

ANONYMOUS TIP JUSTIFIES TRAFFIC STOP

The Tennessee Supreme Court has verified that a traffic stop can be based on an anonymous call from a citizen.

In State v Hanning, an October 20th decision, the Court affirmed the conviction of a trucker, who had been spotted driving “recklessly” by a citizen. The citizen called in a complaint and told the dispatcher the black Smith Brothers semi was pulling off I 75 at the Highway 72 exit ramp.

Sergeant Kent Russell of the Loudon Police Department was in a parking lot at McDonald’s about 150 yards from the top of the ramp. He got the call from dispatch and immediately drove to the exit ramp, saw a black truck tractor and trailer with its parking lights on parked in the emergency lane, facing the top of the ramp. Sergeant Russell turned on his blue lights and drove down the ramp against the flow of traffic and parked very close to the front of the truck. When he approached he saw the words “Smith” and “transport” on the door.

The traditional manner to verify an anonymous report is to meet a two prong test and show 1) the basis of the informant’s knowledge of the conveyed information and 2) the informant’s credibility. This is obviously troublesome as many citizens going down the road don’t hang around after making the call. Many times the caller will be unknown.

However, the Court ruled years ago in State v Wilhoit, 962 S.W.2d at 487 that an investigating officer’s independent corroboration on the anonymously provided information can cure deficiencies in proving reliability.

The verification of information in this case was:

- 1) The report of the driving incident was at or near the time of the encounter and a Court can assume the report is first hand and hence reliable. Citing State v Pulley 863 SW2d at 32.
- 2) The officer’s verification of the caller’s observations i.e. color and type of truck, location and direction of travel was sufficient to demonstrate the caller’s basis of knowledge.
- 3) The officer’s corroboration of those factors satisfied the credibility prong of the reliability inquiry.

The Court also stated, “we believe that a report of a truck and trailer being driven recklessly on the interstate poses a sufficiently high degree of threat of imminent hazard to warrant prompt investigation.

The Court also warns that this type of tip will probably not be sufficient without a high risk of imminent injury or death. The Court notes recent (2007) NHTSA statistics that show approximately 13,000 were killed by drunk drivers nationally. The Court states that the danger presented by drunk driving and the public’s interest in eliminating this problem are obvious and indisputable.

U.S. SUPREME COURT DENIES CERTIORARI FOR SAME ISSUE

Hours after our Supreme Court decided the Hanning case, the U.S. Supreme Court announced that it refused to hear a Virginia case that had a much different ruling. Two Justices, Chief Justice Roberts and Justice Scalia wrote a scathing dissent to denial of certiorari in Virginia y Harris, 2009 U.S. Lexis 7645. The Chief Justice wrote:

“Every year, close to 13,000 people die in alcohol-related car crashes -- roughly one death every 40 minutes. See Dept. of Transp., Nat. Hwy. Traffic Safety Admin., Traffic Safety Facts, 2007 Traffic Safety Annual Assessment -- Alcohol-Impaired Driving Fatalities 1 (No. 81106, Aug. 2008). Ordinary citizens are well aware of the dangers posed by drunk driving, and they frequently report such conduct to the police. A number of States have adopted programs specifically designed to encourage such tips -- programs such as the "Drunkbusters Hotline" in New Mexico and the REDDI program (Report Every Drunk Driver Immediately) in force in several States. See Dept. of Transp., Nat. Hwy. Traffic Safety Admin., Programs Across the United States That Aid Motorists in the Reporting of Impaired Drivers to Law Enforcement (2007).

By a 4-to-3 vote, the Virginia Supreme Court below adopted a rule that will undermine such efforts to get drunk drivers off the road. The decision below commands that police officers following a driver reported to be drunk *do nothing* until they see the driver actually do something unsafe on the road -- by which time it may be too late.”

The Chief Justice noted that there was a difference of opinion between States and U.S. Circuits concerning the issue of anonymous tips on the roadways. He articulated his lack of agreement with seven Justices, who chose not to resolve the issue.

DENIAL OF CERT HAS NO EFFECT ON HANNING

Two days after these decisions were announced on October 22nd this writer had the opportunity to speak to Richard Wintory, Deputy County Attorney in Pima County, Tucson, Arizona about these decisions. Wintory had just completed an outstanding three hour Supreme Court update for the Tennessee District Attorneys General Conference and is noted for his expertise concerning the Court. Wintory described the denial of cert as the equivalent of a hung jury. It has no precedential value in Tennessee. Be aware that defense attorneys will claim that the denial somehow overturns the Hanning decision. It does not. Tennessee law is not written by the Virginia Supreme Court. The denial of cert only effects Virginia by leaving the current state of Virginia law alone. It also makes clear that there is a split in jurisdictions, the type of split that may lead the Supreme Court to hear the issue at some later time.