

No. 04-93054-A

IN THE SUPREME COURT OF THE STATE OF KANSAS

CITY OF DERBY, PLAINTIFF-APPELLEE,

v.

THOMAS L. JONES, DEFENDANT-APPELLANT

**APPELLEE'S RESPONSE TO
APPELLANT'S PETITION FOR REVIEW**

**PETITION FOR REVIEW FROM THE COURT OF APPEALS OF THE STATE OF KANSAS
MEMORANDUM OPINION No. 93,054
DISTRICT COURT CASE No. 04-CR-1020
DISTRICT COURT OF SEDGWICK COUNTY
HONORABLE TERRY L. PULLMAN, JUDGE**

**Larry Linn
727 N. Waco, Suite 175
Wichita, Kansas 67203
Telephone: (316) 264-8810
ATTORNEY FOR APPELLEE
CITY OF DERBY**

KS No. 09472

TABLE OF CONTENTS

OBJECTION TO PRAYER FOR REVIEW 1

RELEVANT DATES 1

ISSUE PRESENTED 1

State v. Crawford, 275 Kan. 492, 67 P.3d 115 (2003) 1

State v. Slater, 267 Kan. 694, 986 P.2d 1038 (1999) 1

ARGUMENT: The Court of Appeals correctly applied this Court’s controlling precedents of *Crawford* and *Slater* holding that a stop is legal when based upon dispatched information stating a vehicle’s style, color, the state of origin and tag number of its license plate, highway location, and direction of travel – all corroborated by the law enforcement officer before the stop – and also stating the conclusory allegation that the vehicle was being driven by a possible drunk driver, which the officer was unable to corroborate before the stop. 2

 Kan. S.Ct. R. 8.03(a) 2

 K.S.A. 20-3018(b) 2

State v. McKeown, 249 Kan. 506, 819 P.2d 644 (1991) 2

State v. Crawford, 275 Kan. 492, 67 P.3d 115 (2003) 2

State v. Partridge, 29 Kan.App.2d 887, 33 P.3d 862 (2001) 2

State v. Tucker, 19 Kan.App.2d 920, 878 P.2d 855 (1994) 2

State v. Slater, 267 Kan. 694, 986 P.2d 1038 (1999) 2

CONCLUSION 4

State v. Tucker, 19 Kan.App.2d 920, 927, 878 P.2d 855, 861 (1994) 4

State v. Slater, 267 Kan. 694, 986 P.2d 1038 (1999) 4

CERTIFICATE OF SERVICE 5

OBJECTION TO PRAYER FOR REVIEW

COMES NOW Plaintiff-Appellee City of Derby (“City”), by and through counsel, Larry Linn, and hereby objects, pursuant to K.S.A. 20-3018(b) and Kan. S.Ct. R. 8.03, to the Petition for Review filed by Defendant Thomas L. Jones urging this Court to review and reverse the Kansas Court of Appeals’ decision affirming the district court’s denial of Defendant’s Motion to Suppress.

RELEVANT DATES

The Court of Appeals issued its decision on June 24, 2005. Defendant filed his Petition for Review with the Clerk of the Appellate Courts on July 20, 2005. By operation of K.S.A. 60-206(a) and Kan. S.Ct. R. 8.03(c)(1), the City believes this Response is timely if filed on or before August 3, 2005.

ISSUE PRESENTED

Whether the Court of Appeals erred in applying this Court’s controlling precedents of *State v. Crawford*, 275 Kan. 492, 67 P.3d 115 (2003), and *State v. Slater*, 267 Kan. 694, 986 P.2d 1038 (1999).

ARGUMENT

The Court of Appeals correctly applied this Court’s controlling precedents of *Crawford* and *Slater* holding that a stop is legal when based upon dispatched information stating a vehicle’s style, color, the state of origin and tag number of its license plate, highway location, and direction of travel – all corroborated by the law enforcement officer before the stop – and also stating the conclusory allegation that the vehicle was being driven by a possible drunk driver, which the officer was unable to corroborate before the stop.

Any party aggrieved by a decision of the Court of Appeals may petition the Supreme Court for discretionary review. Kan. S.Ct. R. 8.03(a). Among the factors to be considered in determining whether review will be granted are: (1) the general importance of the question presented; (2) the existence of a conflict between the decision sought to be reviewed and a prior decision of the supreme court, or of another panel of the court of appeals; (3) the need for exercising the Supreme Court's supervisory authority; and (4) the final or interlocutory character of the judgment, order or ruling sought to be reviewed. K.S.A. 20-3018(b). Defendant fails to discuss and apply these factors in his quest to obtain discretionary review.

