A REASONABLE APPROACH TO REASONABLE SUSPICION AND INFORMANT TIPS:
STATE v. BRIDGE

INTRODUCTION

A continuing theme of American life is the ongoing tension between individual liberty and societal order. This conflict continually arises between individuals attempting to assert their constitutional rights and governmental authority seeking to limit those rights in order to promote the public welfare. In a stop and frisk case, this conflict is resolved by determining whether the action taken by the police officer was reasonable. If the officer's actions were reasonable the conflict is resolved in favor of the interest of the government, otherwise the rights of the individual are superior.

This Note examines State v. Bridge, in which the Nebraska Supreme Court held that reasonable suspicion existed to stop an individual when the only basis for the stop was a tip received by the police from an informant who believed that the defendant was driving while intoxicated. This Note reviews the development of the authority to conduct investigative stops in both the United States Supreme Court and the Nebraska Supreme Court. This Note discusses the balance between governmental interests and individual rights and how this balance affects the justification of an investigative stop. The Note also discusses the totality of the circumstances test and how it is used to determine if reasonable suspicion exists to conduct a stop and how informants' tips fit into this test. This Note concludes that in Bridge, the Nebraska Supreme Court properly applied the totality of the circumstances test in holding that reasonable suspicion existed to conduct the investigative stop.

2. Id.
4. Id. The fourth amendment to the United States Constitution prohibits “unreasonable searches and seizures.” See infra note 45.
6. Bridge, at 784-87, 452 N.W.2d at 545-47.
7. See infra notes 49-144 and accompanying text.
8. See infra notes 145-203 and accompanying text.
9. See infra notes 212-30 and accompanying text.
10. See infra notes 231-98 and accompanying text.
11. See infra note 299 and accompanying text.
FACTS AND HOLDING

On March 4, 1988, Chadron Police Department Special Services Officer Eaton encountered Rodney Bridge at the Chadron, Nebraska police station after Eaton had called Bridge to tell him to get his dog from the pound. Eaton smelled alcohol on Bridge's breath when Bridge came to the police station, at which point Eaton became concerned that Bridge might be driving while intoxicated. Eaton then radioed Chadron Police Officer Tad Appleby and informed Appleby that he had smelled alcohol on Bridge's breath and that he believed Bridge might be driving while under the influence of alcohol. Eaton described Bridge and his vehicle to Appleby and gave Officer Appleby the license number of Bridge's car. After receiving this information, Appleby proceeded to the dog pound and followed Bridge into the parking lot. Neither Eaton nor Appleby had observed Bridge commit any traffic violations or engage in any erratic or reckless driving. After Bridge had placed the dog into his car and before Bridge had driven away, Officer Appleby questioned him, asking his name and requesting to see his driver's license. At this time Appleby could smell alcohol on Bridge. Bridge agreed to perform field sobriety tests, and based on these tests, Appleby arrested Bridge for driving under the influence of alcohol. A subsequent urine test showed that Bridge had a urine alcohol content of .284, which is almost three times the allowable legal limit in Nebraska.

13. Id.
14. Id. Both Eaton and Appleby were employees of the Chadron Police Department. Id. at 784, 452 N.W.2d at 545.
15. Bridge, at 782, 452 N.W.2d at 544.
16. Id.
17. Id. at 784, 452 N.W.2d at 545.
18. Id. at 782-83, 452 N.W.2d at 544.
19. Id. at 783, 452 N.W.2d at 544.
20. Id. Field sobriety tests include several possible activities: (1) walking heel to toe in a straight line; (2) standing and touching your nose with your index finger; (3) standing erect and tilting your head back with your eyes closed; and (4) hopping on one leg without losing your balance. F. BAILEY, HOW TO PROTECT YOURSELF AGAINST COPS IN CALIFORNIA & OTHER STRANGE PLACES 51-52 (1982).
21. Id. at 783, 452 N.W.2d at 545. Section 39-669.07 of the Nebraska Revised Statutes provides in part:

It shall be unlawful for any person to operate or be in the actual physical control of any motor vehicle:

(1) While under the influence of alcoholic liquor or of any drug;
(2) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her blood;
(3) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per two hundred ten liter of his or her breath; or
(4) When such person has a concentration of ten-hundredths of one gram or more by weight of alcohol per one hundred milliliters of his or her urine.
At trial, Bridge moved to suppress the evidence discovered as a result of the investigative stop, claiming that the stop had violated his constitutional right to be free from unreasonable searches and seizures. He alleged that Officer Appleby did not have the required reasonable suspicion to make an investigatory stop and that there was a lack of sufficient objective evidence which could have formed the reasonable basis for the stop. Therefore, Bridge argued, the stop had violated the fourth amendment to the United States Constitution and article I, section 7 of the Nebraska State Constitution both of which prohibit unreasonable searches and seizures by government officers. The county court for Dawes County sustained Bridge’s motion to suppress. On appeal of the county court’s order to suppress, however, the district court for Dawes County reversed the county court. On remand, the county court then considered the evidence, over the renewed objection of Bridge, and found Bridge guilty of driving while under the influence of alcohol.

The Nebraska Supreme Court affirmed the district court’s denial of Bridge’s motion to suppress the evidence discovered during the investigative stop and affirmed his conviction. The essence of Bridge’s argument to the Nebraska Supreme Court was that the mere smell of alcohol as perceived by Special Services Officer Eaton could not form the objective basis for a reasonable suspicion required

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22. *Bridge*, 234 Neb. at 783, 452 N.W.2d at 545.
24. The fourth amendment of the United States Constitution provides:
   The 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.
25. Article I, section 7 of the Nebraska Constitution provides:
   The 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 warrant shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the person or thing to be seized.
   NEB. CONST. art. I, § 7.
27. *Bridge*, 234 Neb. at 787, 452 N.W.2d at 547 (Grant, J., dissenting). A motion to suppress is a “device used to eliminate from the trial of a criminal case evidence which has been secured illegally, generally in violation of the Fourth Amendment...” *Black’s Law Dictionary* 914 (5th ed. 1979).
28. *Bridge*, 234 Neb. at 787, 452 N.W.2d at 547 (Grant, J., dissenting).
29. *Id.* (Grant, J., dissenting).
30. *Id.* at 787, 452 N.W.2d at 547.
for investigatory stops.\textsuperscript{31}

In reviewing the decision of the district court, the Nebraska Supreme Court stated that a police officer is authorized “to stop in a public place any person that he or she reasonably suspects has committed, is committing, or is about to commit a crime and to ask that person’s name, address, and an explanation of his or her actions.”\textsuperscript{32} The court stated that in order for an investigative stop to be justified there must be an objective manifestation of criminal activity based on the totality of the circumstances.\textsuperscript{33} The court stated further that “the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”\textsuperscript{34}

According to the Nebraska Supreme Court, the facts as established by the court at trial had created a reasonable suspicion that Bridge had been driving while intoxicated.\textsuperscript{35} The court held that the officer's personal observations alone need not be the sole factual basis for the stop, but that the factual basis may arise from information provided by another person.\textsuperscript{36} The court also held that when the information providing the factual basis for the stop was furnished by another person, it must contain sufficient indicia of reliability to satisfy a reasonable suspicion.\textsuperscript{37} The court stated that a detailed eyewitness report of a crime based upon personal observation by the informant carries with it a presumption of reliability.\textsuperscript{38}

\textsuperscript{31} Brief for Appellant at 7. Bridge argued that an investigatory stop must be founded on an objective manifestation of facts that leads to a reasonable suspicion that the suspect has or is about to commit an unlawful act. \textit{Id.} at 4. Bridge also argued that “the mere odor of alcohol, standing alone, is not sufficient to justify either a lay witness or any expert rendering an opinion as to whether one is intoxicated in violation of the law.” \textit{Id.} at 8 (quoting \textit{State v. Johnson}, 215 Neb. 391, 395, 338 N.W.2d 769, 772 (1983)).

\textsuperscript{32} \textit{Bridge}, 234 Neb. at 783, 452 N.W.2d at 545 (citing \textit{NEB. REV. STAT.} 29-829 (1989)). "An investigatory stop must be justified by an objective manifestation, based upon the totality of the circumstances, that the person stopped has been, is, or is about to be engaged in criminal activity." \textit{Bridge}, 234 Neb. at 783, 452 N.W.2d at 545 (quoting \textit{State v. Ege}, 227 Neb. 824, 826, 420 N.W.2d 305, 308 (1988)).

