GENERAL NO. 2-11-0432
APPELLATE COURT OF THE STATE OF ILLINOIS
SECOND JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)
	) Appeal from DuPage County
Plaintiff-Appellee,	) of the 18th Judicial Circuit
	) DuPage County, Illinois
	)
-vs-	) Circuit Court Case No: 10 DT 4042
	)
SVEN CARLSON	) The Honorable Richard D. Russo,
	) Judge Presiding
Defendant-Appellant.	)

BRIEF AND ARGUMENT OF DEFENDANT-APPELLANT

SVEN CARLSON

Donald J. Ramsell
RAMSELL & ASSOCIATES, L.L.C.
128 S. County Farm Rd.
Suite F
Wheaton, IL 60187
(630) 665-8780

ORAL ARGUMENT REQUESTED

BRIEF OF DEFENDANT-APPELLANT SVEN CARLSON

NATURE OF THE CASE

This is an appeal by the Defendant from a final judgment denying his Petition to Rescind Summary Suspension. (TCR c.59) On October 20, 2010, the defendant was stopped by Deputy Koty of the DuPage County Sheriff's Office and eventually arrested for Driving Under the Influence of Alcohol and Illegal Transportation of Alcohol. (TCR c.2)

On October 29, 2010, the defendant filed a Petition to Rescind Summary Suspension. (c 10) The hearing began on December 30, 2010. (ROP c.1 – 94) On that date, the court granted the State's motion for a directed finding in part, holding that the initial stop of the vehicle was justified under the community caretaking exception. (ROP c.73-74) The hearing continued on the remaining issues through multiple dates. On April 15, 2011, the court denied the Petition to Rescind in its entirety. (TCR c.53)

On April 29, 2011 the defendant filed his timely Notice of Appeal. (TCR c.59)

POINTS AND AUTHORITIES

STANDARD OF REVIEW

STATEMENT OF FACTS

ARGUMENT

A. THE STOP OF THE DEFENDANT'S VEHICLE UNDER THE COMMUNITY CARETAKING EXCEPTION WAS UNJUSTIFIED, WHERE THE INFORMATION RELAYED TO THE POLICE (i.e. THAT THE DRIVER WAS MISSING AND POSSIBLY SUICIDAL) WAS SEVEN HOURS STALE AND WAS NOT BASED UPON THE PERSONAL KNOWLEDGE OF THE CALLER, AND THE DEFENDANT'S GIRLFRIEND HAD TOLD THE POLICE THAT SHE HAD SPOKEN TO THE DEFENDANT TWO AND ONE HALF HOURS LATER AND THAT NOTHING APPEARED WRONG.

1. The basic information related to the police was vague and unreliable.

2. The reliability prong of the Fourth Amendment applies to all seizures – whether they are for criminal or caretaking purposes. Here, the reliability of the information was never corroborated, and its reliability was never established during the seven hours between the one-time call and the seizure of the defendant.

PAGE

3. The police conduct, in seizing the defendant seven hours after the uncorroborated hearsay was made by a caller from Puerto Rico, was unreasonable under the community caretaking exception to the Fourth Amendment.

PAGE

4. The passage of time rendered the information stale, and there was no 'emergency' justifying the police conduct.

PAGE

STANDARD OF REVIEW

A summary suspension should be reviewed using the same standard of review applicable to suppression rulings. *People v. Wear*, 229 Ill.2d 545, 561, 323 Ill.Dec. 359, 893 N.E.2d 631 (2008) accord *People v. Dittmar* 2011 WL 2438939, 11 (Ill.App. 2 Dist.) (Ill.App. 2 Dist.,2011). Because there are no issues of historical fact relevant to the ground on this appeal is taken, namely whether the seizure of defendant was valid under the community-caretaking doctrine, the review of the trial court's ruling should be de novo. *People v. Dittmar* 2011 WL 2438939, 11 (Ill.App. 2 Dist.) (Ill.App. 2 Dist. 2011)

STATEMENT OF FACTS

This is an appeal by the Defendant from a final judgment denying his Petition to Rescind Summary Suspension. (TCR c.59) On October 20, 2010, the defendant was stopped by Deputy Koty of the DuPage County Sheriff's Office and eventually arrested for Driving Under the Influence of Alcohol and Illegal Transportation of Alcohol. (TCR c.2)

On October 29, 2010, the defendant filed a Petition to Rescind Summary Suspension. (c 10) The hearing began on December 30, 2010. (ROP c.1 – 94) The hearing began on December 30, 2010. (ROP c.3)

