GETTING DRUNK DRIVERS OFF ILLINOIS ROADWAYS: ADDRESSING THE SPLIT OF AUTHORITY REGARDING 911 TIPS & INVESTIGATORY TRAFFIC STOPS*

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I. INTRODUCTION

Getting drunk drivers off roadways continues to be a concern for both law enforcement and unsuspecting motorists throughout the country, and particularly in Illinois.[1] In fact, according to the most recent statistics, deaths caused by drunk drivers increased 4.6 percent nationwide from 2011 to 2012 and accounted for over 10,300 lost lives.[2] Here at home, Illinois was responsible for the ninth-most drunk driving deaths in 2012, an increase of 15.5 percent from the previous year.[3]

People all over the country are well aware of the dangers posed by drunk drivers, and these concerned citizens frequently report such potentially deadly misconduct to the police by calling 911.[4] As many as six states have tried curbing the devastation caused by drunk drivers by enacting programs specifically designed to encourage tips calling about suspected drunk drivers, such as New Mexico's "Drunkbusters Hotline" and Ohio's "1-800-GRAB-DUI" program.[5]

While these states have taken targeted action through government initiatives, the U.S. Supreme Court has failed to provide much guidance on whether a police officer can pull over a suspected drunk driver based solely on a 911 tip. The inaction of the nation's highest court, however, has not prevented a number of local jurisdictions from taking action through their

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1. *See* Virginia v. Harris, 558 U.S. 978, 978–80 (2009) (Roberts, C.J., dissenting); *see also, e.g.*, Mich. Dept. of State Police v. Sitz, 496 U.S. 444, 451 (1990).
2. *2012 Drunk Driving Fatalities by State*, MADD BLOG NOVEMBER 2013 (Nov. 15, 2013), http://www.madd.org/blog/2013/november/2012-drunk-driving-fatalities.html.
3. Illinois totaled 278 drunk driving deaths in 2011 and 321 in 2012. *Id.*
4. *Harris*, 558 U.S. at 978.
5. *See id.*; *Programs Across the United States that Aid Motorists in the Reporting of Impaired Drivers to Law Enforcement*, NAT'L HIGHWAY TRAFFIC SAFETY ADMIN. (Mar. 2007), http://www.nhtsa.gov/links/sid/3674ProgramsAcrossUS/pages/background.html.

own judicial branches.[6] In fact, a majority of state courts and at least one federal circuit court have essentially given police officers the ability to pull over a suspected drunk driver based solely in response to a 911 caller's tip.[7] These more liberal jurisdictions allow police officers to pull over an alleged drunk driver without requiring personal observation of the driver swerving or otherwise engaging in criminal activity, so long as a 911 caller's allegation contains some reliable information.[8]

However, a number of other states—including Illinois—have yet to fully adopt this open-minded approach, which has left appellate courts, practicing attorneys, and police officers with a patchwork of authorities regarding the issue.[9] Moreover, the split of authorities continues to fuel the debate about whether 911 callers reporting drunk drivers are, by themselves, sufficient to provide police with reasonable suspicion to perform a justifiable investigatory (or *Terry*) stop.[10]

This Comment will argue that the Illinois Supreme Court should adopt a clear drunk driving standard, which permits police officers—based solely on a 911 caller's report of a suspected drunk driver—to assume reasonable suspicion exists without having to independently verify that the driver committed a traffic violation or engaged in some other criminal activity. In other words, this blanket rule would allow all Illinois police officers responding to a 911 call alleging drunk driving to pull over a suspect without having to independently observe erratic driving, avoiding a potentially fatal outcome for the suspected drunk driver and other law-abiding motorists. Section II of this Comment will provide a brief historical background about the evolution of the "reasonable suspicion" standard needed for a justifiable traffic stop by summarizing the Fourth Amendment as well as relevant U.S. Supreme Court and other federal caselaw. Section III of this Comment will distinguish and analyze the split of authority among Illinois' appellate courts regarding 911 callers alleging drunk driving and the ability of these complaints to give rise to reasonable suspicion, allowing police to perform a proper investigatory traffic stop. Section IV of this Comment will analyze and discuss the justifications and potential problems regarding a blanket drunk driving exception in Illinois. Finally, Section V of this Comment will summarize the concepts and emphasize the need for a clear standard, or

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6. *See* Denise N. Trauth, *Requiring Independent Police Corroboration of Anonymous Tips Reporting Drunk Drivers: How Several States Are Endangering the Safety of Motorists*, 76 U. CIN. L. REV. 323, 323 (2007).
7. *See id.* at 323.
8. *Id.*
9. *See, e.g.*, City of Crystal Lake v. Hurley, 2011 IL App (2d) 110352-U, ¶¶ 6-9.
10. *See* Trauth, *supra* note 6, at 323–24; *see also* People v. Smulik, 964 N.E.2d 183, 186–89 (Ill. App. Ct. 2012); *see also* People v. Shafer, 868 N.E.2d 359, 366–68 (Ill. App. Ct. 2007).

exception, in Illinois with respect to 911 tips alleging drunk drivers and investigatory *Terry* stops.

