

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

January 23, 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. 00-1934-CR**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JESSE J. RABAS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

¶1 HOOVER, P.J.<sup>1</sup> Jessie Rabas appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, contrary to

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

WIS. STAT. § 346.63(1)(a).<sup>2</sup> Rabas argues that the trial court erred by concluding that the arresting officer had a reasonable suspicion to detain him to investigate a possible OWI violation. This court disagrees and therefore affirms the judgment of conviction and the order denying Rabas's motion to suppress.

## BACKGROUND

¶2 Rabas claims that the only facts adduced at the suppression hearing were as follows:

While on foot patrol on June 5, 1999, Officer Gurnee of the Appleton Police Department overheard a radio dispatch which advised that the department received an anonymous tip of a possible impaired motorist who was operating a motorcycle on College Avenue. The only information Officer Gurnee was given was a vague description of a male who was on a motorcycle, possibly a Harley-Davidson.

After receiving this information, Officer Gurnee observed a motorcycle being operated by ... Rabas. ... Gurnee admitted ... that there was nothing independent of the tipster's information which would cause him to have asked Mr. Rabas to pull over. Nevertheless, Officer Gurnee approached Mr. Rabas and instructed him to pull his motorcycle to the curb.

¶3 A review of the hearing transcript, however, reveals the following evidence. At approximately 2:26 a.m., officer Jay Steinke was in the 300 block of

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<sup>2</sup> WISCONSIN STAT. § 346.63(1)(a) provides in part:

No person may drive or operate a motor vehicle while:

(a) Under the influence of an intoxicant, a controlled substance, a controlled substance analog or a combination of an intoxicant, a controlled substance, and a controlled substance analog, under the influence of any other drug to a degree which renders him or her incapable of safely driving, or under the combined influence of an intoxicant and any other drug to a degree which renders him or her incapable of safely driving ....

West College Avenue on general foot patrol when a male approached him and referred to Steinke by name. Steinke recognized the individual, but did not know his name. He had given Steinke reliable information in the past and was “not the type of person, I don’t think ... that would come up to me to lie to me, to start something that didn’t need to be checked on.” The male pointed to a man driving a motorcycle on College Avenue and indicated that he had seen the cyclist consuming alcoholic beverages at Houdini’s Bar and he was very drunk. In Steinke’s opinion, based on the way the informant approached him, he appeared to be very sincere about what he was reporting.

¶4 Steinke knew that officer Gurnee was at an intersection at the end of the 300 block of West College Avenue. He radioed to Gurnee “that I had information that the operator of that motorcycle was intoxicated. ... I believe I just radioed the information that he was intoxicated and check on his welfare.” Steinke testified that “[t]he traffic light turned red, I believe on College, and Officer Gurnee made contact with the operator when he was stopped at the stop light.”

¶5 Gurnee testified that at approximately 2:26 a.m., he was at the intersection at the end of the 300 block of West College Avenue. At that time, he received a call from Steinke, who advised him that Steinke was just east of Gurnee’s location and that an apparently intoxicated motorcyclist was in the curb lane, approximately three vehicles in, and was approaching Gurnee’s intersection. Gurnee saw someone who “matched this description.”<sup>3</sup> The motorcycle was

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<sup>3</sup> The description presumably refers to the motorcycle’s location, identified in three ways.

stopped at a red light at the intersection. The only basis that Gurnee had for approaching the motorcycle was the information he had received from Steinke.

¶6 The trial court found, among other facts, that this case did not involve an anonymous tip. Rather, the information was provided “face-to-face” by a believable, sincere citizen informant. Upon the foregoing evidence, the trial court held that Gurnee had reasonable suspicion to temporarily detain Rabas.

### STANDARD OF REVIEW

¶7 In reviewing a trial court’s ruling on a motion to suppress, this court will uphold the trial court’s findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, the application of constitutional and statutory principles to these facts is a question of law this court reviews de novo. *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

### ANALYSIS

¶8 Rabas argues that Gurnee did not have reasonable suspicion to stop him. The temporary detention of a person during a traffic stop constitutes a seizure under the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). Therefore, an automobile stop is subject to the constitutional requirement that it not be unreasonable under the circumstances. *Id.* at 810.