\textsuperscript{33} \textit{Bridge}, 234 Neb. at 783, 452 N.W.2d at 545.

\textsuperscript{34} \textit{Id.} (quoting \textit{Terry v. Ohio}, 392 U.S. 1, 21 (1968)).

\textsuperscript{35} \textit{Id.} at 786, 452 N.W.2d at 546-47. The court stated that Bridge’s reliance on \textit{Johnson} was misplaced. \textit{Id.} In \textit{Johnson}, the defendant was arrested simply because she smelled of alcohol. No sobriety tests were taken. Johnson had been stopped for operating a motor vehicle with an improper registration. \textit{Johnson}, 215 Neb. at 395, 338 N.W.2d at 772.

\textsuperscript{36} \textit{Bridge}, 234 Neb. at 783, 452 N.W.2d at 545 (citing \textit{Adams v. Williams}, 407 U.S. 143 (1972)).

\textsuperscript{37} \textit{Bridge}, 234 Neb. at 783, 452 N.W.2d at 545.

\textsuperscript{38} \textit{Id.} at 783, 452 N.W.2d at 543. The court went on to state that:

\[\text{the reliability of the informant varies from an anonymous telephone tipster to a known citizen’s face-to-face meeting with police officers. The vehicle description varies from minimal to very detailed. The reported location of the}\]
The court ruled that Officer Appleby had a reasonable basis to justify his investigatory stop of Bridge based on three factors: (1) Officer Appleby knew the informant, (2) Special Services Officer Eaton had described the vehicle and knew where Bridge was headed, and (3) there was very little time between Eaton's report and Appleby's investigation. The court held that the information provided by Eaton was sufficient to justify Appleby's stop because an investigative stop is designed to clarify ambiguous situations. The court stated that "even if it was equally probable that the vehicle or its occupants were innocent of any wrongdoing, police must be permitted to act before their reasonable belief is verified by escape or fruition of the harm it was their duty to prevent." The court asserted that any fourth amendment rights of the defendant in the case were outweighed by the interests that the state has in preserving evidence and preventing crime.

However, Judge Grant, joined by Judges Caporale and Shanahan, dissented. Judge Grant's dissent argued that the district court had erred in reversing the county court's suppression order. Judge Grant took the position in his dissent that the stop by Officer Appleby was illegal and therefore the suppression order was appropriate. The dissent argued that "[a]n arresting officer must have 'a particularized and objective basis for suspecting the person stopped of criminal activity'" in order to conduct a stop. In the opinion of Judge Grant, the only rational inference to be drawn from the fact that Bridge had the odor of alcohol on his breath was that Bridge had been drinking, not that he was legally drunk. Therefore, Judge Grant would have reversed the district court and dismissed the case.

vehicle varies from pinpoint accuracy to a general direction of travel. The observation of traffic violations ranges from none to several. The shorter the time lag, the more likely the stop is valid.

Id. at 784, 452 N.W.2d at 545 (quoting Ege, 227 Neb. at 827, 420 N.W.2d at 308).
39. Bridge, 234 Neb. at 784, 452 N.W.2d at 545.
40. Id. (quoting 1 W. LAFAVE & J. ISRAEL, CRIMINAL PROCEDURE § 3.8 at 303 (1984).)
41. Id. (emphasis in original).
42. Id.
43. Id. at 787-89, 452 N.W.2d at 547-48 (Grant, J., dissenting).
44. Id. at 789, 452 N.W.2d at 548 (Grant, J., dissenting).
45. Id.
46. Id. at 788, 452 N.W.2d at 547 (quoting State v. Daniels, 220 Neb. 480, 482, 370 N.W.2d 179, 181 (1985)).
47. Id. Judge Grant reached that conclusion because nothing else had indicated that Bridge was drunk or that his alcohol content was beyond the legal limit. "The officer and his informant had the opportunity to hear slurred speech and the opportunity to see erratic driving or walking, and did not testify, or refer, to any such activity." Id. at 788-89, 452 N.W.2d at 548.
48. Id. at 789, 452 N.W.2d at 548.
BACKGROUND

**AUTHORITY FOR INVESTIGATIVE STOP: TERRY V. OHIO**

The Fourth Amendment to the United States Constitution, and article I, section 7 of the Nebraska Constitution protect individuals from unreasonable searches and seizures.\(^49\) A search or seizure is per se unreasonable if it is conducted without a warrant, unless it falls under one of the exceptions to the rule.\(^50\) These carefully drawn exceptions arise when the public's interest in ensuring safety or in preserving evidence outweighs the individual's liberty and privacy interests.\(^51\)

In the context of a Fourth Amendment seizure, a "stop" means the temporary detention of an individual for investigation.\(^52\) A stop occurs when the individual being detained reasonably believes that he is not at liberty to leave the officer's presence.\(^53\) Investigative stops of one form or another have long been considered to be routine procedure by law enforcement personnel,\(^54\) but until the 1967 case of *Terry v. Ohio*\(^55\) the United States Supreme Court had not specifically authorized such procedures.\(^56\)

In *Terry*, Cleveland Police Officer McFadden observed two men who appeared to be "casing" a business by repeatedly walking back and forth in front of the store.\(^57\) Officer McFadden became suspicious and believed that the men might be armed, so McFadden approached the men, informed them that he was a police officer and asked their names.\(^58\) After the men answered by mumbling something, Officer McFadden grabbed Terry and discovered a pistol in Terry's pocket as a result of a pat down search.\(^59\) Officer McFadden also found a gun on Terry's companion, Chilton.\(^60\) At trial, as a result of the evidence obtained by Officer McFadden, Terry and Chilton were convicted of carrying concealed weapons.\(^61\)

Terry and Chilton appealed the use of the weapons as evidence

\(^{49}\) See *supra* notes 24-25.
\(^{52}\) J. LA SOTA, JR. & G. BROMLEY, MODEL RULES FOR LAW ENFORCEMENT STOP AND FRISK 4 (1974).
\(^{53}\) Id.
\(^{55}\) 392 U.S. 1 (1968).
\(^{56}\) Project, 26 HOW. L.J. at 993.
\(^{57}\) *Terry*, 392 U.S. at 5-6.
\(^{58}\) Id. at 6-7.
\(^{59}\) Id. at 7.
\(^{60}\) Id.
\(^{61}\) Id. at 7-8.
against them. The defendants argued that the admission of the guns into evidence had violated their fourth amendment rights.

The United States Supreme Court upheld the convictions, holding that the fourth amendment to the United States Constitution permitted a police officer to stop and frisk a person if the officer reasonably believed “that criminal activity may be afoot and that the persons with whom he is dealing may be armed and presently dangerous.”

The Court stated further that in justifying the stop, the “officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.”

In determining the reasonableness of the stop, the Court created a balancing test, weighing the intrusion upon the person and the person’s individual rights against society’s interest in having the police protect themselves and others. However, the Court limited this holding to factual situations similar to the one in the case. The Court justified warrantless searches for weapons only when an officer reasonably fears for his own safety or the safety of others.

The exception to the warrant and probable cause requirement of the fourth amendment created by the United States Supreme Court in Terry has come to be known as the “Terry stop.”