II. HISTORICAL BACKGROUND: THE FEDERAL TREND

Over the years, the U.S. Supreme Court has attempted to interpret and apply the Fourth Amendment search and seizure clause while, at the same time, ensuring its most basic protections are upheld in light of evolving societal views. The Court has moved away from its *per se* warrant requirement for proper searches and seizures towards a more lenient standard, holding traffic stops may be performed based on reasonable suspicion, a lesser standard than probable cause.[11] While the Court has adopted a "totality of the circumstances" analysis to determine whether an anonymous tip is reliable enough to provide reasonable suspicion, the Court still has yet to explicitly hold whether a reliable tip alone satisfies the reasonable suspicion threshold required for police to perform a justifiable *Terry* stop in alleged drunk driving scenarios.[12]

In fact, the Court passed on this exact opportunity as recently as five years ago in *Virginia v. Harris*.[13] The lack of clarity on this issue was evident in Chief Justice Roberts's dissenting opinion, where he disagreed with the Court's denial of certiorari and noted:

> I am 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. This is an important question that is not answered by our past decisions, and that has deeply divided federal and state courts. The Court should grant the petition for certiorari to answer the question and resolve the conflict.[14]

A. The Fourth Amendment

The Fourth Amendment to the U.S. Constitution provides that all searches and seizures must be "reasonable."[15] For purposes of this discussion, the reasonableness requirement is made applicable to the states

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11. *See* Alabama v. White, 496 U.S. 325, 332 (1990).
12. *See generally* Florida v. J.L., 529 U.S. 266, 268–74 (2000).
13. *See* 558 U.S. 978, 978–81 (2009) (Roberts, C.J., dissenting).
14. *Id.* at 978.
15. The Fourth Amendment provides,

> [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

through the Fourteenth Amendment.[16] Moreover, the Framers of the Constitution had two main concerns when drafting the Fourth Amendment: (1) to protect individual privacy and (2) to reign in unrestricted government activity.[17] Thus, the purpose of the Fourth Amendment is not to completely eliminate all contact between police officers and citizens,[18] but rather, to protect an individual's privacy from arbitrary invasion by government actors, such as the police.[19]

Additionally, the Supreme Court has defined a seizure as "when, by means of physical force or a show of authority, [a person's] freedom of movement is restrained."[20] The Court has further held a seizure only occurs when "in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave."[21] Also pertinent to this discussion, the Court has held investigatory traffic stops conducted by police officers constitute a "seizure" under the Fourth Amendment.[22]

Traditionally, police officers needed a warrant based on probable cause and issued by a neutral judge or magistrate to justify a constitutional search or seizure.[23] However, because no specific definition of probable cause was ever articulated by the Court, this standard is based on the totality of the circumstances, requiring a court to take into account "facts and circumstances within the arresting officers' knowledge and of which they had reasonably trustworthy information . . . sufficient . . . to warrant a man of reasonable caution in the belief that an offense has been or is being committed."[24]

The Court, over time, has established a few very limited exceptions to the *per se* warrant requirement, such as cases involving hot pursuit, searches incident to an arrest, and searches of the place where the person is arrested and places in the suspect's immediate control.[25] The Court has also extended this exception to brief investigatory traffic stops, known today as *Terry* stops, so long as the officer has reasonable suspicion to believe the search will produce evidence of a crime.[26]

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16. Terry v. Ohio, 392 U.S. 1, 8 (1968).
17. *See* Carol S. Steiker, *Second Thoughts About First Principles*, 107 HARV. L. REV. 820, 820 (1994).
18. United States v. Mendenhall, 446 U.S. 544, 553 (1980).
19. *See* Camara v. Mun. Court & Cnty. of San Francisco, 387 U.S. 523, 528 (1967).
20. *Mendenhall*, 446 U.S. at 553.
21. *Id.* at 554.
22. United States v. Perkins, 348 F.3d 965, 968 (11th Cir. 2003).
23. *See* Katz v. United States, 389 U.S. 347, 356–57 (1967).
24. Draper v. United States, 358 U.S. 307, 313 (1959).
25. James Michael Scears, *Anonymous Tips Alleging Drunk Driving: Why "One Free Swerve" Is Too Many*, 64 OKLA. L. REV. 759, 762 (2012).
26. *See* Terry v. Ohio, 392 U.S. 1, 8–9 (1968).

B. *Terry v. Ohio* (1968)

In its landmark decision in *Terry v. Ohio*, the Supreme Court established a lesser standard permitting police to perform a constitutional investigatory stop based on a police officer's observations of potential criminal activity.[27] In *Terry*, the Court departed from the traditional probable cause standard and held a police officer could conduct a brief investigatory stop after an easier-to-meet standard, known as "reasonable suspicion," was satisfied.[28] Like probable cause, the new standard was based on an officer's own observations of "unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot."[29] However, the *Terry* Court defined this new standard as "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [an] intrusion."[30]

In its decision, the *Terry* Court held an officer can conduct a brief seizure and limited search to look for weapons if they observe unusual conduct that allows them to conclude "criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous."[31] Under this less-demanding standard, the Court now permitted police officers to seize and search a person more easily without violating the Fourth Amendment.[32]

C. *Alabama v. White* (1990)

Relying on the *Gates* precedent seven years earlier, which held an anonymous tip could give rise to probable cause based on the totality of the circumstances (i.e., accuracy and reliability, and basis of knowledge of the tipster),[33] the Supreme Court in *Alabama v. White* specifically addressed whether an anonymous tip could give rise to the less-demanding reasonable suspicion standard.[34]

To make this determination, the *White* Court abided by the elements of reliability in the *Gates* totality of the circumstances approach and required the tip to be sufficiently corroborated, or independently verified, by the police prior to performing a stop.[35] Allowing the tip to be sufficiently and independently observed by police gave the Court a predictive element, which

27. *Id.* at 21–22.
28. *Id.* at 22.
29. *Id.*
30. *Id.* at 21.
31. *Id.* at 20.
32. *See id.* at 22.
33. *See* Illinois v. Gates, 462 U.S. 213, 227 (1983).
34. 496 U.S. 325, 327–31 (1990).
35. *Id.* at 328–31.

played a major role in its decision to allow investigatory stops based on a reliable tip.[36]

