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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal No. 2013 AP 001128

In the Matter of the Refusal of David Adams:

VILLAGE OF HALES CORNERS,

Plaintiff-Respondent,

v.

DAVID E. ADAMS,

Defendant- Appellant.

BRIEF & APPENDIX OF DEFENDANT-APPELLANT

**APPEAL FROM AN ORDER DATED MAY 14, 2013, IN
THE CIRCUIT COURT OF MILWAUKEE COUNTY
The Honorable Carolina Stark, Presiding
Trial Court Case No. 2012 TR 16882**

Respectfully submitted:

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ISSUE PRESENTED

- I. WHETHER A TRAFFIC OFFICER, WHO HAS NO MORE THAN A VAGUE REPORT FROM AN UNIDENTIFIED TIPSTER OF A "POSSIBLE" DRUNK DRIVER (A TIP THAT INCLUDES NO DESCRIPTION OF ANY DRIVING BEHAVIOR), AND WHO NEVER SEES THE TIPSTER IN ANY PROXIMITY TO THE SUSPECT VEHICLE, AND WHO FIRST ENCOUNTERS THE SUSPECT VEHICLE PROPERLY PARKED IN A PARKING LOT, HAS REASONABLE SUSPICION TO SUMMARILY DETAIN THE VEHICLE'S DRIVER.**

The trial court: answered Yes.

STATEMENT ON PUBLICATION

The appellant believes the Court's opinion in this case will meet the criteria for publication insofar as it will further develop the law regarding suspected OWI traffic stops. In particular, it will give greater definition to the contours of *State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516.

STATEMENT ON ORAL ARGUMENT

The appellant does not request oral argument insofar as he believes the briefs will sufficiently explicate the facts and law necessary for this Court to decide the issues presented.

STATEMENT OF THE CASE

This is an appeal from an order finding the defendant-appellant, David Adams, guilty of having unreasonably refused to submit to a chemical test, contrary to section 343.305(9), Stats. (R12; App. A). More specifically, this is an appeal of the trial court's conclusion, in the context of that refusal case, that there was reasonable suspicion to stop and detain Adams, as a prelude to arresting him for Operating While Intoxicated (OWI), contrary to section 346.63. (R16-16).

On August 27, 2011, Officer Douglas Sayeg, on patrol with the police department for the plaintiff-respondent, Village of Hales Corners, stopped and arrested 77-year-old David Adams and issued him a citation for OWI - First Offense. (R1; R16-8, 16). Officer Sayeg eventually issued Adams a Notice of Intent to Revoke Operating Privileges for having declined to submit to an evidentiary chemical test of his breath. (*Id.*). The case was initially venued in the Village of Hales Corners Municipal Court. (*Id.*). A refusal hearing was conducted there and Adams was deemed guilty of the refusal charge. (*Id.*).

Adams timely filed a *de novo* appeal to the Milwaukee County Circuit Court. (*Id.*). On February 5 and April 12, 2013, the circuit court conducted the evidentiary portion of a refusal hearing. (R16; R17). On May 7, 2013, the circuit court issued a decision from the bench on the refusal charge and ruled against Adams. (R18). On May 14, 2013, the circuit court entered an order memorializing its decision on the refusal charge. (R12). This appeal followed. (R14).

STATEMENT OF THE FACTS

On August 27, 2011, shortly after 10:00 p.m., Officer Sayeg was on routine patrol in a marked squad car and heading eastbound on West Grange Avenue. (R9-Ex. 4; R16-10). At 10:07 p.m., Officer Sayeg received a dispatch of, in Officer Sayeg's own words, a "**possible** intoxicated driver." (R16-11)(emphasis added). The dispatch included a rough description of the vehicle (a red and gray van) and a license plate number. (*Id.*). Finally, dispatch also provided an approximate location of the vehicle (Forest Home and Highway 100). (*Id.*). It was apparent the report was coming from some other motorist. (*Id.*).

The dispatch indicated the vehicle in question was westbound on Forest Home. (R16-22). Officer Sayeg happened to be in the area, and also heading westbound on Forest Home. (*Id.*). Officer Sayeg thus continued westbound on Forest Home toward Highway 100 and began looking for the vehicle, when he received a second dispatch indicating the vehicle had turned into the parking lot of the China Inn. (R16-12). When that second dispatch arrived, Officer Sayeg was just a block or two from the China Inn and thus able to turn into the China Inn parking lot in a relatively short period of time. (R16-22, 24).