The first witness to testify was Corporal Vandevoorde. (ROP c.3) He testified as follows: On October 19, 2010, he was dispatched to Four Lakes to look for a subject that was reported missing, suicidal. He stated that the original officer, Deputy Koty, was dispatched there at 7:18 pm. (ROP c.5) He got involved about a half an hour later. (ROP c.6) The source of the information was a third-party. The officer believed it to be a friend. (ROP c.6)

Hours later, around midnight, four officers (including Vandevoorde) were sitting in front of the defendant's residence, when Vandevoorde saw a vehicle that he believed was being driven by the defendant drive past him. Vandevoorde put his own vehicle into drive and follow the defendant. (ROP c.9). So did another deputy. Vandevoorde activated his overhead emergency lights stopped the defendant's vehicle. (ROP c.9) Vandevoorde admitted that he observed no law violations prior to the stop, nor had he learned of any allegation that the defendant had committed a crime prior to the stop. (ROP 9-10)

Vandevoorde stated that his dispatch had received the call from Downers Grove dispatch. (ROP c.11) Vandevoorde could not identify who, if anyone, ever actually talked to the purported original caller (who was referred to as the defendant's 'friend'). (ROP c.11) Vandevoorde could not provide the name of the caller/source of information, nor could he provide that person's address, nor could he provide the name of anyone else who knew the source of the information. (ROP c.12)

Eventually, Vandevoorde stated that a 'Matt Moore', who was out of state, had called a dispatcher and said that the defendant had slit his wrists. (ROP c.14) That person allegedly had last had contact with the defendant around 5:30 pm. (ROP c. c.12-13). On cross-examination, Vandevoorde elaborated that the 'Matt Moore' had called Downers Grove and claimed that he had witnessed the defendant "cut his wrist and drive off." (ROP c.19).

Vandevoorde testified that a search was then done for the defendant's cell phone, which led them to Four Lakes because the telephone company was triangulating a ping to that area. (ROP c.19) Deputy Koty located the cell phone in a ditch. (ROP c.20) The determined that Sven Carlson was the registered owner of a 2000 green Toyota Camry with plates identical to the

vehicle that he eventually stopped. (ROP c.21) The defendant was entered into LEADS as missing and suicidal. (ROP c.21)

Vandevoorde stated that when he went to the defendant's residence to locate him, the defendant's girlfriend was there. (ROP c.24) Vandevoorde stated that he stopped the defendant "because he was in LEADS as missing and suicidal." (ROP c.24)

On redirect, Vandevoorde was asked whether a person named Matt Moore, or John Moore called Downers Grove. Vandevoorde could not answer. (ROP c.26) Vandevoorde was also confronted with the report of Deputy Koty, where it stated that, "according to dispatch", Matt Moore was in another state and was *not* present when Sven Carlson allegedly cut his wrists. (ROP c.27) Vandevoorde admitted that he could not testify as to whether Matt Moore called John Moore, or whether John Moore called Downers Grove, or whether either of those two people even exist. (ROP c.27)

Upon further clarification, Vandevoorde admitted that the police reports indicated that dispatch had initiated the incident when a particular cellphone number had been used to call a Matt Moore, who was out of state. (ROP c.27)

Vandevoorde also admitted that after the alleged phone call from Matt Moore (or John Moore), Deputy Koty spoke to Jennifer Chavez, the defendant's girlfriend, who told him she had last spoken to the defendant about 7:30 pm on his cell phone. (ROP c.29).

Deputy Koty next testified. (ROP c.31) Koty testified that around 5pm, he got a call for service to assist Downers Grove. (ROP 31-32) Downers Grove was trying to locate a Sven Carlson, who had been reported as missing and suicidal, and they had pinged his phone and

located it in Four Lakes. (ROP c.31 Vandevoorde became involved about 45 minutes to an hour later. (ROP c.32)

Deputy Koty was then shown a dispatch report created by Kevin Zelga, a person Koty knew to be a DuPage Sheriff's dispatcher. (ROP c. 33) That report stated that Sven Carlson had called a Matt Moore who is out of state and stated that he slit his wrists. (ROP c.33) The report attributed a particular cell phone number to Sven Carlson. At about 6:00 pm, the cell phone was located in a ditch in Four Lakes. (ROP c. 33) Deputy Koty's report stated that Sven had been with a John Moore when he cut one of his wrists and got into a car and drove away. (ROP c.34). Koty believed that Matt Moore was the complainant and that John Moore was his brother. (ROP c.34) Deputy Koty has never had contact with John Moore, and has no verification, such as address, date of birth, etc., and he also never spoke to Matt Moore. (ROP c.35)

Sometime close to midnight, Deputy Koty ends up at the residence of Sven Carlson in Woodridge. (ROP c.35). This was around seven hours after the original incident report. (ROP c.36). At this time, he spoke to defendant's girlfriend Jennifer Chavez. She told him that at around 7:30pm (two and one-half hours after the original call) she had spoken to Sven, and she gave no indication that Sven was suicidal or in need of aid. (ROP c.37).

