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ADVANCE SHEET HEADNOTE  
June 24, 2024

2024 CO 51

**No. 24SA2, *People v. Dacus*—Citizen Informant—Reasonable Suspicion—Investigatory Stop.**

In this interlocutory appeal, the supreme court considers the district court's order suppressing certain evidence obtained by a police deputy after the deputy was alerted to a possible drunk driver through a Report Every Drunk Driver Immediately ("REDDI") report. In particular, the People contend that the district court erred in concluding that the REDDI report in this case constituted an anonymous tip requiring corroboration to justify an investigatory stop and that the People had presented insufficient corroborating evidence. In the People's view, the tip at issue was not, in fact, anonymous, and even if it were, law enforcement had developed reasonable suspicion to conduct an investigatory stop. Alternatively, the People contend that the stop at issue was consensual.

The court now concludes that the tipster here was not anonymous, and therefore, the tip alone established reasonable suspicion to justify the stop. Even

if the tip were anonymous, however, the court further concludes that on the facts presented, reasonable suspicion supported an investigatory stop in this case.

Accordingly, the court reverses the district court's suppression order and remands this case to the district court for further proceedings consistent with this opinion.

**The Supreme Court of the State of Colorado**  
2 East 14th Avenue • Denver, Colorado 80203

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**2024 CO 51**

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**Supreme Court Case No. 24SA2**  
*Interlocutory Appeal from the District Court*  
Park County District Court Case No. 23CR48  
Honorable Amanda J. Hunter, Judge

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**Plaintiff-Appellant:**

The People of the State of Colorado,

v.

**Defendant-Appellee:**

Dave A. Dacus.

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**Order Reversed**

*en banc*

June 24, 2024

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**JUSTICE GABRIEL** delivered the Opinion of the Court, in which **CHIEF JUSTICE BOATRIGHT, JUSTICE MÁRQUEZ, JUSTICE HOOD, JUSTICE HART, JUSTICE SAMOUR,** and **JUSTICE BERKENKOTTER** joined.

JUSTICE GABRIEL delivered the Opinion of the Court.

¶1 In this interlocutory appeal, the People challenge the district court's order suppressing certain evidence obtained by a police deputy after the deputy was alerted to a possible drunk driver through a Report Every Drunk Driver Immediately ("REDDI") report. In particular, the People contend that the district court erred in concluding that the REDDI report in this case constituted an anonymous tip requiring corroboration to justify an investigatory stop and that the People had presented insufficient corroborating evidence. In the People's view, the tip at issue was not, in fact, anonymous, and even if it were, law enforcement had developed reasonable suspicion to conduct an investigatory stop. Alternatively, the People contend that the stop at issue was consensual.

¶2 We now conclude that the tipster here was not anonymous, and therefore, the tip alone established reasonable suspicion to justify the stop. Even if the tip were anonymous, however, we further conclude that on the facts presented, reasonable suspicion supported an investigatory stop in this case.

¶3 Accordingly, we reverse the district court's suppression order and remand this case to the district court for further proceedings consistent with this opinion. In light of this determination, we need not address the People's alternative argument that the stop at issue was consensual.

## I. Factual and Procedural Background

¶4 On August 9, 2023 at 5:46 p.m., someone called 911 to make a REDDI report. The call was received by the Park County 911 center. When the caller dialed 911, the dispatch system automatically populated her phone number and her location, by latitude and longitude. The caller said that her name was Christina, she provided her phone number, and she said that she was traveling on Highway 285 in Shawnee. The phone number and location that Christina provided matched what the dispatch system had captured. The call then dropped due to poor cell phone service in the area from which Christina had placed the call.

¶5 Dispatch called the number back and received a voicemail message stating, “Hi, you’ve reached Christina’s phone.” Shortly thereafter, the reporting party called 911 again and identified herself as Christina. She noted her location as approaching mile marker 215 on Highway 285, which again matched the location that the dispatch system had captured, and she said that she had observed a driver on Highway 285 who was driving erratically and who was unable to maintain his lane of traffic. Christina stated that the driver was an old man with black sunglasses, and she described his vehicle as an older, antique green Jeep. She also reported that the driver had pulled over to let her pass. The call then dropped again, and although dispatch called back, it was unable to reach Christina.

¶6 In the time that dispatch had Christina on the line, the operator did not ask her for her last name. Nor did dispatch ask for her address, which, according to dispatch, would not have had anything to do with the call because the relevant location was where the erratic driving was occurring, not where Christina happened to reside.