In its decision, the *White* Court determined the tip was reliable because of its accurate predictions of the suspect's future behavior, such as arriving at a specific location carrying a brown case.[37] The Court also noted the same essential factors of the *Gates* totality of the circumstances analysis were applicable to the reasonable suspicion context but emphasized that only a minimal showing of those factors was required to meet this less-demanding standard.[38] Specifically, the *White* Court held anonymous tips usually contain three elements to satisfy reasonable suspicion: (1) they are specific enough so police can conclude it is based on first-hand knowledge; (2) they are predictive enough of some future behavior of the subject; and (3) they are able to be corroborated by police.[39]

After this groundbreaking decision, a number of lower courts began using the *White* precedent to uphold investigatory traffic stops based on anonymous tips when police were only corroborating descriptive details before the traffic stop.[40] This trend was especially pronounced in cases where anonymous tipsters alleged drunk driving or illegal possession of a firearm.[41]

D. *Florida v. J.L.* (2000)

But just as the U.S. Supreme Court seemed to be greatly diminishing the level of suspicion required for *Terry* stops, the Supreme Court in *Florida v. J.L.* bucked the trend.[42] In its decision, the *J.L.* Court determined a vague, anonymous tip did not establish the requisite reasonable suspicion needed for a brief seizure, or investigatory stop, because it did not contain any predictive information for police to independently verify and lacked reliability in its "assertion of illegality."[43] Although this appeared to be a step backwards, the Court's suggestive language in dicta suggested something else.[44] In dicta,

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36. *Id.* at 331–32.
37. *Id.* at 332.
38. *Id.* at 328–29. The Court noted,

> suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Id. at 330.
39. *See* THOMAS K. CLANCY, THE FOURTH AMENDMENT: ITS HISTORY AND INTERPRETATION 483–84 (2008).
40. Scears, *supra* note 25, at 766–67.
41. *Id.*
42. *See* 529 U.S. 266, 274 (2000).
43. *Id.* at 272–74.
44. *See generally id.* at 273–74.

the Court opined that other more dangerous or less invasive situations could arise that could justify getting rid of the reliability typically required in a tip to conduct a justifiable *Terry* stop.[45]

Although the *J.L.* Court rejected the government's argument that firearms were dangerous enough to lessen the reliability requirement under the totality of the circumstances test, it notably left open the possibility that other situations could arise that inhibit public safety enough—such as a person carrying a bomb or in places where a decreased expectation of privacy exists—where it would be justified to dramatically lower the reliability required by an anonymous tip.[46] In other words, the Court suggested other more pressing situations could arise that would not necessarily require police to independently verify a tip to ensure it was reliable.[47]

A dissenting Chief Justice John Roberts opined that the question of whether *J.L.* applied to anonymous tips reporting drunk or erratic driving remained unsettled, and it was unclear whether the Fourth Amendment requires "independent corroboration before police can act in a drunk driving-anonymous tip scenario.[48] Thus, federal and state courts have been left to interpret this suggestive language in *J.L.* and apply it however they see fit.

E. *United States v. Wheat* (2001)

Focusing on the indicative language in *J.L.*, the United States Eighth Circuit Court in *United States v. Wheat* held an anonymous tip alleging a person was driving erratically was sufficient to give rise to reasonable suspicion under the totality of the circumstances.[49] The court reached its conclusion despite the fact the police officer did not personally observe the driver engage in any erratic driving before pulling the vehicle over.[50] Instead, the police officer located the vehicle described by the 911 caller and, soon thereafter, conducted a *Terry* stop.[51]

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45. *Id.* at 273–74.

46. In its opinion, the Court in dicta noted,

> The facts of this case do not require us to 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. 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. Nor do we hold that public safety officials in quarters where the reasonable expectation of Fourth Amendment privacy is diminished, such as airports, and schools, cannot conduct protective searches on the basis of information insufficient to justify searches elsewhere.

Id.

47. *See generally id.*

48. Virginia v. Harris, 558 U.S. 978, 978 (2009) (Roberts, C.J., dissenting).

49. 278 F.3d 722, 729 (8th Cir. 2001).

50. *Id.*

51. *See id.*

In its decision, the court noted an erratic driver who is potentially drunk poses a unique, imminent threat to public safety and, therefore, a lesser standard of reliability pertaining to the anonymous tip should be permitted, allowing police to make a justifiable traffic stop.[52]

The federal circuit court also noted two critical distinctions exist between the dangers of drunk driving, like in *Wheat*, and cases involving an alleged gun possessor, like in *J.L.*[53] First, a police officer responding to an alleged unlawful possession report may initiate a simple consensual encounter for which no articulable suspicion is required; but, this is clearly impossible with a moving vehicle.[54] Additionally, a police officer responding to a tip alleging unlawful possession may quietly observe the suspect for a longer period of time to watch for other indications of criminal activity that would give rise to reasonable suspicion; however, alleged drunk driving scenarios are vitally different.[55] In this instance, a police officer has two choices: (1) intercept the vehicle immediately, or (2) follow and observe the driver, waiting for an erratic movement, which could result in a devastating, if not fatal, collision.[56]

Therefore, due to the imminent danger of drunk driving, the *Wheat* Federal Court held a substantial governmental interest exists in effectuating a traffic stop as quickly as possible in an alleged drunk driving scenario.[57]

III. ILLINOIS' SPLIT OF AUTHORITY

Because the U.S. Supreme Court has not ruled on the issue of whether independent police verification is required before performing a *Terry* stop when responding to 911 tips alleging drunk driving, Illinois has failed to apply or adopt a consistent approach. Although the Illinois legislature has essentially codified the *Terry* decision in its Criminal Code,[58] the Court's lack of guidance has created a patchwork of authority throughout the state, leaving police officers, practitioners, and judges with no clear standard to consistently apply or put into practice.

