal substances or firearms, then show how the Supreme Court applied that precedent in *Navarette*. It will then trace the development of Illinois law on this issue prior to *Navarette* and explain how Illinois courts applied precedent developed in the context of anonymous tips of contraband in the significantly different factual setting of an anonymous tip of drunk driving. It will conclude by attempting to define the parameters of tips that are sufficiently reliable to support an investigatory stop for suspicion of drunk driving under

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23. *See* Brief for the United States as Amicus Curiae Supporting Respondent at 21–22, Navarette v. California, No. 12-9490 (U.S. Apr. 22, 2014) ("These collective efforts would be undermined by a rule requiring that before an investigatory stop, officers must observe a suspect repeat the dangerous conduct that elicited the citizen's report in the first place.").

24. U.S. CONST. amend. IV; ILL. CONST. art. I, § 6.

25. Terry v. Ohio, 392 U.S. 1, 30 (1968) (holding that "where a police officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot" he is entitled to a search of the suspect).

26. *See infra* notes 142–95 and accompanying text (discussing cases in which courts weighed reasonable suspicion in drunk-driving settings).

27. *See* cases cited *infra* notes 83–84 and accompanying text.

28. *See* Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 451, 455 (1990) (holding that DUI checkpoints are permissible under the Fourth Amendment because the great danger to public safety presented by drunk driving greatly outweighs the slight intrusion on the privacy of motorists who are stopped at DUI checkpoints); People v. Bartley, 486 N.E.2d 880, 885–86, 889 (Ill. 1985) (noting the extreme danger to public safety posed by drunk driving and holding that no probable cause or individualized suspicion is required for a DUI roadblock checkpoint).

Illinois law and the *Navarette* decision.

I. DISCUSSION: THE DEVELOPMENT OF THE LAW OF ANONYMOUS TIPS AND *TERRY* STOPS

A. Legal Standard

The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated."[29] Similarly, article I, section 6 of the Illinois Constitution provides: "The people shall have the right to be secure in their persons, houses, papers and other possessions against unreasonable searches, seizures, invasions of privacy or interceptions of communications by eavesdropping devices or other means."[30] It is well established that vehicle stops constitute "seizures" of "persons."[31] The operative legal standard, derived from *Terry v. Ohio*,[32] is familiar: police need only have reasonable suspicion that a crime has been or is about to be committed to make an investigatory stop.[33] The Illinois Supreme Court has explained in detail the *Terry* standard in the context of an auto stop:

> Under *Terry*, a police officer may conduct a brief, investigatory stop of a person where the officer reasonably believes that the person has committed, or is about to, commit a crime. *Terry*, 392 U.S. at 22; *People v. Gherna*, 784 N.E.2d 799 (2003); *People v. Thomas*, 759 N.E.2d 899 (2001).
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> The investigatory stop must be justified at its inception. *Terry*, 392 U.S. at 19–20. "[T]he police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry*, 392 U.S. at 21. The officer's suspicion must amount to more than an inarticulate hunch, (*Terry*, 392 U.S. at 22; *Gherna*, 784 N.E.2d 799), but need not rise to the level of suspicion required for probable cause, (*United States v. Sokolow*, 490 U.S. 1, 7 (1989)). In judging the police officer's conduct, we apply an objective standard: "would the facts available to the officer at the moment of the seizure . . . 'warrant a man of reasonable caution in the belief' that the action taken was

29. U.S. CONST. amend. IV; *see also* People v. Wilson, 885 N.E.2d 1033, 1037 (Ill. 2008) (stating that the Fourth Amendment has been incorporated into the Fourteenth Amendment of the United States Constitution to apply to the states).

30. ILL. CONST. art. I, § 6.

31. Brendlin v. California, 551 U.S. 249, 256–57 (2007); People v. Bunch, 796 N.E.2d 1024, 1029 (Ill. 2003) (finding that vehicle stops raise Fourth Amendment concerns).

32. Terry v. Ohio, 392 U.S. 1 (1968).

33. *Id.* at 39.

> appropriate?" *Terry*, 392 U.S. at 21–22; *accord Thomas*, 759 N.E.2d 899.
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> The *Terry* standards have been codified in the Code of Criminal Procedure of 1963 (725 ILCS 5/107–14 (West 2006)), and we apply the same standards in determining the propriety of investigatory stops under article I, section 6, of our state constitution. (Ill. Const. 1970, art. I, § 6). *Thomas*, 759 N.E.2d 899; *see also People v. Caballes*, 850 N.E.2d 26 (2006) (reaffirming court's position that the search and seizure clause of our state constitution should be interpreted in limited lockstep with the search and seizure clause of the federal constitution).[34]

An officer's decision to make an investigatory stop is "a practical one based on the totality of the circumstances."[35] Under the totality of the circumstances approach, a deficiency in one element can be made up by the strength of another.[36]

An officer may initiate a *Terry* stop based on information provided by a third party if the information is reliable and "allows an officer to reasonably infer that a person was involved in criminal activity."[37] A reviewing court "should consider the informant's veracity, reliability, and basis of knowledge"[38] and must be aware that "one simple rule will not cover every situation" because "tips may vary greatly in their value and reliability."[39] Thus, courts may give greater weight to information provided by an eyewitness or victim of a crime, as opposed to a participant in the crime or someone with inside knowledge of the criminal scheme.[40] However, even a tip provided by a citizen-informant may be unreliable if it is based only on "speculative observations" or "subjective fears."[41] Even a description of a suspect in

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34. People v. Close, 939 N.E.2d 463, 467–68 (Ill. 2010).

35. People v. Sanders, 986 N.E.2d 114, 118 (Ill. App. Ct. 2013) (quoting People v. Harris, 957 N.E.2d 930, 935 (Ill. App. Ct. 2011)) (internal quotation marks omitted).

36. People v. Yarber, 663 N.E.2d 1131, 1135–36 (Ill. App. Ct. 1996).

37. People v. Shafer, 868 N.E.2d 359, 362–63 (Ill. App. Ct. 2007) (quoting People v. Jackson 810 N.E.2d 542, 553 (Ill. App. Ct. 2004)) (internal quotation marks omitted).

38. People v. Sparks, 734 N.E.2d 216, 221 (Ill. App. Ct. 2000).

39. People v. Allen, 950 N.E.2d 1164, 1177 (Ill. App. Ct. 2011) (citing *In re* J.J., 539 N.E.2d 764, 766 (Ill. App. Ct. 1989)).

40. *Jackson*, 810 N.E.2d at 554; *see* People v. Matous, 886 N.E.2d 1278, 1285–86 (Ill. App. Ct. 2008) (finding that a pharmacist's tip to police that two men had separately purchased pseudoephedrine, a chemical used to make methamphetamine, and left together, raised reasonable suspicion justifying a *Terry* stop, in part because pharmacist was a concerned citizen who was acting against his economic interest by informing on his customers).

41. *See* People v. Ertl, 686 N.E.2d 738, 741–42, 746–47 (Ill. App. Ct. 1997) (finding that a caller's report that her ex-husband was banging on the door did not justify a *Terry* stop, although the ex-husband was known to own guns and had threatened the caller in the past, where the caller had no idea whether the ex-husband was carrying a gun as he banged on her door, and where he

a police radio bulletin does not justify a *Terry* stop without a showing that the police who issued the bulletin possessed facts that would have warranted the stop.[42] The test is always one of the reasonableness of the officer's conduct in the totality of the circumstances.[43]

B. United States Supreme Court Decisions on Terry *Stops Based on Anonymous Tips*

For the better part of the last fifteen years, lower courts have based their assessments of whether an anonymous tip is reliable enough to give a police officer reasonable suspicion to justify a *Terry* stop[44] on two Supreme Court cases, one of which held that a *Terry* stop was justified under the circumstances,[45] the other that it was not.[46]

In *Alabama v. White*,[47] the police received an anonymous tip that a named woman (the defendant Vanessa White) in possession of an ounce of cocaine would leave an apartment building at a particular time in a brown Plymouth station wagon with a broken right taillight and drive to a named motel, approximately four miles away, via a circuitous route

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made no threats at that time).

42. People v. Lawson, 700 N.E.2d 125, 130–31 (Ill. App. Ct. 1998) (citing United States v. Hensley, 469 U.S. 221, 232 (1985)). Incidentally, although this factual setting may seem somewhat remote from the question of the reliability of an anonymous tip of drunk or reckless driving, it was a topic of intense discussion at oral argument in *Navarette v. California*. When Justice Breyer asked counsel for the respondent to cite another case that had held that a third-party report of a crime provided an investigating officer with reasonable suspicion, counsel cited *United States v. Hensley*, 469 U.S. 221 (1985), in which the Court held that police officers who receive a police bulletin informing them that a person is wanted on reasonable suspicion based on articulable facts of having committed a felony—but not necessarily a misdemeanor—should be able to stop that person and investigate that suspicion. Transcript of Oral Argument at 33–35, Navarette v. California, No. 12-9490 (U.S. Apr. 22, 2014). When Justices Kennedy and Sotomayor pointed out that *Hensley* did not involve an anonymous tip, counsel responded that *Hensley* was nevertheless relevant and important to the Court's decision because it distinguished between felonies and misdemeanors based on the seriousness of the crime and the danger to public safety that it presents in determining, in the totality of the circumstances, that the reasonable suspicion standard was met. *Id.* at 35–36.

43. People v. Gonzalez, 704 N.E.2d 375, 384 (Ill. 1998), *abrogated by* People v. Sorenson, 752 N.E.2d 1078 (Ill. 2001).

44. *See, e.g.*, People v. Lampitok, 798 N.E.2d 91, 106–09 (Ill. 2003) (relying on *White* to determine that reasonable suspicion existed to justify the search at its inception); People v. Snyder, 904 N.E.2d 625, 631 (Ill. App. Ct. 2009) (holding that a stop was justified because of the officers' conduct and reasonable belief that the defendant was involved in a more serious crime than a routine traffic offense); People v. Brown, 798 N.E.2d 800, 809–10 (Ill. App. Ct. 2003) (finding a stop not justified through an anonymous informant's tip because it was uncorroborated and lacked the requisite indicia of reliability).

45. Alabama v. White, 496 U.S. 325, 332 (1990).

46. Florida v. J.L., 529 U.S. 266, 274 (2000).

47. 496 U.S. 325.

involving numerous twists and turns.[48] Police observed a woman exit the specified apartment building, get into the specified car, and drive toward the named motel.[49] An officer stopped the woman just before she reached the motel, and police found a significant amount of marijuana and three milligrams of cocaine in her possession.[50]

The Supreme Court held that while this was a "close case,"[51] under the totality of the circumstances the *Terry* stop was justified because "independent corroboration by the police of significant aspects of the informer's predictions imparted some degree of reliability to the other allegations made by the caller."[52] Police were reasonable in believing that, because the informer[53] had access to information about the defendant's itinerary—information the general public would not have possessed—the informer may also have had information about illegal activities in which the defendant was involved.[54] The informer gave police "reason to believe not only that the caller was honest but also that he was well informed, at least well enough to justify the stop."[55]

Justice Stevens, joined by Justices Marshall and Brennan, authored a dissenting opinion, reasoning that it did not follow from the fact that the informer knew defendant's itinerary that the informer knew that defendant possessed illegal drugs.[56] As Justice Stevens explained, "[a]nybody with enough knowledge about a given person to make her the target of a prank, or to harbor a grudge against her, will certainly be able to formulate a tip about her like the one predicting Vanessa White's excursion."[57]

In its decision in *Florida v. J.L.*,[58] the Supreme Court distinguished *White* and required additional indicia of reliability besides the corroboration of innocent, rather than inculpatory, details.[59] In *J.L.*, an

48. *Id.* at 327.
49. *Id.*
50. *Id.* at 326–27.
51. *Id.* at 332.
52. *Id.* at 331–32.
53. In the cases cited in this Article, courts use the various terms "informer," "informant," "caller," "tipster," and "complainant" to refer generally to a person who informs law enforcement authorities of wrongdoing. In this Article, we use these terms interchangeably, as the cases do, and the reader should understand them all to have the same meaning. While "informant" may connote a known, not anonymous, informer, we will use the phrase "known informant" where that meaning is intended.
54. *Id.* at 332.
55. *Id.*
56. *Id.* at 333 (Stevens, J., dissenting).
57. *Id.*
58. 529 U.S. 266 (2000).
59. *Id.* at 272 (requiring anonymous tip to be reliable in assertion of illegality in addition to

anonymous caller reported that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun.[60] When officers found a young black male wearing a plaid shirt at that particular bus stop, they stopped and frisked the young man and found a gun, although they did not see a gun and had no reason for suspicion other than the tip.[61] However, the Supreme Court held that the tip did not contain sufficient indicia of reliability to support the frisk, as the caller provided no predictive information, unlike in *White*, and the authorities had no means at all of testing the caller's knowledge or credibility.[62] The caller never explained how he knew that the defendant was carrying a gun or provided any basis for believing that he had inside information.[63] The fact that there was actually a person fitting the description given by the caller at the location specified by the caller, unlike the fact that the caller in *White* correctly predicted the defendant's future conduct, did not alone make the tip sufficiently reliable to give police reasonable suspicion of criminal conduct that would support a *Terry* stop and frisk.[64]

The government argued, however, that the standard analysis should be modified where the tip involves possession of an illegal firearm, as a person in possession of a firearm presents a serious danger to the public.[65] The Court held that such an exception would simply go too far, as it would "enable any person seeking to harass another to set in motion an intrusive, embarrassing police search of the targeted person simply by placing an anonymous call falsely reporting the target's unlawful carriage of a gun."[66] Further, the exception could end up swallowing the rule. For example, courts had already frequently found that it was per se foreseeable that a person carrying large amounts of narcotics was also carrying a gun;[67] thus, if the Court permitted a firearm exception, lower courts might begin to hold that a dubious tip

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identification of a determinate person).

60. *Id.* at 268.

61. *Id.*

62. *Id.* at 271 (holding that lack of predictive information gave police no means of testing informant's knowledge or credibility).

63. *Id.*

64. *Id.* at 271–72.

65. *Id.* at 272 (rejecting proposed "firearm exception" to *Terry* analysis); *see also* Brief for the United States as Amicus Curiae Supporting Petitioner, *J.L.*, 529 U.S. 266 (No. 98-1993), 1999 WL 1259993, at *18 (proposing justification for a stop and frisk where anonymous tip reports presence of a firearm).

66. *J.L.*, 529 U.S. at 272.