¶7 Deputy Joseph Sackett of the Park County Sheriff's Office was in the area at the time of the 911 calls, and within a few minutes after being dispatched to investigate the report of reckless driving, he spotted ahead of him an old Jeep matching Christina's description. At this time, a few vehicles were directly behind the Jeep, which, Deputy Sackett observed, appeared to be driving under the speed limit.

¶8 Using his front radar, the deputy noted that the cars in front of him (and behind the Jeep) were all traveling 37 m.p.h. in a 55 m.p.h. zone, although neither the weather nor any other conditions warranted such slow speeds. The deputy did not observe the Jeep swerving or crossing lane lines. Nor was there a minimum speed limit on this portion of the highway. Nonetheless, in the deputy's view, driving at that speed was concerning because it was not normal behavior for drivers to be driving at that speed in that location. Indeed, the deputy noted that, if anything, it is normal for drivers to drive 65 or 75 m.p.h. in that area.

¶9 As the deputy was following the line of cars, he saw the Jeep pull off to the side of the road into an emergency pull-off or fishing area. The driver did so of his own volition and not due to any action by the deputy. The deputy then pulled in behind the Jeep to determine if the Jeep was the same vehicle that was the subject of the call reporting a reckless driver. According to the deputy, he initiated contact with the driver because of the report of a reckless driver and also because driving 37 m.p.h. in a 55 m.p.h. zone seemed unusual to him.

¶10 After pulling in behind the Jeep, the deputy turned on his overhead lights but not his siren. He did not block in the Jeep, nor did he draw a weapon. The deputy then approached the driver's side of the Jeep. As he did, he observed that the driver matched the description that the caller had given to dispatch. He further saw the driver looking at his phone.

¶11 Before the deputy spoke to the driver, he smelled a strong odor of alcohol coming from the vehicle. The deputy also saw a half-empty bottle of vodka and what appeared to be a marijuana container on the front seat, and he smelled burnt marijuana.

¶12 The deputy asked the driver, "Hey, man. How's it goin'? Everything okay?" The driver responded that he was getting directions, and at some point, he mentioned that he was having trouble with the Jeep. According to the deputy, the driver's speech was "[s]lurred, thick tongue[d]," and the deputy had difficulty



understanding him. The deputy then told the driver that he had made contact because law enforcement had received a traffic complaint.

¶13 At that point, the deputy asked the driver for his identification. The driver initially produced a medical card instead of his driver's license. The deputy again asked for identification, and the driver provided documents identifying himself as Dave A. Dacus. As of this point in the encounter, the deputy had not told Dacus that he was under arrest or not free to leave, nor had the deputy drawn his weapon (indeed, at no time during the encounter did the deputy draw his weapon).

¶14 The deputy indicated that the following then occurred:

I asked Dave if he would consent to roadside tests, he said he couldn't walk. I asked him if I could check his eyes, he stated I could.

Dave was not able to follow my finger as instructed. . . . Dave was swaying side to side and had to use my vehicle bumper to hold himself up. Dave's appearance and body movements reminded me of others I have seen who have been under the influence of alcohol and[/]or drugs.

I advised Dave of the expressed consent law and he said he wouldn't consent to a test. Dave told me he had seven [DUIs.]

¶15 The deputy then arrested Dacus, and the District Attorney later charged him with Driving Under the Influence-Fourth or Subsequent Offense ("DUI"), pursuant to section 42-4-1301(1)(a), C.R.S. (2023), in Park County District Court.

¶16 As pertinent to the issues before us, Dacus subsequently filed a Motion to Suppress Evidence Seized in Violation of Defendant's Constitutional Rights. In

this motion, Dacus argued that (1) an anonymous informant had made the REDDI report; (2) Deputy Sackett did not observe any independent corroborating evidence of criminal activity by Dacus; and (3) the only observations that the deputy had made were that Dacus was driving an antique Jeep under the speed limit and then pulled off the road into a proper pull-off location. Dacus asserted that such facts did not rise to the level of reasonable suspicion to support an investigatory stop. Accordingly, Dacus argued that the stop violated his constitutional rights.

¶17 The People responded that (1) the caller was, in fact, named; (2) Deputy Sackett did not stop Dacus but rather contacted him after he had already stopped; and (3) the deputy's contact with Dacus was consensual. The People further asserted that the deputy smelled alcohol and burnt marijuana, observed the bottle of vodka on the passenger seat, and noticed that Dacus's speech was slurred, all of which established probable cause to arrest Dacus, only after the deputy had commenced the consensual stop.