As noted previously, Illinois' current split is evident among its appellate districts. For instance, Illinois' Fourth Appellate District has adopted a more liberal approach, which a majority of other states and at least one federal

52. *Id.* at 736.
53. *Id.*
54. *Id.*
55. *Id.*
56. *Id.*
57. *Id.* at 737.
58. 725 ILL. COMP. STAT. 5/107-14 (1968).

circuit court have followed.[59] The Fourth District has held 911 tips alleging drunk driving are sufficient by themselves to justify an investigatory stop, so long as the tip satisfies certain factors indicating its reliability.[60] Moreover, Illinois' Fifth Appellate District coincides with the Fourth District, which has held no independent police verification of an anonymous tip is required to pull over a suspected drunk driver, due to the imminent danger that the situation poses to the general public.[61] This is the same rationale used by the Fourth District court, too.[62]

On the other hand, Illinois' Second Appellate District has taken a more hardline approach regarding this issue, holding police officers need more than a just 911 caller's allegation of drunk driving, such as independent police verification or a more detailed basis for the tipster's allegation, to pull over a driver.[63] For example, a tipster's vague description that they had been "cut off" by a driver[64] or an allegation of a "possible drunk driver" on the road[65] is not sufficient by themselves to justify a *Terry* stop, due to lack of reasonable suspicion.[66]

Thus, a hodgepodge of authority exists throughout the Land of Lincoln, leaving police officers confused about whether they can pull over a suspected drunk driver in response to a 911 call without personally observing any erratic driving.

A. Illinois Criminal Code and Supreme Court

The Illinois legislature has attempted to codify the holding in *Terry* in section 107–14 of the Illinois Code of Criminal Procedure, which provides:

> A peace officer . . . may stop any person in a public place for a reasonable period of time when the officer reasonably infers from the circumstances that the person is committing, is about to commit or has committed an offense . . . and may demand the name and address of the person and an explanation of his actions.[67]

Additionally, the temporary questioning will take place in the vicinity of where the person or vehicle was stopped.[68]

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59. *Wheat*, 278 F.3d at 729; People v. Shafer, 868 N.E.2d 359, 367 (Ill. App. Ct. 2007); *see generally* People v. Ewing, 880 N.E.2d 587, 595–96 (Ill. App. Ct. 2007).
60. *See generally Ewing*, 880 N.E.2d at 595–96.
61. People v. Stewart, No. 5-10-0264, 2011 WL 10501179, at *2-3 (Ill. App. Ct. 2011).
62. *Ewing*, 880 N.E.2d at 597.
63. City of Crystal Lake v. Hurley, 2011 IL App (2d) 110352-U, ¶¶ 6-12.
64. *Id.* ¶ 10.
65. City of Lake Forest v. Dugan, 564 N.E.2d 929, 930 (Ill. App. Ct. 1990).
66. *See, e.g.*, *Hurley*, 2011 IL App (2d) 110352-U, ¶ 10; *Dugan*, 564 N.E.2d at 930.
67. 725 ILL. COMP. STAT. 5/107-14 (1968).
68. *Id.*

Moreover, the Illinois Supreme Court has explained that police officers must point to specific, articulable facts to justify a *Terry* stop that, when considered under the totality of the circumstances, make the stop reasonable.[69] Further, a *Terry* stop is not indefinite and can only last as long as necessary to either confirm or deny the officer's suspicions that prompted the investigatory traffic stop.[70] However, the Illinois Supreme Court has yet to rule on the issue of whether independent corroboration of a 911 tip is needed to give rise to reasonable suspicion in alleged drunk driving scenarios.

B. Illinois' Fourth Appellate District

Illinois' Fourth Appellate District has consistently held 911 callers alleging drunk driving can, by themselves, give rise to reasonable suspicion to justify a *Terry* stop, so long as the tip is reliable.[71] A tip's reliability is determined by using a four-factor test, which allows a police officer to reasonably infer the suspected drunk driver is under the influence.[72] In other words, the Fourth District allows police to pull over a suspected drunk driver without having to personally observe or validate any erratic driving or criminal activity when responding to a reliable 911 tip.[73] The Fourth District justifies its holding in the fact that an alleged drunk driver poses an imminent threat to public safety, and therefore, the tip alleging drunk driving requires less corroboration by police.[74]

For instance, the court in *People v. Shafer* held a telephone tip reporting a drunk driver gave police reasonable suspicion to justify a *Terry* stop without personally observing any traffic violations due to the tip's reliability and the imminent public danger posed by the suspected drunk driver.[75] In its decision, *Shafer* adhered to a four-factor test[76] to determine the tip's

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69. People v. Ledesma, 795 N.E.2d 253, 262 (Ill. 2003).
70. People v. Brown, 798 N.E.2d 800, 806 (Ill. App. Ct. 2003).
71. People v. Ewing, 880 N.E.2d 587, 595–96 (Ill. App. Ct. 2007); People v. Shafer, 868 N.E.2d 359, 367 (Ill. App. Ct. 2007).
72. *Shafer*, 868 N.E.2d at 363.
73. *See generally Ewing*, 880 N.E.2d at 595–96.
74. *Shafer*, 868 N.E.2d at 366; *Ewing*, 880 N.E.2d at 597.
75. *Shafer*, 868 N.E.2d at 366–67.
76. The *Shafer* court employed the four-factor test from a New Hampshire Supreme Court case that stated:

> 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.

reliability, which has since been consistently applied in the Second Appellate District in subsequent caselaw.[77] In *Shafer*, a fast-food employee notified police that an allegedly intoxicated driver had just ordered food in the drive-thru, and the suspected drunk driver was pulled over shortly after leaving the parking lot.[78] The court made mention that less rigorous corroboration of 911 tips is required when it concerns an alleged drunk driver, noting "[an] informant's tips regarding possible incidents of drunk driving require less rigorous corroboration than tips concerning matters presenting less imminent danger to the public."[79]

