COURT OF APPEALS
DECISION
DATED AND FILED

February 14, 2018

Diane M. Fremgen
Acting Clerk of Court of Appeals

Appeal No. 2017AP1555

Cir. Ct. Nos. 2016TR15524
2016TR15525

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANGELA J. COKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County: TIMOTHY D. BOYLE, Judge. *Affirmed*.

¶1 GUNDRUM, J.[1] Angela Coker appeals her judgment of conviction for operating a motor vehicle while intoxicated, arguing the circuit court erred in

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

denying her motion to suppress evidence. Specifically, Coker asserts the arresting trooper lacked reasonable suspicion to conduct the traffic stop leading to her arrest because the information he received from dispatch was unreliable due to its anonymous nature and lack of corroboration. Of note, Coker does not contend that if the information was sufficiently reliable it did not provide the trooper with reasonable suspicion to conduct the stop; therefore, we do not address that question. Because we conclude the trooper properly relied upon the information, we affirm.

Background

¶2 A trooper with the Wisconsin State Patrol, the arresting officer in this case, was the only witness to testify at the suppression hearing held on Coker's motion. His relevant testimony is as follows.

¶3 On June 18, 2016, at approximately 11:16 p.m., the trooper performed a traffic stop on Coker based upon dispatch for the Racine County sheriff indicating there was a driving complaint "with multiple callers" of a "[w]hite Ford Flex van travelling southbound [on the interstate] from Milwaukee that was allegedly weaving all over the road."[2] Dispatch advised that the van was "just south of Highway K in Racine" and there was a caller following the van and providing updates on its location. Through dispatch, this caller directed the trooper to "the correct vehicle," and the trooper stopped the van, driven by Coker,

[2] While we need not and do not address whether the information of which the trooper was aware provided reasonable suspicion, we note that in ***Navarette v. California***, 134 S. Ct. 1683 (2014), the United States Supreme Court recognized, based upon "the accumulated experience of thousands of officers," that "weaving 'all over the' roadway," "driving 'all over the road,'" and "weaving back and forth" are "erratic behaviors" that are "strongly correlated with drunk driving." ***Id.*** at 1690-91 (citations omitted).

after following it for approximately one mile. The trooper himself did not observe any traffic violations but stopped the vehicle "based on multiple callers calling about the same vehicle giving an accurate description of the white Ford Flex van and the caller following the vehicle that was willing to make a written statement."

¶4 On cross-examination, the trooper indicated he did not remember getting a license plate number for the van, and he was not aware if any of the callers provided dispatch with any additional identifying information for the van. In the "just under" one minute that he followed Coker, he observed no problems with her driving.

¶5 On redirect examination, the trooper confirmed dispatch had informed him of "multiple" callers providing a description which matched the van he pulled over; he was aware a vehicle was following the van but he "c[ould]n't say that [he] saw that vehicle"; he was advised the caller following the van "would be willing to make a statement once the stop occurred"; the caller "advised [through dispatch] when [the trooper] was behind the correct vehicle"; and "there were no other vehicles on the road that [he] observed at that time that matched that description."

¶6 The circuit court found there were "multiple callers" indicating there was "erratic driving and weaving by this individual" and "all the representations that were made to [the trooper] through the dispatch were confirmed and verified." The court determined the trooper had reasonable suspicion to stop the vehicle and denied Coker's motion to suppress. Coker was eventually found guilty of operating a motor vehicle while intoxicated and was sentenced. She now appeals.

Discussion

¶7 Reviewing a circuit court's ruling on a motion to suppress evidence, we apply the clearly erroneous standard to the court's factual findings. ***State v. Smiter***, 2011 WI App 15, ¶9, 331 Wis. 2d 431, 793 N.W.2d 920 (2010). Our review of whether the facts constitute reasonable suspicion, however, is de novo. ***State v. Powers***, 2004 WI App 143, ¶6, 275 Wis. 2d 456, 685 N.W.2d 869.

¶8 "When reviewing a set of facts to determine whether those facts could give rise to a reasonable suspicion," we should

> apply a commonsense approach to strike a balance between the interests of the individual being stopped to be free from unnecessary or unduly intrusive searches and seizures, and the interests of the State to effectively prevent, detect, and investigate crimes. In every case, a reviewing court must undertake an independent objective analysis of the facts surrounding the particular search or seizure and determine whether the government's need to conduct the search or seizure outweighs the searched or seized individual's interests in being secure from such police intrusion.