67. *See id.* at 273 (citing United States v. Sakyi, 160 F.3d 164, 169 (4th Cir. 1998); United States v. Dean, 59 F.3d 1479, 1490 n.20 (5th Cir. 1995); United States v. Odom, 13 F.3d 949, 959 (6th Cir. 1994); United States v. Martinez, 958 F.2d 217, 219 (8th Cir. 1992)).

that a person was carrying a large amount of narcotics could justify a *Terry* frisk based on the likelihood that the person was also carrying a firearm.[68] The Court further stated that while there may be circumstances, such as where an informer alleges that a person is carrying a bomb, in which "the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability," or upon a lesser showing of reliability, the facts of *J.L.* did not require the Court to rule on the issue.[69]

In a concurring opinion, Justice Kennedy discussed the limits of the decision, stating that the Court's decision was correct "[o]n the record created at the suppression hearing," but that "there are many indicia of reliability respecting anonymous tips that we have yet to explore in our cases."[70] Justice Kennedy observed that the testimony showed that "an anonymous tip came in by a telephone call and nothing more" and that "[t]he record does not show whether some notation or other documentation of the call was made either by a voice recording or tracing the call to a telephone number."[71] In general, a tip might be "anonymous in some sense" but have "certain other features" which support its reliability—as in *White*, where the tipster's correct prediction of the suspect's future behavior supported the tip's reliability.[72]

For instance, "the ability of police to trace the identity of anonymous telephone informants may be a factor which lends reliability to what, years earlier, might have been considered unreliable anonymous tips."[73] With the aid of modern technology, a squad car can be sent "within seconds to the location of the telephone used by the informant."[74] Police are able to hold even an "anonymous" informant responsible for false information if they are able to trace the anonymous phone call he made.

An "anonymous" tip may also be reliable under *J.L.* if the same tipster, even if he never gave his name or even showed his face but is identifiable by the sound of his voice, has given reliable information in previous investigations.[75] Yet another factor is whether the informant

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68. *Id.* (holding that, if officers may conduct *Terry* frisks based on "bare-boned" firearm tips, it would be reasonable to also permit frisks based on bare-boned narcotics tips).

69. *Id.* at 273–74.

70. *Id.* at 274 (Kennedy, J., concurring).

71. *Id.* at 275.

72. *See id.* (discussing how a tip may provide lawful basis for a police action); Alabama v. White, 496 U.S. 325, 331–32 (1990) (holding that police verification of predictions made by anonymous tip made the tip more reliable).

73. *J.L.*, 529 U.S. at 276.

74. *Id.*

75. *Id.* at 275.

places his "anonymity at risk"—for example, if a person gives a tip of ongoing criminal activity to an officer in a face-to-face conversation, rather than over the telephone, then the tip may be sufficiently reliable to justify police action even if the officer fails to get the informer's name.[76]

Thus, *J.L.* set limits on the discretion of law enforcement to rely on anonymous tips to conduct investigatory stops, but it left law enforcement significant flexibility to conduct investigatory stops based on anonymous tips either where there are additional indicia of reliability or where the potential harm is very great.

Courts nationwide have considered how *White* and *J.L.* apply to cases involving anonymous tips of drunk driving, with differing results.[77] Chief Justice Roberts, joined by Justice Scalia, described the split of authority on the issue in a dissent from the Court's denial of certiorari in *Virginia v. Harris*.[78] In that case, the Commonwealth of Virginia sought review of a Virginia Supreme Court decision holding that an officer could not perform an investigatory stop of a suspected drunk driver, based only on an anonymous tip, until he actually saw the driver do something unsafe on the road.[79] In his dissent, Chief Justice Roberts wrote that he was "not sure that the Fourth Amendment requires such independent corroboration before the police can act, at least in the special context of anonymous tips reporting drunk driving."[80]

The Chief Justice took note of the language in *J.L.* that suggested that the Fourth Amendment analysis might be different in "circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability," or where the "reasonable expectation of Fourth Amendment privacy is diminished."[81] Based on this language and the indisputable fact that drunk driving presents an imminent risk of serious harm, the Chief Justice wrote that "it is not clear that *J.L.* applies to anonymous tips reporting drunk or erratic driving."[82]

Chief Justice Roberts went on to explain that, among lower courts

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76. *Id.* at 276 (citing United States v. Sierra-Hernandez, 581 F.2d 760 (9th Cir. 1978)).

77. *See infra* notes 83, 84 and accompanying text.

78. 558 U.S. 978, 979 (2009) (Roberts, C.J., dissenting from denial of certiorari).

79. *Id.* at 978–79 (citing Harris v. Commonwealth, 668 S.E.2d 141, 146–47 (Va. 2008)).

80. *Id.* at 979.

81. *Id.* (internal quotations omitted).

82. *Id.* (citing Mich. Dep't of State Police v. Sitz, 496 U.S. 444, 451 (1990)) ("No one can seriously dispute the magnitude of the drunken driving problem or the States' interest in eradicating it. Media reports of alcohol-related death and mutilation on the Nation's roads are legion."); *see supra* note 28 and accompanying text.

that have considered this question, the majority view has been that police are not required to corroborate an anonymous tip before making an investigatory stop.[83] A minority of lower courts has held, along with *Harris*, that an arresting officer must confirm an anonymous tip by personally observing impaired or erratic driving before making an investigatory stop.[84] The Chief Justice concluded that the Supreme Court should weigh in on the issue because "police should have every legitimate tool at their disposal for getting drunk drivers off the road," and only the Supreme Court could decide once and for all whether unverified anonymous tips are one such tool.[85]

In *Navarette v. California*,[86] the Supreme Court finally addressed this question directly, holding that an uncorroborated anonymous tip may be sufficient to justify a *Terry* stop if it has adequate indicia of reliability for the officer to credit the caller's account and the content of the tip gives the officer reasonable suspicion of criminal activity. As we will explain more fully in Part I.0 below, the Court reasoned that the tip in *Navarette* was reliable because (1) the caller demonstrated that she had personally observed the conduct she was reporting, (2) the call was made within a very short time of the incident and thus there was little time to fabricate the report, and (3) the caller used the 911 system to deliver the tip, putting herself at risk of being tracked and held accountable for false reporting. Further, the content of the tip provided reasonable suspicion of drunk driving because the reckless driving described by the caller was of the sort that an "objectively reasonable police officer" would recognize as bearing "sound indicia of drunk driving."[87]

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83. *Harris*, 588 U.S. at 980 (citing United States v. Wheat, 278 F.3d 722 (8th Cir. 2001); People v. Wells, 136 P.3d 810 (Cal. 2006); Bloomingdale v. State, 842 A.2d 1212 (Del. 2004); State v. Prendergast, 83 P.3d 714 (Haw. 2004); State v. Walshire, 634 N.W.2d 625 (Iowa 2001); State v. Crawford, 67 P.3d 115 (Kan. 2003); State v. Golotta, 837 A.2d 359 (N.J. 2003); State v. Scholl, 684 N.W.2d 83 (S.D. 2004); State v. Boyea, 765 A.2d 862 (Vt. 2000); State v. Rutzinski, 623 N.W.2d 516 (Wis. 2001)); *see also* Cottrell v. State, 971 So. 2d 735, 745–46 (Ala. Crim. App. 2006); State v. Contreras, 79 P.3d 1111, 1118 (N.M. Ct. App. 2003); State v. Hanning, 296 S.W.3d 44, 54 (Tenn. 2009).

84. *Harris*, 588 U.S. at 981 (citing State v. Sparen, No. CR00258199S, 2001 WL 206078 (Conn. Super. Ct. Feb. 9, 2001); Commonwealth v. Lubiejewski, 729 N.E.2d 288 (Mass. App. Ct. 2000); McChesney v. State, 988 P.2d 1071 (Wyo. 1999)); *see also* State v. Kooima, 833 N.W.2d 202, 211 (Iowa 2013); State v. Lee, 938 P.2d 637, 640 (Mont. 1997); State v. Miller, 510 N.W.2d 638, 644–45 (N.D. 1994); Harris v. Commonwealth, 668 S.E.2d 141, 147 (Va. 2008).

85. *Harris*, 558 U.S. 978 at 980–81 (noting "sharp disagreement" among federal and state courts as to application of *J.L.*'s general rule, concluding that "[t]he conflict is clear and the stakes are high").

86. No. 12-9490 (U.S. Apr. 22, 2014); *see supra* notes 1–9 and accompanying text; *infra* Part I.0.

87. *Navarette*, No. 12-9490, slip op. at 8.

For years prior to *Navarette*, however, Illinois courts had to fend for themselves in addressing this issue. As the following discussion will show, *Navarette* answered many questions raised by the decisions of courts facing the issue of whether an anonymous tip can raise reasonable suspicion of drunk driving, but it left others unanswered.

C. Ledesma *and Early Interpretations of* J.L. *and* White *by Illinois Courts*

In the immediate aftermath of *J.L.*, Illinois courts were inclined to adhere to the decision closely. In *People v. Carlson*,[88] the Illinois Appellate Court held that *J.L.* required that an officer performing a *Terry* stop and frisk know the basis for the informer's knowledge of the defendant's illegal conduct.[89] An officer received word from a 911 dispatcher that a caller had reported that a possibly suicidal man named Edward was carrying a gun and speaking with his girlfriend on a pay phone at a specified location.[90] At that location, the officer indeed found a man on a pay phone fitting the description the caller had given and answering to the name Edward.[91] Upon confirming that the man's name was Edward, the officer drew his weapon, commanded the man to lie prone, and then asked if the man had a weapon[92] The man did not have a gun on his person, but he told the officer that there was a gun in his vehicle.[93]

The court held that, under *J.L.*, the prosecution had failed to "present evidence of sufficient indicia of reliability to justify the stop and frisk."[94] While the State asserted that the call was not anonymous, as the arresting officer reported that the defendant's girlfriend had made a 911 emergency call to report the defendant, the court found that the record supported no such assertion.[95] The 911 dispatcher told the officer that there had been a report of a man speaking with his girlfriend on a pay phone, but the dispatcher did not reveal, and, as far as the record showed, did not know, who had reported the man.[96] The court reasoned that it must assume that the tip was anonymous, as there was

88. 729 N.E.2d 858 (Ill. App. Ct. 2000).

89. *Id.* at 860 (characterizing *J.L.* as requiring that police must have basis on which to test anonymous tipper's knowledge).

90. *Id.* at 859.

91. *Id.*

92. *Id.*

93. *Id.*

94. *Id.* at 860.

95. *Id.* (noting that officer made no statement as to his knowledge of the caller).

96. *Id.* (finding no evidence as to who actually made the call, ability to trace the call, or a recording of the call).

no evidence in the record that the police "knew the identity of the caller or whether the police could find the caller's phone number or address."[97] As such, the case was controlled by *J.L.* because, just as in *J.L.*, the stop and frisk was based on an anonymous tip that was no more than "[a]n accurate description of a subject's readily observable location and appearance," without any guarantee that the tip was "reliable in its assertion of illegality, not just its tendency to identify a determinate person."[98]

Similarly, in *People v. Sparks*,[99] the Illinois Appellate Court held, based on *J.L.*, that information provided by a known but confidential informant that a particular car was carrying drugs is insufficient to support a *Terry* stop unless the State shows that the informant was able to provide more than "innocent" details of a suspect. The informant in *Sparks* gave authorities the "defendants' names; the make, model, color, and license plate number of [a defendant's] car; their race; from where they were traveling; and the day and approximate time that they would be coming through Springfield" on Interstate 55.[100] However, the State insisted on keeping the informant confidential and provided no information as to how the informant knew that the defendants were transporting drugs.[101] Further, the police officers involved had never worked with the informant before and could not vouch for his reliability.[102] Under these circumstances, the court treated the tip as anonymous and held that something more than corroboration of the tip in innocent details was needed to raise reasonable suspicion that would

97. *Id.*

98. *Id.* at 859–60 (quoting Florida v. J.L., 529 U.S. 266, 272 (2000)) (internal quotation marks omitted).

99. 734 N.E.2d 216, 223 (Ill. App. Ct. 2000).

100. *Id.*

101. *Id.*

102. *Id.* As the dissenting Justice in *Sparks* pointed out, the facts of *Sparks* are exceedingly similar to those of *White*. *Id.* at 226 (McCullough, J., dissenting) ("*J.L.* also supports a finding that the search was proper."). Importantly, *J.L.* explicitly did not overrule *White*; on the contrary, it held that "an anonymous tip *lacking indicia of reliability of the kind contemplated in . . . White* does not justify a stop and frisk." *Id.* (emphasis added) (quoting *J.L.*, 529 U.S. at 274) (internal quotation marks omitted).Considering the factual similarity between *White* and *Sparks*, it is difficult to understand why the court deemed *J.L.*, not *White*, to control the case. One possibility is that the *Sparks* court decided to affirm the trial court's decision to grant the defendants' motion to suppress because it disapproved of the State's decision to cast the case in terms of the *Terry* stop-and-frisk doctrine instead of probable cause in order to avoid having to disclose the identity of the confidential informant. By arguing that even if the tip had been fully anonymous, a *Terry* stop would have been justified, the State did not have to meet the higher threshold for probable cause. The concurring Justice stated that in this respect the State "wants the best of both worlds in this case." *Id.* at 223 (Cook, P.J., specially concurring).

justify stopping and searching the defendants' car.[103]

Perhaps fearing that Illinois courts were too heavily influenced by *J.L.* in deciding these cases, the Illinois Supreme Court weighed in on the issue in *People v. Ledesma*[104] and followed *White*, not *J.L.* In *Ledesma*, an anonymous 911 caller reported that he had overheard on his police scanner talk of a drug deal that would take place soon after in the parking lot of a particular Aldi store in Tilton, Illinois.[105] According to the caller, one of the vehicles involved would be teal-colored.[106] A 911 dispatcher relayed the tip to police officers, who positioned themselves in a parking lot across from the Aldi store.[107] The officers saw a maroon automobile drive into the Aldi lot and then into the parking lot of an adjacent gas station and park next to a teal vehicle.[108] The cars turned off their headlights and remained parked next to each other for a short time.[109] The vehicles then left the gas station simultaneously and drove off together.[110] Police pulled over both vehicles and, with the assistance of a narcotics detection canine, found more than 2200 grams of cannabis in the teal vehicle.[111] After the driver of the maroon vehicle was arrested for driving on a revoked license, police found $5000 in cash in his vehicle.[112]

The *Ledesma* court discussed not only *White* and *J.L.* but also two Illinois Appellate Court cases that predated those decisions, *People v. Messamore*[113] and *People v. Moraca*.[114] In *Messamore*, the court held that officers did not have reasonable suspicion to make a *Terry* stop based only on an anonymous caller's tip that a suspicious vehicle, identified only as a dark-green or blue Oldsmobile, was in the area, where the caller did not describe any suspicious activity other than that the car had been circling the area for half an hour.[115] Similarly, in *Moraca*, the court held that an anonymous tip provided to CATCH ("Catch A Thief With Citizen's Help"), a program under which phone

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103. *Id.* (majority opinion).
104. 795 N.E.2d 253, 266 (Ill. 2003), *overruled on other grounds by* People v. Pitman, 813 N.E.2d 93, 101 (Ill. 2004).
105. *Id.* at 256.
106. *Id.*
107. *Id.*
108. *Id.* at 257.
109. *Id.*
110. *Id.*
111. *Id.*
112. *Id.*
113. 615 N.E.2d 762 (Ill. App. Ct. 1993).
114. 464 N.E.2d 312 (Ill. App. Ct. 1984).
115. *Messamore*, 615 N.E.2d at 763–64.

operators took calls from the public regarding criminal activity and relayed the information to police, was an insufficient basis for reasonable suspicion under *Terry*.[116] The tipster stated only that a named individual who drove a blue van with a given license plate number in a particular neighborhood in Elgin, Illinois, possessed a handgun in a black pouch and cannabis in a green bag, without stating how he knew this information.[117]

The *Ledesma* court distinguished *Messamore* and *Moraca*, explaining that the tips in those cases provided no information that could be corroborated to establish the informer's credibility before officers proceeded with a *Terry* stop.[118] "[A]n anonymous tip that merely provides the static details of a suspect's life along with an allegation of criminal conduct" cannot support a *Terry* stop.[119] Such a tip is different from the tip in *Ledesma* itself, which stated that a person or persons in a teal car would participate in a drug deal at a particular location.[120] As the officers observed, a maroon car pulled up to a teal car at that location, and then, after a moment, the two cars drove away together.[121] The Illinois Supreme Court held that the tip that a drug deal would occur was partially corroborated by the officers' personal observation of conduct consistent with a drug deal at the location described by the tipster and involving a car described by the tipster, and that under these circumstances *White* compelled the conclusion that there was reasonable suspicion to support a *Terry* stop.[122]

The Illinois Appellate Court later extended *Ledesma* to the drunk driving context in *Village of Mundelein v. Thompson*.[123] In *Thompson*, a 911 caller reported that he was "following a guy in a van who seem[ed] to be drunk" and who was "all over the road."[124] The dispatcher, while still on the line with the caller, relayed the message to

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116. *Moraca*, 464 N.E.2d at 313 (holding that an uncorroborated tip, standing alone, constitutes insufficient grounds for a *Terry* stop).