Similarly, the court in *People v. Ewing* determined a 911 caller gave police reasonable suspicion to pull over a suspected drunk driver without requiring personal verification of erratic driving, based on the four-factor *Shafer* test.[80] In *Ewing*, an employee called 911 to report a drunk driver that had just left her place of business and gave a description of the vehicle, including its make, model, and license plate.[81] After holding the tip was reliable based in large part on its detailed information, the *Ewing* court emphatically distinguished between tips alleging drunk driving and those reporting other crimes, such as unlawful possession of a firearm.[82] Most notably, the court, like *Shafer*, determined suspected drunk drivers present a more imminent danger to other motorists and, therefore, require lesser corroboration of an informant's tip.[83]

C. Illinois' Fifth Appellate District

Illinois' Fifth Appellate District also adheres to the Fourth Appellate District's liberal approach, holding a reliable tip alone can justify a *Terry* stop in drunk driving scenarios because of the danger it poses to the general public.[84]

For instance, based on *Shafer*, the court in *People v. Stewart* held a police officer had reasonable suspicion based solely on a 911 caller's tip and could therefore conduct a justifiable *Terry* stop.[85] In *Stewart*, a 911 caller

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State v. Sousa, 855 A.2d 1284, 1290 (N.H. 2004).

77. Similar to the New Hampshire Supreme Court's test, the *Shafer* factors include: (1) the quantity and detail of the information received to ensure the police are pulling over the suspect described by the tipster; (2) the time between the tip and the police's ability to locate the suspect; (3) whether the tipster's information was based on eyewitness observations; and (4) whether the tip has sufficient detail. *Shafer*, 868 N.E.2d at 363.

78. *Id.* at 361.

79. *Id.* at 366.

80. 880 N.E.2d 587, 597 (Ill. App. Ct. 2007).

81. *Id.* at 595–97.

82. *Id.* at 597.

83. *Id.*

84. No. 5-10-0264, 2011 WL 10501179, at *3 (Ill. App. Ct. 2011).

85. *Id.* at *2.

reported a red Ford vehicle with a license plate of "18CU[B]S" was driving erratically "all over the road."[86] The tipster was following the suspect, giving the 911 dispatcher updated reports about the vehicle's location and erratic driving.[87] The police officer responded and, upon locating the vehicle, turned on his lights and performed a *Terry* stop.[88] Noting informants' tips regarding potential incidents of drunk driving "require less rigorous corroboration than tips concerning matters presenting less imminent danger to the public," the *Stewart* court concluded the police had reasonable suspicion based solely on the tip to perform a justifiable *Terry* stop.[89] Particularly, the court determined a police officer should not have to wait to independently observe erratic driving in drunk driving scenarios or obtain specific details supporting the tipster's conclusion before stopping the vehicle.[90]

D. Illinois' Second Appellate District

Illinois' Second Appellate District has taken a different approach when determining whether an anonymous tip alone can give rise to reasonable suspicion in alleged drunk driving cases.[91] The Second District's stricter approach holds a tip, by itself, is not sufficient to justify an investigatory traffic stop; instead, the tipster must provide police with other, additional information that leads them to their conclusion about the motorist's alleged intoxicated state.[92] In other words, police cannot stop a vehicle based only on a tipster's report that a driver is intoxicated because the tipster must provide a specific basis for the allegation or police must independently verify the driver's erratic or drunk driving before making the *Terry* stop.[93]

The court in *City of Crystal Lake v. Hurley* disagreed with the Fourth District Court's reasoning in *Ewing*, which held police are permitted to pull over a reported drunk driver without questioning the details of a tipster's drunk driving allegation.[94] In contrast, the *Hurley* court held a tipster's assertion that an intoxicated driver swerved in front of him was not sufficient to give rise to reasonable suspicion to justify a *Terry* stop.[95] In *Hurley*, a 911 caller reported he was "cut off" in a parking lot by an allegedly-intoxicated drunk driver; according to the court, this allegation was not enough to permit

86. *Id.* at *1.
87. *Id.*
88. *Id.*
89. *Id.* at *2.
90. *Id.*
91. City of Crystal Lake v. Hurley, 2011 IL App (2d) 110352-U, ¶ 9.
92. *Id.* at *2-3.
93. *Id.* at *2-4.
94. *Id.* at *3.
95. *Id.*

police to conduct a justifiable *Terry* stop because it lacked requisite reasonable suspicion.[96] Although the tip passed the four *Shafer* factors, the *Hurley* court went a step further and held the tipster must provide a basis for their conclusion, or specific details that led the caller to believe the driver was intoxicated, in addition to merely providing the tip.[97] Thus, the caller's allegation that he was "cut off" by a drunk driver was not specific enough to justify a *Terry* stop.[98]

Similarly, the court in *Village of Mundelein v. Minx* held a tipster's description of another driver's traffic offense was too vague to permit a justifiable *Terry* stop based on reasonable suspicion.[99] In *Minx*, a 911 caller reported another driver was "driving recklessly."[100] The 911 caller never indicated what observations led him to this conclusion, such as "whether defendant was speeding, running red lights, weaving between lanes, etc."[101] But, after locating the vehicle, the police officer pulled over the suspected drunk driver without independently verifying any reckless or erratic driving.[102] Although the 911 tip had some substance of reliability, the *Minx* court held it did not satisfy reasonable suspicion based on its lack of detail and the absence of a police officer's personal observation of erratic driving—one of which was needed under the totality of the circumstances.[103]

Also following this line of authority, the court in *City of Lake Forest v. Dugan* held a 911 caller's report that there was a "possible drunk driver" on the road did not give police authority to perform a justifiable *Terry* stop.[104] In *Dugan*, a concerned citizen reported an intoxicated driver had just left a gas station.[105] The caller provided police with the license plate, color, and make of the driver's vehicle.[106] A few minutes later, a police officer located the vehicle and followed the driver for some time.[107] But, without independently verifying anything indicating the driver was intoxicated, the police officer pulled over the driver and arrested him because he was, not surprisingly, under the influence of alcohol.[108] However, because the concerned citizen failed to provide any specific facts that supported her conclusion about the driver's intoxicated state, the *Dugan* court held the