State v. Rutzinski, 2001 WI 22, ¶15, 241 Wis. 2d 729, 623 N.W.2d 516 (citations omitted). "[B]efore an informant's tip can give rise to grounds for an investigative stop, the police must consider its reliability and content." ***Id.***, ¶17.

> Tips should exhibit reasonable indicia of reliability. In assessing the reliability of a tip, due weight must be given to: (1) the informant's veracity; and (2) the informant's basis of knowledge. These considerations should be viewed in light of the "totality of the circumstances," and not as discrete elements of a more rigid test: "[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., ¶18 (citations omitted).

¶9 Whether an officer acted reasonably in performing a traffic stop is determined by what he/she knows at the time he/she conducts this temporary seizure. *See* ***State v. Nordness***, 128 Wis. 2d 15, 35, 37 n.6, 381 N.W.2d 300 (1986) (holding that the constitutional inquiry related to a seizure by law enforcement turns on the facts and circumstances available to the officer at the time of the seizure). Here, at the time he conducted the traffic stop, the trooper was aware that "multiple" individuals[3] had called in about a "[w]hite Ford Flex van travelling southbound [on the interstate] from Milwaukee that was allegedly weaving all over the road." He also was aware that a caller who continued to follow the van had expressed his/her willingness to give a written statement. Whether or not the caller later actually did provide such a statement is of no consequence in determining whether the trooper acted reasonably in relying upon the information this caller provided. The trooper would have reasonably believed he could rely upon the caller's information in part because the caller indicated a willingness to make himself/herself known and accountable to law enforcement through a written statement. Furthermore, the caller indicated he/she was following the van, provided contemporaneous updates on the van's location, and directed the trooper to the van. While the trooper did not testify that the caller indicated he/she was driving *directly* behind the van, with the information provided, the trooper nonetheless could reasonably have concluded that the caller knew his/her identity might well be discovered by law enforcement and thus that

[3] Notably absent from Coker's brief-in-chief and reply brief is any acknowledgement of the key fact—found by the circuit court based upon the undisputed testimony of the trooper—that not just one but "multiple" individuals called in to report concerns about Coker's driving. Instead, Coker erroneously briefs this appeal as if there was only one caller. Significantly, each caller's tip adds to the reliability of the tip(s) of the other caller(s). *See* ***State v. Hillary***, 2017 WI App 67, ¶18, 378 Wis. 2d 267, 903 N.W.2d 311.

he/she "potentially could be arrested if the tip proved to be fabricated." *See* ***Rutzinski***, 241 Wis. 2d 729, ¶32. This too added to the reliability of the information relayed to the trooper. *See* ***id.*** (recognizing that a tip from an unidentified informant who "exposed him- or herself to being identified" is generally reliable); *see also* ***State v. Williams***, 2001 WI 21, ¶35, 241 Wis. 2d 631, 623 N.W.2d 106 ("Risking one's identification intimates that, more likely than not, the informant is a genuinely concerned citizen as opposed to a fallacious prankster.").

¶10 In ***Rutzinski***, an informant told police he/she was in the vehicle in front of the suspected drunk driver the informant had reported. ***Rutzinski***, 241 Wis. 2d 729, ¶32. Our supreme court noted that "by revealing that he or she was in a particular vehicle, the informant understood that the police could discover his or her identity by tracing the vehicle's license plates or directing the vehicle to the side of the road." ***Id.*** Thus, the informant "exposed him- or herself to being identified," and the "threat of arrest could lead a reasonable police officer to conclude that the informant [was] being truthful." ***Id.*** Similarly, in this case, as far as the trooper was aware, the caller was willing to "expose[] him- or herself to being identified"—either through a subsequent written statement or by identifying his/her location as being behind and following Coker's vehicle—and thus that the caller potentially could be held accountable "if the tip proved to be fabricated." ***Id.*** Similar to the ***Rutzinski*** court's conclusion, here this "could lead a reasonable police officer to conclude that the informant [was] being truthful." *See* ***id.***

¶11 By reporting that the "white Ford Flex van" was weaving all over the road, providing updates on the van's location, and "directing [the trooper] to the correct vehicle," the caller "necessarily claimed eyewitness knowledge of the alleged dangerous driving." *See* ***Navarette v. California***, 134 S. Ct. 1683, 1689

