

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CIVIL): AY
CASE NO.: 50-2020-CA-002888-XXXX-MB

HUGH FRANCIS QUINN, III,
Petitioner,

v.

STATE OF FLORIDA,
DEPARTMENT OF HIGHWAY
SAFETY AND MOTOR VEHICLES,
Respondent.

_____/

Opinion filed: November 6, 2020

Petition for Writ of Certiorari from the Bureau of Administrative Review, Department of Highway Safety and Motor Vehicles.

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PER CURIAM.

Petitioner, Hugh Francis Quinn, III, seeks review of an order affirming the suspension of his license based on his refusal to submit to a breath test. Petitioner asserts that the suspension order is not supported by competent, substantial evidence because his refusal to submit to the breath test was not incident to a lawful stop and arrest. We agree and grant the Petitioner for Writ of Certiorari.

The facts of this case as presented to a DHSMV hearing officer on Petitioner's appeal from the suspension of his driver license are as follows. Petitioner was stopped following an anonymous call reporting an impaired driver. According to the caller, the driver was last seen in a bar where he appeared to be intoxicated. The caller provided the police with the driver's vehicle's description, license plate number, and the direction the vehicle was headed. Dispatch provided this information, including the address the reported vehicle was registered, to a nearby officer, Officer Dicks. Officer Dicks initiated a stop on the vehicle as it was pulling into a parking space at the registered address. Petitioner was the driver and sole occupant of the vehicle.

Another officer, Officer Borrows, arrived on the scene a short time later. After making contact with Petitioner, Officer Borrows detected the odor of alcohol on Petitioner's breath and noticed that his speech was slurred, he was uncooperative, he was unsteady on his feet, and his eyes were bloodshot. Based on these observations, Officer Borrows determined that it was unsafe to conduct field sobriety exercises and placed Petitioner under arrest for Driving Under the Influence (DUI).

After being placed under arrest, Petitioner agreed to submit to a breath test. However, at the breath testing facility, it was reported that Petitioner would not blow continuously into the instrument which resulted in inadequate breath samples. After being read the Implied Consent Warning, Petitioner once again reportedly failed to comply. His actions were taken as a refusal, and as a result, his driver license was suspended.

Notably, while the evidence presented to the DHSMV hearing officer included the Officer Borrows' probable cause affidavit, it did not include Officer Dicks' probable cause affidavit. Thus, there was no evidence before the DHSMV hearing officer demonstrating that Officer Dicks *independently* corroborated the information provided by the anonymous caller prior to performing

an investigative stop on Petitioner. Nonetheless, the hearing officer affirmed the suspension of Petitioner's license.

Law enforcement may stop a person for the purpose of investigating possible criminal behavior as long as it "has reasonable suspicion that the person is engaged in criminal activity." *J.L. v. State*, 727 So. 2d 204, 206 (Fla. 1998) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)). "The validity of a stop is measured in terms of the information and circumstances known to the law enforcement officer." *Pinkney v. State*, 666 So. 2d 590, 592 (Fla. 4th DCA 1996). If the information is not personally observed, but received from an informant, the informant's veracity, reliability, and basis of knowledge are critical in establishing the reasonable suspicion required for a stop. *Id.* (citing *Alabama v. White*, 496 U.S. 325 (1990)). Because the veracity, reliability, and basis of knowledge of anonymous informants are unknown, it is seldom that tips from these informants are sufficient to establish reasonable suspicion. *State v. Evans*, 692 So. 2d 216, 218 (Fla. 4th DCA 2000) (explaining that "[a]nonymous tips are at the low-end of the reliability scale"). As a result, Florida courts have routinely held that tips provided by anonymous informants must first be independently corroborated by law enforcement in order to establish the necessary reasonable suspicion for a stop. *See, e.g., Solino v. State*, 763 So. 2d 1249, 1252 (Fla. 4th DCA 2000); *State v. Rewis*, 722 So. 2d 863, 865 (Fla. 5th DCA 1998); *Williams v. State*, 721 So. 2d 1192, 1193 (Fla. 1st DCA 1998).