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96. *Id.* at *3-4.
97. *Id.* at *4.
98. *Id.*
99. 815 N.E.2d 965, 971–72 (Ill. App. Ct. 2004).
100. *Id.* at 971.
101. *Id.*
102. *See generally id.* at 970–73.
103. *Id.* at 971–72.
104. 564 N.E.2d 929, 930–31 (Ill. App. Ct. 1990).
105. *Id.* at 930.
106. *Id.*
107. *Id.*
108. *Id.*

caller failed to sufficiently corroborate the complaint to justify the stop.[109] Therefore, the *Terry* stop was invalidated.[110]

IV. ANALYSIS

There is little debate about whether drinking and driving is a serious and potentially deadly dilemma plaguing roadways throughout the country.[111] The only debate is whether police can curb this criminal behavior by pulling over a suspected drunk driver without independently corroborating a 911 tip—an important debate that has not been resolved by either the U.S. Supreme Court or the Illinois Supreme Court.[112]

The many jurisdictions that permit police to pull over a suspected drunk driver without personally observing erratic driving or drunken-like behavior find comfort in a number of justifications.[113] The stakes are high, they say, and the danger is real in these types of scenarios.[114] For one, an intoxicated person behind the wheel poses an imminent danger to the public and the potential benefits of such a rule outweigh its potential costs or negative effects.[115] Moreover, given the situation, it is impractical to require police to wait several minutes to independently verify erratic driving because that period of time could be dangerous or even fatal. Another justification is that the expectation of privacy enjoyed by individuals is diminished on the open road and the privileges of the Fourth Amendment should therefore also be somewhat diminished, allowing for police to pull someone over without having to corroborate a 911 tip.[116] And, finally, eyewitness tips alleging drunk driving have become increasingly reliable, and it is therefore unnecessary and illogical for police to have to wait for the allegedly intoxicated driver to commit a traffic violation before pulling them over.[117]

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109. *Id.* at 931.
110. *Id.*
111. *See* Virginia v. Harris, 558 U.S. 978, 978–80 (2009) (Roberts, C.J., dissenting); *see also, e.g.*, Mich. Dept. 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.").
112. *Harris*, 558 U.S. at 979. *Compare* City of Crystal Lake v. Hurley, 2011 IL App (2d) 110352-U, ¶¶ 7-9 (holding independent police verification or basis for the caller's 911 tip was needed in addition to the allegation itself), *with* People v. Shafer, 868 N.E.2d 359, 367 (Ill. App. Ct. 2007) (holding a reliable 911 tip, by itself, can give rise to the reasonable suspicion needed to conduct a justifiable *Terry* stop).
113. *See Harris*, 558 U.S. at 979.
114. *Id.*
115. *Shafer*, 868 N.E.2d at 365; United States v. Wheat, 278 F.3d 722, 732 (8th Cir. 2001).
116. *Harris*, 558 U.S. at 978.
117. *Id.*

A. Immediate Danger Posed by a Drunk Driver

Arguably the most widely-accepted justification for adopting a drunk driving exception is the very unique and imminent danger an intoxicated person behind the wheel poses to the general public.[118] As discussed previously, the majority of Illinois' appellate courts have recognized that a drunk driver presents an imminent danger to the public that is more challenging to thwart successfully by means other than a *Terry* stop.[119]

As the *Shafer* court pointed out, it would be irresponsible for a police officer, having received a tip alleging drunk driving, to be required to abide by a wait-and-see approach and merely follow the suspected driver's car, waiting for potentially devastating results to occur.[120] Additionally, concerned citizens contacting the police are often a "truly extraordinary" and selfless, good Samaritan-type occurrence.[121] Citizens that overcome their reluctance to call 911 should be rewarded for their courage because they report alleged drunk driving out of a sense of protection for the greater good.[122] They are not necessarily looking out for themselves; rather, they are looking out for others, a virtue to reward—not to ignore.[123]

Similarly, a number of other state supreme courts have implemented this rationale in their holdings. For instance, the Supreme Court of Wisconsin has held, although no blanket rule exists, extraordinary dangers, such as drunk driving, sometimes justify extraordinary precautions.[124] Likewise, the New Jersey Supreme Court mentioned intoxicated drivers, which it referred to as "moving time bombs," pose a significant risk to themselves as well as the public and these types of situations therefore warrant a lesser degree of police corroboration.[125]

Additionally, the dangers in drunk driving scenarios are heightened compared to dangers in other situations, such as an alleged firearm or drug possession, which require greater Fourth Amendment protections.[126] For instance, courts find extraordinary danger in "a vehicle's mobility; the unpredictability of a driver's actions; the observable nature of erratic driving . . . and a lack of alternatives for police investigation of drunk driving."[127]

118. Scears, *supra* note 25, at 774.
119. *Shafer*, 868 N.E.2d at 365.
120. *Id.* at 367–68.
121. People v. Ewing, 880 N.E.2d 587, 596 (Ill. App. Ct. 2007).
122. *Id.*
123. *See id.*
124. State v. Rutzinski, 623 N.W.2d 516, 527 (Wis. 1994).
125. State v. Golotta, 837 A.2d 359, 368 (N.J. 2003).
126. Colby J. Morrissey, *Anonymous Tips Reporting Drunk Driving: Rejecting a Fourth Amendment Exception for Investigatory Traffic Stops*, 45 NEW ENG. L. REV. 167, 184 (2010).
127. *Id.*

An anonymous report of erratic or drunk driving presents a greater need for prompt action by police.[128]

