

IN THE SUPREME COURT OF THE STATE OF DELAWARE

JEFFREY A. SCHNEIDER,	§	
	§	No. 738, 2009
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	New Castle County
	§	
STATE OF DELAWARE,	§	Cr. I.D. No. 0906002133
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: July 21, 2010  
Decided: August 19, 2010

Before **HOLLAND, BERGER** and **JACOBS**, Justices.

**ORDER**

This 19<sup>th</sup> day of August 2010, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. Jeffery A. Schneider (“Schneider”) appeals from the denial by the Superior Court of his Motion to Suppress Evidence. Schneider claims that the Superior Court erred, because the police trooper who performed the search did not have a reasonable articulable suspicion to stop and search him. We find no error and affirm.

2. On June 2, 2009, an anonymous informant called the police. The informant reported that Schneider was drinking alcohol in the driver’s seat of a green van, in an elementary school little league field parking lot, during a game.

Delaware State Police Trooper Amy Lloyd (“Officer Lloyd”) responded to the call, and met with the informant in the parking lot for about thirty seconds. According to Officer Lloyd, the informant reported that she had seen Schneider drinking in his car, and that she knew Schneider because she had “partied with him in the past . . . [and] hung out with him before.” Officer Lloyd also testified that “[i]t didn’t appear that [the informant] knew [Schneider] very well.” There is no record that the informant ever identified herself to Lloyd.

3. Before Officer Lloyd was able to question the informant further, the green van left the parking lot, and Lloyd followed it. Although Officer Lloyd did not observe Schneider break any laws or drive erratically, she stopped his van and arrested Schneider for driving while intoxicated.

4. Schneider moved in his Superior Court criminal proceeding to suppress the evidence seized as a result of the motor vehicle stop. The Superior Court denied the motion,<sup>1</sup> and this appeal followed.

5. On appeal, Schneider claims that the Superior Court erroneously denied his motion to suppress, because the unidentified informant’s report did not create a reasonable and articulable suspicion to search and seize him. Schneider asserts that his Fourth Amendment right against unreasonable search and seizure, and his

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<sup>1</sup> *State v. Schneider*, 2009 WL 3327226, at \*6 (Del. Super. Ct. Oct. 15, 2009).

corresponding right under Article I, Section 6 of the Delaware Constitution<sup>2</sup> were violated.

6. This Court reviews the denial of a motion to suppress for abuse of discretion.<sup>3</sup> Where, however, “the denial of motion to suppress evidence [is] based on an allegedly illegal stop and seizure, we conduct a *de novo* review to determine whether the totality of the circumstances, in light of the trial judge’s factual findings, support a reasonable and articulable suspicion for the stop.”<sup>4</sup>

7. For the search and seizure of Schneider’s van to be constitutional, the informant’s report must have sufficiently established “a reasonable and articulable suspicion that a crime has occurred, is occurring, or is about to occur.”<sup>5</sup> Whether an anonymous “tip suffices to give rise to reasonable suspicion depends on both the quantity of the information it conveys as well as the quality . . . of that

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<sup>2</sup> U.S. CONST. amend. IV (“The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. . . .”); DEL. CONST. art. I, § 6 (“The people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures. . . .”). We do not address the alleged violation of the Delaware Constitution, because it was not fully and fairly presented to this Court as an issue on appeal. *See Ortiz v. State*, 869 A.2d 285, 291 (Del. 2005).

<sup>3</sup> *Pendelton v. State*, 990 A.2d 417, 419 (Del. 2010).

<sup>4</sup> *Lopez-Vazquez v. State*, 956 A.2d 1280, 1285 (Del. 2008).

<sup>5</sup> *Bloomingtondale v. State*, 842 A.2d 1212, 1217 (Del. 2000) (holding that an anonymous tip of erratic driving was sufficiently reliable to establish a reasonable suspicion of criminal activity, making a vehicular stop constitutional); *see also Terry v. Ohio*, 392 U.S. 1 (1968) (holding that brief stops by law enforcement officers based on a reasonable suspicion of criminal activity do not violate the Fourth Amendment to the United States Constitution).

information, viewed under the totality of the circumstances.”<sup>6</sup> Here, the record shows, the information the anonymous informer reported was of sufficient quantity and quality to justify the vehicular stop.

8. The informant reported that she saw Schneider drinking alcohol. The informant also identified Schneider’s van by oral description and by pointing at it. That provided enough information for Officer Lloyd accurately to identify the vehicle and the alleged criminal activity. Thus, the “quantity” requirement for a reasonable and articulable suspicion is satisfied.