117. *Id.* at 316.

118. People v. Ledesma, 795 N.E.2d 253, 264 (Ill. 2003) (distinguishing *Messamore* and *Moraca* on the grounds that in neither of them did officers observe activity providing indicia of reliability for the tip), *overruled on other grounds by* People v. Pitman, 813 N.E.2d 93, 101 (Ill. 2004).

119. *Id.*

120. *Id.* at 256 (describing the tip); *id.* at 266–67 (describing tip as specifically identifying location of, and one vehicle involved in, illegal activity).

121. *Id.* at 257.

122. *Id.* at 266–67; *c.f.* People v. Brown, 798 N.E.2d 800, 803–805, 808 (Ill. App. Ct. 2003) (distinguishing *White* and *Ledesma* under facts similar to those of *Sparks* because there was no predictive information that police could corroborate).

123. 793 N.E.2d 996 (Ill. App. Ct. 2003).

124. *Id.* at 998.

Mundelein police.[125] The caller then gave the 911 dispatcher his name and address and watched as police stopped the defendant's van.[126]

The court held that there was reasonable suspicion to stop the van based on the caller's tip.[127] While the caller followed the van and spoke with the 911 operator, he described the location of the van in relation to landmarks such as a Family Video store,[128] and police actually found the van where the caller indicated it would be, giving rise to the inference that the caller was indeed presently witnessing the defendant's impaired driving when he called 911.[129] The court reasoned that under these circumstances the tip was more likely to be reliable:

> A strong inference that a person is a direct witness to the offense is more indicative of reliability than a weak inference of some source of inside information. Further, an informant who is almost surely a fellow motorist, and thus a chance witness, is much less likely to have a malicious hidden agenda than an informant with a source of inside information.[130]

Thus, even though police had corroborated only details of the tip that may have had an innocent explanation, not the allegations of illegal conduct, they could nevertheless rely on the tip under *White*.

Additionally, the caller in *Thompson* did not remain anonymous.[131] As soon as it was clear to the 911 operator that the police had located the suspect vehicle, the operator asked the caller for his name and address, and the caller provided them.[132] Because the caller was not anonymous, the need to corroborate the tip before acting on it was less acute.[133]

However, in *Village of Mundelein v. Minx*,[134] the Illinois Appellate Court rendered a different decision under very similar facts. A motorist called the Mundelein police department from a cell phone to report that the car in front of him was "driving recklessly."[135] The motorist remained behind the car until a police officer arrived and followed the suspect vehicle.[136] The officer did not notice any erratic driving.[137]

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125. *Id.*
126. *Id.* at 998–99.
127. *Id.* at 1004.
128. *Id.* at 999.
129. *Id.* at 1003–04.
130. *Id.* at 1004.
131. *Id.* at 999.
132. *Id.*
133. *Id.*
134. 815 N.E.2d 965 (Ill. App. Ct. 2004).
135. *Id.* at 968.
136. *Id.* at 968–69.

The officer drove past the caller's car in order to follow the suspect vehicle, but he did not know the caller's identity and did not speak with him.[138]

The court noted that a number of factors militated in favor of the reliability of the anonymous tip in this case: "the citizen-informant witnessed a crime by happenstance, reported the crime, did nothing to conceal his identity and, in fact, indicated he would sign a complaint, and followed defendant's vehicle until the officer arrived, thereby exposing his identity."[139] However, the court held that the caller's report was not sufficiently detailed to support a *Terry* stop, as "the caller simply reported that defendant was 'driving recklessly,' without indicating what observations led him to this conclusion, *e.g.*, whether defendant was speeding, running red lights, weaving between lanes, etc. This information did not provide the specificity necessary to justify an investigatory stop."[140] The court concluded that

> [w]hile the motorist-informant here had a greater degree of reliability than [a] completely anonymous informant . . . , the additional reliability did not adequately compensate for either the lack of detail in his complaint or the absence of a police officer's observation of corroborating behavior. . . . [T]he totality of information was simply insufficient to give [the officer] reasonable suspicion that defendant was guilty of a crime.[141]

Thus, in the aftermath of *Ledesma*, the determination of whether a citizen's report of drunk driving was reliable enough to support a *Terry* stop turned on whether (1) the tip was anonymous or whether the tipster had exposed his identity, (2) the informer provided sufficient factual detail to credibly demonstrate personal knowledge of wrongdoing, and (3) police were able to corroborate any or all of the factual details provided by the informer.

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137. *Id.* at 969.

138. *Id.*

139. *Id.* at 971.

140. *Id.*

141. *Id.* at 972; *c.f.* People v. DiPace, 818 N.E.2d 774, 780 (Ill. App. Ct. 2004) (holding that a tip from concerned citizens regarding a drunk driver could support a *Terry* stop where (1) the informers personally witnessed and specifically described the defendant's erratic driving, both over the phone to a police dispatcher and in person to the arresting officer before he made the arrest; (2) the informers provided the license number of the suspect vehicle; and (3) the informers provided their names and contact information to police).

D. The Shafer *Decision: Anonymity, Specificity, and the Threat of Drunk Driving*

In *People v. Shafer*,[142] the Illinois Appellate Court significantly refined the analysis of *Terry* stops based on anonymous tips of drunk driving that it had developed after *Ledesma*. In *Shafer*, a police officer received information from a police dispatcher that an employee at a Wendy's restaurant had called to report that an intoxicated person had caused a disturbance while ordering food at the restaurant's drive-thru window.[143] Without further information, the officer proceeded quickly to the only Wendy's restaurant in the area and saw a car leaving the Wendy's parking lot as he arrived.[144] The officer activated his overhead lights, stopped the car immediately, and told the driver that he was reported to have caused a disturbance at Wendy's.[145] The driver spoke indistinctly and smelled of alcohol.[146] The officer arrested him for DUI.[147]

Justice Steigmann, writing for a panel of the Illinois Appellate Court's Fourth District, treated the issue more broadly and comprehensively than the Illinois Appellate Court has done before or since, reviewing numerous cases from other jurisdictions for persuasive authority. The court found persuasive, in particular, a list of factors used by the Supreme Court of New Hampshire in *State v. Sousa*[148] to determine whether anonymous tips about motorists give rise to reasonable suspicion:

> First, whether there is a "sufficient quantity of information" such as the vehicle's make, model, license plate number, location and bearing, and "similar innocent details" so that the officer may be certain that the vehicle stopped is the one the tipster identified. Second, the time interval between the police receiving the tip and the police locating the suspect vehicle. Third, whether the tip is based upon contemporaneous eyewitness observations. Fourth, whether the tip is sufficiently detailed to permit the reasonable inference that the tipster has actually witnessed an ongoing motor vehicle offense.[149]

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142. 868 N.E.2d 359 (Ill. App. Ct. 2007).
143. *Id.* at 361.
144. *Id.*
145. *Id.*
146. *Id.*
147. *Id.*
148. 855 A.2d 1284, 1290 (N.H. 2004).
149. *Id.* (internal citations omitted). In *Sousa*, an anonymous tipster called a local police department to report a blue pickup truck with Massachusetts plate number 9557FO who was "all over the road" and was heading south on Everett Turnpike at Exit 6. The report was forwarded to the New Hampshire State Police, and a dispatcher told a state trooper in the area of a report of

The Illinois Appellate Court also held, citing and discussing numerous decisions of other states, that an "anonymous" tip made via 911 is not really anonymous at all because a 911 caller, even if he does not give his name, puts his anonymity at risk.[150] The police maintain records of 911 which they can use to investigate false reports,[151] they can send squad cars to the location of the telephone used by the informant "within seconds" if false anonymous tips become a recurring problem, and the ability to trace the identity of anonymous telephone informants with the aid of modern technology may be a factor which "lends reliability to what, years earlier, might have been considered unreliable anonymous tips."[152] Further, again citing numerous cases from other jurisdictions, the court stated that "a less rigorous corroboration of tips is needed when the tip concerns a suspected drunk driver" because a drunk driver is a serious present threat to public safety that cannot be thwarted by means other than a *Terry* stop.[153] Justice

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"erratic op" going southbound from Exit 6. He relayed the license plate number and a description of the vehicle, a blue Ford pickup from Lowell, Massachusetts. The trooper confirmed this information by running a license check on the vehicle. The trooper located the vehicle near Exit 2 and pulled it over, without noticing any erratic driving. *Id.* at 1285.The Supreme Court of New Hampshire explained that it had previously held in *State v. Melanson*, 665 A.2d 338 (N.H. 1995), that an anonymous tip could provide reasonable suspicion to support stopping a potentially drunk driver, but it determined that it should reexamine this precedent in light of *J.L.* The court noted that while some intermediate state courts had found anonymous tips of drunk driving unreliable, "*every* state court of last resort that has directly addressed the issue [since *J.L.*] has concluded that, in a drunk or erratic driving case, certain tips are sufficiently reliable and detailed, in the totality of the circumstances, to establish reasonable suspicion." *Sousa*, 855 A.2d at 1288 (emphasis in original). Parenthetically, we note that the court's statement is no longer true in light of *Harris v. Commonwealth*, 668 S.E.2d 141, 147 (Va. 2008). Additionally, although *Sousa* cited *State v. Walshire*, 634 N.W.2d 625 (Iowa 2001), the Iowa Supreme Court has recently returned to the issue and held that anonymous tips of drunk driving are not sufficiently reliable to justify a *Terry* stop if they are based on the tipster's personal observation of the driver's drunkenness but not his impaired driving. *See* State v. Kooima, 833 N.W.2d 202, 210–11 (Iowa 2013).The *Sousa* court discussed, as exemplars of the majority position, the decisions in *State v. Boyea*, 765 A.2d 862 (Vt. 2000) and *United States v. Wheat*, 278 F.3d 722 (8th Cir. 2001), and, as exemplars of the minority position, *State v. Miller*, 510 N.W.2d 638 (N.D. 1994) and *State v. Lee*, 938 P.2d 637 (Mont. 1997). Based on these cases, it distilled the governing principles cited in *Shafer* and quoted above in the body of this Article. The court did not apply its analytical framework to the facts of the case before it, however, deciding instead to remand the case to the trial court because "the application of the test involves a fact-intensive inquiry" that it should not conduct where the record had not been developed to meet that particular test. *Sousa*, 855 A.2d at 1291.

150. *Shafer*, 868 N.E.2d at 364–65; *see supra* note 76 and accompanying text.

151. *Shafer*, 868 N.E.2d at 364 (quoting State v. Golotta, 837 A.2d 359, 367–68 (N.J. 2003)).

152. *Id.* (quoting Florida v. J.L., 529 U.S. 266, 276 (2000) (Kennedy, J., concurring)) (internal quotation marks omitted).

153. *Id.* at 365 (citing *Wheat*, 278 F. 3d at 732 n.8; State v. Tucker, 878 P.2d 85, 864 (Kan. 1994); State v. Stolte, 991 S.W.2d 226, 343 (Tex. Ct. App. 1999); State v. Rutzinski, 623 N.W.2d 516, 521 (Wis. 2001)).

Steigmann quoted the language of the Vermont Supreme Court in *State v. Boyea*, which stated as follows:

> In contrast to the report of an individual in possession of a gun, an anonymous report of an erratic or drunk driver on the highway presents a qualitatively different level of danger, and concomitantly greater urgency for prompt action. In the case of a concealed gun, the possession itself might be legal, and the police could, in any event, surreptitiously observe the individual for a reasonable period of time without running the risk of death or injury with every passing moment. An officer in pursuit of a reportedly drunk driver on a freeway does not enjoy such a luxury. Indeed, a drunk driver is not at all unlike a "bomb," and a mobile one at that.[154]

Regarding the tip in the case before it, the *Shafer* court stated that it was made to a 911 emergency number, and it was, therefore, not truly anonymous and should not be viewed with the skepticism with which courts treat information provided by anonymous or confidential informants.[155] Further, the court applied the *Sousa* factors and determined that all four factors weighed in favor of concluding that the tip was reliable.[156] Finally, it rejected the defendant's contention that the tip could not justify a *Terry* stop because it was "conclusory and uncorroborated," emphasizing instead that an "informant's tips regarding possible incidents of drunk driving require less rigorous corroboration. . . . DUI is sufficiently dangerous to the public that it would have been irresponsible for [the investigating officer], having received the tip, to simply follow defendant's car and wait for

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154. *Id.* (quoting *Boyea*, 765 A.2d at 867) (internal quotations omitted). This language is, of course, based on the Supreme Court's distinction in *J.L.* of the case before it from a "bomb" threat. *J.L.*, 529 U.S. at 273–74 (majority opinion) ("We do not say, for example, that a report of a person carrying a bomb need bear the indicia of reliability we demand for a report of a person carrying a firearm before the police can constitutionally conduct a frisk."). Although this portion of the opinion is often cited in cases such as *Boyea* and others—*see*, *e.g.*, *Golotta*, 837 A.2d at 372 ("We find the bomb example to be particularly apt because . . . this Court has previously described intoxicated motorists as 'moving time bombs.'" (citation omitted))—some commentators have pointed out that this language in *J.L.* is dicta that merely admits that "extraordinary dangers sometimes justify unusual precautions," 529 U.S. at 272, without necessarily sanctioning a sliding scale requiring substantial corroboration where the danger is low and proportionately less corroboration as the danger grows more serious. *See* Melanie D. Wilson, *Since When Is Dicta Enough to Trump Fourth Amendment Rights? The Aftermath of* Florida v. J.L., 31 OHIO N.U. L. REV. 211, 229 (2005); Chris LaTronica, Comment, *Could You? Should You?* Florida v. J.L.*: Danger Dicta, Drunken Bombs and the Universe of Anonymity*, 85 TULSA L. REV. 831, 847–48 (2011); *see also* Brief for Petitioners at 26–27, Navarette v. California, No. 12-9490 (U.S. Apr. 22, 2014) (arguing that "the Court was presumably imagining a report of a potentially cataclysmic event such as a terrorist attack or similar activity; *e.g.*, the Boston Marathon bombing," not drunk driving or any such mundane activity).