Extensions of Terry

Although in Terry the Court had limited its holding to the narrow question presented, the Court subsequently extended Terry to additional areas. For example, in Adams v. Williams, the Court gave its approval to investigative stops by police officers for purposes

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62. Id. at 8.
63. Id.
64. Id. at 30-31. The legitimacy of a stop is not tested by the probable cause standard necessary for a warrant but must be tested against the fourth amendment's prohibition against unreasonable searches and seizures. Id. at 20.
65. Id. at 20-21.
66. Id. at 21, 24-27. See Camara v. Municipal Court, 387 U.S. 523, 536-37 (1967) (holding that reasonableness is determined by “balancing the need to search against the invasion which the search entails.”). See also Wibben v. North Dakota State Highway Commissioner, 413 N.W.2d 329, 332-33 (N.D. 1987) (holding that the interest of the state in preventing drunk driving outweighed the defendant's fourth amendment interest).
67. Terry, 392 U.S. at 30. The Court stated that it was only considering the narrow question of whether “it is always unreasonable for a policeman to seize a person and subject him to a limited search for weapons unless there is a probable cause for arrest.” Id. at 15. The Court did not consider the appropriateness of a seizure “upon less than probable cause for purposes of 'detention' and/or interrogation.” Id. at 19 n.16.
68. Id. at 30.
70. Harper, Has the Replacement of "Probable Cause" With "Reasonable Suspi-
of detention and interrogation.\textsuperscript{72} In \textit{Adams}, a known police informant told an officer that an individual in a nearby car was carrying drugs and a revolver.\textsuperscript{73} The police officer approached the car, disarmed the individual, and arrested him based solely on the information he had received from the informant who was known to him.\textsuperscript{74} A subsequent search of the car and the suspect uncovered a large amount of heroin and additional weapons.\textsuperscript{75}

The Court upheld the validity of the stop, reasoning that a police officer is not required by the fourth amendment to shrug his shoulders and permit a crime to happen or allow a criminal to escape simply because he lacks probable cause to arrest the person.\textsuperscript{76} Additionally, the Court stated that conducting a brief stop in order to determine the identity of a suspicious individual or to maintain the status quo briefly while obtaining more information might be the most reasonable thing for an officer to do in view of the facts known at the time.\textsuperscript{77} Relying on \textit{Terry}, the Court held that the officer was justified in seizing the gun because the seizure amounted to a limited intrusion intended to insure the officer's safety.\textsuperscript{78}

The Court also held that the police officer was justified in responding to the informant's tip.\textsuperscript{79} The Court identified four factors in reasoning that the officer had acted on reasonable suspicion because the tip contained sufficient "indicia of reliability:" (1) the officer knew the informant, (2) the informant had provided the officer information in the past, (3) the informant came forward personally and gave information that was verifiable immediately at the scene, and (4) the informant may have been subject to arrest if the tip proved to be incorrect.\textsuperscript{80}

The United States Supreme Court held that reasonable cause can be based not only on the observations of the officer, but also on information supplied by an informant.\textsuperscript{81} The Court made it clear, how-

\textsuperscript{71}. 407 U.S. 143 (1972).
\textsuperscript{72}. \textit{Id.} at 146-49.
\textsuperscript{73}. \textit{Id.} at 144-45.
\textsuperscript{74}. \textit{Id.} at 145.
\textsuperscript{75}. \textit{Id.}
\textsuperscript{76}. \textit{Id.}
\textsuperscript{77}. \textit{Id.} at 146.
\textsuperscript{78}. \textit{Id.} at 148.
\textsuperscript{79}. \textit{Id.} at 146. The Court said that a stronger case is presented when the officer knows the informant than when the tip is anonymous. \textit{Id.}
\textsuperscript{80}. \textit{Id.} at 146-47. The Court said the information contained enough indicia of reliability to justify the stop even though the tip would not have been a sufficient basis for an arrest or search warrant. \textit{Id.} at 147.
\textsuperscript{81}. \textit{Id.} at 147.
ever, that the value and reliability of informants' tips can vary greatly. The Court stated that some tips which completely lack any indicia of reliability warrant either no police action or require further investigation before a stop can be justified. Some tips, on the other hand, are clearly sufficient to warrant appropriate police action.

In United States v. Brignoni-Ponce the Court indicated in dicta that Terry extends to situations which present no physical danger to the police or to the public. In Brignoni-Ponce, border patrol officers had stopped a vehicle near the California-Mexico border. The Court noted that in this case the sole factor that the officers had relied on in making the stop was the fact that the occupants of the car appeared to be of Mexican descent. The Court held that this single factor was insufficient to create a reasonable suspicion that the car contained illegal aliens. Therefore, the stop could not be justified.

Although in Brignoni-Ponce the stop was held invalid, the Court did set forth the analysis to be applied in determining whether such a stop could be valid. In its analysis, the Court stated that an officer could stop a vehicle near the border when there was a reasonable suspicion that the vehicle contains illegal aliens. In discussing the validity of a stop, the Court balanced the governmental interest in preventing the entry of illegal aliens into the country against the intrusion upon individual liberty that occurs when an officer stops a car and questions the occupants.

82. Id.
83. Id.
84. Id. The Court gave two examples of when a tip would warrant police action: (1) "when the victim of a street crime seeks immediate aid and gives a description of his assailant;" or (2) "when a credible informant warns of a specific impending crime." Id.
85. 422 U.S. 873 (1975).
86. Harper, 22 AKRON L. REV. at 28. In Brignoni-Ponce the Court also indicated that Terry extends to vehicle stops. See Brignoni-Ponce, 422 U.S. at 884. In Terry, the court was concerned with the stop of suspects on foot. Terry, 392 U.S. at 5-6. The facts in Brignoni-Ponce involved the stop of a suspect in a vehicle. Brignoni-Ponce, 422 U.S. at 884. The Court stated that it was unreasonable to make random stops under the fourth amendment. Brignoni-Ponce, 422 U.S. at 883. Cf. Delaware v. Prouse, 440 U.S. 648, 663 (1979) (holding that an officer may stop a vehicle if there is reasonable suspicion that the driver is unlicensed, the car is unregistered, or either an occupant or the vehicle is otherwise subject to stop for violation of a law).
87. Brignoni-Ponce, 422 U.S. at 874-75.
88. Id. at 885-86.
89. Id. at 886.
90. Id.
91. Id. at 878-80, 884-85.
92. Id. at 881.
93. Id. at 878-80. The Court reasoned that a reasonable suspicion requirement for stops provides the government with an adequate means of preventing the entry of ille-
The Court also indicated that there are several factors to consider in determining whether reasonable suspicion exists to stop a vehicle in the border area: (1) the characteristics of the area; (2) the proximity of the area to the border; (3) the traffic pattern of the particular road; (4) the previous experience of the officer with alien traffic; (5) any information about recent illegal crossings in the area; (6) the behavior of the driver; (7) the nature of the vehicle; and (8) the appearance, including dress and haircut, of the occupants.\(^9\)

In *United States v. Cortez*,\(^9\) the Court explained the essence of the justification necessary to form a reasonable suspicion to authorize the stop of a person by the police.\(^9\) In *Cortez*, Border Patrol officers had stopped a vehicle which they believed to be carrying illegal aliens.\(^9\) The Court stated that “the totality of the circumstances — the whole picture — must be taken into account” in determining whether the officer’s suspicion for stopping the vehicle was justified.\(^9\) The Court stated that the totality of the circumstances test is comprised of two elements: (1) all the circumstances must be assessed, and (2) the consideration of all the circumstances must create a reasonable suspicion that the individual being stopped is participating in wrongdoing.\(^9\)

The Court stated that the issue was whether, based on the whole picture, the officers could reasonably surmise that the vehicle they chose to stop was involved in criminal activity.\(^10\) The Court stated that an officer is allowed to make inferences and deductions which might elude the untrained person.\(^10\) The Court held that the officers in *Cortez* reasonably could have concluded that the particular vehicle they stopped was engaged in criminal activity.\(^10\) In holding...
that the stop was reasonable, the Court stated that it was critical that the officers were aware of three factors in drawing their inferences: (1) the officers knew the area was used as a crossing point for illegal aliens, (2) the officers knew that it was common for aliens to be led through the desert to the highway from the border, and (3) the officers knew based on clues collected over two months immediately prior to the stop that one guide had established a pattern of operations.\textsuperscript{103}

