

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 11, 1999**

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

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

**No. 98-3541-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**PAUL RUTZINSKI,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Affirmed.*

FINE, J. Paul Rutzinski appeals his conviction for driving while intoxicated, entered on his no-contest plea. He contends that the police officer did

not have lawful authority to stop him because the stop was predicated on an alleged anonymous tip.<sup>1</sup> We affirm.

Rutzinski was arrested in Greendale, Wisconsin, shortly after the Greendale police department received a call that a black pickup truck was being driven erratically. The caller was driving in traffic with the pickup truck and kept in contact with the police dispatcher until after the truck was stopped. Indeed, after the officer who arrested Rutzinski, who was driving the black pickup truck, pulled in behind the truck, the caller told that to the Greendale police dispatcher.

Before he entered his plea, Rutzinski moved to suppress all evidence that flowed from the officer's stop of his truck, contending that the caller's "tip" was insufficiently corroborated. The only person who testified at the suppression hearing was the police officer who made the stop. He told the trial court that he heard the police dispatch, pulled in behind the truck, and made the stop. He also told the trial court that he did not personally see the truck or its driver do anything either dangerous or illegal. The trial court denied Rutzinski's motion.

Our standard of review is mixed. The trial court's findings of fact are invulnerable on appeal unless they are "clearly erroneous." RULE 805.17(2), STATS.; *see also State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). On the other hand, "whether a stop meets statutory and constitutional standards is a question of law subject to *de novo* review." *Krier*, 165 Wis.2d at 676, 478 N.W.2d at 65. Under the constitutions of both the United States and Wisconsin, police may justifiably rely on an anonymous tip in stopping a citizen

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<sup>1</sup> A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty or no-contest plea. Section 971.31(10), STATS.

“when details of the anonymous informant’s predictions can be verified, [and thus] there is reason to believe that the caller is honest and well-informed about the illegal activity.” *Ibid.* The tip received by the Greendale police here was partially “anonymous,” in the sense that the name and address as well as other details of the caller were not known to the police when he called to report that the black pickup truck was being driven erratically. It was more than the typical anonymous call, however, because the caller told the Greendale police that he was driving in traffic with the truck and, indeed, told the dispatcher when the officer’s squad car appeared. Thus, unlike the usual anonymous caller, who would face no untoward consequences for a false tip motivated by malice, the caller here was on the scene. Thus, the tip here was not a ““fleshless anonymous”” telephone call that could have been that of a ““prankster, rival, or misinformed individual.”” *See State v. Williams*, 214 Wis.2d 412, 423, 570 N.W.2d 892, 896 (Ct. App. 1997) (quoting *United States v. Roberson*, 90 F.3d 75, 80–81 (3d Cir. 1996)), *rev’d*, No. 96-1821-CR (Wis. Apr. 27, 1999). A stop is lawful if it is ““reasonable under all the facts and circumstances.”” *Williams*, slip op. at 9 (quoting *State v. Richardson*, 156 Wis.2d 128, 139–140, 456 N.W.2d 830, 834 (1990)). The stop here amply meets that test.

*By the Court.*—Judgment affirmed.

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

