

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 11, 2009

David R. Schanker
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2008AP2041

STATE OF WISCONSIN

Cir. Ct. Nos. 2007TR4569
2007TR4708

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF SHEBOYGAN,

PLAINTIFF-RESPONDENT,

V.

EMILY R. ALSHESKIE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 BROWN, C.J.¹ Emily R. Alsheskie appeals from a judgment convicting her of operating a motor vehicle while intoxicated. She argues that the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

deputy lacked reasonable suspicion to detain her. She theorizes that the stop was based on a cell-phone call by an anonymous tipster to a dispatcher and the dispatcher then relayed a significantly different version to the deputy in the field. She therefore reasons that the reliance by the deputy on that information was invalid as a matter of law and that nothing the deputy saw first-hand independently salvaged the stop.

¶2 Our response is as follows: First, anonymous or not, the tipster's information was based on an ongoing, real-time, eyewitness account such that veracity was high and certain details of the information were corroborated by the investigating officer making the account reliable. Second, while the dispatcher put a "spin" on the information that was incorrect, the substance of the relay was correct. Third, the deputy also relied on independent, first-hand observations of unlawful driving behavior before making the stop. We affirm.

¶3 On November 16, 2007, at approximately 10:30 p.m., a tipster reported a suspected drunken driver to the sheriff's department. The tipster followed the driver's vehicle while contemporaneously providing the dispatcher with his personal observations. The transcript of the dispatch recording contains the following:

Dispatcher: Sheriff's Department.

Caller: Yes, I would like to report a possible drunken driver.

Dispatcher: Okay and where is that happening?

Caller: On Highway 23, eastbound.

Dispatcher: From where?

Caller: We just passed junction A, west of Plymouth.

Dispatcher: Okay, hang on, I think. Do you have a description of it?

Caller: Yes, it's a white SUV. Possibly a Chevrolet Trailblazer, with personalized plates of bulldog.

....

Dispatcher: Okay. What's the driver doing?

Caller: Just all over the place. Really riding the shoulder, then overcorrecting, you know, and then giving more to the middle.

....

Dispatcher [to Deputy]: My driver said that he, that the driver is riding on the shoulder, crossing over the center line and this has been going on for some time.

¶4 The dispatcher asked for the tipster's name; cellular phone number; and the make, model, and color of his car, which the tipster provided. The tipster also continued to provide information relating to the driver's location and the control of the vehicle, telling the dispatcher that the driver had "sped up" and was "swerving again." The dispatcher then relayed to the deputy their location and that "the driver is continuing to speed up, slow down, ride the shoulder and cross over the center line."

¶5 When the deputy finally came into view of the suspect vehicle, the deputy confirmed that it was a white Chevy Trailblazer SUV with the license plate "BLLDOGZ," and the vehicle was at the location provided by the tipster. At this time, the deputy observed that the vehicle was stopped in an intersection, with the "back tires of the vehicle ... parked in the crosswalk [and over] the large stop line." The vehicle remained in this stopped position for what the deputy perceived to be an unusual period even though there were no pedestrians or oncoming traffic that would have necessitated the long stop.

¶6 When the suspect resumed driving, the deputy turned on his emergency lights. Two cars traveling in front of the suspect vehicle pulled over, but the driver of the suspect vehicle continued driving. The deputy then turned on his siren a few different times. Still, the driver continued on for four to five city blocks. When it appeared that the vehicle was finally going to pull over, the deputy verified with the dispatcher that the informant's identity had been established. The vehicle then finally pulled over on a side street. The deputy approached the vehicle and detected an "odor of intoxicants coming from the inside of the vehicle." The deputy identified the driver as Alsheskie and administered several field sobriety tests, all of which Alsheskie failed.