¶18 After conducting an evidentiary hearing on Dacus's motion to suppress, the district court concluded that having the caller's first name and a phone number was insufficient to take the call out of the realm of an anonymous tip. The court thus noted that in order to justify the contact with Dacus, the People needed to show some corroboration by law enforcement of the contents of the tip, or at least

independent evidence developed by law enforcement to establish reasonable suspicion to justify a traffic stop. The court found, however, that Deputy Sackett had not corroborated any of the statements from the REDDI reporter as to the alleged erratic driving. Rather, the only conduct that he saw was unusually slow driving. The court further concluded that the facts that Deputy Sackett had turned on his overhead lights and stated that he was contacting Dacus for a traffic complaint demonstrated that Dacus was not free to leave at that point. In the court's view, these facts, taken together, established a Fourth Amendment violation. (The court added that had Deputy Sackett not turned on his overhead lights, the court would have agreed that the encounter was consensual.)

¶19 The court thus suppressed all evidence obtained after Deputy Sackett's contact with Dacus at the window of Dacus's vehicle.

¶20 The People then filed this interlocutory appeal.

## **II. Analysis**

¶21 We begin by addressing our jurisdiction over this matter. Next, we address the applicable standard of review. We then proceed to address the applicable law and apply that law to the facts before us.

### **A. Jurisdiction Under Section 16-12-102(2), C.R.S. (2023), and C.A.R. 4.1**

¶22 Section 16-12-102(2) and C.A.R. 4.1 provide that the prosecution may file an interlocutory appeal in this court from a trial court's ruling granting a defendant's

pretrial motion to suppress evidence if the prosecution certifies both to the trial judge who granted the motion and to this court that the appeal is not taken for purposes of delay and that the evidence at issue is a substantial part of the proof of the charge pending against the defendant. *People v. Thompson*, 2021 CO 15, ¶ 13, 500 P.3d 1075, 1078. The People have so certified here, and Dacus has not challenged that certification. Accordingly, we have jurisdiction over the People’s appeal in this case.

### **B. Standard of Review**

¶23 A trial court’s order suppressing evidence presents a mixed question of fact and law. *Id.* at ¶ 15, 500 P.3d at 1078. As a result, “[w]e accept the trial court’s findings of historic fact if those findings are supported by competent evidence, but we assess the legal significance of the facts de novo.” *Id.* (alteration in original) (quoting *People v. Davis*, 2019 CO 24, ¶ 14, 438 P.3d 266, 268); see also *People v. Glick*, 250 P.3d 578, 582 (Colo. 2011) (“We will not substitute our own judgment for that of the trial court unless the trial court’s findings are clearly erroneous or not supported by the record.”); *People v. Kaiser*, 32 P.3d 480, 483 (Colo. 2001) (noting that a trial court’s application of an erroneous legal standard in resolving a suppression motion and the court’s ultimate legal conclusion of constitutional law that is inconsistent with or unsupported by evidentiary findings are subject to correction on review).

¶24 “In reviewing a trial court’s ruling on a motion to suppress, we look solely to the record created at the suppression hearing.” *Thompson*, ¶ 16, 500 P.3d at 1078.

### C. Anonymous Tips and Reasonable Suspicion

¶25 The Fourth Amendment protects individuals “against unreasonable searches and seizures.” U.S. Const. amend IV.

¶26 Arrests and investigatory stops are seizures that implicate Fourth Amendment protections. *People v. Martinez*, 200 P.3d 1053, 1057 (Colo. 2009). An arrest must be supported by probable cause, which has been defined as information showing a fair probability that the defendant committed, is committing, or is about to commit a crime. *Id.* An investigatory stop, in contrast, may be justified when the police have “a reasonable articulable suspicion that the defendant is involved in criminal activity.” *Id.* This level of suspicion is less than proof of wrongdoing by a preponderance of the evidence and is also less demanding than the “fair probability” standard for probable cause. *People v. Polander*, 41 P.3d 698, 703 (Colo. 2001). Accordingly, “reasonable suspicion can arise from information that is less reliable than that required to show probable cause.” *Id.*

¶27 Tips from identified citizen informants can alone provide a basis for finding reasonable suspicion to justify an investigatory stop. This is because “[a] citizen eye-witness who, with no motive but public service, and without expectation of

payment, identifies himself and volunteers information to the police, has inherent credibility.” *People v. Saars*, 584 P.2d 622, 626 (Colo. 1978). As a result, law enforcement generally need not establish prior reliability in order to act on a citizen informant’s tip. *Id.*; see also *People v. Mathis*, 542 P.2d 1296, 1298 (Colo. 1975) (noting that a citizen informant who identified herself and voluntarily reported the suspicious activity at issue provided a reasonable basis for making an investigatory stop).