Upon entering the parking lot, Officer Sayeg immediately observed a red and gray van. (R16-24). Officer Sayeg testified the van was properly situated in a parking space, in a manner that in no way suggested an impaired driver. (R16-25). Nevertheless, Officer Sayeg immediately approached and positioned his squad car approximately three feet off the van's rear bumper, effectively blocking the van from moving. (*Id.*).

The record strongly suggests Officer Sayeg did this so quickly and immediately that he never cross-confirmed the respective license plate numbers.

At roughly the same time, the 77-year-old driver of the vehicle, David Adams, was stepping down from the van. (*Id.* at 13, 27). It was August and Adams was wearing shorts, which revealed both of his legs were bandaged from his calves down to his ankles, and he immediately began walking toward the squad car, now angled just off his rear bumper. (*Id.* at 13, 16). As the elderly Adams stepped from the van, he apparently used it to steady himself. (*Id.* at 13). Officer Sayeg immediately activated the emergency lights of his squad car, and Adams continued walking toward Officer Sayeg. (*Id.* at 14). The entire sequence of events were very rapid fire. **Less than 40 seconds** elapsed between the times: (1) Officer Sayeg was still on Forest Home confirming for dispatch that he would head toward the China Inn; and (2) Officer Sayeg advised dispatch he had already stopped "David Adams." (R9-Exs. 4 and 5; Apps. C and D).

ARGUMENT

- I. A TRAFFIC OFFICER, WHO HAS NOTHING MORE THAN A VAGUE REPORT FROM AN UNIDENTIFIED TIPSTER OF A "POSSIBLE" DRUNK DRIVER (A TIP THAT INCLUDES NO DESCRIPTION OF ANY DRIVING BEHAVIOR), AND WHO NEVER SEES THE TIPSTER IN ANY PROXIMITY TO THE SUSPECT VEHICLE, AND WHO FIRST ENCOUNTERS THE VEHICLE PROPERLY PARKED IN A PARKING LOT, LACKS REASONABLE SUSPICION TO SUMMARILY DETAIN THE VEHICLE'S DRIVER.**

A. Applicable Legal Standards.

It is appropriate for a circuit court to entertain, in the context of a refusal hearing, the defendant's position that the arrest was unlawful because the traffic stop that preceded it was not justified by either probable cause or reasonable suspicion. *In re Refusal of Anagnos*, 2011 WI App 118, ¶15, 337 Wis. 2d 57, 805 N.W.2d 722. The circuit court did so in this case and concluded the traffic stop of Adams was lawful. Whether an officer initiating a traffic stop has reasonable suspicion the vehicle's driver has committed an offense presents a question of law this Court reviews *de novo*. *State v. Jackson*, 147 Wis. 2d 824, 829, 434 N.W.2d 386 (1989). This Court will therefore pay no deference to the lower court's resolution of the issue. *State v. Hegwood*, 113 Wis. 2d 544, 547, 335 N.W.2d 399 (1983).

To pass muster under the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution, an officer initiating a traffic stop must, at a minimum, have a reasonable suspicion the driver of the vehicle has committed an offense. *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). All investigative traffic stops, no matter how short the duration, must be objectively reasonable under the circumstances existing at the time of the stop. *Whren v. United States*, 517 U.S. 806, 809-10 (1996); *State v. Waldner*, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996). Before initiating a stop, the officer must be able to point to specific and articulable facts which, taken together with rational inferences, objectively warrant a reasonable person with the knowledge and experience of the officer to believe criminal activity is afoot. *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

B. A Vague Report Of "Possible" Drunk Driving, Made By An Unidentified Individual Neither Present At The Scene Of Stop Nor Otherwise Available To The Officer Does Not Give Rise To Reasonable Suspicion To Stop A Vehicle Already Properly Parked.