In \textit{Michigan v. Summers},\textsuperscript{104} the Court considered the question of whether the police can legally detain an individual while they execute a valid warrant to search the individual's residence.\textsuperscript{105} The Court held that such detention was valid under the fourth amendment because a warrant founded on probable cause to search for contraband implicitly carries with it limited authority to detain the occupants of the residence while the search is conducted.\textsuperscript{106} In reaching this decision, the Court weighed the justification for the detention advanced by the police against the restraint on the liberty of the citizen.\textsuperscript{107} The Court held that the interests of the police in preventing flight, minimizing the risk to officers, and the promotion of the orderly completion of the search outweighed the invasion upon the privacy of the residents.\textsuperscript{108} The Court stated that it was important that the officers had a warrant to search the residence in determining the extent of the intrusion on the individual and that the detention of the individual was only a slight intrusion as it related to the search of the home.\textsuperscript{109} The Court stated that the warrant had provided an objective justification for the officers to detain the resident because a judicial officer had determined that probable cause existed to believe that a crime was being committed by someone in the home.\textsuperscript{110} Like other cases subsequent to \textit{Terry}, the Court in \textit{Summers} recognized that a limited intrusion upon an individual's fourth amendment privacy rights can be justified by sufficient governmental

\textsuperscript{103} Id. at 419.
\textsuperscript{104} 452 U.S. 692 (1981).
\textsuperscript{105} Id. at 694-95. The warrant was for the purpose of searching the residence for narcotics. The defendant was outside the house and in the process of leaving when the officers showed up with the search warrant and had the defendant re-enter his house. \textit{Id.} at 693.
\textsuperscript{106} Id. at 705. The Court stated that "[i]f the evidence that a citizen's residence is harboring contraband is sufficient to persuade a judicial officer that an invasion of the citizen's privacy is justified, it is constitutionally reasonable to require that citizen to remain while officers of the law execute a valid warrant to search his home." \textit{Id.} at 704-05.
\textsuperscript{107} Id. at 702-03.
\textsuperscript{108} Id. at 701-03.
\textsuperscript{109} Id.
\textsuperscript{110} Id. at 703.
interests.\textsuperscript{111} In\textit{ Illinois v. Gates},\textsuperscript{112} the Court applied "totality of the circumstances analysis" to informant tip cases.\textsuperscript{113} In\textit{ Gates}, the Bloomingdale, Illinois Police Department had received an anonymous letter that claimed that Lance and Susan Gates were involved in selling drugs.\textsuperscript{114} The letter described how the couple brought drugs from Florida and stated that they were going to Florida again.\textsuperscript{115} Subsequent investigation by the police verified some assertions made in the letter.\textsuperscript{116} Based on this investigation a warrant was issued and when Lance and Susan returned from Florida officers searched their car and home.\textsuperscript{117} The search uncovered marijuana, weapons, and other forms of contraband.\textsuperscript{118} The Illinois Circuit Court suppressed the evidence and the Illinois Supreme Court affirmed the suppression, stating that probable cause to issue the warrant was not present based on the United States Supreme Court decision in\textit{ Aguilar v. Texas}\textsuperscript{119} and the two-pronged test established in the case.\textsuperscript{120}

The United States Supreme Court reversed the Illinois courts and upheld the validity of the warrant,\textsuperscript{121} stating that the requirements of\textit{ Aguilar} were not to be rigidly applied in every case.\textsuperscript{122} The Court stated that the requirements of\textit{ Aguilar} should be treated as closely related issues that help to answer the "commonsense, practical question of whether there is 'probable cause' to believe that con-

\begin{itemize}
\item \textsuperscript{111} Id. at 697-700.
\item \textsuperscript{112} 462 U.S. 213 (1983).
\item \textsuperscript{113} Id. at 230-46. See infra note 124.
\item \textsuperscript{114} Gates, 462 U.S. at 225.
\item \textsuperscript{115} Id.
\item \textsuperscript{116} Id. at 225-26.
\item \textsuperscript{117} Id. at 226-27.
\item \textsuperscript{118} Id. at 227.
\item \textsuperscript{119} 378 U.S. 108 (1964).\textit{ Aguilar} established a two-pronged test to determine whether probable cause existed to issue a warrant. Id. at 112-15. See 3 W. LaFAVE, supra note 99, at 476. In\textit{ Aguilar}, the Court recognized that in order for an informant's tip to provide probable cause for the issuance of a search warrant two requirements must be satisfied.\textit{ Aguilar}, 378 U.S. at 114. First, the underlying circumstances must create a reason to believe that the informant is a credible person. Id. This requirement can be satisfied by showing that the informant had given accurate information before or that the statement was against the informant's own interest. 3 W. LaFAVE, supra note 99, at 476. This first requirement can also be satisfied by subsequent corroboration of the story by the police. Spinelli v. United States, 393 U.S. 410, 415 (1969). Second, the underlying circumstances must show the basis of the conclusions reached by the informant.\textit{ Aguilar}, 378 U.S. at 114. This requirement can be satisfied if it is shown that the informant had personal knowledge, if the informant specifies a credible source, or if the informant has given sufficient details so that it can be inferred that he acquired the information in a reliable way. 3 W. LaFAVE, supra note 99, at 476.
\item \textsuperscript{120} Gates, 462 U.S. at 216-17.
\item \textsuperscript{121} Id. at 246.
\item \textsuperscript{122} Id. at 230 n.6.
\end{itemize}
traband or evidence is located in a particular place." 

In replacing the two-pronged test of *Aguilar* with the totality of the circumstances analysis, the Court stated:

The task of the issuing magistrate is simply to make a practical, commonsense decision whether, given all the circumstances set forth in the affidavit before him, including the "veracity" and "basis of knowledge" of persons supplying hearsay information, there is a fair probability that contraband or evidence of a crime will be found in a particular place.

In *United States v. Place*, the Court extended *Terry* to include the seizure of an individual's personal possessions by law enforcement officers. In *Place*, Drug Enforcement Administration ("DEA") agents had seized Place's luggage at La Guardia airport after he refused to allow the agents to search the luggage. The agents took the luggage from La Guardia to Kennedy Airport, where a trained narcotics detection dog performed a "sniff test" on the luggage.

Although the Court found that the detention in this case was unreasonable because of its length, the Court held that the fourth amendment does not prohibit the temporary detention of personal luggage if a reasonable suspicion exists that the luggage contains narcotics. The Court justified the detention by weighing the governmental interest in curtailing the flow of narcotics, against the intrusion on the individual's fourth amendment interests. The

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123. *Id.* at 230. In applying the totality of the circumstances test the Court stated that an informant's reliability, veracity, and basis of knowledge were still highly relevant in deciding the value of the informant's tip. *Id.* at 238.

124. *Id.* at 238. The Court stated that the totality of the circumstances test allows a "balanced assessment of the relative weights of all the various indicia of reliability (and unreliability)." *Id.* at 234. The Nebraska Supreme Court in *State v. Arnold*, 214 Neb. 769, 336 N.W.2d 97 (1983), adopted the totality of the circumstances test, as it is applied to informants in cases involving a warrant, as established by the U.S. Supreme Court in *Gates. Arnold*, 214 Neb. at 774, 336 N.W.2d at 100.


126. *Id.* at 702.

127. *Id.* at 699.

128. *Id.* at 699. The dog had a positive reaction to one of the bags. The test was performed ninety minutes after the seizure of the luggage had occurred. *Id.*

129. *Id.* at 697-98. The Court stated, "the brevity of the invasion of the individual's fourth amendment interests is an important factor in determining whether the seizure is so minimally intrusive as to be justifiable on reasonable suspicion." *Id.* at 709. The Court determined that under the circumstances of *Place*, ninety-minutes was too long. *Id.*

130. *Id.* at 703-09. The Court felt that the strong governmental interest in curtailing the flow of narcotics outweighed the minimal intrusion of the "canine sniff" on the individual's fourth amendment interests. *Id.* at 703-07. While holding this particular detention unreasonable because of the length of the detention, the Court declined to adopt an outside time limitation for a permissible stop. *Id.* at 709-10.
Court stated that brief detentions of personal property can be so minimally intrusive on an individual's fourth amendment interests that strong governmental interests will justify a seizure of the property.\(^\text{131}\) The Court held that such a seizure could properly be based solely on articulable facts indicating that the property includes contraband or the evidence of a crime.\(^\text{132}\)