Instead, Defendant questions – for the *first time* in this appeal¹ – this Court’s wisdom in deciding *State v. Slater*, 267 Kan. 694, 986 P.2d 1038 (1999), because it did not require the reporting party to provide either an indication of driving error or a basis from which the caller had arrived at his opinion of the intoxication of the suspect driver. Essentially,

¹In his Appellant’s Brief, Defendant relied *exclusively* on *State v. McKeown*, 249 Kan. 506, 819 P.2d 644 (1991), neglecting to discuss or distinguish – or to cite – controlling Kansas precedents, even after the City called his attention to them in its Appellee’s Brief. *See also State v. Crawford*, 275 Kan. 492, 67 P.3d 115 (2003); *State v. Partridge*, 29 Kan.App.2d 887, 33 P.3d 862 (2001); *State v. Tucker*, 19 Kan.App.2d 920, 878 P.2d 855 (1994).

Defendant urges this Court to apply the same scrutiny to a tip from a known informant as it does to a tip from an anonymous one.

Defendant misses the point that the type of tip or informant involved and the information that tipster provides about the basis for his knowledge driver are meant to balance each other. *See Slater*, 267 Kan. at 700-02, 986 P.2d at 1043-44. Where the tip is truly anonymous and the veracity of the informant cannot be determined, then the information he gives must be detailed and corroborated by the officer's subsequent observations. *Slater*, 267 Kan. at 702, 986 P.2d at 1044.² When the informant does not identify himself or herself, but gives enough information that his or her identity may be ascertained, then less detail may be necessary. *Slater*, 267 Kan. at 701, 986 P.2d at 1043.³ The most reliable tips are those when the person giving the tip gives the police his or her name and address or identifies himself or herself in such a way that he or she can be held accountable for the tip. *Slater*, 267 Kan. at 700, 986 P.2d at 1043.⁴ Here, the tipster was an

²Defendant relies, in part, upon the following cases supporting this point: *Goodlataw v. State*, 847 P.2d 589 (Alaska App. 1993); *State v. Smith*, 638 N.E.2d 1353 (Ind.App. 1994); *State v. Markus*, 478 N.W.2d 405 (Iowa App. 1991); *State v. Melanson*, 140 N.H. 199, 665 A.2d 338 (1995); *Taxation and Revenue Dept. v. Van Ruiten*, 107 N.M. 536, 760 P.2d 1302 (1988); *People v. Rance*, 227 A.D.2d 936, 644 N.Y.S.2d 447 (1996); *State v. Lownes*, 499 N.W.2d 896 (S.D. 1993).

³Defendant also relies upon the following cases supporting this point: *People v. Willard*, 183 Cal.App.3d Supp. 5, 228 Cal.Rptr. 895 (1986); *Peterson v. Tipton*, 833 P.2d 830 (Colo.App. 1992); *State v. Sampson*, 669 A.2d 1326 (Me. 1996); *Playle v. Commissioner of Public Safety*, 439 N.W.2d 747 (Minn.App. 1989); *State v. Ramey*, 129 Ohio App.3d 409, 717 N.E.2d 1153 (1998); *Rittman v. State ex rel. Dept. of P. S.*, 875 P.2d 439 (Okla.App. 1994); *State v. Sailo*, 910 S.W.2d 184 (Tex.App. 1995)).

⁴Defendant even relies upon the following cases supporting this point: *Frette v. City of Springdale*, 331 Ark. 103, 959 S.W.2d 734 (1998); *State v. Evans*, 692 So.2d 216 (Fla.App. 1997); *State v. Butler*, 224 Ga.App. 397, 480 S.E.2d 387 (1997); *Kaysville City v. Mulcahy*, 943 P.2d 231, 236 (Utah App. 1997).

identified off-duty police officer; thus, the information he provided “is even more reliable than the anonymous tips discussed in *Slater* and *Crawford*.” Slip. Op. at 5.

CONCLUSION

“A motor vehicle in the hands of a drunken driver is an instrument of death. It is deadly, it threatens the safety of the public, and that threat must be eliminated as quickly as possible.” *State v. Tucker*, 19 Kan.App.2d 920, 927, 878 P.2d 855, 861 (1994). The greater and more immediate the risk to the public revealed by the tip, the less importance is accorded to the process of corroboration or verification of the tip. *Tucker*, 19 Kan.App.2d at 929, 878 P.2d at 862. Had Defendant been sober, his encounter with Officer Riebel would have been a comparatively minimal intrusion upon his freedom of movement and privacy. *Tucker*, 19 Kan.App.2d at 927, 878 P.2d at 861. Instead, as Defendant seemingly concedes, it was immediately apparent that Defendant had just driven under the influence of alcohol. Defendant has not provided this Court with a sufficient reason, given his clear risk to the public, why it should rethink its decision in *State v. Slater*, 267 Kan. 694, 986 P.2d 1038 (1999), and require a tipster to provide more information to stop him. Defendant’s Petition for Review must be denied.

Respectfully submitted,

Larry Linn
727 N. Waco, Suite 175
Wichita, Kansas 67203
Telephone: (316) 264-8810
ATTORNEY FOR APPELLEE
CITY OF DERBY

KS No. 09472

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing was mailed, by U.S. Mail, postage pre-paid, to:

Jeff Griffith
Attorney at Law
111 S. Baltimore
P.O. Box 184
Derby, KS 67037

Dated this _____ day of August, 2005.

ATTORNEY FOR APPELLEE