To properly analyze the issue *sub judice*, it must first be determined when Officer Sayeg's stop of Adams occurred. A stop occurs when an officer in some way restrains the liberty of a citizen by means of physical force or show of authority. *Florida v. Bostick*, 501 U.S. 429, 434 (1991). In determining whether a contact between a citizen and a police officer is a "stop" implicating *Terry*, the crucial consideration is whether the citizen was under a reasonable impression she was not free to

leave the officer's presence. *United States v. Wylie*, 569 F.2d 62, 68 (D.C. Cir. 1977). To that end, a suspect's acquiescence to an officer's show of authority establishes a *Terry* stop. *California v. Hodari D.*, 499 U.S. 62, 623-24 (1991). Whether a reasonable impression exists (i.e., that a person is not free to leave) depends on what a reasonable person, innocent of any crime, would have thought had she been in the citizen's shoes. *Wylie, supra* at 68.

Here, the stop occurred when Officer Sayeg positioned his marked squad car just a few feet from Adams' rear bumper, effectively blocking him into his parking spot. This constituted the requisite level of both a show of authority and physical restraint which, not surprisingly, caused Adams to acquiesce by immediately heading toward Officer Sayeg upon exiting his van. Because he apparently used the vehicle to help his 77-year-old body down from the van, Officer Sayeg immediately activated his squad car's emergency lights.¹

Having established when the stop occurred, the next step is to examine what information Officer Sayeg possessed at that precise point in time to support a traffic stop. The determination of reasonableness is a commonsense test based on the totality of the facts and circumstances known to the officer at the time of the stop. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990). Ascertaining the facts and circumstances

¹It was later determined Adams indeed had leg injuries affecting his balance which prompted Officer Sayeg to administer alternate field sobriety tests that did not require Adams to demonstrate good balance. (R16-16, 28-29).

known to Officer Sayeg at the time of the stop is a relatively uncomplicated endeavor, in light of his testimony on the matter:

Q And you pulled in behind the vehicle?

A Yes.

Q How close would you say you situated yourself to that vehicle?

A I was on an angle and so it was probably maybe three to four feet from his rear bumper.

* * *

Q And the vehicle, there was nothing unusual about the way the vehicle was parked?

A That's correct.

Q It was parked in a normal fashion, nothing that would suggest unsafe driving?

A That's correct.

Q **At this stage, all the information that you have as a basis for the stop is the information that you have received from dispatch?**

A **Correct.**

Q **Which is . . . somebody reported a possible drunk driver in a vehicle that . . . matched Mr. Adam's vehicle?**

A **Correct**

* * *

Q And at this point, you haven't spoken directly to the person, whoever it was, that made that report?

* * *

A I have not.

Q At this point, you don't have the name of that individual.

A No.

Q And at this point, early stage when you are pulling in, looking at the vehicle, observing Mr. Adams exiting the vehicle, and putting on your emergency lights, you don't even know whether dispatch has the name . . . of the individual who made the report?

A Correct

Q You have already detained him and are investigating an OWI?

A Yes . . .

Q And the cellphone caller wasn't there at that time?

A They were not. . . .

Q Did you ever see that person that evening face to face? . . .

A I did not.

(R16-24-27). The stop and detention of Adams, accordingly, was precipitated by nothing more than a report from an unidentified individual, nowhere to be found at the scene of the stop, who alleged a vehicle roughly matching the description of Adams' vehicle "possibly" had an intoxicated driver. Such vague information, low in general reliability, fell well below what was needed to justify an investigatory detention at that point in time.²

²As further discussed below, this is not to say all Officer Sayeg could do was turn his squad car around and leave. On the contrary, Officer Sayeg could have continued his investigation by remaining and watching the elderly gentleman walk to the China Inn, observing his actions and gait for signs of possible intoxication. He could have simultaneously radioed dispatch to see whether the tipster had explained "why" he believed the driver might "possibly" be intoxicated. Most importantly, he could have asked dispatch whether the tipster had been willing to identify him or herself.

That some unknown individual alleging possible drunk driving managed to report where Adams and his vehicle could be found parked, and that Officer Sayeg found Adams and his vehicle parked there (and parked properly), did not give rise to a reasonable suspicion to immediately stop and detain Adams. The investigation was far too inchoate at that point in time, particularly given the absence of an informant who had been willing to identify himself. In addition, there was no immediate danger to the public at the time the detention occurred.