In \textit{Michigan v. Long},\(^\text{133}\) the Court broadened the scope of \textit{Terry} to include the warrantless search of an area beyond the detained person's immediate area of control.\(^\text{134}\) In \textit{Long}, police officers had searched the passenger compartment of Long's car after seeing a weapon on the floorboard of the car and after having conducted a pat down search of Long for weapons.\(^\text{135}\) The Court concluded that it was permissible to conduct a limited search of the passenger compartment of a car if the officer possessed a reasonable belief that the individual was dangerous or could have gained control of a weapon.\(^\text{136}\) The Court stated that as long as the officers possessed a reasonable belief that the suspect might be dangerous, the balancing test of \textit{Terry} weighed in favor of allowing the search of a passenger compartment for weapons.\(^\text{137}\) The Court ruled that it was not unreasonable for the officers to ensure that there were no other weapons in the car before allowing Long to reenter the vehicle.\(^\text{138}\)

In \textit{United States v. Hensley},\(^\text{139}\) the Court extended \textit{Terry} to include stops conducted during the investigation of completed felonies.\(^\text{140}\) In \textit{Hensley}, the officers had stopped the defendant on the basis of a flyer indicating that Hensley was wanted in connection with an investigation of an aggravated robbery.\(^\text{141}\) The Court stated that police can stop individuals to investigate past crimes, and reasoned that the law enforcement "interest in solving crimes and bringing offenders to justice" outweighs the individual's interest in not being subjected to a stop.\(^\text{142}\) The Court explained that when the in-
trusion was not more extensive than that allowed for investigation of ongoing or imminent crimes the interest of law enforcement outweighs the interest of the individual. The Court also determined that an officer could rely on a flyer to justify the stop of an individual, provided that the flyer was issued based on articulable facts creating reasonable suspicion that the person had committed a crime.

NEBRASKA INVESTIGATORY STOP CASES

As early as 1967, and prior to the United States Supreme Court decision in Terry, the Nebraska Supreme Court, in State v. Carpenter, discussed the need to balance conflicting governmental and individual interests in determining whether a stop is justified. In Carpenter, a police officer stopped a car at 3:00 a.m. in an area in which a burglary had recently occurred after observing the car proceed slowly through the neighborhood. In upholding the validity of the stop, the court stated that the case presented a conflict between the rights of an individual and the interests of the public in being protected by the police:

Individual rights on occasion must give way to the rights of society. This is the very purpose of law — to restrict the rights of the individual to provide protection for society. It is not possible to ignore the fact that police officers are charged with the duty to prevent crime as well as to detect it. Often an immediate inquiry is an indispensable attribute to the prevention and discovery of crime. This is particularly true where a moving vehicle is involved. Then, time is of the essence. Unless the vehicle is stopped and the occupants identified, it may be impossible to connect them to the area if a crime is later uncovered.

The Nebraska Supreme Court adopted the reasoning of the United States Supreme Court in Terry v. Ohio in its 1968 decision in State v. Dillwood. In Dillwood, two Omaha detectives stopped a car which they believed to have been used in the robbery of a fur store. One of the detectives had spotted the automobile in the immediate area of the robbery just moments after the alarm at the

143. Id.
144. Id. at 232. In Hensley, the reasonable suspicion for the flyer was based on an informant’s tip. Id. at 233-34.
145. 181 Neb. 639, 150 N.W.2d 129 (1967).
146. Id. at 644-45, 150 N.W.2d at 133.
147. Id. at 641-42, 150 N.W.2d at 132.
148. Id. at 644-45, 150 N.W.2d at 133. The court also stated that “[e]very temporary restriction of the absolute freedom of movement is not an arrest.” Id. at 646, 150 N.W.2d at 134.
149. 183 Neb. 360, 160 N.W.2d 195 (1968).
150. Id. at 360-62, 160 N.W.2d at 196-97.
store had sounded.\textsuperscript{151} In his police car, the detective followed the vehicle and radioed to another detective in an effort to try to apprehend the suspects.\textsuperscript{152} The two detectives blocked the path of the getaway car, at which point one of the passengers tried to run away.\textsuperscript{153} One detective apprehended the fleeing suspect while the second detective approached the car to apprehend the other passenger.\textsuperscript{154} The first detective uncovered a revolver in a pat-down search of the apprehended suspect while the second detective confiscated three fur coats lying on the back seat of the vehicle.\textsuperscript{155}

The Nebraska Supreme Court held that the stop of the vehicle was justified.\textsuperscript{156} Quoting from \textit{Terry}, the court stated that the standard for determining whether a search or seizure is justified was whether a man of "reasonable caution" would believe that the officer's actions were appropriate, based on the facts available to the officer at the time.\textsuperscript{157}

In justifying the stop of an individual for interrogation, the court in \textit{State v. Brewer},\textsuperscript{158} adopted the rationale of the United States Supreme Court in \textit{Adams}.\textsuperscript{159} In \textit{Brewer}, a police informant had told an officer about a robbery that might occur that evening.\textsuperscript{160} The information provided by the informant included the names of the parties who were going to commit the robbery, the probable location and time of the robbery, a description of the vehicles that would probably be used, and the weapons that would be used.\textsuperscript{161} When the robbery did not occur, the police staked out the home of one of the parties.\textsuperscript{162} When that suspect arrived at this location, the police stopped him.\textsuperscript{163} The police also stopped another car which was driven by another of

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\textsuperscript{151} Id. at 361, 160 N.W.2d at 196-97. The robbery occurred at 2:40 a.m. and the detective did not observe any other vehicles or pedestrians in the area, other than the vehicle in question. \textit{Id.}
\textsuperscript{152} Id. at 361-62, 160 N.W.2d at 197.
\textsuperscript{153} Id. at 362, 160 N.W.2d at 197.
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} Id. at 363, 160 N.W.2d at 198.
\textsuperscript{157} Id. at 362-63, 160 N.W.2d at 197-98. The court stated that "[t]he standard for determining probable cause for search and seizure is practical and not technical." \textit{Id.} at 362, 160 N.W.2d at 197.
\textsuperscript{158} 190 Neb. 667, 212 N.W.2d 90 (1973).
\textsuperscript{159} \textit{Id.} at 673, 212 N.W.2d at 93-94. \textit{See supra} notes 71-84 and accompanying text.
\textsuperscript{160} \textit{Brewer}, 190 Neb. at 669, 212 N.W.2d at 92. The informant was known to the police and had given correct information before. \textit{Id.}
\textsuperscript{161} \textit{Id.} at 670, 212 N.W.2d at 92. The informant had been asked to participate in the crime. \textit{Id.}
\textsuperscript{162} \textit{Id.} at 671, 212 N.W.2d at 93. The parties had seen the informant with the police earlier in the day and the police were aware of this. \textit{Id.}
\textsuperscript{163} \textit{Id.} at 671-72, 212 N.W.2d at 93. The police arrested him for giving false information after having asked him a few questions. \textit{Id.} at 672, 212 N.W.2d at 93.
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The police then searched this car and uncovered two guns. In upholding the stop and search, the Nebraska Supreme Court relied on Adams, stating that reasonable cause can be based on information received from an informant as well as the personal observations of a law enforcement officer.

The Nebraska Supreme Court, in State v. Ebberson, adopted the totality of the circumstances test shortly after it was established by the United States Supreme Court in United States v. Cortez. In Ebberson, two men had robbed a convenience store. Two officers who happened to be nearby at the time, received notice over their police radio that the store had just been robbed. The officers positioned themselves at the main intersection nearest to the store. Less than a minute later, the officers stopped a car carrying two men who matched the description that the officers had been given.

