

### EXAMINERS' ANALYSIS OF QUESTION NO. 9

Persons have a right to be secure from unreasonable searches and seizures based on both the United States and Michigan Constitutions. US Const, Am IV; Const 1963, Art 1, Sec 11; *People v Kazmierczak*, 461 Mich 411, 417 (2000). *People v Williams*, 472 Mich 308, 313-314 (2005). A search without a warrant is presumed to be unreasonable and unconstitutional. *People v Champion*, 452 Mich 92, 98 (1996); *People v Barbarich*, 291 Mich App 468, 472 (2011).

A traffic stop is considered to be a seizure of the occupants of the vehicle and is within the parameters of the Fourth Amendment. *Brendlin v California*, 551 US 249, 255 (2007); *People v Williams*, 236 Mich App 610, 612 n1 (1999). Law enforcement officers are permitted to make an investigatory stop when they possess a "particularized and objective basis for suspecting the particular person stopped of criminal activity." *Navarette v California*, 572 US 393, 396-397 (2014) quoting *United States v Cortez*, 449 US 411, 417-418 (1981). A traffic stop is justified if the officer has "an articulable and reasonable suspicion that a vehicle or one of its occupants is subject to seizure for a violation of law." *Williams*, 236 Mich App at 612. A violation of the law includes a traffic law. *People v Davis*, 250 Mich App 357, 363 (2002). In this case, Officer Smith stopped the pickup based on information from an unidentified person who observed the erratic driving of the pickup. Smith performed a warrantless stop based on that information.

The court is required to evaluate the stop and view the totality of the circumstances presented to the officer in a light "based on commonsense (sic) judgments and inferences about human behavior." *People v Horton*, 283 Mich App 105, 109 (2009) quoting *People v Jenkins*, 472 Mich 26, 32 (2005). The court should not use "overly technical reviews" of an officer's assessment of whether criminal activity is afoot. *People v Faucett*, 442 Mich 153, 168 (1993).

When the information is not based on the personal knowledge of the officer but is based on information provided by another, a tip, the legal test is whether the tipster's information "contained sufficient indicia of reliability to provide law enforcement with a reasonable suspicion that would justify the stop." *Barbarich*,

291 Mich App at 474. In making this determination, the court must consider: (1.) The reliability of the informant; (2.) the nature of the informant's information; and (3.) the reasonableness of the suspicion in light of those factors. *People v Took*s, 403 Mich 568, 577 (1978).

Information provided to law enforcement by a citizen who has "personally observed suspicious activities is entitled to a finding of reliability when the information is sufficiently detailed and is corroborated within a reasonable period of time by the officer's own observations." *Id.* The amount of information needed to justify an investigative stop of an erratically driven vehicle based on an anonymous tip is less than other types of criminal behavior that pose a less immediate threat. *Barbarich*, 291 Mich App at 475, 479. The public interest in road safety is greater than the minimal invasive nature of the investigation. *Id.* at 479.

In this instance, the dispatcher relayed the information to Smith as it was being provided by the caller. The citizen tipster described reckless driving. The reliability of the information was corroborated by Officer Smith in a timely manner.

The information provided by the citizen tipster must support the inference the citizen tipster "witnessed an actual traffic violation that compels an immediate stop." *Barbarich*, 291 Mich App at 475 quoting *United State v Wheat*, 278 F3d 722, 732 (CA8 2001). The imminent danger of erratic driving and the tipster's "firsthand contemporaneous observations" requires less in regard to "predictive elements of reliability". *Barbarich*, 291 Mich App at 475 quoting *United States v Wheat*, 278 F3d 722, 730, 732 (CA8 2001); see also *People v Estabrooks*, 175 Mich App 532, 538-539 (1989).

The information (tip) must correctly identify the vehicle, i.e. the one identified by the citizen's information is the same one stopped by the police. This can be accomplished by verification of make, model, location and bearing (direction) of the vehicle. The quality or reliability of the information need only be corroborated in innocent detail. ("[L]ess is required with regard to a tip's reliability; as to the latter, it will suffice if law enforcement corroborates the tip's innocent details." *Barbarich*, 291 Mich App at 480).

Smith verified the model of the vehicle (pickup truck), the color (black with a red tailgate, an unusual configuration), the road (I-96), the direction (east), the license plate letters (RO v RQ), and the number of occupants (two). Sufficient corroboration of the innocent details was provided to satisfy the legal test, making the investigative approach reasonable. The information provided by the tip warranted investigation by the officer as to whether Don was driving under the influence or was driving recklessly.

The gun and narcotics were then in plain sight in the pickup. If the stop was proper, the officer had a right to be in the position to see the gun and drugs in the pickup truck and the seizure of them by Smith was legal. If it is concluded the stop was not legal, the search and seizure of the gun and drugs is not legal. *Horton v California*, 496 US 128,135 (1990).