COURT OF APPEALS
DECISION
DATED AND FILED

April 17, 2007

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2006AP3058-CR **Cir. Ct. No. 2006CT599**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JON J. GREATENS,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Brown County: RICHARD J. DIETZ, Judge. *Reversed*.

¶1 HOOVER, P.J.[1] Jon Greatens appeals a judgment convicting him of operating a motor vehicle with a prohibited alcohol concentration, third offense.

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Greatens argues the circuit court erred when it denied his motion to suppress because the arresting officer did not have reasonable suspicion to make a traffic stop. We agree and reverse the judgment.

BACKGROUND

¶2 On February 12, 2006, officer Melanie Lovato and her partner received a dispatch for an accident near the intersection of Ashland and Cormier. Another squad was also dispatched to the accident scene. While on the way to the scene, Lovato received additional information from the dispatcher that one of the drivers may have been intoxicated and that a white van was leaving the scene. About one hundred yards away from the intersection, Lovato saw a white van coming toward her. Prior to stopping the vehicle, she did not observe the van commit any moving violations, see any equipment deficiencies, or notice any damage to the vehicle. Nonetheless, Lovato pulled over the vehicle. Lovato then conducted field sobriety tests and placed Greatens under arrest for operating while intoxicated.

¶3 Greatens filed a motion to suppress any evidence derived from the stop of his vehicle on the ground that the police officer did not have a reasonable suspicion to stop and seize him. At the hearing, the State did not present any evidence concerning the source of the information provided to dispatch and conceded the tip was "apparently, anonymous…." The court concluded "under the totality of the circumstances in this case … there was reasonable suspicion to stop that van." Greatens subsequently pled no contest to operating with a prohibited alcohol concentration, third offense.

DISCUSSION

¶4 When reviewing a circuit court's denial of a motion to suppress, we uphold the circuit court's findings of fact unless they are clearly erroneous. *See* ***State v. Waldner***, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). However, whether those facts satisfy the constitutional requirement of reasonableness is a question of law we review without deference. ***Id.***

¶5 The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. Detention of a suspect must be based upon a reasonable suspicion of criminal activity. ***Id.*** at 55-56. Reasonable suspicion is dependent on whether an officer's suspicion is grounded in "specific, articulable facts and reasonable inferences from those facts" indicating the individual committed a crime. ***Id.*** at 56. What constitutes reasonable suspicion is a common sense test. ***Id.*** We look to what a reasonable police officer would "reasonably suspect in light of his or her training and experience." ***Id.***

¶6 "[B]efore an informant's tip can give rise to grounds for an investigative stop, the police must consider its reliability and content." ***State v. Rutzinski***, 2001 WI 22, ¶17, 241 Wis. 2d 729, 623 N.W.2d 516. In assessing reliability, "due weight must be given to: (1) the informant's veracity; and (2) the informant's basis of knowledge." ***Id.***, ¶18. In the case of an anonymous tip, the informant's basis of knowledge and veracity are often unknown. ***Florida v. J.L.***, 529 U.S. 266, 270 (2000). For an anonymous tip to be reliable enough to justify an investigative stop, the tip must be suitably corroborated. *See* ***id.*** An anonymous tip "must contain not only a bald assertion that the suspect is engaged in illegal activity … but also verifiable information indicating how the tipster came to know of the alleged illegal activity." ***Rutzinski***, 241 Wis. 2d 729, ¶28.

¶7 Finding a described individual at a particular time and place is not enough. *See* ***J.L.***, 529 U.S. at 272. In ***J.L.***, police received an anonymous tip that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." ***Id.*** at 268. The court determined the "accurate description of a subject's readily observable location and appearance" did not provide reasonable suspicion to justify an investigative stop. ***Id.*** at 272. The court held:

> The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility. That the allegation about the gun turned out to be correct does not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct: The reasonableness of official suspicion must be measured by what the officers knew before they conducted their search. All the police had to go on in this case was the bare report of an unknown, unaccountable informant who neither explained how he knew about the gun nor supplied any basis for believing he had inside information about J.L.

Id. at 271.

¶8 In this case, Lovato stopped Greatens because the dispatcher informed Lovato that one of the drivers may have been intoxicated and that a white van was leaving the scene. On appeal, the State argues the information was not provided by an anonymous informant, but rather, was provided by the other driver. The State provides no record cites[2] for this argument and indeed the argument ignores the State's concession at the hearing that the informant was "apparently, anonymous…."

[2] Under WIS. STAT. RULE 809.19(1)(e) proper appellate argument requires citation to the part of the record relied on. ***State v. Shaffer***, 96 Wis. 2d 531, 545-46, 292 N.W.2d 370 (Ct. App. 1980).

¶9 Before stopping Greatens, Lovato did not verify that an accident had occurred, that a white van was one of the vehicles involved in the alleged accident, or that the driver of the van was the "possibly" intoxicated driver. The only information Lovato had was that an anonymous informant had stated a white van was leaving the scene. The informant did not even state in which direction the van was traveling or provide any distinguishing characteristics. As in ***J.L.***, this "bare report of an unknown, unaccountable informant" who did not explain how they knew about the accident or provide any basis for believing they had inside information about the driver did not provide the officer with a reasonable suspicion to justify the stop.[3] ***J.L.***, 529 U.S. at 271.

By the Court.—Order reversed.

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

[3] Greatens also argues the tip did not supply a reasonable suspicion to stop his van because it did not provide Lovato with a reasonable suspicion that he had committed an offense. Because we conclude the anonymous tip was unsupported and unverified and therefore did not support reasonable suspicion, we need not reach this argument.