155. *Shafer*, 868 N.E.2d at 367.

156. *Id.*

potentially catastrophic results to occur."[157]

The defendant argued that the tip contained no specific details to support the caller's opinion that the defendant was intoxicated, and the court agreed that "the record [was] silent as to just what defendant did . . . that caused the Wendy's employee enough concern to call . . . police."[158] Nevertheless, the court held that it was enough that the officer knew that the caller was an employee at Wendy's who stated she had been in an altercation with an intoxicated driver at a drive-thru window, where she would have been in "close enough proximity" to make a "hand-to-hand exchange of food and money."[159] This information, plus the facts that the officer had enough information to properly identify the vehicle in question and made the stop very soon after receiving the tip, was enough to meet the *Sousa* test.[160] The tip was therefore sufficiently reliable to create reasonable suspicion to justify a *Terry* stop.[161]

By undertaking a detailed, scholarly analysis and placing itself in the broader context of nationwide opinions on this issue, *Shafer* marked itself as a landmark case in Illinois jurisprudence, and subsequent decisions certainly took note of it. In *People v. Ewing*, the Illinois Appellate Court followed *Shafer* under similar facts.[162] The trial court in *Ewing* had relied on *Minx* in holding that a 911 tip from "Melissa from Crestline [Veterinary Hospital]" that a man leaving the hospital was intoxicated did not give the officer reasonable suspicion to stop the defendant, but the appellate court reversed.[163] According to the appellate court, in an opinion authored by Justice Myerscough, one of the concurring justices in *Shafer*, *Minx* was not only distinguishable but also "simply wrong."[164] *Minx* was distinguishable because, in that case, the caller's belief that the driver was drunk was based on a vague observation that the defendant was "driving recklessly," whereas in

157. *Id.* at 367–68.

158. *Id.* at 367.

159. *Id.*

160. *Id.*

161. *Id.*

162. 880 N.E.2d 587 (Ill. App. Ct. 2007). *Ewing* also addressed the additional issue of whether all the information given to a 911 dispatcher by an anonymous caller could be imputed to the officers, or whether the 911 dispatcher had to relay enough information to raise in the arresting officers' minds reasonable suspicion that would justify a *Terry* stop. The *Ewing* court held, adopting the reasoning of the Second Circuit and another federal court in similar cases, that the knowledge of the 911 dispatcher could be imputed to the officer. *Id.* at 595 (citing United States v. Colon, 250 F.3d 130, 138 (2d Cir. 2001)).

163. *Id.* at 591.

164. *Id.* at 597.

Ewing the caller had an opportunity to observe the defendant during a face-to-face, in-person encounter when he dropped off his dog at the veterinary hospital.[165] The *Ewing* court explained that, like the caller in *Shafer*, who had a close personal encounter with the suspect at a drive-thru window, the caller was in close enough proximity to the suspect to be able to notice signs of intoxication.[166] Further, the court noted that a layperson is perfectly competent to determine whether another person is intoxicated.[167] The court held that the tip in *Ewing* was therefore more reliable.[168]

The Illinois Appellate Court further reasoned that *Minx* was wrong because, in that case, the caller certainly put his anonymity at risk by calling on his own cell phone and remaining behind the suspect vehicle until a *Terry* stop was made.[169] According to the *Ewing* court, an officer should not have to wait until he can personally corroborate a non-anonymous report that a motorist is driving recklessly, thereby endangering the public, before making a stop.[170] Rather, "as noted in *Shafer*, an intoxicated driver presents a more imminent danger than many other crimes—such as concealment of a handgun—and requires less corroboration of an informant's tip."[171]

The influence of *Shafer* on Illinois courts is further apparent in *People v. Rollins*.[172] In another opinion authored by Justice Myerscough, the appellate court in *Rollins* strained to follow *Shafer* despite important factual differences. In *Rollins*, an anonymous 911 caller reported that a black man from Chicago was selling drugs from the trunk of a brown four-door Chevrolet without hubcaps on Fowler Street in front of Green Meadows apartment complex.[173] The arresting officer, with no further information from the dispatcher, arrived on the scene and noticed a car matching the caller's description turning from Fowler onto an intersecting street.[174] The officer initiated a *Terry* stop and learned that the driver was from Chicago.[175] After receiving permission to search the car, he found drugs.[176] Applying the *Sousa*

165. *Id.*
166. *Id.* at 596–97.
167. *Id.* at 597 (citing People v. Workman, 726 N.E.2d 759, 762–63 (Ill. App. Ct. 2000)).
168. *Id.*
169. *Id.* at 597–98.
170. *Id.*; *see* People v. Shafer, 868 N.E.2d 359, 365–66 (Ill. App. Ct. 2007).
171. *Ewing*, 880 N.E.2d at 597 (citing *Shafer*, 868 N.E.2d at 365).
172. 892 N.E.2d 21 (Ill. App. Ct. 2008).
173. *Id.* at 23.
174. *Id.*
175. *Id.*
176. *Id.*

factors adopted in *Shafer* and relying in part on *Shafer*'s holding that 911 calls are not truly anonymous, the *Rollins* court held that the tip was sufficiently detailed and reliable to raise reasonable suspicion that would justify a *Terry* stop.[177]

Justice Appleton, who had concurred in *Shafer* along with Justice Myerscough, dissented in *Rollins*, contending that the case was indistinguishable from *J.L.* and *Sparks*.[178] As in those cases, the caller did not state that he saw the man doing anything incriminating or indicate how he knew that the man was selling drugs; he simply stated that a man was selling drugs out of the brown Chevrolet.[179] Although the majority inexplicably insisted that the caller did state that he saw the man selling drugs,[180] the dissent pointed out that the caller made no such statement, and the majority could only *infer* from the detailed report given by the caller that the caller had witnessed the criminal activity.[181] Despite the majority's attempt to distinguish *J.L.* on the basis that it involved *concealed* criminal activity of which an informer would need to have inside knowledge, rather than open, ongoing criminal activity that anyone in the area could see,[182] the dissent

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177. *Id.* at 26.

178. *Id.* at 29 (Appleton, P.J., dissenting).

179. *Id.*

180. *Id.* at 27 (majority opinion). This insistence was at odds with the majority's own statement of the facts of the case. *See id.* at 23.

181. *Id.* at 30 (Appleton, P.J., dissenting).

182. *Id.* at 26–27 (majority opinion). Although Illinois cases have not turned on this distinction between concealed criminal activity, as in *J.L.*, and open criminal activity that the tipster could easily have seen, cases in other jurisdictions have sometimes emphasized it. Where the tip describes open criminal activity, some courts presume that the tipster personally observed the conduct, without requiring proof of personal knowledge. For example, although in *State v. Boyea*, 765 A.2d 862 (Vt. 2000), the emergency dispatcher told the arresting officer only that the suspect vehicle was "operating erratically" at a particular location, and the record did not show that the tipster had given any other factual details that might show his basis of knowledge, a concurring opinion stated as follows:

> The offense alleged here did not involve a concealed crime—a possessory offense. What was described in the police dispatch to the arresting officer was a *crime in progress*, carried out in public, identifiable and observable by anyone in sight of its commission. Unlike the tip alleged in *White*—that White was carrying narcotics— . . . here a total stranger could have observed defendant's driving abilities. No intimate or confidential relationship was required to support the accuracy of the observation. The caller simply reported a contemporaneous observation of criminal activity taking place in his line of sight. (Obviously, the caller may have used words other than "erratic driving" to describe what was observed, and the dispatcher may have reduced the tipster's information to police lingo before issuing the BOL.)

Boyea, 765 A.2d at 875 (Skoglund, J., concurring) (emphasis in original). Similarly, in *State v. Walshire*, 634 N.W. 2d 625 (Iowa 2001), in which the tipster stated that he was following the suspect vehicle and saw the suspect driving in the median, the Iowa Supreme Court stated that:

> This case is different from *J.L.* in several respects, one of which is particularly

concluded that *J.L.* simply permitted no such inference.[183]

The Fourth District, in an opinion by Justice Steigmann, joined by Justice Appleton, cleaved to *Shafer* again in *People v. Hansen*.[184] In *Hansen*, a boy and his mother, identifying themselves as Carson and Pam Smith, called 911 to report that a black truck with a sticker in the rear window reading "All Types Landscaping" was driving recklessly, "hot rodding" up and down the street and doing "donuts" in the road.[185] Six minutes later, they called back to say that the vehicle had taken off eastbound on Route 16.[186] An officer was dispatched by 911 to investigate, and he stopped a truck fitting the description given by the boy and mother heading eastbound on Route 16.[187] The driver was arrested on suspicion of drunk driving.[188] The trial court granted the defendant's motion to quash arrest, however, reasoning that the mother and boy had not given sufficient details to raise reasonable suspicion of drunk driving.[189]

The appellate court reversed. The court began by summarizing *Shafer* and *Ewing*, pointing out that in both cases the tips were not anonymous, even though the informers did not give their full names, because the informers called 911 emergency numbers and gave some identifying information.[190] This discussion is particularly noteworthy because the court stated that "[i]nformation provided pursuant to an emergency call is *more reliable* than other calls."[191] The court thus appeared to suggest that the fact that the callers had called a 911 emergency number made their tips even *more* reliable, *apart* from the fact that the callers had given their names,[192] presumably because it

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> important: the information provided here did not concern concealed criminal activity, but rather illegality open to public observation. The tip here demonstrated the tipster's basis of knowledge: the caller observed the defendant driving in an erratic manner.

Id. at 627–28. Although the caller refused to give his name and there was no further information about him or her in the record, the court considered the caller a citizen informant (as opposed to a confidential informant cooperating with authorities in hopes of receiving leniency for his own offenses) whose information was therefore presumptively reliable. *Id.* at 629; *c.f.* State v. Kooima, 833 N.W.2d 202, 211–12 (Iowa 2013) (holding that a tip of drunk driving could not support an investigatory stop where it was clear from the record that the tipster did not actually see the suspects driving drunk).

183. *Rollins*, 892 N.E.2d at 29–30 (Appleton, P.J., dissenting).
184. 968 N.E.2d 164 (Ill. App. Ct. 2012).
185. *Id.* at 165.
186. *Id.* at 166.
187. *Id.*
188. *Id.*
189. *Id.*
190. *Id.* at 167–69.
191. *Id.* at 170 (emphasis added).
192. The Seventh Circuit has questioned whether a 911 call truly deserves to be treated as

allowed authorities to trace the call and verify the identity and location of the callers if they had any reason to doubt that the callers had given their correct names.[193]

Further, the court explained that the callers had given sufficiently specific detail of recklessness in describing the car spinning donuts and racing up and down the street, that such recklessness raised reasonable suspicion of drunk driving, and that the tip met all the *Sousa* factors adopted in *Shafer*.[194] The suspect vehicle presented an imminent threat

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more reliable because the caller puts his anonymity at risk:

> Yet as a practical matter a name given by a caller does not make the tip less anonymous. Suppose that the 911 call in this case had begun: "My name is John Jenkins, and I would like to report. . .". That a caller gives a name does not mean that he *is* John Jenkins (either the President of Notre Dame or any other John Jenkins). Caller ID does not solve this problem for public phones or even home phones, which can be used by multiple people (including guests at a party); some subscribers block the service. Cell phones, which almost always use caller ID, can be stolen.

United States v. Wooden, 551 F.3d 647, 649–50 (7th Cir. 2008) (Easterbrook, C.J.) (emphasis in original); *see also* Brief of National Association of Criminal Defense Lawyers & National Association of Federal Defenders as Amici Curiae in Support of Petitioners at 9, 11, Navarette v. California, No. 12-9490 (U.S. Apr. 22, 2014) (arguing that callers may easily frustrate authorities' attempts to trace 911 calls, by methods such as using a prepaid cell phone or "spoofing"). Nevertheless, the *Wooden* court found that the tip in that case, which reported a man on the street who had drawn his gun, justified a *Terry* stop based on the danger to public safety described:

> And it would undermine the goal of the 911 system to require a caller to *prove* his identity, perhaps by coming to the station with a driver's license or passport, before the police react to the information. When crime is in progress, prompt action is essential. The fourth amendment prohibits unreasonable searches and seizures, and it has long been understood that, when the police believe that a crime is in progress (or imminent), action on a lesser degree of probability, or with fewer procedural checks in advance, can be reasonable . . . . The district court did not err in concluding that the circumstances reported to the police implied a need for haste, and that a report by a person claiming to have seen a gun drawn in public provided articulable suspicion for a *Terry* stop and frisk.

Wooden, 551 F.3d at 650 (emphasis in original).

193. *See* Brief for the United States as Amicus Curiae Supporting Respondent, *supra* note 23, at 16 (citing 47 C.F.R. §§ 20.18(f)–(g), which require cellular carriers to transmit data concerning a caller's geographic location with every 911 call).