¶7 The question of whether an investigative stop meets constitutional and statutory standards is a question of law, which we review de novo. *State v. Rutzinski*, 2001 WI 22, ¶12, 241 Wis. 2d 729, 623 N.W.2d 516. An investigative stop meets constitutional requirements when it is supported by reasonable suspicion. *Id.*, ¶¶12-14 (citing U.S. Const. amend. IV; Wis. Const. art I, § 11). Reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

¶8 Courts recognize that tips fall on a spectrum of reliability. *See Rutzinski*, 241 Wis. 2d 729, ¶17. Whether a particular tip is reliable and supports reasonable suspicion for an investigative stop depends on the tipster's veracity and basis of knowledge. *See id.*, ¶18. Veracity and basis of knowledge are not discrete elements, but rather are viewed in light of all the circumstances. *Id.* "A deficiency in one consideration may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id.* (citation omitted).

¶9 The veracity of tips ranges from high to low. Courts attribute the highest degree of veracity to a tipster who is personally known to police and has given police reliable tips in the past. *See Adams v. Williams*, 407 U.S. 143, 146-47 (1972). When a tipster has a high degree of veracity, the tip is sufficiently reliable to justify an investigative stop. *Id.* Courts reason that with such a “strong indicia of the informant’s veracity, there need not necessarily be any indicia of the informant’s basis of knowledge.” *Rutzinski*, 241 Wis. 2d 729, ¶21. When an informant has a lesser degree of veracity, such as when police know only a tipster’s name, courts require at least some indication of the tipster’s basis of knowledge. *State v. Kolk*, 2006 WI App 261, ¶¶2, 19, 298 Wis. 2d 99, 726 N.W.2d 337. And when police are faced with an anonymous tipster, courts require a strong indication of the tipster’s basis of knowledge to find that the tip is reliable. *Rutzinski*, 241 Wis. 2d 729, ¶25. An officer may infer a tipster’s basis of knowledge either from an eyewitness account or the corroboration of details that demonstrate the tipster’s inside knowledge. *See id.*, ¶33. Ultimately, it is the State’s burden to prove a tipster’s veracity and basis of knowledge by clear and convincing evidence. *See State v. Kieffer*, 217 Wis. 2d 531, 541-42, 577 N.W.2d 352 (1998) (addressing warrantless searches).

¶10 Without veracity, basis of knowledge, or corroboration of significant details, a tip is not sufficiently reliable to support reasonable suspicion for an investigative stop. *See Rutzinski*, 241 Wis. 2d 729, ¶¶18-25; *Florida v. J.L.*, 529 U.S. 266, 269-70 (2000). In *J.L.*, 529 U.S. at 271, the Supreme Court held that the tip was unreliable where the tipster was not named and gave no basis for knowing about the crime. The *J.L.* tipster called police to report “that a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun.” *Id.* at 268. Police went to the bus stop, located a black male wearing a plaid shirt, and

without independently observing any suspicious behavior, initiated an investigative stop and found a concealed weapon. *Id.* at 268-69. The court held the tip was unreliable because “[a]ll the police had to go on ... was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L.” *Id.* at 271. Therefore, the tip in *J.L.* fell outside the spectrum of reliability. *Id.*

¶11 Conversely, a tip is firmly within the reliability spectrum when a tipster provides his or her name and relays an eyewitness account. *State v. Sisk*, 2001 WI App 182, ¶¶3, 8-11, 247 Wis. 2d 443, 634 N.W.2d 877. In *Sisk*, the court held a tipster was reliable because he provided what he said was his name and reported that he saw two armed men enter a building. *Id.*, ¶¶3, 9. Even though police corroborated only innocent details—the suspects’ descriptions and location—the court found those details along with the named tipster’s eyewitness account supported reasonable suspicion. *Id.*, ¶¶3, 8-11.

¶12 Here, Alsheskie argues that the tip was anonymous because “the identity of the cell phone caller ... was not conveyed to the Deputy until after the detention had been initiated.” That contention is incorrect. The deputy learned that the tipster had provided his identity before the actual stop. But, more to the point, anonymous or not, this tipster demonstrated a high degree of veracity and basis of knowledge such that, on the sliding scale, this tipster did not slide very far.