Furthermore, the options police officers have are extremely limited when responding to a 911 tip in these situations.[129] For instance, an officer can either pull over the suspected drunk driver immediately to check if the driver is under the influence of alcohol, avoiding a potentially dangerous situation, or an officer can take a hands-off approach and quietly follow the driver, waiting for the driver to swerve or commit another traffic violation.[130] Choosing the latter will undoubtedly result in one of three outcomes: (1) the suspected drunk driver will continue down the road and make it safely to his destination; (2) the suspected drunk driver will mindlessly weave in-and-out of traffic lanes, injuring nobody, but nonetheless corroborating the informant's tip and justifying a *Terry* stop; or (3) the suspected drunk driver will swerve into oncoming traffic or fail to stop at a red light at a busy intersection, slamming into another vehicle and killing any number of unsuspecting motorists.[131]

As Chief Justice John Roberts noted in *Virginia v. Harris*, consider the sheer difficultly for a police officer to explain to a grieving family that, although police knew through a 911 tip that the driver of the car that swerved into their son's or father's lane was intoxicated, "they were powerless to pull him over, even for a quick check" because of the wait-and-see mandate.[132]

Although the U.S. Supreme Court in *J.L.* refused to speculate explicitly about which types of dangerous circumstances would justify a drunk driving exception, the Court did in fact hypothesize in dicta that a 911 report of a "person carrying a bomb" did not need to have the same indicia of reliability that is required in less dangerous scenarios before police can constitutionally conduct a seizure.[133]

Similarly, the Illinois' Fourth Appellate District in *Schafer* agreed with the Court's "ticking time bomb" analysis, stating intoxicated drivers are indeed "moving time bombs."[134] It therefore follows that intoxicated drivers behind the wheel are uniquely dangerous to the general public and these situations should not require the same level of corroboration other scenarios do.[135]

128. United States v. Wheat, 278 F.3d 722, 729 (8th Cir. 2001).
129. *Id.* at 736.
130. *Id.* at 735–36.
131. *See id.* at 736–37.
132. 558 U.S. 978, 978 (2009) (Roberts, C.J., dissenting).
133. Florida v. J.L., 529 U.S. 266, 273–74 (2009).
134. People v. Shafer, 868 N.E.2d 359, 366 (Ill. App. Ct. 2007).
135. *See generally id.* at 366.

B. Reliability of and Potential Abuse by Tipsters

Further, many jurisdictions, including the majority of Illinois' appellate districts, consider 911 tips alleging drunk drivers much more reliable than anonymous tips alleging other criminal activity, such as illegal possession of drugs or firearms.[136] Unlike tips alleging a person has a firearm, where a predictive element may be the only way police can corroborate the tipster's knowledge, the tip in drunk driving cases almost always comes from eyewitness observations, which inherently increases the tip's reliability.[137]

Although many critics of a drunk driving exception argue it could be abused in petty ways by feuding neighbors or family members, ultimately wasting the police department's time, this argument is an exaggerated one. Specifically, "[g]iven the intricacies and improbabilities that would be involved in seeking to harass another by a report of reckless or erratic driving, it seems highly unlikely that such a report will have been fabricated for that purpose."[138]

Similarly, the Wisconsin Supreme Court recently clarified this point regarding 911 calls and their reliability. The Court stated:

> The recorded call and its subsequent transcript show both the caller's basis of information and the caller's reliability. The fact that the police agency either knew the identity of the caller or had the means to discover the caller's identity enhances the caller's credibility. The police were in a position to go back to their source. If the information provided had turned out to be untrue, the police would have been able to follow up and confront the caller, demand an explanation, and pursue criminal charges.[139]

Therefore, the risk of feuding citizens abusing the drunk driving exception is relatively low. Even if the critics' fears were to come true, the possibility of that abuse happening is most certainly outweighed by the strong government interest in getting drunk drivers off the road as soon as possible.[140]

Along those same lines, 911 tips can no longer be considered truly "anonymous," which greatly increases a 911 tip's reliability and decreases the likelihood for potential abuse or harassment.[141] By calling 911, the tipster puts their anonymity at risk, which increases the tip's reliability.[142] In other

136. *Wheat*, 278 F.3d at 734–35.
137. *Id.*
138. State v. Hanning, 296 S.W.3d 44, 51 (Tenn. 2009).
139. State v. Williams, 2001 WI 21, ¶ 74, 241 Wis.2d 631, 671, 623 N.W.2d 106, 124 (Prosser, J., concurring).
140. *See, e.g.*, *Wheat*, 278 F.3d at 735–36.
141. *See* Florida v. J.L., 529 U.S. 266, 276 (2000) (Kennedy, J., concurring).
142. *Id.*

words, tipsters who call 911 are more reliable compared to anonymous informants who mail a letter to police with no return address because their phone numbers can be easily traced seconds after making initial contact with the 911 dispatcher.[143] Caller identification systems with the ability to track phone numbers are widely available and currently used by law enforcement agencies across Illinois. So, "if anonymous tips are proving unreliable and distracting to police, squad cars can be sent within seconds to the location of the telephone used by the informant" and police can arrest the phony caller.[144] In other words, tipsters' reports to 911 have a greater degree of reliability than anonymous tips and require less corroboration.[145]

Moreover, some critics may further argue a tipster can use the same advances in technology to block the police from tracking the location of their call, but this argument is also misplaced because the Federal Communications Commission (FCC) rules eliminate this from the realm of possibilities.[146] In fact, the same FCC rules that allow someone to block their number from another person's caller identification service by dialing *67 actually prohibit this same action for calls seeking emergency assistance, such as 911.[147] Thus, even when a person dials *67 before dialing 911, the phone number will still be seen and available to the emergency dispatcher on the other end of the call, and police will be able to track the phone number's location.[148] The same is true for cellular phones, as the FCC rules require service providers to have the ability to pinpoint the location of all cell phones that dial 911, which allows police to respond and assist the caller immediately.[149]