194. *Hansen*, 968 N.E.2d. at 171. It is noteworthy that in *Hansen*, the second *Sousa* factor—the time interval between the police receiving the tip and the police locating the suspect vehicle—received some attention. Since the Illinois Appellate Court began using the *Sousa* factors in 2007, the second *Sousa* factor has generally been an afterthought, and no cases have turned significantly on it. In *Hansen*, however, this factor came into play because the trial court's decision was based in part on the reasoning that the six-minute interval between the Smiths' first call and their second call, in which Carson Smith stated that the suspect was leaving the area, indicated that the imminent danger to the public had ceased, and, combined with the fact that there was a twelve-minute interval between the first call and the *Terry* stop, the second *Sousa* factor weighed against the reasonableness of the stop. The appellate court rejected this reasoning because, regardless of whether the stop took six minutes or twelve minutes, "the time-interval was in line with [the] decisions in *Shafer* and *Ewing*." *Id.* at 172. Further, the appellate court did

to public safety, and officers were justified in initiating the *Terry* stop without independently corroborating the tip.[195]

E. Distinguishing Shafer*: Reliability and Specificity*

While *Shafer* has clearly been influential, the Illinois Appellate Court has not followed *Shafer* uncritically. In two recent decisions, it has affirmed trial courts that have granted motions to quash arrest and suppress evidence gained from invalid *Terry* stops based on unreliable tips. In *People v. Smulik*, the defendant dined with a female friend at a restaurant, but he left after he and his friend argued.[196] The defendant then had a drink at a nearby bar.[197] After leaving the bar, he pulled into a gas station, parked his car in a marked parking space, turned off the engine and smoked a cigarette in his car in order to "cool down a bit" from the argument.[198] A police car then pulled up behind him, emergency lights flashing.[199] The police officer had received a dispatch regarding "a possible DUI with a complainant following."[200] The complainant, a female whose name did not appear in the record, had observed the defendant drinking at both the restaurant and the bar, believed he was too drunk to drive, and called in his license plate number, his location, and a description of his vehicle.[201]

The court stated that there was no evidence in the record showing that the complainant provided her name or contacted police via an emergency number. Without any such information, the court held that it

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not agree that the interval between the first call and the second call showed that the suspect no longer presented a threat to the public; to the contrary, the fact that the Smiths felt it necessary to make a second call indicated that they still judged the suspect to be a threat to the public. *Id.* at 171–72. Other courts, including the United States Supreme Court in *Navarette*, have focused not on the interval between the tip and the police response but on whether the tip and the observation of erratic driving were essentially "contemporaneous." *See* Navarette v. California, No. 12-9490, slip op. at 6 (U.S. Apr. 22, 2014); *see also* United States v. Wheat, 278 F.3d 722, 735 (8th Cir. 2001) ("We think that an anonymous tip conveying a contemporaneous observation of criminal activity whose innocent details are corroborated is at least as credible as the one in *White*, where future criminal activity was predicted, but only innocent details were corroborated."); Bloomingdale v. State, 842 A.2d 1212, 1219–20 (Del. 2004) (agreeing with the *Wheat* court's conclusion, and holding the same); State v. Hanning, 296 S.W.3d 44, 49–50 (Tenn. 2009) (holding that an anonymous tip of drunk driving was reliable in significant part because the offense, the tip, and the officer's response were all virtually contemporaneous, which tended to indicate that the tipster had personally witnessed the offense).

195. *Hansen*, 968 N.E.2d at 171–73.

196. People v. Smulik, 964 N.E.2d 183, 184 (Ill. App. Ct. 2012).

197. *Id.*

198. *Id.*

199. *Id.*

200. *Id.*

201. *Id.* at 184–85.

was bound to treat the tip as an anonymous one, and its reliability hinged "on the existence of corroborative details observed by the police," in which respect the evidence was lacking.[202] The court reasoned that, before making the *Terry* stop, the officer had been able to corroborate only "noninculpatory aspects of the tip—that a vehicle fitting a certain description would be found at a particular location."[203] Under *J.L.* and *White*, the officer simply did not have sufficient information to raise reasonable suspicion that would justify a *Terry* stop. The court questioned whether an informer's reporting contemporaneous observations actually improved the reliability of the tip, pointing out that contemporaneous reports of the movements of a particular vehicle had no bearing on the *veracity* of the informer as to whether the vehicle was being driven erratically.[204] Such information was no different than the information given in *J.L.*, which did no more than identify a particular suspect at a particular location.[205]

The court in *Smulik* acknowledged that *Shafer* had held that "the threat that intoxicated drivers pose to public safety justifies some relaxation of the corroboration requirement."[206] However, the *Smulik* court found that this reasoning was inapposite because the arresting officer initiated the *Terry* stop while the suspect vehicle was stopped with the engine turned off, when the officer could just as easily have initiated a consensual encounter to corroborate the tip that the suspect was intoxicated.[207]

In the most recent decision of the Illinois Appellate Court, the Third District weighed in on the issue in *City of East Peoria v. Palmer*.[208] In *Palmer*, the police received a call from the Par-A-Dice Casino that an individual had been cut off from drinking and there was a possible drunk driver leaving the premises.[209] The casino gave police a description of the suspect vehicle and its license plate number and offered to call back when the individual began to drive away.[210] An officer pulled into the parking lot of the casino and waited for the

202. *Id.* at 187.

203. *Id.*

204. *Id.* at 188–89 (criticizing State v. Rutzinski, 623 N.W. 2d 516, 521 (Wis. 2001)). *But see infra* note 228 and accompanying text.

205. *Id.* at 188 n.3.

206. *Id.* at 188.

207. *Id.* at 189. Nevertheless, it is a crime to be in "actual physical control" of an automobile while intoxicated, even if not driving. *See infra* note 290 (discussing Illinois DUI statute).

208. 980 N.E.2d 774 (Ill. App. Ct. 2012).

209. *Id.* at 777.

210. *Id.*

follow-up call.[211] However, before he received any such call, the officer noticed a car matching the casino's description driving past his location, not in the parking lot but out on the road in front of the lot, and he pulled out of the parking lot to follow.[212] The suspect vehicle stopped at a traffic light, but the officer could not see the license plate number because another car was between his car and the suspect vehicle.[213] The suspect vehicle then crossed the intersection and pulled into a gas station, and the officer pulled in behind and initiated the *Terry* stop.[214]

The court held that, under the totality of the circumstances, the officer did not have sufficient information to raise a reasonable suspicion justifying a *Terry* stop.[215] The casino told the officer that a dark green Ford SUV, possibly driven by a drunk driver, would be pulling out of the parking lot soon, and that he would receive another call when the vehicle left the parking lot; however, the officer never saw any dark green Ford SUV leave the parking lot, and when he first noticed a dark green Ford SUV, it was out on the main road, not in the parking lot or leaving the parking lot.[216] The casino had given the officer the license plate number of the suspect vehicle, but the officer admitted that he was not available to verify that the license number matched the one the casino had given until after he initiated the *Terry* stop.[217] The court recognized that, under *Shafer*, a tip that there is a drunk driver on the road is subject to a "less stringent reliability analysis" in determining whether it provides reasonable suspicion to justify a *Terry* stop because drunk driving is an imminent threat to public safety, but in this case the officer had absolutely no indication that this was the same dark green Ford SUV that the casino had described to him when he initiated the *Terry* stop of the vehicle.[218] According to the court, he therefore did not have reasonable suspicion that the driver of the SUV was drunk.

F. The Navarette *Decision*

The United States Supreme Court finally rendered a decision on this issue in *Navarette v. California*. In *Navarette*, a 911 caller reported that

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211. *Id.*
212. *Id.*
213. *Id.*
214. *Id.* at 777–78.
215. *Id.* at 783–84.
216. *Id.*
217. *Id.* at 788.
218. *Id.*

she had been run off the road by a silver Ford F150 pickup, and she provided a license number and the location of the near-accident, mile marker 88 on southbound Highway 1.[219] The caller identified herself, but neither she nor the 911 dispatcher who received the call testified at the suppression hearing, and the prosecution, lower courts, and Supreme Court all treated the tip as anonymous.[220] The 911 dispatcher relayed the tip to a dispatcher in an adjacent county, who in turn broadcast it to California Highway Patrol officers.[221] Thirteen minutes after hearing the broadcast tip, a California Highway Patrol officer spotted a truck fitting the caller's description at miler marker 69 on southbound Highway 1.[222] Five minutes after that, without having personally observed any erratic driving, the officer pulled the truck over.[223] The officer smelled marijuana, searched the truck and found thirty pounds of marijuana within.[224]

The Supreme Court explained that the Fourth Amendment permits an investigative stop when there is reasonable suspicion in the totality of the circumstances, "dependent on both the content of information possessed by police and its degree of reliability," that a crime is occurring.[225] While an anonymous tip alone seldom suffices to provide police with reasonable suspicion, the court confirmed that "under appropriate circumstances, an anonymous tip can demonstrate 'sufficient indicia of reliability to provide reasonable suspicion to make [an] investigatory stop.'"[226]

The Court first determined that the 911 call was sufficiently reliable. First, by reporting that she had been run off the road by a vehicle that she specifically identified, the caller demonstrated that she had personal, eyewitness knowledge of the suspect's reckless driving, and personal knowledge supports a tip's reliability.[227] Second, the record showed, based on when the tip was made, where the caller said the incident of reckless driving occurred, what direction the suspect vehicle was heading, and where the responding officer actually found the suspect vehicle that the caller was apparently telling the truth about seeing the

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219. Navarette v. California, No. 12-9490, slip op. at 1 (U.S. Apr. 22, 2014).
220. *Id.* at 2 n.1.
221. *Id.* at 1.
222. *Id.* at 1–2.
223. *Id.* at 2.
224. *Id.*
225. *Id.* at 3 (quoting United States v. Cortez, 449 U.S. 411, 417–18 (1981)) (internal quotation marks omitted).
226. *Id.* at 4 (quoting Alabama v. White, 496 U.S. 325, 327 (1990)).
227. *Id.* at 5.

suspect vehicle heading southbound at mile marker 88 at the time of her call, and the tip was therefore apparently contemporaneous with the observation of criminal activity. Just as, in evidence law, present sense impressions and statements made while the declarant is under stress of excitement may be treated as especially reliable, the caller's 911 call, demonstrably contemporaneous with the observation that prompted it (unlike the tip in *J.L.*), should be treated as especially reliable.[228] Third, the caller's use of the 911 emergency system provided additional indicia of reliability because 911 callers may be recorded, identified, traced, and prosecuted for false reporting, and "technological and regulatory developments" have made it increasingly reasonable to suppose that a false tipster would "think twice before using such a system," in fear of being traced and caught.[229]

Having determined that the tip was reliable, the Court considered whether the tip, even if reliable, was sufficient to provide reasonable suspicion of drunk driving.[230] The tip in *Navarette* did not actually allege drunk driving or any particular crime; it merely alleged that a motorist ran the caller off the road. The Court determined that this tip was sufficient because running another vehicle off the road "suggests lane positioning problems, decreased vigilance, impaired judgment, or some combination of those recognized drunk driving cues" which, along with other behaviors such as weaving across the roadway, crossing the center line and driving in the median, represent "sound indicia of drunk driving" that any "reasonable and prudent men" would recognize.[231]

The Navarettes contended that running another driver off the road could be explained by something as innocent as "an unruly child" in the backseat. However, the Court explained that "reasonable suspicion need not rule out the possibility of innocent conduct."[232] The petitioners also contended that any reasonable suspicion that may have arisen was dispelled by the officer's following the suspect vehicle for five minutes without observing any erratic driving. The Court again disagreed, explaining that five minutes was hardly long enough to dispel the reasonable suspicion that the tip created, especially considering that "the appearance of a marked police car would inspire more careful driving for a time."[233] The Court emphasized that there was no need, in

228. *Id.* at 6.
229. *Id.* at 7.
230. *Id.* at 8.
231. *Id.* at 8–9.
232. *Id.* at 10 (citing People v. Arvizu, 534 U.S. 266, 277 (2002)).
233. *Id.* (citing *Arvizu*, 534 U.S. at 275).

any case, for an officer who had received a reliable tip of drunk driving to "surveil a vehicle at length in order to personally observe drunk driving."[234] Rather, once reasonable suspicion arises, "the reasonableness of the officer's decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques."[235] Further, the Court explained, "[t]his would be a particularly inappropriate context to depart from that settled rule, because allowing a drunk driver a second chance for dangerous conduct could have disastrous consequences."[236]

Thus, the Court quite simply held that the anonymous tip was reliable and the officer had reasonable suspicion to stop the Navarettes, even though he did not personally observe any erratic driving to corroborate the tip. Notably, the Court did not expressly adopt the reasoning of the respondent in its briefing and at argument that the great danger to public safety presented by drunk driving may justify *Terry* stops, in the totality of the circumstances, even in situations in which the facts were such that, in a less dangerous context, the standard for reasonable suspicion would not be met. It never addressed the "bomb" language in *J.L.*, and, while it made a faint gesture toward the line of argument based on that language when it stated, in dicta, that "allowing a drunk driver a second chance for dangerous conduct could have disastrous consequences,"[237] this proposition formed no part of its analysis of whether the officer had reasonable suspicion in the first place. The Court simply reasoned that the tip, made via 911 immediately after personally observing the conduct it reported, provided reliable information that would lead a reasonable officer to suspect that the motorist it described may be intoxicated. However, the Court did not expressly reject or repudiate the respondent's proffered reasoning based on the danger to public safety, and it remains unclear whether, in a different case in which the tip did not have all the indicia of reliability or specificity that the tip in *Navarette* had, it might comport with the Fourth Amendment to reason that a *Terry* stop was nevertheless justified based in part on the suspected drunk driver's potential danger to public safety.

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234. *Id.*

235. *Id.* (quoting United States v. Sokolow, 490 U.S. 1, 7 (1989)) (internal quotation marks omitted).

236. *Id.*

237. *Id.*

II. ANALYSIS: KEY CONSIDERATIONS IN ASSESSING PROPRIETY OF *TERRY* STOPS BASED ON TIPS OF DRUNK DRIVING

Under these principles, the following are key factual issues that Illinois courts will look to resolve to determine whether a drunk driving tip provides reasonable suspicion to justify a *Terry* stop.

A. Is the Tip Truly Anonymous?

The first question is whether and to what degree the tip is anonymous. A tip given anonymously is less reliable than a tip given by someone who also gives his name and contact information, and an anonymous tip therefore requires greater corroboration before police can act on it by initiating a *Terry* stop.[238] However, as the foregoing discussion shows, whether courts consider a tip to be anonymous is actually more complicated than simply whether the tipster gives his name. Numerous decisions hold that, even if a tipster does not actually give his name or specifically identify himself, the tip is entitled to no less reliability if the tipster has placed his anonymity at risk such that the police could find him and confront him if his information proved to be false.[239] For instance, *Shafer* explained that 911 calls are not anonymous at all, even if the caller does not give her full name, because the police are able to trace 911 calls instantly, and *Ewing* and *Hansen* cited, discussed, and followed *Shafer* on this point.[240] *Navarette*

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238. People v. Sparks, 734 N.E.2d 216, 221–222 (Ill. App. Ct. 2000).