In upholding the stop, the court stated that the test to determine if a stop is justified was "whether the police officer has a reasonable suspicion founded upon articulable facts which indicate that criminal activity has occurred or is occurring and that the suspect may be involved." In determining whether this test had been satisfied, the court cited Cortez, stating that the totality of the circumstances must be taken into account. In Ebberson, the court found that the totality of the circumstances provided the officers with reasonable suspicion to conduct the stop. The circumstances considered by the court included the fact that the robbery was reported immediately to the officers involved who were a short distance away, that the street on which the car had approached the officers was one of the few thoroughfares from the robbery site, that there was little traffic, that the vehicle approached them within minutes from the direction of the robbery, and that the passengers of the vehicle matched the de-

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164. Id. at 672, 212 N.W.2d at 93.
165. Id. The parties in the second car were then placed under arrest. Id.
166. Id. at 673, 212 N.W.2d at 93-94.
168. Id. at 44-45, 305 N.W.2d at 907. United States v. Cortez, 449 U.S. 411 (1981), is discussed supra notes 95-103 and accompanying text.
169. Id. at 42, 305 N.W.2d at 906.
170. Id. The broadcast described the robbers and stated that they had a shotgun.
171. Id.
172. Id. at 42-43, 305 N.W.2d at 906. A subsequent search of the car revealed a shotgun, two money bags and some rolls of change. Id. at 43, 305 N.W.2d at 906.
173. Id. at 44, 305 N.W.2d at 907.
174. Id. The court stated that the totality of the circumstances includes all objective observations and considerations and suspicions drawn by trained and experienced officers by inference or deduction that the person stopped is about to be, is, or has been engaged in criminal behavior. Id. at 45, 305 N.W.2d at 907.
175. Id. at 45, 305 N.W.2d at 907.
scription the officers had received.\textsuperscript{176}

In \textit{State v. Kavanaugh},\textsuperscript{177} the defendant had been convicted of driving while under the influence of alcohol.\textsuperscript{178} This case began when a deputy sheriff had observed a pickup truck drive out of a mobile home business on a foggy night at 1:20 a.m.\textsuperscript{179} The deputy stopped the pickup truck.\textsuperscript{180} After the defendant rolled down his window, the deputy noticed the smell of alcohol and the red and watery appearance of the defendant's eyes.\textsuperscript{181} The defendant admitted to the officer that he had been drinking.\textsuperscript{182}

The Nebraska Supreme Court stated that the stop was justified in light of the totality of the circumstances.\textsuperscript{183} The court stated that not only the objective observations of the officer but also the inferences and deductions drawn by the officer must be considered in determining whether the totality of the circumstances justified a stop.\textsuperscript{184} In \textit{Kavanaugh}, the deputy stated that he had stopped the pickup because he thought a burglary might have just occurred at the mobile home business because other businesses in the area had recently been burglarized and vandalized.\textsuperscript{185} The court stated that these facts, along with the lateness of the hour and the fact that the deputy did not recognize the pickup as belonging to the owner of the business, warranted the deputy's belief that criminal activity might have occurred and that the driver of the pickup might have been involved.\textsuperscript{186}

In \textit{State v. Ege},\textsuperscript{187} an employee of a service station identified himself to a policeman and informed the officer that the driver of the car parked across the street had just driven up over the curb near the station and that the driver smelled strongly of alcohol when he came into the station.\textsuperscript{188} Before stopping the suspect's car, the officer first observed the car start and stop in the parking lot three or four times and then trailed the car a few blocks without witnessing any traffic

\textsuperscript{176} Id.
\textsuperscript{177} 230 Neb. 889, 434 N.W.2d 36 (1989).
\textsuperscript{178} Id. at 890, 434 N.W.2d at 37.
\textsuperscript{179} Id. The defendant was the operator of the mobile home business. Id.
\textsuperscript{180} Id.
\textsuperscript{181} Id.
\textsuperscript{182} Id. The defendant then was arrested after failing several field sobriety tests.
\textsuperscript{183} Id. at 897-98, 434 N.W.2d at 41.
\textsuperscript{184} Id. at 893, 434 N.W.2d at 38.
\textsuperscript{185} Id. at 893, 434 N.W.2d at 39.
\textsuperscript{186} Id.
\textsuperscript{187} 227 Neb. 824, 420 N.W.2d 305 (1988).
\textsuperscript{188} Id. at 825-26, 420 N.W.2d at 307. The officer was parked next to the station. Id. at 825, 420 N.W.2d at 307.
Upon stopping the car, the officer noticed a strong odor of alcohol and also noticed that the driver had slurred speech. The officer then had the driver perform field sobriety tests which the driver failed.

The Nebraska Supreme Court upheld the validity of the stop, stating that the officer had a reasonable basis to stop the car. In reaching this conclusion the court stated that "[a]n investigatory stop must be justified by an objective manifestation, based upon the totality of the circumstances, that the person stopped has been, is, or is about to be engaged in criminal activity." The court also stated that when information from an informant is used as a basis for the stop, the information supplied by the informant must contain "sufficient indicia of reliability." The court stated that a "detailed eyewitness report of a crime" by an informant provides its own indicia of reliability. The court also declared that a citizen informant is presumptively reliable if the informant had personally observed the commission of the crime.

In applying these principles, the court balanced several factors to determine that a reasonable basis for the stop had existed. The court considered the informant's reliability and credibility, the description of the vehicle, observation by the officer of any traffic violations, and the time lag between the stop and the report of the criminal activity. First, the court held that the information supplied by the informant was of the most reliable type. Second, the court stated that the description of the car and its location were very accurately reported. Third, the court stated that the officer observed erratic movement of the car while it was in the parking lot. Finally, the court stated that the time lag between the stop and the informant's report was very short. Based on these circumstances the court concluded that the stop was based on reasonable suspicion.

189. *Id.* at 826, 420 N.W.2d at 307.
190. *Id.*
191. *Id.*
192. *Id.* at 827, 420 N.W.2d at 308.
193. *Id.* at 826, 420 N.W.2d at 308.
194. *Id.*
195. *Id.*
196. *Id.* at 826-27, 420 N.W.2d at 308.
197. *Id.* at 827, 420 N.W.2d at 308.
198. *Id.*
199. *Id.* The informant had talked face to face with the officer, had personal knowledge of the driver's acts and condition, and had also identified himself by name, therefore, putting himself in a position to be held accountable for his report. *Id.*
200. *Id.* The informant pointed directly at the car. *Id.*
201. *Id.*
202. *Id.* at 827-28, 420 N.W.2d at 308.
and was legal.203

ANALYSIS

In State v. Bridge204 the Nebraska Supreme Court held that reasonable suspicion existed to stop an individual when the only basis for the stop was a tip received by the police from an informant who believed that the defendant was driving while intoxicated.205 The decision of the court in Bridge is consistent with the court's approach in past cases dealing with investigative stops. The court properly decided that the 'totality of the circumstances' test is the appropriate standard to apply in determining reasonable suspicion.206 The court was also correct in holding that an informant's tip can be relied upon to provide the required reasonable suspicion to make a stop.207

The significance of Bridge lies in the fact that the court extended the permissibility of an investigative stop to a situation in which the officer relied solely on an informant's tip to justify the stop.208 Based on past decisions, the court properly considered the reliability of the informant's tip as a key factor in determining whether the tip was sufficient to establish reasonable suspicion.209 The court also appropriately applied a presumption that a "detailed eyewitness report" by an informant who witnessed a crime is reliable.210 This approach to the use of tips by informants is not only consistent with the Nebraska Supreme Court's emphasis on reasonableness of the officer's actions in justifying the stop,211 but it also advances the public interest in effective law enforcement.212

203. Id. at 828, 420 N.W.2d at 308-09.
205. Id. at 786-87, 452 N.W.2d at 546-47.
206. See Bridge, 234 Neb. at 783, 452 N.W.2d at 545.
207. See id. See infra notes 258-99 and accompanying text.
208. See Bridge, 234 Neb. at 783, 452 N.W.2d at 545. See supra notes 49-203 and accompanying text.
209. See Bridge, 234 Neb. at 783, 452 N.W.2d at 545. See infra notes 261-63 and accompanying text.
210. See Bridge, 234 Neb. at 783, 452 N.W.2d at 545. See infra notes 282-84 and accompanying text.
211. See State v. Ege, 227 Neb. 824, 420 N.W.2d 305 (1988) (balancing several factors to determine that a reasonable basis for the stop existed); State v. Ebberson, 209 Neb. 41, 305 N.W.2d 904 (1981) (stating that the test to determine if a stop is justified is "whether the police officer has a reasonable suspicion founded upon articulable facts which indicate that criminal activity has occurred or is occurring and that the suspect may be involved"); State v. Dillwood, 183 Neb. 360, 160 N.W.2d 195 (1968) (stating that the standard for determining whether a search or seizure is justified was whether a man of "reasonable caution" would believe that the officer's actions were appropriate).
212. See NEB. REV. STAT. 29-829 (Reissue 1989) (recognizing and promoting this public interest, the Nebraska legislature enacted a statute which allows police officers to stop an individual whom they reasonably suspect is about to commit, has committed or is in the process of committing a crime). Public opinion polls have clearly shown
Governmental Interests v. Individual Interests

The cases which have relied on *Terry v. Ohio*, including *Bridge*, can be summarized as supporting the same rule. The rule being that limited intrusions upon an individual's personal freedom are constitutionally permissible if the police officer has an articulable suspicion that the suspect is engaged in criminal activity. The existence of articulable suspicion causing the balance between an individual's right to personal freedom and the public interest to fall in favor of the latter.