(2014) ("By reporting that she had been run off the road by a specific vehicle—a silver Ford F-150 pickup, license plate 8D94925—the caller necessarily claimed eyewitness knowledge of the alleged dangerous driving."). "That basis of knowledge lends significant support to the tip's reliability." ***Id.*** Furthermore, the manner in which the trooper testified as to the callers' reports—that the van "was allegedly weaving all over the road" and the caller following the van was providing updates on the van's location—suggests the callers were continuing to observe Coker's dangerous driving as they reported it. As well, the "multiple callers" collectively indicated that the van was "travelling southbound [on the interstate] from Milwaukee," and dispatch advised—which information could only have come from the callers—that the vehicle was "just south of Highway K in Racine." As the Supreme Court stated in ***Navarette***, "[t]hat sort of contemporaneous report has long been treated as especially reliable." ***Id.*** The trooper "reasonably could have inferred from this information that the informant had a reliable basis of knowledge." *See* ***Rutzinski***, 241 Wis. 2d 729, ¶33 (Because "[t]he informant explained that he or she was making personal observations of Rutzinski's contemporaneous actions" which indicated "where the vehicle was located and the setting surrounding the vehicle at the given time," the officer "reasonably could have inferred from this information that the informant had a reliable basis of knowledge.").

¶12 Coker contends it "weigh[s] against the veracity of the caller" that the trooper himself did not observe any erratic driving or traffic violations in the "just under" one minute he followed her before conducting the traffic stop. The Supreme Court addressed a similar consideration in ***Navarette***. In that case, the Court stated that "the absence of additional suspicious conduct, after the vehicle was first spotted by an officer," did not "dispel the reasonable suspicion of drunk

driving" which came from the informant's report that Navarette had previously operated his vehicle so as to "[ru]n the reporting party off the roadway." ***Navarette***, 134 S. Ct. at 1687, 1691. The Court added: "It is hardly surprising that the appearance of a marked police car[4] would inspire more careful driving for a time. Extended observation of an allegedly drunk driver might eventually dispel a reasonable suspicion of intoxication, but the *5-minute* period in this case hardly sufficed in that regard." ***Id.*** at 1691 (emphasis added). The Court's determination that a five-minute period in which an observing officer noted no signs of impaired driving "hardly sufficed" to dispel reasonable suspicion makes it easy for us to conclude that the trooper's preseizure observation period of "just under" one minute, while not reinforcing the veracity of the multiple callers who reported observing Coker "weaving all over the road," also did not undermine the veracity of those reports.

¶13 In ***Rutzinski***, our supreme court stated that "where the allegations in the tip suggest an imminent threat to the public safety or other exigency that warrants immediate police investigation," the Fourth Amendment

> do[es] not require the police to idly stand by in hopes that their observations reveal suspicious behavior before the imminent threat comes to its fruition. Rather, it may be reasonable for an officer in such a situation to conclude that the potential for danger caused by a delay in immediate

[4] In this case, the trooper did not specifically testify that he was in a "marked" police car when he was following Coker. He did testify, however, that at the time he received the dispatch regarding Coker's driving, he was "on the interstate" and "conducting traffic enforcement patrol." From common experience, we could reasonably infer from this testimony that he was in a "marked" police car; however, we need not, and do not, rely on such an inference because the main teaching point here from ***Navarette*** is that an officer personally observing no suspicious driving for a period of *five minutes* was considered by the Supreme Court to "hardly suffice[]" to dispel reasonable suspicion of drunk driving that the officer had based upon the informant's report. *See* ***Navarette***, 134 S. Ct. at 1691.

> action justifies stopping the suspect without any further observation. Thus, exigency can in some circumstances supplement the reliability of an informant's tip in order to form the basis for an investigative stop.

Rutzinski, 241 Wis. 2d 729, ¶26. The court held that because "of the potential for imminent danger that drunk drivers present," an informant's allegations suggesting another motorist may be operating while intoxicated "supplement[] the reliability of the tip." ***Id.***, ¶35. Here, the tips by the "multiple callers" were sufficiently reliable to justify the stop so that we need not rely upon the supplementation our supreme court discussed in ***Rutzinski***. That said, such supplementation only further strengthens the trooper's basis for stopping Coker.

Conclusion

¶14 By themselves, the tips from the multiple callers were sufficiently reliable to justify the trooper's traffic stop of Coker. The brief period of time the trooper had to personally observe Coker's driving before pulling her over did nothing to undermine that. While the tips themselves were alone sufficient to justify the stop, coupled with the alleged potential imminent danger to the public of Coker's driving, "[t]hese factors substantially outweighed the minimal intrusion that the stop would have presented had [Coker] indeed not been intoxicated." *See* ***id.***, ¶37.

¶15 For the foregoing reasons, we affirm.

By the Court.—Judgment affirmed.

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