The proper analysis of the issue in this case will revolve primarily around *State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, which addressed traffic stops based on reports from citizen informants. The legal backdrop for *Rutzinski* was a United States Supreme Court decision from the year before: *Florida v. J.L.*, 529 U.S. 266, 266 (2000). *J.L.* had held insufficient, to justify a stop and frisk, an unidentified tip that a person was carrying a concealed gun, even though the tipster provided an accurate description and location (bus stop) of the suspect, and further alleged criminal activity. That, of course, is precisely all Officer Sayeg had here. *J.L.* thus compels a similar result: the stop of Adams was unlawful. Not surprisingly, *J.L.*'s reasoning rings true in this case:

The tip in the instant case lacked the moderate indicia of reliability present in *White* and essential to the Court's decision in that case. 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. If *White* was a close case on the reliability of anonymous tips, this one surely falls on the other side of the line.

J.L., 529 U.S. at 271.

The "close call" in *Alabama v. White*, 496 U.S. 325 (1990), to which *J.L.* referred offers a stark contrast to the facts of this case, and provides a measure of the general distrust with which the Supreme Court regards unidentified informants. In *White*, the unidentified tipster correctly predicted that a woman carrying a brown attache case (allegedly containing an ounce of cocaine) would be leaving a specific apartment building at a specific time in a brown Plymouth station wagon with the right taillight lens broken, and that she would then go to a specific motel. *Id.* at 327. This "close case" was called in favor of the government.

As can be seen, *J.L.*'s decision was based, *inter alia*, on the logic that before a tipster is willing to reveal her identity, the tip remains suspect since the tipster remains in a posture that

insulates her from the slightest repercussion in the event her report is fabricated. It is for this reason courts have generally taken a dim view of the reliability of unidentified tipsters. *J.L.* was also persuaded by the fact the tipster provided no “predicative information” the police could verify, other than a description and location of the suspect. *Id.* at 271.

Against this backdrop, *Rutzinski* examined the following factual circumstances. In *Rutzinski*, Officer Sardina overheard and responded to a police dispatch asking that a squad respond to the area of 51st Street and Grange Avenue because an unidentified motorist calling from a cell phone reported she was observing a black pickup truck weaving within its lane, varying its speed from too fast to too slow, and tailgating. *Rutzinski*, 2001 WI 22 at ¶ 4. While responding, Officer Sardina then received a second dispatch indicating the motorist was still on the phone, and that she and the black pickup had traveled to 60th and Grange. *Id.* at ¶ 5. Using this information, Officer Sardina determined the vehicles were heading toward him and positioned his squad car in the median and waited. *Id.* Officer Sardina then saw *both* vehicles pass his location and pulled behind the black pickup. *Id.* at ¶ 6.

After doing so, Officer Sardina received yet a third dispatch stating the motorist indicated she was now the vehicle *ahead* of the truck, could see Officer Sardina's squad, and confirmed Officer Sardina was following the correct truck. *Id.* Although Officer Sardina did not independently observe any signs of erratic driving, he activated his emergency lights and conducted a traffic stop of the black pickup. *Id.* at ¶ 7. The

motorist who reported Rutzinski's erratic driving also pulled over when, and where, Officer Sardina made the stop. *Id.*

Rutzinski ultimately concluded these circumstances gave rise to a reasonable suspicion to stop the vehicle. In so doing, it distinguished *J.L.* with the following observations:

- (1) By giving the location of his vehicle with respect to the suspect vehicle, the informant exposed herself to being identified by police;
- (2) The informant provided police with verifiable information indicating her basis of knowledge; and
- (3) The tip suggested Rutzinski posed an imminent threat to the public's safety.

Rutzinski at ¶32-36. *Rutzinski* noted that when the basis for an investigative stop depends solely on an informant's tip, the officer must consider both the veracity of the informant and the content of the tip as it relates to the informant's basis of knowledge of alleged illegality. *Rutzinski*, at 18. A deficiency in

one might be compensated by a strong showing as to the other.³
Id. citing Illinois v. Gates, 426 U.S. 213, 233 (1983).