239. *See, e.g.*, Florida v. J.L., 529 U.S. 266, 276 (Kennedy, J., concurring) ("If an informant places his anonymity at risk, a court can consider this factor in weighing the reliability of the tip."); State v. Rutzinski, 623 N.W.2d 516, 525 (Wis. 2001) (citing, inter alia, *Adams v. Williams*, 407 U.S. 143, 146–47 (1972) (holding that a tip from a known informant, given to a police officer in a face-to-face conversation, was reliable in part because the informant exposed himself to arrest by providing information)) (holding that a caller put his anonymity at risk by telling police that he was in the car in front of the suspect vehicle).

240. Additionally, the penalty in Illinois for making false reports via 911 or to a police officer is stiff. A person commits the offense of "disorderly conduct" if he knowingly(4) Transmits or causes to be transmitted in any manner to any peace officer, public officer or public employee a report to the effect that an offense will be committed, is being committed, or has been committed, knowing at the time of the transmission that there is no reasonable ground for believing that the offense will be committed, is being committed, or has been committed; [or]

. . . .

(6) Calls the number "911" for the purpose of making or transmitting a false alarm or complaint and reporting information when, at the time the call or transmission is made, the person knows there is no reasonable ground for making the call or transmission and further knows that the call or transmission could result in the emergency response of any public safety agency[.]

720 ILL. COMP. STAT. 5/26-1(a) (2013). A violation of subsection (a)(4) or (a)(6) of the disorderly conduct statute is a Class 4 felony, *id.* § 5/26-1(b), punishable by a term of imprisonment "not less than one year and not more than three years." 730 ILL. COMP. STAT 5/5-

agreed, citing Federal Communications Commission regulations requiring phone carriers to transmit information about the call, including the caller's geographic location, to 911 dispatchers.[241]

It may be significant, however, that neither *Shafer* nor *Ewing* nor *Hansen* involved a phone call that would have been completely anonymous, even without the ability of modern technology to trace the call. In both *Shafer* and *Ewing*, an employee called police while on the job, giving the name of her employer, and reported a drunk driver.[242] In *Shafer*, the caller identified herself as a Wendy's employee in a town that had only one Wendy's restaurant to report an incident that had just occurred at Wendy's.[243] In *Ewing*, the caller identified herself as "Melissa from Crestline," a veterinary hospital.[244] In *Hansen*, the callers, a mother and son, both gave their full names, Pam and Carson Smith of Fieldon, Illinois.[245] Thus, the *content* of all three calls provided enough information to allow police to trace the call back to the caller and hold the caller responsible if the information proved false. No Illinois court has yet held a 911 phone call tip in which the caller did not identify himself at all, other than by calling 911, to be reliable without looking for some corroborating factor.

In the wake of *Navarette*, the need for caution on this point is somewhat reduced, as *Navarette was* a case in which the record showed that the tip was received via 911 but contained no information identifying the caller. However, where the record does not show even that the call was made to 911, or that it could be traced back to the caller in some other way, the call may *not* be sufficiently reliable to raise reasonable suspicion justifying a *Terry* stop without corroboration. For example, in *Smulik*, the arresting officer testified only that she received a dispatch regarding a possible DUI and she initiated a *Terry* stop.[246] Even though the caller was following the suspect as she called police, the record did not show that she called an emergency number, which would put her anonymity at risk.[247] Further, the record showed that,

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4.5-45(a) (2013); *see also* Brief for the United States as Amicus Curiae Supporting Respondent, *supra* note 23, at 17 n.1 (citing statutes in every state criminalizing such false reporting). *But see supra* note 194 and accompanying text.

241. *See Navarette*, No. 12-9490, slip op. at 7 (citing 47 C.F.R. §§ 20.18(d)(1), (e)–(h) (2013); *id.* §§ 64.1601(b), (d)(4)(ii)).

242. People v. Ewing, 880 N.E.2d 587, 589 (Ill. App. Ct. 2007); People v. Shafer, 868 N.E.2d 359, 361 (Ill. App. Ct. 2007).

243. *Shafer*, 868 N.E.2d at 361.

244. *Ewing*, 880 N.E.2d at 589.

245. People v. Hansen, 968 N.E.2d 164, 170–71 (Ill. App. Ct. 2012).

246. People v. Smulik, 964 N.E.2d 183, 184–85 (Ill. App. Ct. 2012).

247. *Id.*

although the complainant remained on the scene to speak with police if necessary, the arresting officer did not speak with her until *after* initiating the *Terry* stop.[248] On this record, the court had no choice but to analyze the stop as if it were a truly anonymous tip by someone who had not put her anonymity at risk at the time of the stop. Thus, the tip could only be judged reliable enough to support a *Terry* stop if the police observed corroborative details. Because the police observed no such corroborative details, the evidence fell short.[249]

In summary, a non-anonymous tip from a citizen informant, unlike an anonymous tip, need not be viewed with suspicion and requires less corroboration to justify a *Terry* stop. A 911 call is not strictly an "anonymous" tip, even if the caller does not give his name. However, the State must *prove* that the informer used an emergency number, gave his name, or otherwise put his anonymity at risk, even if, as in *Smulik*, it seems fair to infer that the tip was made to a 911 number and the caller did put her anonymity at risk. If the State produces no such evidence, then it must prove that police had information corroborating inculpatory

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248. *Id.* at 186–87; *see* Vill. of Mundelein v. Thompson, 793 N.E.2d 996, 1001 ("Only the facts known to the officer at the time of the seizure can be considered in determining whether the seizure was proper—information gained after the seizure is made must be disregarded."). In *Thompson*, the defendant argued that the *Terry* stop was not proper because, although the caller eventually gave police his name and contact information, he did not do so before the defendant was stopped. *Thompson*, 793 N.E.2d at 1003; *see supra* note 133 and accompanying text. The court held that the record showed that, although it was close, in fact the caller did give his name and contact information before the stop occurred, and the court expressly did not decide "whether such anonymity would have rendered the call unreliable." *Thompson*, 793 N.E.2d at 1004.Importantly, if the informant had spoken with the arresting officer in a face-to-face conversation *before* the officer initiated the *Terry* stop, the tip would likely have been deemed reliable enough to raise reasonable suspicion, even if the informant had not given her name. Illinois courts sometimes treat anonymous face-to-face, in-person tips to police as more reliable than telephone tips, reasoning that speaking with a police officer concretely puts one's anonymity at risk, even if the officer does not actually ask for a name. *See, e.g.*, People v. Sanders, 986 N.E.2d 114, 123–24 (Ill. App. Ct. 2013); People v. Miller, 824 N.E.2d 1080, 1084 (Ill. App. Ct. 2005); People v. DiPace, 818 N.E.2d 774, 780 (Ill. App. Ct. 2004); *In re* A.V., 783 N.E.2d 111, 114 (Ill. App. Ct. 2002). Importantly, however, even face-to-face anonymous tips may not be reliable enough to support an investigatory stop where there are no other indicia of reliability. People v. Henderson, 989 N.E.2d 192, 200 (Ill. 2013) (holding that the fact that the arresting officers received the anonymous tip in person was not enough to distinguish the case from *J.L.*, where the cases were otherwise essentially identical); People v. Rhinehart, 961 N.E.2d 933, 938 (Ill. App. Ct. 2011) (holding unreliable an anonymous tip given to a police officer in person where the record did not show (1) whether the tip was based on personal knowledge or (2) the distance between the location at which the tip was given and the site of the *Terry* stop).

249. *Smulik*, 964 N.E.2d at 187; *see also* People v. Carlson, 729 N.E.2d 858, 860 (Ill. App. Ct. 2000) (refusing to assume that the suspect's girlfriend made the call when there was no proof in the record); *supra* notes 94–97 and accompanying text. *But see* Vill. of Mundelein v. Minx, 815 N.E.2d 965, 971 (Ill. App. Ct. 2004) (treating the tip as non-anonymous because the caller clearly put his anonymity at risk and indicated he would sign a complaint even though his name and contact information did not appear in the record).

details, or had some other strong indicia of reliability, as in *White*, in order to survive a motion to suppress evidence gained from the *Terry* stop.[250]

B. How Specific is the Tip? What Factual Details Are Provided?

The reliability of the tip depends on the totality of the circumstances, not just on whether the tipster gives his name or puts his anonymity at risk. Even if a tip is not anonymous, "it remains the case that a minimum of corroboration or other verification of the reliability of the information is required."[251] Thus, the specificity and level of detail with which a tip is made are often critical to a court's decision on a motion to suppress.

1. Is the Factual Detail Sufficient to Allow Authorities to Identify the Vehicle?

In *Shafer*, the Illinois Appellate Court adopted the *Sousa* factors to analyze whether a tip is sufficiently reliable to support a *Terry* stop.[252] The first *Sousa* factor is whether there is enough information "such as the vehicle's make, model, license plate number, location and bearing, and 'similar innocent details' so that the officer may be certain that the vehicle stopped is the one the tipster identified."[253] In most Illinois cases, this factor has weighed in favor of reliability because tipsters usually give this sort of identifying information.[254] *Navarette* was no exception—the caller gave the color, make, model, and license number of the suspect vehicle, and she also provided its bearing and the location of the observed reckless driving.[255]

However, where the tipster gives only scant identifying information, the court may be likely to grant a motion to suppress evidence gained from the arrest. For example, in *Palmer*, the arresting officer knew that a potentially intoxicated driver would soon be leaving the Par-A-Dice

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250. *See Smulik*, 964 N.E.2d at 187 (discussing the reliability of an anonymous tip "hing[ing] on the existence of corroborative details observed by the police").

251. *Thompson*, 793 N.E.2d at 1003, *cited in* People v. Linley, 903 N.E.2d 791, 796 (Ill. App. Ct. 2009); *see infra* note 295 and accompanying text; *see also* People v. Sparks, 734 N.E.2d 216, 223 (Ill. App. Ct. 2000) (requiring adequate corroboration, and holding that quality, not quantity, of corroboration is the crucial requirement).

252. *See supra* note 148 and accompanying text (describing the *Sousa* factors applied in *Shafer*).

253. People v. Shafer, 868 N.E.2d 359, 363 (Ill. App. Ct. 2007) (quoting State v. Sousa, 855 A.2d 1284, 1290 (N.H. 2004)) (internal quotation marks omitted).

254. *Id.* at 367 (dismissing the argument that the tip was unreliable in part because the tip was sufficiently detailed).

255. Navarette v. California, No. 12-9490, slip op. at 1–2 (U.S. Apr. 22, 2014).

Casino in a dark green Ford SUV, and he stopped a vehicle in the vicinity of the casino for no reason other than that it was a dark green Ford SUV.[256] In such circumstances, the officer did not have enough information to be reasonably certain that the vehicle he stopped was the same vehicle that the casino had reported.[257] Thus, the officer did not have reasonable suspicion justifying a *Terry* stop, and the appellate court affirmed the trial court's decision to grant the defendant's motion to quash arrest.[258]

2. Is the Factual Detail Sufficient to Support the Inference That the Tipster Has Actual Knowledge of Wrongdoing?

Courts will scrutinize the level of detail contained in the tip to determine whether it fairly supports an inference that the tipster actually saw the conduct he reports. As the appellate court stated in *Thompson*:

> A strong inference that a person is a direct witness to the offense is more indicative of reliability than a weak inference of some source of inside information. Further, an informant who is almost surely a fellow motorist, and thus a chance witness, is much less likely to have a malicious hidden agenda than an informant with a source of inside information.[259]

This issue has often come into play based either on *J.L.*, which stated that police had no reasonable suspicion to frisk the defendant because "[a]ll the police had to go on in this case was the bare report of an unknown, unknowable informant *who neither explained how he knew about the gun* nor supplied any basis for believing he had inside information,"[260] or on the last two *Sousa* factors, which consider "third, whether the tip was based upon contemporaneous eyewitness observations . . . [and fourth,] whether the tip was sufficiently detailed to permit the reasonable inference that the tipster has actually witnessed an ongoing motor vehicle offense."[261] The United States Supreme

256. 980 N.E.2d 774, 783–84 (Ill. App. Ct. 2012).

257. *Id.* at 784; *see also* State v. Wood, No. 2010-350, 2011 WL 4976125, at *2 (Vt. Apr. 21, 2011) (distinguishing *State v. Boyea*, 765 A.2d 862 (Vt. 2000), and holding that a tip that a small gray car was operating erratically on Cedar Street, without giving a direction of travel, was not sufficiently specific to justify a *Terry* stop).

258. *Palmer*, 980 N.E.2d at 784.

259. Vill. of Mundelein v. Thompson, 793 N.E.2d 996, 1004 (Ill. App. Ct. 2003). *But c.f.* Brief for Petitioners, *supra* note 154, at 35 ("If anything, people tend to act more aggressively toward their fellow motorists from the safety and anonymity of their cars than they would if they were meeting on the sidewalk. On the road, anyone angered by the driver or passengers in another car can get immediate revenge by placing a quick call to the authorities.").

260. Florida v. J.L., 529 U.S. 266, 271 (2000) (emphasis added).

261. People v. Shafer, 868 N.E.2d 359, 365 (Ill. App. Ct. 2007) (quoting State v. Sousa, 855 A.2d 1284, 1290 (N.H. 2004)) (internal quotation marks omitted).

Court directly confirmed the importance of the caller's personal knowledge of the drunk or erratic driving in *Navarette*.[262] Regardless of exactly how the issue is framed in terms of the case authority, courts are more likely to find the tip reliable if the tipster gives specific details that support the inference that the tip is based on his personal observations or other direct personal knowledge and is not a fabrication designed to harass the suspect or distract the police.

The quantum of detail necessary, however, is uncertain. In *Minx*, the caller's report that a person was "driving recklessly" was deemed insufficiently detailed despite the fact that the tip was made by another motorist who made the report by cell phone while following the suspect vehicle and presently observing the suspect's driving as he phoned in the tip, and who said he would be willing to sign a complaint.[263] Although the arresting officer drove past the caller's vehicle in pursuing and stopping the suspect, he did not speak with the caller at all or get any additional details from him; the arrest was based solely on the caller's report to the Mundelein police that the suspect was driving recklessly.[264] The Second District appellate panel determined that this tip was insufficiently detailed to raise reasonable suspicion that would justify a *Terry* stop.[265]

This conclusion strikes us as curious. Reckless driving is itself a crime, defined as driving with "willful or wanton disregard for the safety of persons or property,"[266] and a lay citizen is competent to identify it. While it is true that the caller gave no specific facts supporting his conclusion that the suspect was driving recklessly, we struggle to understand why the allegation that the suspect was driving in a criminally unsafe manner was not sufficient to raise a reasonable suspicion that a crime was in progress,[267] particularly when the tip bore

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262. Navarette v. California, No. 12-9490, slip op. at 5–6 (U.S. Apr. 22, 2014).

263. Vill. of Mundelein v. Minx, 815 N.E.2d 965, 968–69 (Ill. App. Ct. 2004).

264. *Id.* at 968–69, 971.