Both the United States Supreme Court and the Nebraska Supreme Court have repeatedly recognized that the fourth amendment prohibits only those searches and seizures which are unreasonable. Both Courts have consistently balanced the various governmental interests involved against the individuals' fourth amendment interests in determining whether there was reasonable suspicion to conduct an investigative stop.

Various governmental interests have been held to support investigative stops depending on the type of situation involved. These interests include 'the protection of the arresting or investigating officer, the prevention of the flight of criminals and the orderly completion of a search, the curtailling of the flow of drugs, the aiding in solving crime and bringing criminals to justice, the protection of the public and the prevention of crime, and the prevention of drunk driving.'

In *Bridge*, the Nebraska Supreme Court held that the govern-

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that citizens want to encourage the police to investigate all stages of criminal activity regardless of whether it involves past, present or future crimes. Harper, *Has The Replacement of "Probable Cause" With "Reasonable Suspicion" Resulted in the Creation of the Best of All Possible Worlds?*, 22 AKRON L. REV. 13, 14 (1988). The public interest involves the safety of citizens and the public welfare which can conflict with the fourth amendment rights of individuals. *Id.*


216. *Id.*

217. *See supra* notes 49-203 and accompanying text.

218. *See supra* notes 49-203 and accompanying text.

219. *See infra* notes 219-24 and accompanying text.


mental interest in the prevention of crime and the preservation of evidence outweighed Bridge's fourth amendment interests.\textsuperscript{226} The court was clearly correct in stating that these interests were relevant in this case, because if Bridge had not been stopped a crime would have continued and some evidence would not have been gathered and preserved.\textsuperscript{227} However, the court failed to discuss the stronger governmental interest present in protecting the public safety by preventing drunk driving.\textsuperscript{228}

The decision in \textit{Bridge} correctly approached the situation by balancing the competing interests involved.\textsuperscript{229} In determining whether it was reasonable to conduct a stop, courts must balance the interests of the government against the interests of the individual.\textsuperscript{230} However, the court should have stressed the governmental interest in protecting the safety of the public as well as the interests of preventing crime and preserving evidence.\textsuperscript{231}

\textit{Totality of the Circumstances}

Bridge had argued that there was a complete lack of any objective evidence on which the requisite reasonable suspicion to justify the stop could be based.\textsuperscript{232} The court, however, rejected Bridge's argument, stating that consideration of all the factors present was sufficient to establish reasonable suspicion.\textsuperscript{233} In doing so, the court properly held that the appropriate standard to apply in determining

\textsuperscript{226} \textit{Bridge}, 234 Neb. at 784, 452 N.W.2d at 545.
\textsuperscript{227} \textit{See id.}
\textsuperscript{228} \textit{Id.} In \textit{Carpenter}, the Nebraska Supreme Court relied on the governmental interest in protecting the public to justify the stop of a vehicle. \textit{Carpenter}, 181 Neb. at 645, 150 N.W.2d at 133. In that case the police were protecting the property of the public from burglaries. \textit{Id.} at 642-44, 150 N.W.2d at 132. Certainly the governmental interest in protecting the physical safety of the public by keeping drunk drivers off the road is a stronger interest than simply protecting property. \textit{See id.} at 645, 150 N.W.2d at 133.

The Supreme Court of North Dakota in the case of \textit{Wibben v. North Dakota State Highway Commissioner}, 413 N.W.2d 329 (N.D. 1987), held that the individual's fourth amendment interest was minimal in comparison to the governmental interest in preventing the individual from driving while intoxicated. \textit{Wibben}, 413 N.W.2d at 333. The court stated that the safety of the public is threatened by a person who operates a motor vehicle while intoxicated. \textit{Id.} The court in \textit{Bridge} should have made the same argument since the safety of the public was clearly threatened as much by Bridge who had an alcohol level of .284, almost three times over the legal limit. \textit{Bridge}, 234 Neb. at 783, 452 N.W.2d at 545.

\textsuperscript{229} \textit{See Bridge}, 234 Neb. at 784, 452 N.W.2d at 545.
\textsuperscript{230} \textit{See Terry v. Ohio}, 392 U.S. 1, 21, 24-27 (1968). \textit{See also supra} notes 49-203 and accompanying text.
\textsuperscript{231} \textit{See supra} notes 222-24 and accompanying text.
\textsuperscript{233} \textit{Bridge}, 234 Neb. at 786, 452 N.W.2d at 546-47.
reasonable suspicion is the totality of the circumstances test.\(^{234}\)

In *United States v. Cortez*,\(^ {235}\) the United States Supreme Court stated that the totality of the circumstances test is comprised of two elements.\(^ {236}\) First, the assessment of the situation must be based on all of the circumstances.\(^ {237}\) Second, the consideration of all the circumstances must create a suspicion that the individual being stopped is participating in wrongdoing.\(^ {238}\) The circumstances relied on by the Court in *Cortez* in upholding the stop of a vehicle containing illegal aliens consisted solely of circumstantial evidence and inferences drawn by the officers over a period of two months.\(^ {239}\) The stop of the vehicle in question was based solely upon the officers theory concerning when, where, and what type of vehicle illegal aliens might be transported in.\(^ {240}\) Other than the fact that the vehicle which the officers stopped matched the theory they had developed, there were no other objective factors on which the officers could have relied in making the stop.\(^ {241}\)

Unlike *Cortez*, the court in *Bridge* was able to point to specific, observable events in addition to other factors in considering the totality of the circumstances present.\(^ {242}\) In *Bridge*, the observable circumstances considered by the court were that (1) the informant smelled alcohol on Bridge, (2) the informant saw Bridge get into the car and drive away, and (3) the informant described the vehicle in detail and knew where it was going.\(^ {243}\)

The circumstances presented in *Bridge* created a stronger suspicion that criminal activity was occurring than did the circumstances present in *State v. Kavanaugh*,\(^ {244}\) where a police officer had stopped a pickup simply because it was leaving a business late at night.\(^ {245}\) In *Kavanaugh*, the court considered three circumstances in upholding the stop: (1) the officer did not recognize the pickup as belonging to the owner of the business; (2) businesses in the area had been re-

\(^{234}\) *Id.* at 783, 452 N.W.2d at 545.  
\(^{236}\) *Id.* at 418.  
\(^{237}\) *Id.*  
\(^{238}\) *Id.*  
\(^{239}\) *Id.* at 412-15. The factors the Court held established reasonable suspicion were that (1) the officers knew the area was used as a crossing point for illegal aliens, (2) it was common for aliens to be lead through the desert to the highway from the border, and (3) based on clues collected over two months prior to the stop, one guide had established a pattern of operations. *Id.* at 419.  
\(^{240}\) *Id.* at 413-15.  
\(^{241}\) *Id.* at 415.  
\(^{242}\) *Bridge*, 234 Neb. at 786, 452 N.W.2d at 547.  
\(^{243}\) *Id.*  
\(^{244}\) 230 Neb. 889, 434 N.W.2d 36 (1989).  
\(^{245}\) *Id.* at 893, 434 N.W.2d at 39.
cently burglarized and vandalized; and (3) it was late at night.\textsuperscript{246} Other than these circumstances, there was no unequivocal evidence to indicate that criminal activity was afoot.\textsuperscript{247} The court, however, held that these circumstances were sufficient to create reasonable suspicion that criminal activity had occurred.\textsuperscript{248} The court explained that the totality of the circumstances test allows an officer to rely on inferences and deductions in determining whether reasonable suspicion exists.\textsuperscript{249}