C. Lesser Expectation of Privacy on the Road

Another justification for courts that permit investigatory traffic stops in these situations is the fact that a driver enjoys a lesser expectation of privacy in a vehicle on the open road.[150] Thus, because an investigatory traffic stop on the road is less invasive than a typical Fourth Amendment search and

143. *See generally id.*
144. *Id.*
145. People v. Shafer, 868 N.E.2d 359, 364–65 (Ill. App. Ct. 2007).
146. *Fact Sheet 19: Caller ID and My Privacy*, PRIVACY RIGHTS CLEARINGHOUSE, https://www.privacyrights.org/caller-id-and-my-privacy (last updated Oct. 1, 2014).
147. *Id.*
148. *Id.*
149. *Cell Phones and 9-1-1,* NAT'L EMERGENCY NUMBER ASS'N, http://www.nena.org/?page=911Cellphones (last visited Apr. 26, 2015).
150. *See* People v. Wells, 136 P.3d 810, 816 (Cal. 2006); *see also* Fink v. Ryan, 673 N.E.2d 281, 286 (Ill. 1996).

seizure, a lesser standard of reliability should be required for tips to meet the constitutional reasonableness requirements.[151]

Although a driver does not lose all reasonable expectations of privacy in an automobile, the Illinois Supreme Court has held a driver's expectation of privacy is greatly diminished because the vehicle and its use are subject to various Illinois regulations.[152] For instance, in Illinois, a driver must meet a number of requirements, including obtaining a valid driver's license by passing vision and written examinations, acquiring appropriate vehicle insurance, having current vehicle registration, title, tag, and license plate, and wearing a seatbelt, among others.[153] Regulations in Illinois, such as these, have led the U.S. Supreme Court to hold a person has a lesser expectation of privacy when they are behind the wheel.[154]

The Supreme Court in *J.L.* similarly noted that areas where a person has a lesser expectation of privacy, such as airports and schools, do not warrant the type of corroboration, or independent verification, traditionally needed for justifiable searches compared to other areas where a person has a stronger sense of privacy.[155] In fact, while driving on the open road, a person expects a lesser level of privacy than one expects within the walls of their residence.[156]

Further, some proponents of the drunk driving exception have analogized an investigatory traffic stop to that of a roadside sobriety checkpoint, which does not require any police corroboration before briefly questioning the driver.[157] Citing the U.S. Supreme Court in this context, the Illinois Supreme Court stated "one's expectation of privacy in an automobile and of freedom in its operation are significantly different from the traditional expectation of privacy and freedom in one's residence."[158]

To justify sobriety checkpoints, the U.S. Supreme Court held individuals driving on public roads enjoy a lower expectation of privacy while on those open thoroughfares.[159] It follows that this lower expectation of privacy diminishes the constitutional safeguards put in place by the Fourth Amendment, which further justifies the need to institute a policy that allows police to immediately pull over suspected drivers without corroboration.

Additionally, by balancing the government intrusiveness of a traffic stop with the government's strong interest in shielding citizens from the

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151. *See* State v. Hanning, 296 S.W.3d 44, 51 (Tenn. 2009).
152. *Fink*, 673 N.E.2d at 286.
153. *See generally* ILLINOIS 2014 RULES OF THE ROAD, ILL. SEC'Y OF STATE (2014), *available at* https://www.cyberdriveillinois.com/publications/pdf_publications/dsd_a112.pdf.
154. *See Fink*, 673 N.E.2d at 286.
155. *See* Florida v. J.L., 529 U.S. 266, 273–74 (2009).
156. *Fink*, 673 N.E.2d at 286.
157. State v. Boyea, 765 A.2d 862, 870 (Vt. 2000) (Skogland, J., concurring).
158. *Fink*, 673 N.E.2d at 286 (citing United States v. Martinez-Fuerte, 428 U.S. 543, 561 (1976)).
159. Colorado v. Bertine, 479 U.S. 367, 372 (1987); *see Martinez-Fuerte*, 428 U.S. at 561.

potentially-devastating effects of drunk driving, traffic stops are the only reasonable method available to police officers to protect this compelling interest.[160]

V. CONCLUSION

In sum, a number of justifications suggest why the Illinois Supreme Court should adopt a "drunk driving exception," allowing police officers to assume reasonable suspicion exists based solely on a 911 caller's report of an intoxicated driver without having to independently view a traffic violation or otherwise observe other criminal activity.

Although the U.S. Supreme Court has yet to resolve this question, it appears quite evident that the Court throughout the years has given police more leniency to perform Fourth Amendment searches and seizures. This is evident in the Court's shift from the *per se* warrant requirement towards the less-demanding probable cause standard, and now to today's approach, which holds *Terry* stops can be conducted based solely on reasonable suspicion, an even lesser standard than probable cause.

Additionally, due to the U.S. Supreme Court's inaction, Illinois appellate courts, attorneys, and police officers are left with a patchwork of authority throughout the state. Although two of Illinois' appellate districts have apparently put into place this drunk driving exception, a blanket rule requiring all jurisdictions to adopt this approach would bring stability and eliminate the confusing split of authority in Illinois.

Finally, a number of justifications relied upon by the courts that already adopt this approach suggest applying this exception in Illinois is not only constitutional, but sensible. Drunk driving poses a unique risk to the general public and, therefore, requiring a wait-and-see approach or independent corroboration of 911 tips is impractical and potentially devastating. Moreover, 911 tips have become increasingly reliable, and independent police corroboration is unnecessary and downright burdensome, given the advances in technology—particularly with regard to identifying 911 callers. The risk of potential abuse or harassment under this exception is also overstated. Finally, persons enjoy a lesser expectation of privacy driving on public roads and the requirements needed to satisfy the Fourth Amendment should therefore also be diminished.

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160. *See* United States v. Wheat, 278 F.3d 722, 736–37 (8th Cir. 2001).