265. *Id.* at 972.

266. 625 ILL. COMP. STAT. 5/11-503(a)(1) (2013).

267. In *Navarette*, as in *Minx*, the tipster alleged reckless driving but not necessarily drunken driving. Brief for Petitioners, *supra* note 154, at 19. The petitioners argued in the Supreme Court that "[a] driver who has, perhaps out of necessity, made a single, seemingly reckless maneuver plainly does not pose the same threat to the public as an obviously intoxicated driver unable to control a vehicle," and should not be treated as such. *Id.* at 31. The respondent answered that "drunk drivers generally manifest their intoxicated status to the public by driving recklessly." Brief for Respondent at 38, *Navarette*, No. 12-9490 (citing United States v. Arvizu, 534 U.S. 266, 277 (2002) ("A determination that reasonable suspicion exists, however, need not rule out the possibility of innocent conduct.")). Similarly, the United States, in its amicus brief, argued that the risks to the public of reckless or aggressive driving, whether due to drunkenness, distraction, or any other cause, are similar and equally deserving of intervention or investigation by police.

other indicia of reliability.[268]

Indeed, the Fourth District in *Ewing* sharply criticized the reasoning of *Minx*, stating that "*Minx* is simply wrong" because a non-anonymous tip that someone is driving recklessly is sufficient by itself to raise reasonable suspicion that would justify a *Terry* stop.[269] In the Fourth District's view, police should be permitted to stop reportedly reckless drivers, who may present a threat to other motorists, "without having to question the caller about the specific details that led him or her to call so long as the non-anonymous tip has a sufficient indicia of reliability [sic]."[270]

The *Ewing* court also recognized, however, that *Minx* was distinguishable from *Ewing*.[271] In *Minx*, the caller merely saw someone on the road driving recklessly.[272] The *Ewing* court reasoned that, although reckless driving is itself a crime, not all reckless driving indicates drunkenness; the conduct that the caller saw and reported may have been a mere "fleeting occurrence" and therefore a lesser danger to public safety which might not warrant a lower threshold of reliability to justify a *Terry* stop.[273] In *Ewing*, by contrast, the caller was an employee of a veterinary hospital who noticed that the defendant was intoxicated when he came in to drop off his animal.[274] Even though the record did not show exactly what the defendant did that made the caller believe that he was too drunk to drive, the court reasoned that it was fair to infer that the caller had an opportunity, when the defendant came into the veterinary hospital, to observe the "defendant's speech, odor and gait," just as the employee-caller in *Shafer* had been able to conclude that the defendant was intoxicated based on an encounter with him at a

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Brief for the United States as Amicus Curiae Supporting Respondent, *supra* note 23, at 24–25. The Court ultimately adopted the reasoning of the respondent on this issue, explaining that "we can appropriately recognize certain driving behaviors as sound indicia of drunk driving," and twice citing *Arvizu*. *See Navarette*, No. 12-9490, slip op. at 8, 10.

268. *See supra* note 141 and accompanying text (describing the other indicia of reliability); *see also* State v. Crawford, 67 P.3d 115, 119–20 (Kan. 2003) (holding that a tip that a driver was "driving recklessly" was sufficient to support an investigatory stop where the suspect driver was found in the vehicle described by the tipster at the location described by the tipster).

269. People v. Ewing, 880 N.E.2d 587, 597–98 (Ill. App. Ct. 2007).

270. *Id.* at 598.

271. *Id.* at 597.

272. *Id.*

273. *Id. But see* People v. Hansen, 968 N.E.2d 164, 165–66, 172 (Ill. App. Ct. 2012) (stating that callers reported a truck "doing donuts" in the road and "hot rodding" up and down the street and that the men inside had been "running up and down through [the town]" and "screaming and hollering," and holding that such a tip was sufficient to raise reasonable suspicion of drunk driving); *see supra* notes 183–94 and accompanying text.

274. *Ewing*, 880 N.E.2d at 589.

drive-thru window.[275] Thus, even though the caller in *Ewing* did not provide police with the factual details that led her to conclude that the defendant was intoxicated, there was no need for such specificity where the tip was not anonymous and was apparently based on an eyewitness, in-person encounter.[276]

The distinction the *Ewing* court made between its facts and *Minx*, to the extent the *Ewing* court considered it significant that reckless driving may be a "fleeting occurrence," may no longer make any difference in light of *Navarette*. *Navarette* made clear that certain driving behaviors that might be termed "reckless" are "sound indicia of drunk driving,"[277] and it rejected the argument that observing an instance of reckless driving, which may be due only to a momentary distraction, did not provide reasonable suspicion, reasoning that "reasonable suspicion 'need not rule out the possibility of innocent conduct.'"[278] However, *Navarette* is distinguishable from *Minx* because the caller in *Navarette*, unlike the caller in *Minx*, provided more than a mere conclusion that the suspect was driving recklessly. She stated specific facts that led to that conclusion; namely, that the suspect had run her off the road.[279] It would be going too far to say that *Minx* is no longer good law in light of *Navarette*.

To sum up, in *Minx*, the only Illinois case to turn specifically on the quantum of factual detail provided in the tip, the appellate court determined that the allegation that the suspect was "driving recklessly" was not specific enough to warrant a *Terry* stop, even though there were other indicia of reliability.[280] Although the court in *Ewing* explained that this conclusion is vulnerable on the ground that it ignores the danger that a reckless driver presents to the safety of the public, especially to the extent that the driver's recklessness may be due to intoxication, the court also explained that *Ewing* is factually

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275. *Id.* at 596–97 (citing People v. Shafer, 868 N.E.2d 359, 367 (Ill. App. Ct. 2007) (holding that the proximity of the customer and employee-tipster supported the reliability of the tipster's observations)).

276. Illinois courts frequently place importance on whether the tipster states that he actually saw the illegal conduct he describes to police. *See, e.g.*, People v. Miller, 824 N.E.2d 1080, 1083–84 (Ill. App. Ct. 2005) (distinguishing *J.L.* and holding that a *Terry* stop was proper because an informer told an officer that he "observed" a man displaying a gun); *see also* State v. Kooima, 833 N.W.2d 202, 208, 211 (Iowa 2013) (distinguishing *State v. Walshire*, 634 N.W.2d 625 (Iowa 2001), and holding that the tip was not reliable because the tipster did not state that he personally observed any impaired or erratic driving).

277. Navarette v. California, No. 12-9490, slip op. at 8 (U.S. Apr. 22, 2014).

278. *Id.* at 10 (citing United States v. Arvizu, 534 U.S. 266, 277 (2002)).

279. *Id.* at 1.

280. Vill. of Mundelein v. Minx, 815 N.E.2d 965, 971 (Ill. App. Ct. 2004). *But see supra* note 268 and accompanying text.

distinguishable from *Minx*, and its criticism of *Minx* may be dicta.[281] *Minx*, though certainly weakened by *Navarette*, remains as somewhat troubling precedent for law enforcement officers, and those receiving tips of "reckless driving" would be prudent to seek, in addition to tipsters' conclusions that a person may be driving recklessly or driving under the influence, specific facts supporting those conclusions, such as when and where a suspect driver weaved between lanes, and to preserve these details for the record. With such details in the record, the tip would likely support a *Terry* stop under *Navarette*.

C. Is the Suspect Vehicle Being Presently Driven? Is the Public in Danger?

Cases have also turned on whether the suspect vehicle is being presently driven and thus represents a present threat to public safety. In *Shafer*, the court held that tips concerning suspected drunk drivers needed less corroboration because a drunk driver represents "an imminent danger to the public that is difficult to thwart by means other

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281. People v. Ewing, 880 N.E.2d 587, 597–98 (Ill. App. Ct. 2007). It is tempting to believe that *Ewing* started a war between the Illinois Appellate Court's Fourth District and Second District. In a subsequent decision, merely footnoted here because it is unpublished and non-citable in Illinois courts, the Second District cleaved to *Minx*, holding that a tip that the suspect vehicle "cut off" the tipster in a Taco Bell parking lot was insufficient to support a *Terry* stop, and it criticized *Shafer* and *Ewing*:

> *Shafer* and *Ewing* can be harmonized with *Minx* only by holding that a report of reckless driving must satisfy some standard of specificity, whereas a report of possible intoxicated driving may be wholly conclusory. We see no reason to adopt such a dual standard. Indeed, although the *Ewing* court made a hair-splitting attempt to distinguish *Minx*, the court ultimately declared that *Minx* was "simply wrong" and that "[w]here 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 [sic] of reliability." *Ewing*, 377 Ill. App. 3d at 597. We disagree. 9-1-1 operators and police personnel manning nonemergency telephone lines can certainly ask for such information. It would not be burdensome for them to simply ask a caller why he or she believes that a particular motorist might be impaired, or in what manner a motorist's driving was erratic or reckless. Thus, we adhere to the reasoning in *Minx* and conclude that, even where there are indicia of reliability that permit an informant's report to substitute for a police officer's personal knowledge, the bare assertion that a motorist is intoxicated will not substitute for at least a modicum of information explaining the basis for the assertion.

City of Crystal Lake v. Hurley, Nos. 09-DT-1324, 09-TR-64136, slip op. ¶ 9 (Ill. App. Ct. Dec. 30, 2011) (unpublished order under Ill. S. Ct. Rule 23). *But see* State v. Crawford, 67 P.3d 115, 119 (Kan. 2003) (holding that conclusory statements that a suspect is driving recklessly can justify a *Terry* stop because such a statement is "the kind of shorthand statement of fact that lay witnesses have always been permitted to testify to in court" (citing State v. Slater, 986 P.2d 1038, 1045 (Kan. 1999))).

than a *Terry* stop."[282] *Ewing*'s criticism of *Minx* was based significantly on this logic.[283] The tip in *Ewing* was not much more detailed or reliable than the tip in *Minx*, but in both cases the tipster suggested that an intoxicated driver was presently driving on an Illinois road, and "such drivers present an imminent danger to other motorists," which justifies a *Terry* stop even with corroboration of only innocent, rather than inculpatory, details.[284]

However, *Smulik* held that this principle does not extend to *potential* drunk drivers who are not actually driving.[285] In *Smulik*, the tipster stated that she had personally seen the defendant drinking at a bar and she believed he was intoxicated when he got behind the wheel.[286] The case was thus factually similar to *Ewing* and *Shafer* with respect to the tip. Nevertheless, the court reached a different result for two reasons: (1) the suspect was not actually driving when the arresting officer initiated the *Terry* stop; rather, he had pulled into a gas station, parked in a parking spot, turned off the engine, and had a cigarette to "cool down" from his argument with his friend earlier in the night,[287] and (2) the tip had to be treated as anonymous because the record did not show whether the tipster provided her name or whether she called via an emergency number, and greater corroboration was therefore required.[288] Under these circumstances, the court stated that the arresting officer should have corroborated the tip by initiating a "consensual encounter" with the suspect, rather than immediately initiating a *Terry* stop.[289]

It is unclear based on the court's opinion in *Smulik* whether the court would have deemed a *Terry* stop justified if *either* the tip had been non-

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282. People v. Shafer, 868 N.E.2d 359, 365 (Ill. App. Ct. 2007).

283. *See Ewing*, 880 N.E.2d at 597 ("While reckless driving may be a result of a drunk driver, it may also be a fleeting occurrence. An intoxicated driver remains impaired as he or she continues to drive. In fact, as noted in *Shafer*, an intoxicated driver presents a more imminent danger than many other crimes . . . .").

284. *Id.* at 598. *Minx* may have been distinguishable from *Shafer* and *Ewing* in this respect. It is unclear whether the officer in *Minx* initiated the *Terry* stop while the suspect was driving or after he had already pulled into his driveway. *See Minx*, 815 N.E.2d at 969 (stating that the officer "activated his emergency lights either at [the moment the suspect turned into the driveway] or shortly before reaching the driveway"). If the suspect had already pulled into his driveway when the officer initiated the *Terry* stop, then *Minx* is like *Smulik*, and there was no need to apply a lesser standard of corroboration based on the threat to public safety. In any case, because the *Minx* court held that the tip was insufficiently detailed to raise reasonable suspicion by itself, the court did not address or find any need to resolve the factual dispute over when the *Terry* stop actually occurred.

285. People v. Smulik, 964 N.E.2d 183, 189 (Ill. App. Ct. 2012).

286. *Id.* at 186–87.

287. *Id.* at 184.

288. *Id.* at 186–87.

289. *Id.* at 189.

anonymous *or* the suspected drunk driver had actually been driving when the stop occurred, or if *both* of those conditions would have to have been satisfied.[290] Generally, of course, a *Terry* stop for suspicion of drunk driving will occur while the suspect is driving, but would an Illinois court hold that a driver can be pulled over on suspicion of DUI based only on a truly anonymous tip, even a relatively strong one? Since *J.L.*, no Illinois court has ever so held. *Thompson*, *Shafer*, *Ewing*, and *Hansen* all involved tips that, in one way or another, were deemed not to be truly anonymous.

The drug/gun cases such as *White*, *J.L.*, and *Ledesma* are of limited usefulness on this question because they do not involve an imminent threat to public safety. Indeed, the *J.L.* Court expressly stated that it did not decide and would not speculate "about the circumstances under which the danger alleged in an anonymous tip might be so great as to justify a search even without a showing of reliability" such as, for example, where the tip concerned a bomb set to explode.[291] According to *White* and *Ledesma* and their progeny, an anonymous tip is only sufficiently reliable to support a *Terry* stop if there are some indicia of reliability such as predictions of future behavior that are proved correct, even if only in innocent details.[292] For example, in *People v. Brown*,[293] the anonymous tip regarding a drug transaction contained no predictive information and police corroborated only innocent details, so the case was deemed identical to *J.L.* and the tip was found to be unreliable.[294] On the other hand, in *People v. Rollins*,[295] the anonymous tip contained no predictive information and police were not able to corroborate any inculpatory details before initiating the *Terry* stop, but the court held that the tipster's description of "ongoing public" criminal activity, rather than concealed criminal activity, supported an inference that the

290. This question boils down to the simpler question of whether a truly anonymous tip may give reasonable suspicion of drunk driving, because other cases establish that a person may commit the offense of "driving" under the influence without actually driving. The statute provides that a person "shall not drive or be in *actual physical control* of any vehicle" while under the influence. 625 ILL. COMP. STAT. 5/11-501(a) (2013) (emphasis added). "Actual physical control of a vehicle requires only that one is behind the steering wheel in the driver's seat with the ignition key and physically capable of starting the engine and moving the vehicle." People v. Heimann, 491 N.E.2d 872, 874 (Ill. App. Ct. 1986). Thus, we can say with some confidence that if the officer in *Smulik* had indisputably reliable information that the defendant was drunk, an arrest would have been warranted; not only would the officer have had reasonable suspicion to justify a *Terry* stop, but he also would have caught the defendant *in flagrante delicto*.