It is problematic to try to justify the stop of Adams in light of the decision in *Rutzinski*. There are deficiencies in all of the considerations, and no strong showing to compensate for any of the deficiencies. Indeed, the problems are manifold. Chief among them is that from Officer Sayeg's perspective (the only perspective that matters), the identity of the tipster who reported a "possible intoxicated driver" was completely unknown. Indeed, the record reveals that at the time of the stop, the tipster's identity was not even known to dispatch. Moreover, and critically, neither was tipster anywhere to be found at the location of the stop, either prior to it, or at the time it was effectuated. (R16-24). Thus, from Officer Sayeg's perspective, the caller had not exposed himself to being identified by police.⁴

³ While *J.L* did not consider a juvenile carrying a concealed gun sufficiently dangerous to support a *Terry* search, it did state, in what amounted to dicta (and using a hypothetical report of a person carrying a bomb) that "extraordinary dangers sometimes justify unusual precautions." *Id.* at 272-74. *Rutzinski* seized on this language to conclude the danger posed by a suspected drunk driver moving on the road may be sufficient to justify a traffic stop. *Rutzinski*, at ¶35.

⁴That the caller's identity was not even known to dispatch at the time of the stop is evident from the transcripts of the 911 call and the dispatch tape. *Compare* App. C, p. 2 (stop occurred before 10:08:35) and App. D, p. 3 (caller provides identity at 10:09:36).

This major shortfall in establishing reasonable suspicion, might have been overcome, as *Rutzinski* teaches, had the tipster been present at the scene of Adams' stop (or more precisely, had Officer Sayeg reasonably believed the tipster was present). This was not a stop, however, like *Rutzinski* where the officer was expressly told the tipster was still following along with the suspect vehicle. Nor is this a case, like *Rutzinski*, where Officer Sayeg saw the tipster's vehicle pass his location, confirming it was still traveling with the suspect vehicle. And this is not a case, like *Rutzinski*, where Officer Sayeg received a dispatch stating the tipster had spotted the squad car, confirmed she was still traveling with the suspect vehicle, further provided her position vis-a-vis the suspect vehicle, and then confirmed the officer had correctly located, and was now following, the vehicle that was the object of her report. Nor did the tipster stay at the scene of Adams' stop because, as already noted, he was nowhere near that location. Thus, both the tipster's identity and location were unknown to Officer Sayeg when the stop occurred. This, as *Rutzinski* noted, places the tipster in this case on the very low end of the reliability spectrum. *Rutzinski* at ¶22.

Equally problematic, from the standpoint of trying to fit the square peg of this case into the round hole of *Rutzinski*, is the vague nature of the report as it was communicated to Officer Sayeg, remarkable for its lack of any description of the alleged driving. Here, the anonymous report was first equivocal ("possible"), and second vague ("drunk driver"), and devoid of the detailed and descriptive information the officer in *Rutzinski* received (i.e., weaving, remarkable speed deviations, tailgating). The information (indicating a basis of knowledge) Officer Sayeg received from the unidentified and unidentifiable informant was

not verifiable to anywhere near the degree as that enjoyed by the officer in *Rutzinski*.

The final *coup de grâce* to the legality of the stop of Adams is that the circumstances did not provide the same level of urgency as that at play in *Rutzinski*. Officer Sayeg was not confronted with the same level of urgency or immediate danger to the public and consequently, there was a material difference in the degree of exigency associated with a decision to stop Adams without even minimal additional investigation. Adams' vehicle was off the road and parked, properly, in a parking lot squarely within the area Officer Sayeg was already assigned to patrol that evening. The driver, moreover, had already exited the vehicle and was known to be an elderly gentleman. While in *Rutzinski* further investigation by the officer could have resulted, with each passing moment, in significant harm to another motorist or pedestrian, the same was decidedly not true with regard to Adams. Officer Sayeg had time to further investigate the report. This factor, in particular, more closely aligns this case with the facts of *J.L.*, and thus its outcome, than with the facts of *Rutzinski*, in a way *Rutzinski* would have understood:

In the case of a concealed gun, the possession itself might be legal, **and the police could, in any event, surreptitiously observe the individual for a reasonable period of time without running the risk of death or injury with every passing moment.**

Rutzinski at ¶35 (emphasis added), quoting *State v. Boyea*, 765 A.2d 862, 867 (Vt. 2000).⁵

Further investigation would have been neither difficult nor inconvenient. Already within his patrol zone, Officer Sayeg had a dispatch radio at his disposal, and the record is bereft of any other pressing matter. He could easily have obtained more information that, in retrospect, probably would have, within just minutes, allowed what was then just a hunch to blossom into reasonable suspicion. In less than a minute, dispatch would finally get around to obtaining the identity of the informant. (App. C, p. 3). Shortly thereafter, the caller agreed to remain at a remote location to speak with Officer Sayeg. (*Id.*). At a bare minimum, Officer Sayeg could have acquired a more nuanced understanding of what kind of driving the caller claimed to have observed. And he could have done all this while watching the driver walk to the China Inn, an instantly available opportunity to observe and gauge the driver's gait, balance and behavior.⁶

The framework constructed by *Rutzinski* has proven to be fair and workable in this type of case for more than a decade.