¶13 The facts here demonstrate that the tipster voluntarily left pertinent identifying information for the whole universe of the sheriff’s department to use and digest. That is pretty symptomatic of a reliable person. And, even more

importantly, the tipster rendered ongoing up-to-the-minute eyewitness account of the Chevy Trailblazer's misdeeds. Whether the deputy had the tipster's name or not, he did know that the tipster was giving a running account of the Chevy Trailblazer's misdeeds. So, obviously, the deputy knew that this tipster was in a position to give an eyewitness account. In the mind of a reasonable police officer, it is this real-time assessment that enhances reliability, not whether the deputy happens to have been provided by the dispatcher with the tipster's name.

¶14 The tipster's information was so thorough that the deputy was soon in a position to corroborate certain details given by the tipster. For example, based on the tip, the deputy was able to locate the white Chevy Trailblazer. And, once the deputy was in view of the car, he was able to verify that the suspect car indeed had a personalized plate of "BLLDOGZ." So, there was independent corroboration of innocent details provided by the tipster.

¶15 We conclude that the tipster was not anonymous. But even if we assume for the sake of argument that he was, the information provided was of high veracity, due to its ongoing account and factual identifying information of the suspect vehicle, and that corroboration of innocent details made it also of high reliability.

¶16 We stop for a moment to address Alsheskie's contention that our analysis somehow changes because the dispatcher conveyed some incorrect information to the deputy regarding what the tipster related. Alsheskie's argument is based on the fact that the tipster never said the Chevy Trailblazer went over the center line, but the dispatcher relayed that information to the deputy nonetheless. This is a red herring argument. Regardless of the exact words used by the dispatcher, the deputy was able to glean the following information which was

correct: The tipster was following the suspect driver; the suspect was riding on the shoulder and was driving in an erratic manner indicative of poor management and control of the vehicle. That the exact words of the tipster were not conveyed to the deputy was of little moment. The deputy had the picture and the picture was ongoing and in real-time, “speeding up” and “swerving again.” The claim that the dispatcher’s relaying of the information somehow invalidates the strength of the report is rejected.

¶17 Moreover, the information provided by the tipster was not the sole basis for the stop. The deputy’s independent observation of suspicious behavior provided him with additional reasonable suspicion that the driver of the vehicle was engaged in unlawful behavior. First, the deputy observed that the driver of the Chevy Trailblazer was stopped with its rear wheels in the middle of the cross-walk and the majority of the vehicle was in the lane traffic. This, in itself is a violation of the law. WIS. STAT. § 346.52. Automobiles are required to remain behind the cross-walk.

¶18 Alsheskie argues that we should discount this because it was possible that the vehicle had come to a complete stop at the intersection and then stopped again before proceeding. But, the law does not require a law enforcement officer to rule out innocent explanations before making an investigatory stop. Nor does the law require that the officer observe criminal behavior in order to draw an inference that criminal activity is afoot. *State v. Richardson*, 156 Wis. 2d 128, 142, 456 N.W.2d 830 (1990). Reasonable suspicion may be predicated on “lawful but suspicious conduct, if a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn.” *State v. Waldner*, 206 Wis. 2d 51, 60, 556 N.W.2d 681 (1996). Here, the deputy thought that the vehicle remained with the tires over the

cross-walk for an inordinate period of time. That is enough to raise suspicion in a reasonable police officer's mind that something is askew and provides an independent basis for the stop.

¶19 There is yet more information to support the stop. In *State v. Young*, 2006 WI 98, ¶52, 294 Wis. 2d 1, 717 N.W.2d 729, our supreme court held that a seizure does not actually occur until a law enforcement officer physically detains a suspect. The mere show of authority is not the point at which seizure occurs. *Id.*, ¶65. As such, all behavior exhibited prior to the actual seizure may be used by law enforcement to assess suspicious behavior. *See id.*, ¶¶71-75. This means, in particular, that flight may be used as an indicator. *Id.*, ¶75. Therefore, in addition to the information provided by the tipster, and in addition to the observation by the deputy that the driver of the Trailblazer remained in the cross-walk for an unusual length of time, the driver did not stop when the deputy activated the squad's emergency lights and did not stop when the deputy engaged the siren. Rather, four blocks and a turn went by before the driver finally stopped. This fleeing is another indicator of suspicious behavior.

¶20 So, bottom line, the deputy here had plenty of reasons to stop Alsheskie. We affirm the stop.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