According to Koty, around midnight, Sven Carlson was seen driving down the road. Koty, Corporal Vandevoorde, Sergeant Rushing, Deputy Northrup, and one or two detectives were at the scene. Corporal Vandevoorde stopped the defendant while the other officers got into their cars and "headed down there." (ROP c. 38)

On cross-examination, Deputy Koty elaborated as to the extent of the information that had been gained prior to stopping the defendant. Apparently, Matt Moore called the Downers Grove police while he was in Puerto Rico. Matt had spoken to his brother John, who said that he was with Sven and that Sven had cut his writs and gotten into his car and taken off. (ROP c.47)

The defendant rested. The State moved for a directed finding. (ROP c.50) The state claimed that the stop was valid under the community caretaking doctrine. (ROP c.52-56) The defendant argued that due to the passage of time and the lack of reliability from the actual caller regarding the truth of the information received, coupled with the girlfriend's statement that nothing appeared wrong, that the stop 7 hours later was unreasonable. (ROP c.68-73)

The court granted the State's motion for a directed finding in part, holding that the initial stop of the vehicle was justified under the community caretaking exception. (ROP c.73-74) The hearing continued on the remaining issues which are not the subject of the appeal herein. On April 15, 2011, the court denied the Petition to Rescind in its entirety. (TCR c.53)

On April 29, 2011 the defendant filed his timely Notice of Appeal. (TCR c.59)

ARGUMENT

A. A. THE STOP OF THE DEFENDANT'S VEHICLE UNDER THE COMMUNITY CARETAKING EXCEPTION WAS UNJUSTIFIED, WHERE THE INFORMATION RELAYED TO THE POLICE (i.e. THAT THE DRIVER WAS MISSING AND POSSIBLY SUICIDAL) WAS SEVEN HOURS STALE AND WAS NOT BASED UPON THE PERSONAL KNOWLEDGE OF THE CALLER, AND THE DEFENDANT'S GIRLFRIEND HAD TOLD THE POLICE THAT SHE HAD SPOKEN TO THE DEFENDANT TWO AND ONE HALF HOURS LATER AND THAT NOTHING APPEARED WRONG, AND THE CALL ITSELF WAS SEVEN HOURS STALE..

1. The basic information related to the police was vague and unreliable.

On October 19, 2010 around 5 o'clock in the evening, a person calling himself Matt Moore called the Downers Grove police. He stated he was calling from Puerto Rico. He stated that his brother John Moore had told him that Sven Carlson had cut his wrist and had gotten into a vehicle and drove off.

Around 11:30 that night, the police interviewed the girlfriend of Sven Carlson at Sven's residence. She stated that she had last spoken to Sven around 7:30, and nothing appeared wrong.

At least five, and as many as seven police officers remained stationed near Sven's home. Shortly after midnight, Sven was spotted driving near his home, and the police conducted a stop of the defendant. Sven was eventually arrested for DUI.

Prior to seizing the defendant, the police were unable to confirm the truth of any of the information allegedly communicated to the Downers Grove Police department.

2. The reliability prong of the Fourth Amendment applies to all seizures – whether they are for criminal or caretaking purposes. Here, the reliability of the information was never corroborated, and its reliability was never established during the seven hours between the one-time call and the seizure of the defendant.

The fundamental purpose of the fourth amendment is to safeguard the privacy and security of individuals against arbitrary invasions by government officials. *People v.*

Dilworth, 169 Ill.2d 195, 201, 214 Ill.Dec. 456, 661 N.E.2d 310, 315 (1996). The fourth amendment, through the due process clause of the fourteenth amendment, prohibits unreasonable searches and seizures by state officers. *New Jersey v. T.L.O.*, 469 U.S. 325, 334, 105 S.Ct. 733, 738, 83 L.Ed.2d 720 (1985); *Dilworth*, 169 Ill.2d at 202, 214 Ill.Dec. 456, 661 N.E.2d at 315. *People v. Kline* 355 Ill.App.3d 770, 772, 824 N.E.2d 295, 298, 291 Ill.Dec. 719, 722 (Ill.App. 3 Dist.,2005)