In \textit{Bridge}, based on information given, the officer was able to point to an unequivocal circumstance to show that it was possible that criminal activity was occurring.\textsuperscript{250} The Special Services Officer had smelled alcohol on Bridge's breath and had seen Bridge drive away.\textsuperscript{251} Considering the totality of the circumstances, it is clearly more rational to infer that a person may be driving while under the influence when alcohol was smelled on the driver's breath by a reliable informant than it would be to infer that a burglary had occurred simply because a car was leaving a business late at night.\textsuperscript{252}

The dissent in \textit{Bridge} argued that the only inference that could be drawn from the circumstances was that Bridge had been drinking, because the informant had only smelled alcohol on Bridge's breath and had not observed any other signs of behavior that indicated intoxication.\textsuperscript{253} Certainly, as the majority opinion concluded, it is a rational inference from the fact that alcohol was smelled on Bridge's breath that he may have been driving while under the influence.\textsuperscript{254} The dissent however, is clearly wrong in limiting the possible inference to solely that Bridge had taken a drink.\textsuperscript{255}

The court in \textit{Bridge} was correct in applying the totality of the circumstances test to determine the existence of reasonable suspicion.\textsuperscript{256} It would be impossible to judge the reasonableness of actions taken by the police if the whole picture were not considered.\textsuperscript{257} Thus, the court took into consideration not only the fact that alcohol was smelled on Bridge's breath, but also the fact that the officer per-
sonally observed Bridge operating a motor vehicle.\textsuperscript{258}

\textbf{Informants' Tips}

In order for law enforcement to be effective, police officers need to be able to rely on information provided by informants.\textsuperscript{259} Supporting this proposition, both the United States Supreme Court and the Nebraska Supreme Court have been consistent in determining what constitutes reasonable suspicion in cases that have involved tips by informants.\textsuperscript{260} When reasonable suspicion to make a stop is based on a tip from an informant, the key issue is whether the information supplied by the informant is adequately reliable and complete to make it sufficiently likely that criminal conduct has occurred, is occurring, or is about to occur.\textsuperscript{261}

The Courts have been consistent in stating that a key consideration in dealing with informants tips is the reliability of the informant.\textsuperscript{262} Whether the tip contains sufficient "indicia of reliability" will determine whether it can provide reasonable suspicion for a stop.\textsuperscript{263} The reliability of the tip depends upon such factors as the anonymity of the informant, the level of detail in the tip, and the interval between when the informant observed the situation and when the tip was made.\textsuperscript{264}

In analyzing the reliability of a tip, the United States Supreme Court in \textit{Adams v. Williams}\textsuperscript{265} pointed to similar factors as did the Nebraska Supreme Court in \textit{Bridge}.\textsuperscript{266} In \textit{Adams}, the informant was known by the police officer and approached the officer to inform him that a person in a nearby car was carrying drugs and had a gun.\textsuperscript{267} In \textit{Adams}, the Court held that the informant was sufficiently reliable since the officer knew the informant, the informant had given the officer information in the past, the informant had freely come forward on his own, and the information was verifiable immediately at the scene.\textsuperscript{268} In \textit{Bridge}, the officer also knew the informant, the informant came to the officer with the information, and the interval be-

\textsuperscript{258} \textit{Bridge}, 234 Neb. at 786, 542 N.W.2d at 546-47.
\textsuperscript{260} \textit{See supra} notes 71-84, 113-24, 158-66, 187-203.
\textsuperscript{261} \textit{3 W. LAFAVE, SEARCH AND SEIZURE: A TREATISE ON THE FOURTH AMENDMENT} § 9.3 at 475 (2d ed. 1987).
\textsuperscript{262} \textit{See supra} notes 71-84, 187-203 and accompanying text.
\textsuperscript{263} \textit{Adams v. Williams}, 407 U.S. 143, 147 (1972). The Court in \textit{Adams} pointed out that the reliability of informant tips can vary greatly. \textit{Id.}
\textsuperscript{265} \textit{Adams}, 407 U.S. at 144-45.
\textsuperscript{266} \textit{Id.} at 146-47.
tween the tip and when the officer was able to investigate the tip was short.269 However, in Bridge, the indicia of reliability were stronger because the informant was a fellow employee of the police department.270 Generally, from the perspective of a police officer, and in light of the reasonable person standard, the reliability of a fellow employee of the police department would seem greater than if the informant is simply a person whom the officer happens to know.271

In Illinois v. Gates,272 the Court held that a tip by an anonymous informant, by itself, did not establish probable cause to issue a search warrant.273 The Court stated that the tip provided nothing on which the reliability of the informant could be determined.274 However, the Court recognized that information obtained through subsequent investigation could establish the reliability of the informant's tip.275 In doing so, the Court indicated that the totality of the circumstances test could be used to determine the reliability of a tip.276 In Gates, the totality of the circumstances consisted of not only the tip itself but also the information obtained by subsequent investigation that verified parts of the tip.277

In Bridge, however, the tip itself provided the basis for determining its reliability in order for the officer to form the reasonable suspicion to make the stop.278 The informant was an employee of the police department and gave a detailed eyewitness report of a possible crime.279 The tip was not simply speculation as to the possibility that a crime might occur sometime in the future, on the contrary, the tip was based on a personal observation of events and circumstances indicating that a crime might be occurring.280 A detailed eyewitness tip of this kind provides its own indicia of reliability.281 By providing this type of tip, the informant has placed himself in a position to be held accountable by the police if the information turns out to be false.282

In a case similar to Bridge, the Nebraska Supreme Court in State
v. Ege held that an informant is presumed to be reliable if the informant had observed the crime being committed. The court stated that "[a]n informant's detailed eyewitness report of a crime supplies its own indicia of reliability." In Ege, the informant was a service station employee who had witnessed an individual drive over a curb and had smelled alcohol on the person's breath when the person entered the station. In providing the information the informant identified himself and provided a detailed report of what he had observed. Prior to making the stop the officer had not noticed any traffic violations but did observe the individual stop and start his car three or four times in the parking lot.

Although there are two possible distinctions between Ege and Bridge, neither would have been sufficient to warrant a different result in Bridge. First, the officer in Ege had observed some erratic movement of the individual's car. Second, the informant in Bridge was an employee of the police department while the informant in Ege was not.

The first distinction should not be sufficient to warrant a different result in Bridge. The erratic driving observed by the officer in Ege did not amount to a traffic violation of any kind. Therefore, the observation of the erratic movement of the individual's vehicle by the officer simply added to the suspicion that the individual may have been intoxicated. The court emphasized that reasonable suspicion for a stop could be established by a detailed eyewitness report by an informant. Therefore, the fact that the officer in Bridge had not observed any erratic driving should not affect whether reasonable suspicion existed for the stop.

The second distinction between the cases provides a stronger basis for determining that reasonable suspicion existed in Bridge than in Ege. Although the presumption is that any informant is presumed to be reliable if they have observed a crime being committed, that
premise should be stronger if the informant is an employee of the police department himself rather than someone who is not a police employee.\textsuperscript{297}

The court in Bridge correctly considered the reliability of the informant in determining whether the tip was sufficient to provide reasonable suspicion for a stop.\textsuperscript{298} The court was also correct in holding an informant to be presumptively reliable if they were an eyewitness to the crime and have given a detailed report of what has happened.\textsuperscript{299}

CONCLUSION

In State v. Bridge\textsuperscript{300} the court held that reasonable suspicion could be established based on the single fact that an informant had smelled alcohol on the breath of the suspect. The court correctly applied the totality of the circumstance test to determine whether reasonable suspicion to conduct the stop existed. The court was also correct in focusing on the reliability of the informant in determining whether the tip should be a circumstance to be considered. The fourth amendment only protects individuals from unreasonable searches and seizures and therefore all the circumstances surrounding a stop should be considered in determining whether reasonable suspicion exists. Therefore, reliable tips should be a circumstance that is considered in determining the reasonableness of a stop.

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\begin{itemize}
\item \textsuperscript{297} See supra notes 266-70 and accompanying text.
\item \textsuperscript{298} See supra notes 261-70 and accompanying text.
\item \textsuperscript{299} See supra notes 282-87 and accompanying text.
\item \textsuperscript{300} State v. Bridge, 234 Neb. 781, 452 N.W.2d 542 (1990).
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