

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 2, 2003

Cornelia G. Clark
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. 02-2771
STATE OF WISCONSIN**

Cir. Ct. Nos. 02-TR-4607
02-TR-4608

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

VERNE J. STARK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County:
ROBERT J. KENNEDY, Judge. *Affirmed.*

¶1 BROWN, J.¹ We will assume without deciding that, contrary to the trial court's conclusion, Verne J. Stark was not free to leave when confronted by a village of East Troy police officer on suspicion of driving while intoxicated. Even so, the phone tip from another motorist was not anonymous, as claimed by Stark,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

and the tip was corroborated sufficiently enough that the stop was valid under *Terry v. Ohio*, 392 U.S. 1 (1968). This court affirms the judgment denying Stark's motion to suppress.

¶2 The village police officer received a call from Walworth county dispatch on July 2, 2002, at about 9:30 p.m. that a motorist had anonymously reported, by cell phone, observing another motorist driving erratically. The tipster told the dispatcher that the suspect vehicle was in the vicinity of Highway 20 and ES and was a white Cadillac with a license plate number of 228 BDH. The motorist, who identified himself as Mark Baranowski, also reported that the vehicle was possibly in the Shell station or Burger King parking lot in East Troy, which is a one-half block away from the intersection of Highway 20 and ES. Shortly thereafter, the officer observed the vehicle fitting the description in the Burger King parking lot. The officer pulled up to within twenty or thirty feet of the suspect vehicle. The officer went up to the male subject in the vehicle, identified himself and informed the male subject that he had received a report of a vehicle matching his vehicle's description driving erratically in the vicinity of Highway 20. The officer then asked for his driver's license. At that point, the officer noticed that his eyes were "a little bloodshot" and he had slurred speech. The officer also detected the odor of alcohol coming from inside the vehicle. The subject fumbled with his wallet while producing his license and some of the wallet's contents fell out. The male subject was identified as Stark. Eventually, Stark was cited for operating a motor vehicle while intoxicated and operating with a prohibited blood alcohol content. His motion to suppress was denied and he pled guilty to operating a motor vehicle while intoxicated. He now appeals the judgment and the underlying denial of the motion to suppress.

¶3 We acknowledge that the trial court denied the motion on the basis that this was not “a reasonable, articulable stop case.” The trial court reasoned that when the officer came up to Stark and asked for his driver’s license, Stark had “every right to leave at that point” and the officer was “[j]ust engaging a citizen in conversation about whether or not there might be something that the officer should know. That’s perfectly normal. There was no ... stop.” The trial court did, however, rule in the alternative that if there was a stop, the tips were reliable and facts given by the tips were corroborated by the officer such that the officer had reasonable, articulable suspicion that the subject in the vehicle had committed a crime. The trial court also pointed out that one of the tips was not even an anonymous tip. Stark challenges both conclusions. We will assume, for argument’s sake, that Stark was seized; we will assume that a reasonable person in Stark’s position would not have believed that he was free to leave after the officer came up to him and informed him that he was being investigated for erratic driving and was asked to produce his driver’s license. We will therefore address the alternative finding reached by the trial court.

¶4 The issue we address is governed by *State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N.W. 2d 516. There, our supreme court discussed the nature of cell phone tips in intoxicated driving cases. It held that when an informant exposes himself or herself to being identified, that exposure enhances reliability because the person could be arrested if the tip proved to be fabricated. *Id.*, ¶32. It also enhances reliability when the tipster has observed potential imminent danger to society, which drunk driving represents. *Id.*, ¶34. What further enhanced the tip in *Rutzinski* were certain verifiable observations such as the location of the vehicle and its description. *Id.*, ¶33.

¶5 Here, the facts more than suffice. First, as pointed out by the trial court, Baranowski was not an anonymous tipster. He gave his name. The retort by Stark that Baranowski could have given a false name does not make it any less anonymous. Second, Baranowski reported that he “observed” the erratic driving. Thus, his tip is different than a person who calls on a cell phone and anonymously reports a possible drunk driver without reporting that he or she actually observed any erratic driving. Third, innocent details of the two informants’ tips were corroborated. The car matched the description, the license plate number given was only off by one number, the car was at the location given and the officer located the car contemporaneously in time with the calls. The totality of circumstances shows that the tips were reliable and the officer was justified in suspecting the driver of the Cadillac of driving erratically.

¶6 Stark takes issue with the tip, complaining that it did not explain how he was driving erratically. But that is not a necessary component of a reliable tip and *Rutzinski* does not say otherwise. It is sufficient that Baranowski exposed himself to arrest by alleging that he observed the driver of the Cadillac engaging in erratic driving. The court properly denied the suppression motion. The judgment is affirmed.

By the Court.—Judgment affirmed.

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