A reasonable suspicion is the "sort of common sense conclusion about human behavior upon which practical people—including government officials—are entitled to rely, rather than an inchoate and unparticularized suspicion or hunch." *T.L.O.*, 469 U.S. at 346, 105 S.Ct. at 745, 83 L.Ed.2d 720; *People v. Parker*, 284 Ill.App.3d 860, 864, 219 Ill.Dec. 960, 672 N.E.2d 813, 817 (1996). Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed and its degree of reliability. *Alabama v. White*, 496 U.S. 325, 330, 110 S.Ct. 2412, 2416, 110 L.Ed.2d 301(1990). Both factors, quality and quantity, are considered in the totality of the circumstances when evaluating whether there is reasonable suspicion. White, 496 U.S. at 330, 110 S.Ct. at 2416, 110 L.Ed.2d 301. The requirement of reasonable suspicion is not a requirement of absolute certainty; sufficient probability is the touchstone of reasonableness under the fourth amendment. *T.L.O.*, 469 U.S. at 346, 105 S.Ct. at 745, 83 L.Ed.2d 720; *Dilworth*, 169 Ill.2d at 215, 214 Ill.Dec. 456, 661 N.E.2d at 320–21.

Matt Moore, the alleged caller from Puerto Rico, admittedly had no personal knowledge of the facts which would have justified a stop of Sven Carlson, i.e. the alleged cutting of the wrists. Additionally, unlike many 911 or police dispatch callers, Matt

Moore cannot be considered implicitly reliable - he never claimed to have any personal knowledge and he did not risk being arrested for making a false police report. Hence a person who simply relays hearsay information from someone else should be treated no differently than an anonymous caller. Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if his or her allegations turn out to be fabricated, "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." *Florida v. J.L.*, 529 U.S. 266, 270, 120 S.Ct. 1375, 1378, 146 L.Ed.2d 254 (2000), quoting *White*, 496 U.S. at 329, 110 S.Ct. at 2415–16, 110 L.Ed.2d 301. However, an anonymous tip, suitably corroborated, may provide reasonable suspicion to justify a seizure, so long as the information exhibits some indicia of reliability. *J.L.*, 529 U.S. at 270, 120 S.Ct. at 1378, 146 L.Ed.2d 254, quoting *White*, 496 U.S. at 329–31, 110 S.Ct. at 2415–16, 110 L.Ed.2d 301. In determining whether the substance of a tip, standing alone, may provide reasonable suspicion, courts will consider the detail of the tip, whether the tip established the informant's basis of knowledge, whether the informant indicated he or she witnessed any criminal activity, and whether the tip accurately predicts future activity of the suspect. See *People v. Yarber*, 279 Ill.App.3d 519, 529, 215 Ill.Dec. 617, 663 N.E.2d 1131, 1137 (1996).

Applying all of the above, there is a paucity of reliability about any of the facts that might have justified action in the first place – Matt Moore did not witness any of the events in question (he was in Puerto Rico); Matt Moore said that he learned everything from his brother John, but neither Matt nor John were ever able to be reached by the police after the initial call; and the fact that Sven Carlson is seen seven hours later driving

down a residential street without any display of misbehavior certainly belies the accuracy of the alleged information that was transmitted to the police in the first place.

Even if the initial call by Matt had some bearing of reliability when standing alone, the fact that Sven's girlfriend told the police that she had spoken to Sven some 2 ½ hours after the initial call of Matt Moore, and that Sven was fine, took all reliability away from the caller.

3. The police conduct, in seizing the defendant seven hours after the uncorroborated hearsay was made by a caller from Puerto Rico, was unreasonable under the community caretaking exception to the Fourth Amendment.

In *People v. Dittmar*, 2011 IL App (2d) 091,112, --- N.E.2d ----, 2011 WL 2438939 Ill.App. 2 Dist., 2011 the Second District Appellate Court essentially held that a seizure for community caretaking event requires the same analysis as would a seizure for a criminal investigation - reasonableness.

In *People v. McDonough*, 239 Ill.2d 260, 272, 346 Ill.Dec. 496, 940 N.E.2d 1100 (2010), the Illinois Supreme Court identified a two-prong test for judging whether an encounter qualifies as a community-caretaking endeavor:

> "First, law enforcement officers must be performing some function other than the investigation of a crime. [Citations.] In making this determination, a court views the officer's actions objectively. [Citation.] Second, the search or seizure must be reasonable because it was undertaken to protect the safety of the general public. [Citation.] 'Reasonableness, in turn, is measured in objective terms by examining the totality of the circumstances.' [Citation.] The court must balance a citizen's interest in going about his or her business free from police interference against the

public's interest in having police officers perform services in addition to strictly law enforcement."

