COURT OF APPEALS
DECISION
DATED AND RELEASED

April 4, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 95-2308

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CRAIG C. HILL,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Marquette County: DONN H. DAHLKE, Judge. *Affirmed*.

SUNDBY, J. Defendant-Appellant Craig C. Hill appeals from a judgment convicting him of operating a motor vehicle while under the influence. The trial court refused to suppress evidence given by an officer of the State Patrol who stopped Hill's vehicle on the basis of information given him by Unit 109 of REACT, a citizens' group who travels the highways and notifies the police of any activity that does not appear to be normal. Hill presents one issue:

> Did the State Trooper possess a reasonably articulable suspicion for an investigatory stop of the defendant when that trooper relied upon information given by an anonymous informant?

We[1] conclude that the State Trooper possessed sufficient information to form a reasonable suspicion that Hill was operating while under the influence. We therefore affirm the judgment.

On November 20, 1992, at approximately 6:20 p.m., State Trooper Joseph Gajdosik received a dispatch from the Marquette County Sheriff's Department that a red van with "Hill" painted on its side was traveling north on Highway 51 at mile marker 92 and that the driver was possibly intoxicated. The Trooper went to mile marker 103 and waited in the crossover for such a van. When he saw the van, he waited for traffic to clear and pursued. He observed it from approximately two vehicle lengths and subsequently testified:

> The vehicle would almost touch the center dotted line of the highway, and then it would jerk back to the right or back into its lane of traffic, and go all the way across the lane and almost touch the white fog line on the right-hand side of the highway. Then, it would jerk back to the left, travel through the driving lane, again almost touching the centerline, and then jerk back to the right and proceed back almost touching the fog line.

The Trooper believed that the van was traveling below the speed limit; he estimated that he observed the vehicle for almost one-quarter of a mile before turning on his emergency lights.

Hill argues that the Trooper could not have observed his operation of the vehicle for more than fifteen seconds and that he did not see Hill's vehicle "weaving" out of its lane of traffic.

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[1] This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS. "We" and "our" refer to the court.

The Trooper testified that he received a dispatch that an unknown citizen informant had reported the movement of Hill's van and that according to the informant, a red/white van had almost struck a bridge and the informant believed that the driver was intoxicated.

Whether a traffic stop satisfies statutory and constitutional standards is a question of law that we decide without deference to the trial court. ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). To make an investigatory stop, a police officer must have a "reasonable articulable suspicion" that the person stopped has violated or is violating a law. ***State v. Richardson***, 156 Wis.2d 128, 138-39, 456 N.W.2d 830, 834 (1990). In ***Richardson***, the investigating officer had received information from his shift commander that an anonymous telephone call had been received from an individual who stated that, at that moment, the defendant and another specifically identified man were en route from Viroqua to La Crosse with about one-quarter ounce of cocaine. The caller said he had been with the two men and had personally seen the cocaine. ***Id***. at 133, 456 N.W.2d at 831-32. The caller described the vehicle and gave the license plate number. He also described both men. He told the officer's shift commander the time at which the men had left Viroqua and when they would be expected to arrive in La Crosse. Acting on this information, the police set up a road block and stopped the vehicle operated by the defendant. The officers were able to corroborate much of the information given them by the informant. The court concluded that the information provided the police was sufficiently corroborated that they could rely on it. ***Id***. at 142, 456 N.W.2d at 835.

Whether information from an anonymous informant gives rise to probable cause for a search warrant is to be determined under a totality of the circumstances test. ***Illinois v. Gates***, 462 U.S. 213, 238 (1983). In ***Richardson***, the court said that the "totality of the circumstances test" applied equally to a review of whether the details of an anonymous tip provide police officers with a reasonable suspicion necessary to make a valid investigatory stop. 156 Wis.2d at 142, 456 N.W.2d at 835.

The determination of reasonableness of a investigatory stop is "a common sense question, which strikes a balance between the interests of society in solving crime and the members of that society to be free from unreasonable intrusions. The essential question is whether the action of the law enforcement officer was reasonable under all the facts and circumstances present." ***Id***. at 139-

40, 456 N.W.2d at 834 (quoting ***State v. Jackson***, 147 Wis.2d 824, 831, 434 N.W.2d 386, 389 (1989) (citing ***State v. Guzy***, 139 Wis.2d 663, 679, 407 N.W.2d 548, 555 (1987))).

Hill does not argue that an anonymous informant's tip is *per se* unreliable or that it can never rise to the level of reasonable suspicion for a ***Terry***[2] stop. Hill argues, however, that the Trooper did not know anything about the reliability of the informant, nor was there any *indicia* of reliability to provide reasonable suspicion to make an investigatory stop. We disagree. The informant described Hill's van and told the dispatcher the direction in which Hill's van was proceeding. The Trooper observed the van and followed it for a sufficient length of time to observe highly unusual movements of Hill's vehicle. While the Trooper did not described Hill's movements as "weaving," certainly jerking back and forth within a lane of traffic is out of the ordinary. Further, the informant's observation of Hill's operation was relatively contemporaneous with the Trooper's observation. The time elapsed between the informant's report and the Trooper's observation of the van was thirteen minutes.

The State suggests that because the informant was REACT Unit No. 109, the informant should be treated as a citizen witness rather than an anonymous informant. We would agree with the State's position if it had introduced evidence that the police routinely received anonymous tips from such organizations and had found them to be reliable. However, without such evidence, reliance on self-designated crime stoppers is not sufficient to satisfy the constitutional requirements of investigatory stops. Such evidence of previous reliance was not, however, necessary in this case because the information relayed to the Trooper was sufficient, combined with the Trooper's observation of Hill's movements, to justify an investigatory stop.

By the Court.—Judgment affirmed.

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

[2] ***Terry v. Ohio***, 392 U.S. 1 (1968).