

A CITIZEN'S TIP IS NOT ENOUGH TO JUSTIFY A STOP OF A MOTOR VEHICLE WITHOUT SUFFICIENT DETAIL OR CORROBORATION:

Village of Mundelein v. Minx, No. 2-03-0387, 2nd Dist. (September 14, 2004)

By Sean D. Brady

The Second District Appellate Court recently addressed the issue of a citizen-tip of reckless driving in the case of *Village of Mundelein v. Minx*, No. 2-03-0387, 2nd Dist. (September 14, 2004). In *Minx*, Minx was arrested by the Village of Mundelein and charged with DUI under a local ordinance. Minx filed a petition to rescind his summary suspension and a motion to quash his arrest. The trial court granted the petition to rescind and the motion to suppress. The Village of Mundelein filed an appeal of both the summary suspension under Supreme Court Rule 303 and the motion to suppress under Supreme Court Rule 604(a).

The Second District Appellate Court held that the Village of Mundelein could not appeal the trial court's ruling on the motion to suppress under Supreme Court Rule 604(a) because the language of Supreme Court Rule 604(a) permits the State to file an appeal but not a municipality. The Appellate Court stated that it lacked jurisdiction to hear the Village's appeal of the suppression order on an ordinance violation under *Village of Cary v. Pavis*, 171 Ill. App. 3d 1072 (1988). The village urged the court to overrule *Village of Cary*. However, the court refused stating that only the Supreme Court can make rules regarding interlocutory appeals. The village also argued that the appeal should be allowed because the village had written permission from the State's Attorney to prosecute State Code violations. However, the court was not persuaded and emphasized that Mr. Minx was cited for a municipal ordinance violation and not a State Code violation. Accordingly, the court stated that it lacked jurisdiction to hear the appeal of the motion to suppress.

The court then addressed the rescission of the summary suspension. The record indicated that a citizen called the Mundelein police and identified that a Mercury Marquis with a license plate of 3836 was driving recklessly. The caller was driving behind the Marquis and was willing to sign a complaint. A Mundelein police officer went to the scene and pulled behind the Marquis. However, the officer did not observe any erratic driving. Shortly thereafter, Minx pulled into his driveway, parked and exited his vehicle. The officer pulled behind the defendant. The record was unclear if the officer activated his lights when he pulled behind the defendant in the driveway or shortly before that point. However, Minx testified that he did not see the officer until after Minx had exited his vehicle. Minx further testified that when he saw the officer he did not feel free to leave.

The defendant smelled strongly of alcohol, had bloodshot and glassy eyes, and failed all field sobriety tests. Minx refused to submit to any chemical tests. Minx was arrested for DUI.

The court indicated that because the facts in *Minx* were undisputed in this case, the court would apply a de novo standard of review. The village argued that Minx had not been seized. However, the court found that Minx had been seized because the officer had activated the emergency lights and a reasonable person would not feel free to leave at that point.

The village next argued that the seizure was justified because of the informant's tip. The court noted that under *Terry v. Ohio*, "an investigatory seizure is proper if the officer can point to specific, articulable facts that, when combined with rational inferences derived from them, provide reasonable suspicion that the person seized has committed or is about to commit a crime." The court further noted that "[t]he facts supporting the police officer's suspicion do not need to constitute probable cause, but the officer's actions must be based on more than a mere hunch." The court applied a totality of the circumstances approach.

The court noted that an informant's tip must have some indicia of reliability. Factors to consider when examining reliability are whether the informant was identified, whether the informant offered to sign a complaint, whether the informant witnessed the offense, or whether the tip was corroborated independently. On the other hand, factors that weigh against the reliability of a tip are if the informant was paid for the tip, if the informant did not witness the offense, or if the informant did not identify himself/herself.

In *Minx*, the court noted that although the informant was not identified, there was an indicia of reliability because the informant had witnessed the offense, reported the crime, offered to sign a complaint, and continued to follow Minx until the officer arrived which could have resulted in the officer identifying the informant (although it should be noted that the informant was not identified in the *Minx* case). Thus, the court concluded that there was an indicia of reliability in the citizen's information.

However, the court also went on to examine the level of detail provided in the tip. The court noted that the tip failed to describe exactly what observations were made that were "reckless." There was nothing in the citizen's tip about observations of speeding, weaving or any other traffic violations. Accordingly, the court stated, "This information did not provide the specificity necessary to justify an investigatory stop." The court went on to state, "After considering the totality of the circumstances in this case, we conclude that, although the citizen-informant had indicia of reliability, because of the lack of detail provided, Officer Perdue lacked reasonable suspicion at the time he instituted the investigatory stop." The court noted that although the informant had more reliability than a totally anonymous tip, the additional reliability could not overcome the lack of detail in the tip and the lack of corroboration by the officer. Thus, the Second District found that based on the totality of the information, the officer did not have reasonable suspicion to stop Minx.

Thus, when dealing with traffic stops based on an informant's tip, one should consider the *Minx* case and examine the detail provided in the tip and the corroboration of the tip by the officer. If as in *Minx*, the tip is reliable but lacks detail and corroboration, the stop may lack the requisite reasonable suspicion to justify the stop.