

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 7, 2001

Cornelia G. Clark
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* WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1604-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JEFFREY G. STEFFENSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: WILLIAM H. CARVER, Judge. *Affirmed.*

¶1 BROWN, P.J.¹ Jeffrey G. Steffensen appeals from a judgment convicting him of operating a motor vehicle with a prohibited alcohol

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

concentration pursuant to WIS. STAT. § 346.63(1)(b). The arresting officer conducted a *Terry*² stop of Steffensen's vehicle based upon information from a citizen eyewitness that the vehicle was being operated in an erratic fashion. Steffensen contends that because the officer relied solely upon an anonymous tip, the officer did not have reasonable suspicion to stop his vehicle or probable cause to arrest. As we explain below, we do not view this case as involving an anonymous informant, but rather an identified citizen informant. We conclude that the particular reliability of the tip provided the officer with reasonable suspicion to conduct a *Terry* stop and that probable cause supported the arrest. We therefore affirm the judgment of the trial court.

¶2 The relevant facts are not in dispute. On September 18, 2000, a police officer received a radio dispatch that a Winnebago county deputy coroner called the department from her car to report a vehicle being driven recklessly and "all over the road." The tipster described the vehicle and gave its license plate number. A license plate check revealed the vehicle was registered to Steffensen and gave his address. After searching unsuccessfully for a few minutes for the vehicle, the officer proceeded to Steffensen's home where he observed Steffensen turn on to his own street. The officer pulled him over after observing him drive for about 200 feet. At that time, the officer did not notice any erratic driving.

¶3 The officer testified he noticed a strong odor of an intoxicant emanating from the vehicle and that Steffensen had bloodshot, glassy eyes and slurred speech. After conducting field sobriety tests at the scene, he placed Steffensen under arrest. The trial court found that the officer had reasonable

² *Terry v. Ohio*, 392 U.S. 1 (1968).

suspicion to stop Steffensen and then probable cause to arrest at the scene. The trial court based its decision on the officer's reliance of the facts provided by the informant and the personal observations made by the officer.

¶4 In reviewing a trial court's denial of a motion to suppress, we will "uphold a trial court's findings of fact unless they are against the great weight and clear preponderance of the evidence." *State v. Richardson*, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). However, whether a search or seizure passes statutory and constitutional muster are questions of law that we review de novo. *Id.* at 137-38. The key inquiry in this determination is whether reasonable suspicion exists that a person is committing, is about to commit or has committed a crime. *Terry v. Ohio*, 392 U.S. 1, 30 (1968); WIS. STAT. § 968.24 (codifying the Supreme Court's ruling in *Terry*). The Court defines reasonable suspicion by looking at the "totality of the circumstances." *United States v. Cortez*, 449 U.S. 411, 417 (1981).

¶5 Where, as here, the information possessed by the police before the stop stems solely from an informant's tip, the determination of reasonable suspicion will focus on the weight and reliability due that tip. *See Alabama v. White*, 496 U.S. 325, 330 (Ohio 1990). The tip itself must contain sufficient indicia of reliability to justify the investigative stop. Factors considered most relevant are the informant's veracity, reliability and basis of knowledge. *Id.* at 328.

¶6 Important to the examination of these factors is the type of informant involved in the case. A truly anonymous informant, for example, is comparatively unreliable and his or her tip may require independent police corroboration. *Id.* at 329. Such corroboration may require the police officer to personally observe the illegality, *see Florida v. J.L.*, 529 U.S. 266 (2000), or to confirm the informant's

ability to predict future behavior, *see White*, 496 U.S. at 331-32. But courts credit identified citizen informants with greater reliability. *See State v. Kerr*, 181 Wis. 2d 372, 381, 511 N.W.2d 586 (1994); *see also Maumee v. Weisner*, 720 N.E.2d 507, 513 (Ohio 1999) (finding information provided by identified citizen sufficiently credible without police corroboration); *Kansas v. Slater*, 986 P.2d 1038, 1043 (Kan. 1999) (discussing cases nationwide where citizen tips supported traffic stops; “such tips are high on the reliability scale.”). In such cases, a strong showing as to the other indicia of reliability may be unnecessary. *Illinois v. Gates*, 462 U.S. 213, 233-34 (1983). This is because when an informant is known, the informant can be held accountable for providing false information regarding criminal activity.

¶7 We view this case as involving an identified citizen informant and not an anonymous tip requiring independent police corroboration. Although the record does not clearly show whether the informant gave her name to the dispatcher, it is clear that the informant identified herself as a Winnebago county deputy coroner on her way to a sudden death call. Her identification could have immediately been ascertained based on this information. Moreover, we agree with the trial court’s conclusion that the informant’s professional relationship with law enforcement adds to the veracity and reliability of her tip.

¶8 We conclude that this case involves an identified citizen informant and meets the reliability and veracity factors based on the totality of the circumstances review. Having so concluded, we now look at the informant’s basis of knowledge. Typically, a personal observation by an informant is due greater reliability than a secondhand account. *See id.* Here, the informant personally observed Steffensen driving on a public roadway, described his vehicle, license plate number, direction of travel and location, and stated that he was “all over the

road.” The basis of the informant’s knowledge was her contemporaneous and detailed observations, and we find this adds to the informant’s credibility.

¶9 We hold, therefore, that under the totality of the circumstances involved in this case, the information given by an identified citizen informant was sufficiently reliable to provide the officer with reasonable suspicion of criminal activity without police corroboration. This information, together with the results of field sobriety tests performed at the scene, provided the officer with probable cause to make an arrest.

By the Court.—Judgment and order affirmed.

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

