

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 23, 2006

Cornelia G. Clark
Clerk of Court of Appeals

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.

Appeal No. 2005AP977

Cir. Ct. No. 2004TR12735

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF ROCK,

PLAINTIFF-RESPONDENT,

V.

SANDRA K. HINTZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
JAMES P. DALEY, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.¹ Sandra Hintz appeals a judgment of the circuit court finding her guilty of operating a motor vehicle while under the influence of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

an intoxicant as a first offense. Hintz's argument on appeal is that the anonymous tip that led the arresting officer to stop Hintz's car was insufficient to support reasonable suspicion for an investigative stop. Therefore, Hintz argues, the stop was unlawful and the circuit court erred in denying her motion to suppress the evidence obtained from that stop. We affirm the circuit court.

Background

¶2 On September 6, 2004, Rock County Deputy Sheriff Steven Stenulson received a call from police dispatch. The dispatcher informed Stenulson that dispatch had received an anonymous telephone call. The caller indicated that he or she was following a vehicle that the caller believed was being driven by an intoxicated driver. The caller informed the dispatcher that the vehicle he or she was following "was all over the road, and [had] crossed the center line on several occasions." The caller described the vehicle as a silver Pontiac, gave the dispatcher the car's license plate number, and informed the dispatcher that the car was "traveling eastbound on Highway 81 from south of Nelson Road." In this opinion, we will refer to the anonymous caller as the tipster.

¶3 Deputy Stenulson subsequently spotted the car on Liberty Avenue in the City of Beloit.² Upon driving past the car in the opposite direction, Deputy Stenulson saw someone point to the silver Pontiac. In this opinion, we will refer to this person as the pointer.

¶4 Deputy Stenulson did not observe any indication of unsafe or illegal driving. He stopped the car, which turned out to be Hintz's car.

² Highway 81 becomes Liberty Avenue when you enter the Beloit city limits.

¶5 After noticing signs of possible intoxication, Deputy Stenulson had Hintz perform several field sobriety tests. Stenulson felt Hintz had failed those tests, and Stenulson arrested her. Hintz was charged with operating a motor vehicle while intoxicated, first offense. Hintz moved the circuit court to suppress evidence of her intoxication. Hintz argued that Deputy Stenulson lacked reasonable suspicion to stop her vehicle and that Stenulson lacked probable cause to arrest her for operating while intoxicated. The court denied that motion. Following a stipulated trial, the court found Hintz guilty. Hintz appeals.

Discussion

¶6 On appeal, Hintz challenges only the initial stop. She argues that the tipster's tip in this case did not evince the requisite indicia of reliability to supply Deputy Stenulson with reasonable suspicion to stop Hintz's car. Hintz contends that the officer's information was insufficiently reliable because the tipster was anonymous, having not revealed his or her identity to the police, and the tipster's information was not corroborated. The County responds that the tip was sufficiently reliable because several details the tipster provided—description of the car, location and direction of travel, and license plate number—were verified by the officer, and either the tipster subjected himself or herself to identification because he or she was the pointer or the tip was corroborated by a second person who was the pointer. We agree with the County.

¶7 Hintz's reasonable suspicion argument brings into play our analysis of the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution. *See State v. Rutzinski*, 2001 WI 22, ¶12, 241 Wis. 2d 729, 623 N.W.2d 516. For such questions, we employ a two-step standard of review:

In reviewing an order regarding suppression of evidence, we will uphold the trial court's findings unless they are against the great weight and clear preponderance of the evidence. However, whether a stop meets statutory and constitutional standards is a question of law subject to *de novo* review.

State v. Krier, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991) (citations omitted).

¶8 “[T]o pass muster under the Fourth Amendment and Article I, Section 11, an officer initiating an investigative stop must have, at a minimum, a reasonable suspicion that the driver or occupants of the vehicle have committed an offense.” *Rutzinski*, 241 Wis. 2d 729, ¶14. The suspicion must not be generalized but, rather, “[a]t the time of the stop, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, objectively warrant a reasonable person with the knowledge and experience of the officer to believe that criminal activity is afoot.” *Id.* The overriding principle is that to be constitutional the stop must be reasonable. *Id.*

¶9 An informant's tip may provide reasonable suspicion for an investigatory stop. *Id.*, ¶17. To do so, however, a tip “should exhibit reasonable indicia of reliability.” *Id.*, ¶18. The court in *Rutzinski* explained the considerations to take into account in determining the reliability of a tip:

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. [*Illinois v. Gates*, 462 U.S. 213,] 230 [1983]. 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.* at 233.

Id.

¶10 Turning to the facts here, we would likely agree with Hintz's suppression argument if the facts were only those she discusses in her appellate briefs. But Hintz does not address the pointer.

¶11 The County correctly points out that there are two ways to view the pointer. The tipster told police he or she was following the car the tipster saw being driven in an erratic manner. Thus, one possibility is that the pointer and the tipster are the same person. If that is true, then the tipster exposed his or her identity to the officer. *See id.*, ¶32. (“[B]y 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.”). Hintz does not argue that the officer lacked reasonable suspicion if the tipster exposed his or her identity to discovery in this manner.

¶12 The second possibility is that the pointer was a second person drawing Deputy Stenulson’s attention to Hintz’s car. We think it obvious that a likely reason a person would draw a police officer’s attention to another car on the road is to indicate that the car is being driven dangerously or illegally. Thus, if the pointer is a second person, then a second person provided corroboration of the tipster’s information. Again, Hintz does not address this and, therefore, does not dispute this view of the evidence.

¶13 An officer conducting a temporary investigative stop need not rule out other potential explanations. The overriding question is whether there are specific and articulable facts that would lead a reasonable person with the knowledge and experience of the officer to believe that criminal activity is afoot. That standard is met here.

By the Court.—Judgment affirmed.

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