¶28 In *Polander*, 41 P.3d at 703–04, we examined in some detail the extent to which law enforcement may rely on information obtained from a source outside of the police department to form reasonable suspicion. In that case, an unidentified restaurant employee called the police to report drug activity in the restaurant’s parking lot. *Id.* at 701. We determined that an investigatory stop, based in part on a tip provided by someone other than the police, is justified “as long as the totality of the circumstances indicates that the police possess some minimal level of objective suspicion (as distinguished from a mere hunch or intuition) that the person to be stopped is committing, has committed, or is about to commit a crime.” *Id.* at 703.

¶29 In reaching this conclusion, we identified two important, albeit not dispositive, factors for determining whether the foregoing totality of the circumstances test is met by a tip from outside the police department, namely,

(1) the truthfulness of the person providing the information (i.e., their veracity) and (2) the way in which the person acquired the information (i.e., their basis of knowledge). *Id.* at 702.

¶30 We further explored the extent to which police may rely on tips from outside the police department in *Martinez*, 200 P.3d at 1057–58. There, we noted that anonymous tips come in different forms. *Id.* at 1057. For example, a tip may come from an unidentified citizen informant, which alone may be sufficient to establish reasonable suspicion because, as noted above, citizens are less likely to “fabricate information in return for immunity or other compensation.” *Id.* (quoting *People v. Lucero*, 511 P.2d 468, 470 (Colo. 1973)). A tip may also involve information that comes from a source who, based on the available information, cannot conclusively be characterized as a citizen informant but whose information indicates that the informant had made first-hand, contemporaneous observations and likely is not affiliated with the alleged criminal activity. *Id.* at 1057–58. Such a tip may also be sufficient to establish a reasonable suspicion that a person is involved in criminal activity. *Id.* at 1058.

¶31 A truly anonymous tip, in contrast, is one in which (1) the caller does not provide their name and has no known prior record of providing information, (2) the circumstances do not suggest that the caller was a citizen informant, and (3) the information provided is insufficient to show that the caller was an

unaffiliated bystander contemporaneously witnessing criminal activity. *Id.* Such a tip does not provide the police with a way to assess the caller's veracity or basis of knowledge and thus, without more, is insufficient to establish reasonable suspicion. *Id.*

¶32 This is not to say, however, that a truly anonymous tip is irrelevant to the question of whether reasonable suspicion exists. Such a tip can support a finding of reasonable suspicion "if it contains specific details corroborated by police observation." *Id.* For example, if an anonymous tip predicts a suspect's pattern of activity and law enforcement officers corroborate the tip by observing the tip's forecasted activity, then reasonable suspicion exists. *Id.* This is because "[p]olice observation of activity predicted by the anonymous source gives reason 'to believe not only that the caller was honest but also . . . well informed.'" *Id.* (second alteration in original) (quoting *People v. George*, 914 P.2d 367, 371 (Colo. 1996)). Accordingly, tips providing predictive detail may strengthen both the informant's veracity and the basis of the informant's knowledge, factors that, as noted above, are relevant to the question of whether, under the totality of the circumstances, law enforcement officers had some minimal level of objective suspicion to believe that the person to be stopped is committing, has committed, or is about to commit a crime. *Id.*



## D. Application

¶33 In light of the foregoing principles, we must first decide whether the call from Christina here constituted a truly anonymous tip requiring additional corroboration, or whether Christina was an identified citizen informant or first-hand eyewitness whose information alone established reasonable suspicion. We conclude that Christina fell into the latter camp.

¶34 Although there were issues with cell phone service in the area from which Christina placed her calls, Christina provided her first name, confirmed her cell phone number, provided her location by city and mile marker, and reported that she was calling about someone driving erratically on the highway and crossing lanes of traffic. Moreover, the information that Christina provided as to her identity and location was consistent with the information that the dispatch system had automatically populated, and with such information in hand, law enforcement could easily have determined Christina's full name and address (e.g., by calling Christina back or contacting her cell phone service provider), if such information was needed. Accordingly, Christina was not an anonymous caller who had failed to provide her name or sufficient information to allow law enforcement to determine whether she was a citizen informant or an unaffiliated bystander contemporaneously witnessing criminal activity. *See id.* at 1058. To the contrary, the record established that she was an identified citizen informant and

an unaffiliated bystander who was reporting criminal activity that she was observing in real time. For this reason alone, we conclude that reasonable suspicion existed to justify an investigatory stop of Dacus's Jeep.