The facts of this case do not support reasonableness. The unanswered questions bespeak for the lack of reliability in the situation. For example, if Sven Carlson was suicidal, then why would the alleged witness (John Moore) call his brother in Puerto Rico, rather than call the police to request immediate aid? If both Matt Moore and John Moore were reliable, concerned citizens, then why were the police unable to reach either one of these people over the course of the next seven hours, even though they (allegedly) had the cell phone numbers for each of them?

If Sven Carlson was 'missing and suicidal' then why didn't his own girlfriend express any concern, even though she was the last one to speak with him and had done so 2 ½ hours after the call from Puerto Rico?

In short, there is nothing in this record to distinguish the call from Matt Moore (or whoever it was that called) from a prank by a stranger.

Whatever might have been reasonable at the moment of the original hearsay call, soon dissolved when that caller could not be reached again, when the girlfriend expressed no concerns for Sven Carlson, and when the defendant was seen driving down the road seven hours later with no apparent difficulty.

This is the type of fact pattern where the protection of the citizen from interference prevails over the need for a safe and orderly society. When push comes to shove, liberty over government interference wins out. The trial court erred when it found the stop acceptable.

4. The passage of time rendered the information stale, and there was no 'emergency' justifying the police conduct.

In determining the reasonableness of police conduct in relationship to the Fourth Amendment, including the involuntary seizure of an individual under the caretaking doctrine, the courts should take into account whether the information that was received was valid or stale. Courts have considered the staleness of information when determining whether probable cause exists for the purpose of issuing a search warrant. "[T]he single most important factor in determining whether probable cause is valid or stale is whether or not the defendant was engaged in a continuing course of criminal conduct. *People v. Dolgin* (1953), 415 Ill. 434, 442, 114 N.E.2d 389; *People v. McCoy* (1985), 135 Ill.App.3d 1059, 1067 [90 Ill.Dec. 493] 482 N.E.2d 200." *People v. Rehkopf*, 153 Ill.App.3d 819, 823, 106 Ill.Dec. 728, 506 N.E.2d 435, 437-38 (1987).

Even if the information obtained at 5 pm suggested an immediate need for interference with Sven Carlson's liberties, the passage of time to just past midnight, coupled with an inability to confirm the reliability of the call or the caller, and along with the information from the girlfriend negating the believability of the information originally transmitted, transformed the strength of the information from possible 'reasonable suspicion' down to (at best) a 'mere hunch' or 'conjecture'.

CONCLUSION

For all of the above reasons, the Defendant-Appellant prays that this Honorable Court reverse the ruling of the trial court which found the stop of defendant lawful, and remand the matter for further proceedings.

Respectfully submitted,

RAMSELL & ASSOCIATES, L.L.C.

By:_____
DONALD J. RAMSELL

RAMSELL & ASSOCIATES, L.L.C.
128 S. County Farm Rd., #F
Wheaton, IL 60187
(630) 665-8780
Atty. No. 1133

GENERAL NO. 11-0432
APPELLATE COURT OF THE STATE OF ILLINOIS
SECOND JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)
	) Appeal from DuPage County
Plaintiff-Appellee,	) of the 18th Judicial Circuit
	) DuPage County, Illinois
	)
-vs-	) Circuit Court Case No: 10 DT 4042
	)
SVEN CARLSON	) The Honorable Richard D. Russo,
	) Judge Presiding
Defendant-Appellant.	)

CERTIFICATE OF COMPLIANCE

I certify that this Appellant's Brief conforms to the requirements of Rules 341(a) and (b). The length of this Brief, excluding the Appendix, is 16 pages.

Donald J. Ramsell

INDEX TO THE RECORD

REPORT OF PROCEEDINGS

INDEX TO REPORT OF PROCEEDINGS

Witness: Corporal Van De Voorde

Report of Proceedings from 12-30-10

Witness: Deputy Eric Koty

Report of Proceedings from 12-30-10

Witness: Deputy Eric Koty

Report of Proceedings from 12-30-10

Witness: Nels James Carlson

Report of Proceedings from 04-15-11

APPENDIX

Exhibit		Date
A	Notice of Appeal	4-29-11
B	Order Summary Suspension	5-20-11