291. Florida v. J.L., 529 U.S. 266, 273–74 (2000).

292. *See* discussion *supra* Part I.C.

293. People v. Brown, 798 N.E.2d 800, 808–09 (Ill. App. Ct. 2003).

294. *Id.*

295. People v. Rollins, 892 N.E.2d 21 (Ill. App. Ct. 2008).

tipster must have actually witnessed criminal activity—an inference which the dissent claimed was impermissible under *J.L.*—and provided additional indicia of reliability.[296] Numerous cases in other jurisdictions have used similar logic in the context of *Terry* stops to investigate a tip of drunk driving.[297]

One Illinois Appellate Court case that is perhaps instructive in this context, even though it is a gun case, is *People v. Linley*,[298] in which a tip that gunshots had been fired in a particular area did not permit a *Terry* stop of a man in the area who may have behaved suspiciously.[299] To the extent that this situation is analogous to a tip of drunk driving, this case may indicate that an anonymous tip of drunk driving does *not* create reasonable suspicion to initiate a *Terry* stop without some corroboration or other indication of reliability.

In *Linley*, the arresting officer was dispatched to investigate a report of gunshots in the vicinity of a bar known as the Two Wheel Inn.[300] No information appeared in the record to indicate who made the report or how.[301] While en route but still a short distance from the Inn, the officer noticed a pickup truck idling in the street at the end of a driveway.[302] The defendant and another man were standing outside the truck, speaking to someone within.[303] As the officer approached, he noticed that the defendant glanced at him, then glanced in the opposite direction and backed away slightly from the truck as if he were about to flee.[304] The officer stopped and frisked the defendant and found

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296. *See id.* at 26–27; *id.* at 29–30 (Appleton, P.J., dissenting); *see also* Bloomingdale v. State, 842 A.2d 1212, 1219 (Del. 2004) (asserting that the basis of the tipster's knowledge is less important when, as in the case of most drunk driving tips, the offense reported is open to observation by the general public, rather than concealed).

297. For example, the Supreme Court of California has explained that

> in the context of reckless and possibly intoxicated driving, the tip's lack of "predictive information" [is] not critical to determining its reliability. Such an analysis is more appropriate in cases involving tips of concealed criminal behavior such as possession offenses. . . . An informant's accurate description of a vehicle and its location provides the tip with greater reliability than in the situation of a concealed firearm, because the informant was presumably an eyewitness to illegal activity and his tip can be sufficiently corroborated by the officer spotting the described vehicle in the expected time and place.

People v. Wells, 136 P.3d 810, 815 (Cal. 2006) (citations omitted); *see also supra* note 182 and cases cited therein.

298. People v. Linley, 903 N.E.2d 791 (Ill. App. Ct. 2009).

299. *Id.* at 797–98.

300. *Id.* at 795.

301. *Id.* at 795, 797.

302. *Id.* at 794.

303. *Id.*

304. *Id.*

cocaine in his pocket.[305]

The court explained that an investigatory stop need not be based on the officer's personal observations and may be based on an informant's tip, but the tip must bear some "indicia of reliability" in the totality of the circumstances.[306] A "significant factor" was whether the officer was aware of facts tending to corroborate the tip.[307] The court recognized that there is authority that tips conveyed via an emergency telephone number, such as 911, are not truly anonymous because authorities can trace them instantly.[308] It also recognized, citing *Shafer*, that the need for corroboration is lessened where the tip concerns an imminent threat to public safety, such as a drunk driver.[309] However, "it remains the case that a minimum of corroboration or other verification of the reliability of the information is required."[310]

The court reasoned that, because the officer was only acting based on a dispatch and had no personal knowledge that gunshots were fired, the State was obligated to prove that the information contained in the dispatch was reliable.[311] The State failed to meet this burden, introducing absolutely no evidence "concerning the source or nature of the information underlying the dispatch" and leaving the court to speculate:[312]

> Perhaps another officer heard gunfire, but was attending to other duties and could not investigate. More likely, perhaps, the information came from a civilian. If that is the case, however, his or her identity and the circumstances under which the information was given are unknown. We do not know whether the informant was a concerned citizen or a member of the criminal milieu; whether the report was made in person or by telephone; whether the informant identified himself or herself; whether the informant had a history of providing reliable information or a reputation for giving false reports; whether the report, if made by telephone, was made to an emergency telephone number; whether the informant personally heard gunshots or was relaying secondhand information; and whether the report was contemporaneous with the gunfire.[313]

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305. *Id.*
306. *Id.* at 795.
307. *Id.* at 797.
308. *Id.* at 796 (citing People v. Shafer, 868 N.E.2d 359, 363–64 (Ill. App. Ct. 2007)).
309. *Id.* at 796 (citing *Shafer*, 868 N.E.2d at 365–66).
310. *Id.* at 795 (quoting Vill. of Mundelein v. Thompson, 793 N.E.2d 996, 1003 (Ill. App. Ct. 2004)) (internal quotation marks omitted).
311. *Id.* at 797.
312. *Id.*
313. *Id.*

Under *Shafer*, the threat to public safety presented by gunfire might lessen the need for corroboration, but it did not "permit reliance on a report lacking *any* indicia of reliability whatsoever."[314] The court held that the dispatch alone did not justify the *Terry* stop.[315]

Of course, some factors distinguish *Linley* from drunk driving cases such as *Shafer* and *Ewing*. For instance, in *Linley* there was no description of the shooter or other information by which the police could identify the shooter before performing the investigatory stop.[316] Further, the suspect was not in the immediate vicinity of the Two Wheel Inn, the location of the gunshots reported by the tipster; rather, he was several hundred yards away. There was therefore no basis for reasonably suspecting that this might be the person who had fired the gunshots that the tipster had reported. If the defendant matched a description of the shooter given by the tipster, and if the investigating officer found the defendant very near the location specified in the tip, *Linley* might have been a different case, as the tip would have greater indicia of reliability. True, it would still be a case, like *J.L.*, in which the tip was only specific enough to identify a particular person, without containing any information bearing on the credibility of the tipster. However, the danger to public safety presented by a recent shooter on the loose, like the danger presented by a drunk driver on the roads, distinguishes the case from *J.L.* and permits an investigatory stop with "less rigorous corroboration."[317]

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314. *Id.*

315. *Id.* The court went on to hold that the fact that the defendant stepped back from the truck and glanced away as if he were considering fleeing did not justify the *Terry* stop and frisk, either. *Id.* at 798. While full-fledged flight is a significant factor to be considered in the totality of the circumstances,

> [t]he most that can be said is that [the officer] inferred that defendant briefly contemplated fleeing. . . . [B]y any standard the predictive value of defendant's behavior is meager at best. Perhaps defendant thought about running away. Perhaps he merely considered walking away. It is also possible that he was simply attempting to determine what had brought the police to his home.

Id.; *c.f.* United States v. Sims, 296 F.3d 284, 286–87 (4th Cir. 2002) (holding that "evasive" behavior may raise reasonable suspicion of wrongdoing, but declining to hold that the merely "furtive" behavior of the defendant would have justified a *Terry* stop except for an anonymous tip that a person fitting the defendant's description had been firing a weapon in the vicinity).

316. *Linley*, 903 N.E.2d at 797.

317. People v. Shafer, 868 N.E.2d 359, 366 (Ill. App. Ct. 2007); *see* United States v. Hampton, 585 F.3d 1033, 1039 (7th Cir. 2009) (holding that an anonymous 911 tip giving police the location of a man who had just fired gunshots in public gave police reasonable suspicion which justified a *Terry* stop because "emergency reports are presumptively reliable"); United States v. Wooden, 551 F.3d 647, 649–50 (7th Cir. 2008) (Easterbrook, C.J.) (holding that "a report by a person claiming to have seen a gun drawn in public provided articulable suspicion for a *Terry* stop and frisk" where delaying action until the tip could be corroborated might "frustrate the expedition that is essential to protect lives and safety"); United States v. Elston, 479 F.3d 314,

Although the suggestion that danger to public safety may, in the totality of the circumstances, justify a *Terry* stop even if it is based on an anonymous tip of questionable reliability inspired intense debate at oral argument in *Navarette*,[318] the Supreme Court was mysteriously silent on the validity of this proposition in its opinion. Perhaps the majority felt that resorting to a lower threshold of reliability was simply unnecessary in the case before it because, in the totality of the circumstances, the tip was sufficiently reliable on its face and by its own terms, *regardless* of the danger to public safety. It will fall to courts and litigants in other cases to test this proposition further.

CONCLUSION

Now that the United States Supreme Court has spoken on the issue, it may be that the Illinois Supreme Court will have no need to take up the issue of whether and when anonymous tips may justify investigatory stops, not only because *Navarette* has answered many of the questions courts facing the issue have raised, but also because police will take care to obtain detailed information from tipsters before initiating a stop. If 911 operators and police gather sufficient information to identify the suspect and determine the basis for the caller's conclusion that he is driving drunk, and they diligently preserve that information so that it can be introduced in court, there should be no reason to find the tip unreliable, even if the tipster is reluctant to give his name. The officer or operator who receives the call should ask for a description of the suspect vehicle which includes at least such items as the vehicle's make, model, license number, location, and bearing. He should also ask for factual details supporting the caller's conclusion that the driver is drunk. Did the caller have an in-person encounter with the suspect, perhaps

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319 (4th Cir. 2007) (holding that "imminent threat to public safety" faced by officers responding to a 911 tip that a person was driving drunk while carrying a weapon and threatening to shoot someone "carries substantial weight in assessing the reasonableness of [the officers'] actions").

318. *See* Transcript of Oral Argument, *supra* note 42, at 36–47. Justice Kagan drove much of the discussion on this point. For example, in an exchange that included her most pointed comments, she asked counsel for the respondent if it was not "quite a substantial change in Fourth Amendment law" to suggest that "when we decide whether reasonable suspicion exists, . . . that we get to take into account how serious the offense is," and counsel responded that "reasonable suspicion results from a balancing of the governmental interest." *Id.* at 36. Justice Kagan quickly broke in,

> [t]he balancing occurs categorically. We decide that there's a reasonable suspicion standard by balancing interests. What we don't do is say, you know, depending on how serious we think this crime is, more or less will meet that reasonable suspicion standard. That would be a substantial reworking of Fourth Amendment law or so it seems to me. Maybe I'm wrong.

Id.

before he got behind the wheel, during which he noticed an odor of alcohol, that the suspect was walking unsteadily, that his eyes were glassy and bloodshot? Or did he notice that the suspect's driving appeared to be impaired because his vehicle was weaving across the road and he could not stay in his lane? It will take the 911 operator a minimal amount of time to acquire such information, and with these facts in the record, a circuit court would be bound to find the tip sufficiently reliable to support a *Terry* stop under cases such as *Thompson*, *Shafer*, *Ewing*, and *Hansen*, as well as *Navarette*.

Since *Shafer* held that 911 calls are not anonymous, the only Illinois cases which have held that "anonymous" tips are unreliable are those such as *Smulik* and *Linley*, which were likely not actually anonymous at all. In *Smulik*, the tipster remained on the scene and spoke with the arresting officer after the officer initiated the *Terry* stop; the tip was only *treated* as anonymous because there was no evidence in the record that the informant "provided her name or contacted police through an emergency number" or otherwise put her anonymity at risk until after the *Terry* stop had been initiated.[319] In all likelihood, however, the caller did call 911.[320] Most people know no other way of reaching the police to report wrongdoing. Similarly, in *Linley*, it seems likely that a concerned citizen who had heard the gunshots called 911, but the court would not presume that the tipster had put his anonymity at risk in this way without any evidence to that effect in the record.[321] As *Navarette* demonstrates, as long as the record contains even basic information that someone personally observed what appeared to be a drunk driving offense and put his anonymity at risk by reporting it, an investigatory stop of the suspect driver is likely justified.

Illinois courts remain diligent in refusing to forgive any laxity in ensuring that an officer has reasonable suspicion before making an investigatory stop of a suspected drunk driver. Neither the officer's mere hunch nor a private citizen's is enough to satisfy the Fourth Amendment.[322] An anonymous tip must bear some indicia of reliability, which may be demonstrated by evidence that the tipster put

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319. People v. Smulik, 964 N.E.2d 183, 186–87 (Ill. App. Ct. 2012).

320. *See* People v. Lomax, 975 N.E.2d 115, 123 (Ill. App. Ct. 2012) ("'A 911 call is one of the most common—and universally recognized—means through which police and other emergency personnel learn that there is someone in a dangerous situation who urgently needs help.'" (quoting United States v. Richardson, 208 F.3d 626, 630 (7th Cir. 2000))).

321. As stated above, however, the outcome in *Linley* may have been the same even if there was such information in the record, as there was nothing to connect the defendant with the tip, which reported gunshots at a tavern that was more than a quarter of a mile away and included no description of the shooter.

322. United States v. Wheat, 278 F.3d 722, 732 (8th Cir. 2001).

his anonymity at risk or that the tip is based on the tipster's personal observations. Where such indicia are present, Illinois courts have been willing to recognize a lower threshold for reasonable suspicion in the case of a tip of drunk driving, based on the rationale that requiring the officer personally and meticulously to corroborate the details of the tip could only prolong the presence of a drunk driver on the roads and put the lives of Illinois motorists in imminent danger.

The Illinois Supreme Court declined the opportunity to address this issue directly in *Ewing*, denying the defendant Ewing's petition for leave to appeal,[323] and it has not considered the issue since. *Navarette v. California* has shed additional light on the matter, but leaves open the question of whether the danger to public safety permits an officer to initiate a *Terry* stop based on a tip that meets only a lower threshold of reliability than would otherwise apply.[324] Importantly, given that courts interpret the unreasonable search and seizure clause of the Illinois Constitution in limited lockstep with the unreasonable search and seizure clause of the United States Constitution, *Navarette* settles the issue in Illinois, for as far as *Navarette* goes.[325] For the time being, it is clear that, so long as Illinois law enforcement authorities are diligent in acquiring and preserving the facts that cast suspicion on potentially drunk drivers, they can continue to rely on citizen informers to help to eliminate the great danger to public safety that drunk drivers represent, without having to delay stops to corroborate tips provided by citizen informers themselves.

323. People v. Ewing, 882 N.E.2d 80 (Ill. 2008) (summary order denying petition for leave to appeal).

324. *See supra* Part I.F; *supra* notes 1–9 and accompanying text.

325. *See* People v. Caballes, 851 N.E.2d 26, 44–45 (2006) (reaffirming limited lockstep doctrine); *see also* Hon. John Christopher Anderson, *The Mysterious Lockstep Doctrine and the Future of Judicial Federalism in Illinois*, 44 LOY. U. CHI. L.J. 965 (2013); *supra* notes 31, 34 and accompanying text.