¶35 Even if Christina were anonymous, however, we would conclude that under *Martinez*, the information that she provided was still sufficient to establish the requisite reasonable suspicion to justify an investigatory stop. *Id.* at 1057–58. As noted above, in *Martinez*, we identified two types of anonymous tips that alone can establish the requisite reasonable suspicion, namely, (1) a tip from an unidentified citizen informant and (2) a tip that cannot be conclusively categorized as coming from a citizen informant but in which the information provided indicates that the informant had made “first-hand, contemporaneous observations” and likely was “not affiliated with the criminal activity.” *Id.*

¶36 Here, even if Christina were not identified, we would conclude that she fits within either or both of the categories identified in *Martinez*. Specifically, the information that Christina provided was more than sufficient to indicate that she was a citizen informant. She called 911 and provided detailed information regarding a person driving erratically and crossing lanes of traffic who then pulled over to let her pass. Christina also provided a description of both the driver and the Jeep that he was driving. And when her initial call dropped, she called back to complete her report. This information made clear that Christina was a

concerned citizen who was not likely to be fabricating the information that she was reporting in exchange for immunity or other compensation. *See id.* at 1057.

¶37 And even if the record were insufficient to show that Christina was a citizen informant, she provided first-hand, contemporaneous observations of Dacus's erratic driving, and there was no indication that she was affiliated with his allegedly criminal activities. *See id.* at 1057–58.

¶38 In these regards, *Navarette v. California*, 572 U.S. 393, 398–401 (2014), is substantially on point. In that case, a 911 caller reported that a truck had run her off the road. *Id.* at 395. The caller reported the location at which this occurred, and she described the truck, including its license plate number. *Id.* Within minutes, a highway patrol officer spotted the truck near the reported location, and ultimately, law enforcement found thirty pounds of marijuana in the truck and arrested the truck's driver and passenger. *Id.* at 396–97. The driver and passenger were subsequently charged, and they moved to suppress the evidence, arguing that the traffic stop violated their Fourth Amendment rights because the officer lacked reasonable suspicion to justify the stop. *Id.* at 396.

¶39 The case ultimately reached the Supreme Court, and that Court observed that the initial question for it to decide was whether the 911 call was sufficiently reliable to credit the caller's allegation. *Id.* at 398. The Court concluded that even assuming that the 911 caller was anonymous, "the call bore adequate indicia of

reliability for the officer to credit the caller's account." *Id.* In support of this conclusion, the Court noted that (1) "the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving" and "[t]hat basis of knowledge lends significant support to the tip's reliability"; (2) the facts that the call was placed contemporaneously with the incident and that law enforcement confirmed the truck's location just minutes after the call supported the caller's veracity; and (3) the caller's use of the 911 system tended to indicate her truthfulness, given the facts that 911 calls are recorded and allow for identifying and tracing callers, which provides some safeguards against a caller's making a false report with immunity. *Id.* at 399-401. The Court thus concluded that reasonable suspicion justified the traffic stop at issue. *Id.* at 401-02.

¶40 This reasoning applies with equal force here. As noted above, Christina claimed eyewitness knowledge, she placed the call contemporaneously with the erratic driving that she had witnessed, law enforcement was able to confirm the Jeep's location within minutes after the 911 call, and the fact that Christina called 911 twice tends to lend credibility to her report. Accordingly, for these reasons, too, we conclude that the police had reasonable suspicion to conduct an investigatory stop in this case.

¶41 In light of our foregoing determinations, we need not address the People's alternative argument that Deputy Sackett's contact with Dacus was a consensual stop.

### **III. Conclusion**

¶42 For these reasons, we conclude that the informant here, Christina, was not anonymous and therefore, her tip alone established reasonable suspicion to justify the stop. Even if her tip were anonymous, however, we further conclude that the evidence established that she was a citizen informant or that she had made first-hand contemporaneous observations and likely was not affiliated with the alleged criminal activity at issue, either of which sufficed to establish the requisite reasonable suspicion.

¶43 Accordingly, we reverse the district court's suppression order and remand this case to the district court for further proceedings consistent with this opinion.