9. “With respect to the quality of the information, the key issue is the degree of the reliability of that information.”<sup>7</sup> “The [U.S.] Supreme Court has long emphasized that a primary determinant of a tipster’s reliability is the basis of his knowledge.”<sup>8</sup> Here, the informant based her report on direct observation—a

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<sup>6</sup> *Bloomingtondale*, 842 A.2d at 1217 (quoting *United States v. Wheat*, 278 F.3d 722, 726 (8th Cir. 2001)).

<sup>7</sup> *Bloomingtondale*, 842 A.2d at 1217; see also *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>8</sup> *United States v. Wheat*, 278 F.3d at 734; see also *Illinois v. Gates*, 462 U.S. 213, 230 (1983) (“an informant’s ‘veracity,’ ‘reliability,’ and ‘basis of knowledge’ are all highly relevant in determining the value of [the informant’s] report.”).

reliable basis of knowledge.<sup>9</sup> The basis of the informant’s knowledge having been firmly grounded, the quality of her report turns on the informant’s identity and the reasonableness of Officer Lloyd’s reliance on the informant’s report. The record shows that although the informant was unidentified, Lloyd acted reasonably in relying on her information.

10. The United States Supreme Court has held that “[a]nonymous tips . . . are generally less reliable than tips from known informants. . . .”<sup>10</sup> Not all anonymous tips are equal, however. A “tip given face to face is more reliable than an anonymous telephone call. . . . [W]hen an informant relates information to the police face to face, the officer has an opportunity to assess the informant’s credibility and demeanor.”<sup>11</sup>

11. Here, the informant called the police to report the information regarding Schneider’s alleged activities, and then waited in the parking lot to confirm her

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<sup>9</sup> Lloyd testified that the informant observed Schneider drinking alcohol in the elementary school little league field parking lot. The Superior Court also relied on the informant’s alleged personal knowledge of Schneider, from “part[ying] with him in the past . . . [and hanging] out with him,” to establish the reliability of the informant’s basis of knowledge. *State v. Schneider*, 2009 WL 3327226, at \*1, \*5. This Court finds the informant’s direct observations to be a sufficiently reliable basis. We need not decide whether the informant’s relationship with Schneider contributed to her basis of knowledge or her reliability.

<sup>10</sup> *Florida v. J.L.*, 529 U.S. 266, 269 (2000).

<sup>11</sup> *United States v. Valentine*, 232 F.3d 350, 354 (3rd Cir. 2000) (citation omitted).

earlier report. The informant made no attempt to conceal her identity.<sup>12</sup> She voluntarily approached Officer Lloyd and answered all of her questions. The informant remained unidentified, in part because Schneider abruptly left the parking lot, leaving Officer Lloyd to choose between continuing to question the informant or stop Schneider's van. Because the informant risked identification and took no action to conceal her identity, those factors support the reliability, and thus the quality, of her information.

12. The quantity and quality of the informant's report must be "viewed under the totality of the circumstances."<sup>13</sup> In *Bloomingtondale v. State*,<sup>14</sup> this Court explained that, "when deciding whether an anonymous tip of erratic driving provided reasonable suspicion to stop a vehicle, courts should balance the government's interest in responding immediately to reports of unsafe driving, against the comparatively modest intrusion on individual liberty that a traffic stop entails."<sup>15</sup> Similarly, driving while under the influence of alcohol "poses a

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<sup>12</sup> *Cf. State v. Satter*, 766 N.W.2d 153 (S.D. 2009) (holding that a tip from an unidentified informant, who reported to a police officer in person, was sufficient to justify the search and seizure of a motor vehicle under the Fourth Amendment to the United States Constitution). In evaluating the quality of an unidentified informant's tip, the South Dakota Supreme Court valued that the informant made no effort to conceal his identity. *Id.* at 156.

<sup>13</sup> *Bloomingtondale*, 842 A.2d at 1217.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 1221.

potentially imminent threat of harm to the public,”<sup>16</sup> and requires this Court to achieve the same balance. Here, Schneider pulled out of the parking lot only thirty seconds after Officer Lloyd began talking with the informant. Officer Lloyd wisely chose to pursue Schneider and stop his van, rather than continue to question the informant and risk the potential result of allowing a person to drive under the influence of alcohol.<sup>17</sup>

13. In summary, the informant provided Officer Lloyd a sufficient quantity and quality of information during their face-to-face encounter. To avert any risk of a reportedly intoxicated man driving near a little league baseball field, Officer Lloyd stopped Schneider’s van, based on a reasonable and articulable suspicion that Schneider was driving under the influence. Therefore, the Superior Court did not err in denying Schneider’s Motion to Suppress Evidence.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs  
Justice

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<sup>16</sup> *Id.*

<sup>17</sup> One of the significant circumstances was Schneider’s proximity to an elementary school little league field while a game was in progress. That circumstance weighed in favor of performing the stop.