

**STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II**

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**Appeal No. 2013AP001351  
Manitowoc County Circuit Court Case No. 2012TR002338**

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**STATE OF WISCONSIN,**

Plaintiff-Respondent,

v.

**SANDRA L. BIANCARDI,**

Defendant-Appellant.

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**AN APPEAL FROM THE DECISION OF THE TRIAL  
COURT DENYING DEFENDANT-APPELLANT'S  
MOTION FOR SUPPRESSION OF EVIDENCE IN THE  
CIRCUIT COURT FOR MANITOWOC COUNTY, THE  
HONORABLE DONALD POPPY, CIRCUIT JUDGE,  
PRESIDING**

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**THE BRIEF AND APPENDIX OF THE DEFENDANT-  
APPELLANT SANDRA L. BIANCARDI**

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## **STATEMENT OF THE ISSUES**

Did the anonymous tip coupled with Trooper Guderski subsequent observations provided sufficient reason to stop Ms. Biancardi?

The trial court answered: Yes.

## **STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION**

Because this is an appeal within Wis. Stats. Sec. 752.31(2) Stats., the resulting decision is not eligible for publication. Because the issues in this appeal may be resolved through the application of established law, the briefs in this matter should adequately address the arguments; oral argument will not be necessary.

## **STATEMENT OF THE CASE/FACTS**

The defendant/appellant, Sandra L. Biancardi (Ms. Biancardi), was cited in the Manitowoc County, Wisconsin, with having operated a motor vehicle while under the influence of an intoxicant and operated a motor vehicle with a prohibited alcohol concentration on June 18, 2012 contrary to Wis. Stat. § 346.63(1)(a) and (1)(b) Stats. (R.1:1). The defendant filed a Motion for Suppression of Evidence on July 16, 2012. A motion hearing to the Manitowoc County Circuit Court was held on December 4, 2012, where the Court orally denied the defendant's motion. (R.12:20) A written order denying the motion was filed on December 6, 2012. (R.9:A.App.1). A trial to the court was held on March 12, 2013, where the Court found Ms. Biancardi guilty of operating a motor vehicle while under the influence of an intoxicant. (R.15:1). The defendant timely filed a Notice of Appeal on June 10, 2013.

The pertinent evidence in this case was provided at the motion hearing on December 4, 2012 through the testimony of Trooper Mitchell Guderski. Trooper Guderski testified that on June 18, 2012 shortly before 9:00 p.m. he was on I-43 near Highway Z when he received a dispatch call regarding a 911 caller that had called for help near the 168 mile marker on I-43

and then hung up. (R.12:5-6/A.App.2-3). Trooper Guderski reported that as he travelled towards the 168, dispatch advised the caller was the passenger in a vehicle and that the driver was intoxicated. (R.12:6/A.App.3). Dispatch advised that the vehicle was a black Honda SUV and the caller said he feared for his life and would call and hang up, call and hang up and did this multiple times. *Id.*

Trooper Guderski realized the vehicle was heading south and turned around to proceed southbound on I-43. (R.12:7/A.App.4). As he was traveling southbound on I-43, Trooper Guderski reported that he observed a vehicle in the right hand lane. *Id.* The vehicle was a black SUV. The SUV had a bike rack on the back and bicycles attached thereto. As he was behind the vehicle, Trooper Guderski observed the vehicle gradually cross over the fog line with two right tires by approximately one foot, and then travel on the fog line for about nine seconds. (R.12:A.App.9). Trooper Guderski observed no other weaving. *Id.* He then proceeded to stop the vehicle. *Id.*

Trooper Guderski reports that he stopped the vehicle to check on the driver's safety based on the caller's report. (R.12:9/A.App.5).

At one point, Trooper Guderski pulled up next to the vehicle to check the plates, however, he testified that he could not tell when he made this maneuver how many people were in the vehicle. (R.12:10/ A.App.6). Only after Trooper Gudeski made contact with the driver, did he realize that there was a passenger in the vehicle. He identified the driver as Sandra Biancardi via her driver's license and also a male Hispanic as the passenger (R.12:11/ A.App.7).