Although anonymous tips standing alone have been rejected by Florida courts as sufficient grounds to justify a stop, the Supreme Court of the United States has held that an anonymous tip may nevertheless be sufficient to create reasonable suspicion without the need for independent corroboration where the totality of the circumstances demonstrate that there is a sufficient indicia of reliability in the information provided. *Navarette v. California*, 572 U.S. 393 (2014). In

Navarette, highway patrol officers received a tip from an unidentified 911 caller stating that a truck ran the caller off the road. *Id.* at 395. Shortly thereafter, the officers spotted a truck matching the caller’s description and initiated a traffic stop. *Id.* As officers approached the truck, they smelled marijuana and a subsequent search of the truck bed revealed 30 pounds of marijuana. *Id.* The Court held that although the officers did not independently corroborate the anonymous caller’s tip before making the investigative stop, the officers nevertheless had reasonable suspicion to make the stop under the totality of the circumstances because there was indicia of reliability in the caller’s tip. *Id.* at 404. Specifically, the Court identified three factors that made the anonymous tip more reliable. First, the caller had first-hand knowledge because the caller witnessed the criminal conduct. *Id.* at 399. Second, the tip was made contemporaneously because the caller called 911 shortly after the event. *Id.* at 399–400. Third, the caller utilized the 911 emergency call system which records and traces calls and thereby provides safeguards for false reports. *Id.* at 400–01.

The implications of *Navarette* on the reliability of anonymous tipsters have not yet been considered by a Florida court. *See Grant v. State*, 139 So. 3d 415, 418 (Fla. 5th DCA 2014) (Orginger, J., concurring) (recognizing that *Navarette* “may have altered what we previously believed was well settled law governing when law enforcement officers may stop someone based on an anonymous tip”). Nevertheless, we find that the instant case is factually distinguishable from *Navarette* in several ways. Unlike *Navarette*, there is no evidence that the anonymous caller utilized the 911 emergency system. Without this evidence, there is no telling whether the call was recorded or could have been traced, which undermines the veracity and reliability of the anonymous caller. Furthermore, in *Navarette*, the caller personally witnessed the defendant’s

erratic driving on the road. **Here, however, the anonymous caller did not see or describe any erratic driving by Petitioner.**

For these reasons, under the totality of the circumstances, we hold that the anonymous tip lacked a sufficient indicia of reliability, and, as a result, independent corroboration by law enforcement was necessary to give law enforcement the reasonable suspicion necessary to perform a stop. Because there was no evidence presented that law enforcement independently corroborated the anonymous caller's tip, i.e., witnessed any type of erratic driving pattern whatsoever by Petitioner, we find that the record lacked competent, substantial evidence that law enforcement had reasonable suspicion to perform a stop on Petitioner. We, therefore, conclude that the suspension of Petitioner's driver license was not supported by competent, substantial evidence showing that his breath test refusal was incident to a lawful stop and arrest. Accordingly, we **GRANT** the Petition for Writ of Certiorari and **QUASH** the order affirming the Petitioner's license suspension.

HAFELE and CHEESMAN, JJ., concur.

COATES, J., dissenting.

I respectfully dissent from the majority as I find that *Navarette* is applicable to the instant case. Here, although the anonymous caller did not see or describe any erratic driving by Petitioner, the caller nevertheless saw Petitioner display other signs of impairment immediately before he drove away in his vehicle. Specifically, the caller stated that he saw Petitioner fall down several times while he was leaving the bar and also indicated that five bystanders told Petitioner not to drive his vehicle. Arguably, the caller's tip describes Petitioner operating a vehicle while he was under the influence of alcohol to the extent that his normal faculties are impaired. *See* § 316.193(1), Fla. Stat. (2019). Additionally, the record demonstrates that the anonymous caller's

tip was made immediately after witnessing the criminal act, thus making it a contemporaneous report. As *Navarette* explains, where an anonymous caller witnesses a criminal act and reports it to law enforcement contemporaneously, both the informant and tip are considered to be more reliable. See *Navarette v. California*, 572 U.S. 393, 399–400 (2014). For these reasons, I would hold that under the totality of the circumstances, the anonymous caller’s tip had a sufficient indicia of reliability as to provide law enforcement with the reasonable suspicion necessary to perform a lawful traffic stop without the need of any independent corroboration.