¶9 For an investigatory stop to be valid, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). This court must consider whether all the specific and articulable facts, taken together with the rational inferences from those facts,

amount to reasonable suspicion. *State v. Dunn*, 158 Wis. 2d 138, 146, 462 N.W.2d 538 (Ct. App. 1990). If any reasonable inference of wrongful conduct can be objectively discerned, officers have the right to temporarily detain the individual for purposes of inquiry. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶10 Rabas argues that law enforcement may not detain a person based upon an anonymous tip “unless the officers have first verified (or impeached) the credibility, reliability and veracity of the information under the ‘totality of the circumstances.’” He further asserts that the informant’s information must be corroborated to provide reason to believe the informant is honest and well informed about the illegal activity. Rabas contends that the facts in this case do not meet these criteria in that the information Gurnee received lacked sufficient detail. Rabas claims that Gurnee was only told that there would be a motorcyclist in the curb lane, approximately three vehicles in. There was, he complains, no detailed description of the operator or his clothing, or of the type or color of the motorcycle. He argues that motorcycle traffic is to be expected on a major thoroughfare on a warm June night in a “large” city like Appleton, with “a lot of ‘nightlife.’” Further, Rabas notes Gurnee’s investigation was based entirely upon Steinke’s information and not on anything Gurnee observed. Because of this, and the insufficient information upon which Gurnee acted, Rabas contends that all evidence obtained after the illegal detention must be suppressed. This court rejects Rabas’s argument.

¶11 There are two flaws in Rabas’s analysis. By pursuing arguments premised upon the allegation that this case involves an anonymous tip, Rabas ignores the trial court’s finding that Steinke obtained his information from a “believable, sincere” citizen informant. Rabas does not contend that this finding is

clearly erroneous. This court has thus not been called upon to evaluate the trial court's finding. It is well established that, unlike anonymous police informants, "citizen informants" who have witnessed criminal activity are considered reliable sources of information even though their personal reliability has not previously been proved or tested. *See State v. Doyle*, 96 Wis. 2d 272, 286-87, 291 N.W.2d 545 (1980).

[A]n ordinary citizen who reports a crime which has been committed in his presence, or that a crime is being or will be committed ... is a witness to criminal activity who acts with an intent to aid the police in law enforcement because of his concern for society or for his own safety. *He does not expect any gain or concession in exchange for his information.*

*State v. Knudson*, 51 Wis. 2d 270, 276, 187 N.W.2d 321 (1971). And, while there still must be "some safeguard" as to the reliability of the citizen-informant's information, *State v. Paszek*, 50 Wis. 2d 619, 631-32, 184 N.W.2d 836 (1971), here this requirement is satisfied both because the informant relayed first-hand knowledge<sup>4</sup> and because of Steinke's previous experience with this informant providing accurate information.

¶12 Moreover, Rabas's truncated version of the evidence disregards the reasonable inferences the officers' testimony compels. Aside from Rabas's "anonymous tip" characterization, his other principle contention is that Gurnee had insufficient information to identify Rabas's motorcycle as the one the citizen indicated was operated by an intoxicated person. Yet, it is plain from the officers'

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<sup>4</sup> "The very fact of such direct, personal observation, rather than some mere hunch or inference from the circumstances, attests to the reliability of the manner in which (the private citizen) obtained his information." *Anderson v. State*, 66 Wis. 2d 233, 240, 223 N.W.2d 879 (1974).

testimony that the motorcycle was in both officers' sight. Steinke and Gurnee were standing in the same city block. Steinke directed Gurnee's attention to "that" motorcycle at "approximately 2:26," the same approximate time Steinke testified he received the information. Steinke identified its location, with regard to adjoining traffic, lane of operation and proximity to the intersection where Gurnee was standing. Finally, Steinke was able to perceive that "[t]he traffic light turned red, I believe on College, and Officer Gurnee made contact with the operator when he was stopped at the stop light." On this evidence, any doubt that Steinke approached the wrong motorcycle in an attempt to investigate the potential OWI violation is patently unreasonable.

¶13 Gurnee had reasonable suspicion to stop Rabas because he was reliably informed that Rabas was operating the sufficiently identified motorcycle while under the influence of an intoxicant. Therefore, the trial court correctly denied Rabas's motion to suppress.

*By the Court.*—Judgment and order affirmed.

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