On cross examination, Trooper Guderksi reported that he did not know when he activated his lights how many people were in the vehicle nor did he know the name of the person who made the call to 91. Additionally, he acknowledged that a license plate number had not been provided. (R.12:12/ A.App.8). Further, neither the caller nor dispatch identified the vehicle as having bicycles on the back.(R:12:13/ A.App.9)

Guderski acknowledged that Ms. Biancardi stayed within her lane and did not cross to the left hand lane across the white dotted line that divided the two lanes of traffic. (R:12:13/ A.App.9). Additionally, Guderski conceded that the movements he observed were gradual not drastic. *Id.* Trooper Guderski described the vehicle as travelling over the fog line gradually.(R:12:14/A.App.10).



Based on the testimony of Guderski, the trial court denied the defendant's motion for suppression of evidence. (R:12:20/A.App.11). A written order denying the motion was signed on December 6, 2012. A trial to the court was held on March 12, 2013 where in the court found Ms. Biancardi guilty of operating a motor vehicle while under the influence of an intoxicant. The defendant timely filed a Notice of Appeal on June 10, 2013. The appeal stems from the trial court's denial of Ms. Biancardi's suppression motion.

### **STANDARD OF REVIEW**

"Investigative traffic stops, regardless of how brief in duration, are governed by [the] constitutional reasonableness requirement" under the Fourth Amendment to the United States Constitution and article 1, section 11 of the Wisconsin Constitution. *State v. Rutzinski*, 2001 WI 22, ¶¶ 12-14, 241 Wis.2d 729, 623 N.W.2d 516. Review of a circuit court's denial of a suppression motion presents a mixed question of fact and law. *State v. Knapp*, 2005 WI 127, ¶19, 285 Wis.2d 86, 700 N.W.2d 899. The court employs the clearly erroneous standard when reviewing the trial court's findings of historical fact. *State v. Johnson*, 2007 WI 32, ¶13, 299 Wis.2d 675, 729 N.W.2d 182.

However, whether a seizure has occurred, and, if so, whether it passes statutory and constitutional muster are questions of law subject to de novo review. *Id* at 829, 434 N.W. 2d 386 *citing State v. Guzy*, 139 Wis.2d 663, 407 N.W.2d 548 (1987). *State v. Richardson*, 156 Wis.2d 128, 137-8, 456 N.W.2d 830 (1990), *State v. Kasian*, 207 Wis.2d 611, 621, 558 N.W.2d 687 (Ct. App. 1996) *see also State v. Begicevic*, 2004 WI App 57, ¶3, 270 Wis.2d 675, 678 N.W.2d 293.

## ARGUMENT

### THE ANONYMOUS CALL COUPLED WITH TROOPER GUDERSKI'S OBSERVATIONS DID NOT RISE TO THE REQUISITE LEVEL OF SUSPICION TO STOP MS. BIANCARDI'S VEHICLE

To pass constitutional muster, an investigative stop must be supported by a reasonable suspicion grounded in specific articulable facts and reasonable inferences from those facts that an individual is or was violating the law. *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394. A “seizure” of “person” within the meaning of the Fourth Amendment occurs when an officer temporarily detains an individual during a traffic stop. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). An investigatory stop passes constitutional muster if the police possess reasonable suspicion that a violation has been

committed, is being committed, or is about to be committed.  
*State v. Waldner*, 206 Wis.2d 51, 56, 556 N.W.2d 681 (1996).  
This standard requires that the stop be based on something more  
than an “inchoate and unparticularized suspicion or ‘hunch.’”  
*Terry v. Ohio*, 392 U.S. 1, 27 (1968).

To constitutionally effectuate a traffic stop, an officer’s  
suspicion must be based on “specific and articulable facts which,  
taken together with rational inferences from those facts,  
reasonably warrant the intrusion.” *Id.* at 21. “The  
determination of reasonableness is a common sense test. The  
crucial question is whether the facts of the case would warrant a  
reasonable police officer, in light of his or her training and  
experience, to suspect that the individual has committed, was  
committing, or is about to commit a crime.” *State v. Post*, 2007  
WI 60, ¶ 301 Wis.2d 1, 733 N.W.2d 634 citing *State v.*  
*Anderson*, 155 Wis. 2d 77, 83-84, 454 N.W.2d 763 (1990). The  
State bears the burden of establishing that an investigative stop  
is reasonable. *State v. Taylor*, 60 Wis.2d 506, 519, 210 N.W.2d  
873 (1973).