⁵It should further be noted there was zero urgency associated with obtaining the identity of the driver, as Officer Sayeg immediately recognized David Adams, whom he knew. (R16-35).

⁶Interestingly, Officer Sayeg may have acted precipitously because he failed to consider his other options. Officer Sayeg testimony strongly suggests he viewed his only other option at that time as simply leaving. (R16-14)(testifying he detained Adams because he did not know what Adams was going to do "after he left").

The convergence of an informant, who a beat officer knows has exposed himself to identification, and an exigency posed by a vehicle moving down the road, sanctions a traffic stop while still striking an appropriate balance between the need to protect the public and the rights protected by the fourth amendment. Were the traffic stop here constitutionally approved, however, such a decision would, given these facts, dramatically move the line that demarcates an apropos equilibrium between a seized individual's interest in being secure from police intrusion and the government's need to conduct a seizure. *U.S. v. Hensley*, 469 U.S. 221, 228 (1985); *State v. McGill*, 2000 WI 38, ¶ 18, 234 Wis.2d 560, 609 N.W.2d 795.

While the court's reasoning below is largely irrelevant, given the *de novo* standard of review, it was, in either event, flawed from the start, as it relied on a clearly erroneous finding of fact:

The citizen call provided the following information **that was initially communicated by dispatch to Officer Sayeg**. The citizen caller reported that they were following a red and gray van with license plate number 157817, **that the van was all over the road** on Forest Home traveling west and approaching Highway 100.

(App. B-3)(emphasis added). In fact, Officer Sayeg was never informed the citizen caller said "the van was all over the road." This is evident not only from Officer Sayeg's testimony (all he was told was there was a "possible" intoxicated driver), but

more unequivocally, from the transcript of the actual dispatch. (App. C, p. 1; App. D, p. 1).

The finding of fact that Officer Sayeg possessed information that the citizen caller had reported a van "all over the road" was erroneous, clearly. Section 805.17(2), Stats. The error is important, because although this was information Officer Sayeg could have acquired with a minimum of additional investigation (i.e., simply radioing dispatch), he unequivocally did **not** have that information at the time of the stop. And the stop's reasonableness, after all, must be examined from the standpoint of information *Officer Sayeg* possessed, whether from his own observations, or as communicated to him by other members of law enforcement. *See State v. Orta*, 2000 WI 4, ¶23, 231 Wis. 2d 782, 604 N.W.2d 543 (citing *State v. Friday*, 147 Wis. 2d 359, 434 N.W.2d 85 (1990)(overruled on other grounds)).⁷

⁷The erroneous finding of fact contaminated the trial court's ensuing legal analysis, which it began by specifically noting that "the citizen caller reported that he personally observed the car in question driving all over the road **which then provides the officer** with the basis of knowledge that the caller or reporting citizen is basing the information on in this case personal observation." (App. B-6).

CONCLUSION AND RELIEF REQUESTED

For all of the foregoing reasons, Adams respectfully requests this Court vacate the refusal conviction, and remand to the circuit court with directions that it dismiss that charge with prejudice.

Dated this 7th day of October, 2013.

/s/ Rex Anderegg
REX R. ANDEREGG
Attorney for the Defendant-Appellant

CERTIFICATION

I certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced using a proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, minimum 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 4,441 words.

Dated this 7th day of October, 2013.

/s/ Rex Anderegg
REX R. ANDEREGG

CERTIFICATION OF APPENDIX

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, and a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 7th day of October, 2013.

 /s/ Rex Anderegg
REX R. ANDEREGG

**CERTIFICATE OF COMPLIANCE WITH RULE 809.19
(12)**

I hereby certify that I have submitted an electronic copy of the brief-in-chief and appendix, if available electronically, in *City of Hales Corners v. David Adams*, Appeal No. 2013 AP 001128, which complies with the requirements of s. 809.19 (12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 7th day of October, 2013.

/s/ Rex Anderegg
Rex Anderegg