“In some circumstances, information contained in an  
informant's tip may justify an investigative stop.” *State v.*  
*Rutzinski*, 2001 WI 22, ¶17, 241 Wis.2d 729, 738, 623 N.W.2d

516. In determining whether a tip is sufficient, courts look at the "reliability and content" of the tip. *Id.* at ¶¶19-26. "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." *Id.* at ¶18. The court looks at the totality of the circumstances in determining whether a tip rises to the level of reasonable suspicion. Reliability, veracity and basis of knowledge are all highly relevant factors in determining the value of a tip. *Alabama v. White*, 496 U.S. 325, 328, 110 S.Ct.2412 (1990).

In determining the veracity and reliability of an informant, it is critical to determine whether the informant is known or anonymous. A known tipster increases the reliability of the tip and corroboration of the details of the tip are not required. *see Adams v. Williams*, 407 U.S. 143 (1972).

However, where the tipster is anonymous, as in this case, the officer must gather sufficient information to corroborate the tip. *Rutzinski* at 741. Sufficient corroboration of the information in the tip is essential. A failure to sufficiently corroborate the details of the tip diminishes the tip's value and reliability to such a degree that a seizure based on that

information would violate the provisions of the Fourth Amendment.

Here, the caller was anonymous. He provided no name and no way for the officer to determine his veracity. In fact, he kept calling and then hanging up. Thus, under *Rutzinski*, the officer must sufficiently corroborate the tip. Unfortunately, the tip did not provide sufficient detail for the officer to identify Ms. Biancardi's vehicle. While the tip described the vehicle as black Honda SUV, there was no make of the vehicle provided, no license plate number and the communication with the caller was not continuous (R:12:5-6/ A.App.2-3). The description of the vehicle was not specific. Ms. Biancardi's vehicle had bicycles attached to the rear, and the caller provided no information about the bicycles. Aside from the color and the generic information about the make of vehicle, there was no specific identifying information provided concerning the vehicle. While the caller indicated the vehicle was a black Honda SUV, the caller provided no information describing model or the license plate.

More importantly, the caller provided no additional identifying information concerning the vehicle. See *Alabama v. White*, 496 U.S. 325, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990)

(In *White*, not only did the caller identify the vehicle as a brown Plymouth station wagon, but indicated that the vehicle had a broken right taillight.).

Furthermore, here, the caller allegedly was the passenger in the vehicle. However, prior to stopping the vehicle Trooper Guderski could not even determine if there was a passenger in the vehicle.

The tip provided no license plate number, and no information as to the fact that there were bicycles on the back of the vehicle. The caller simply provided a generic description of the color and brand of the vehicle. Based on the generic description and the fact that the communication was not continuous, Trooper Guderski could only speculate as to whether this was the correct vehicle.

Finally Trooper Guderski's observations of Ms. Biancardi's driving, did not justify the investigatory stop. Ms. Biancardi stayed in her lane, and at no point crossed the white dotted line that separated the right and left hand lanes. While she crossed the fog line by one foot, that movement was gradual. Her vehicle maintained a position on the travel portion of the roadway. There was no testimony that her vehicle ever traveled off the paved portion of the road. "Weaving within a single lane

does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle.” *State v. Post*, 2007 WI 60 at ¶ 38, 301 Wis.2d 1, 22, 733 N.W.2d 634. In *Post*, the defendant moved left to right approximately 10 feet, in and out of the parking lane as it traveled in a “discernible S-type pattern” several times over a two block period and was canted in the parking lane. *State v. Post*, 2007 WI 60 at ¶¶ 33-37. The Court found that while weaving within the lane alone did not justify the stop, the other driving behavior along with the time of night, 9:30 p.m., provided sufficient reasonable suspicion to stop Post’s vehicle.

Unlike *Post*, in Ms. Biancardi’s case, the movement in her lane was gradual and minimal. There was no parking lane (thus the vehicle was not canted into the parking lane), no discernible S-type pattern, nothing suggesting Ms. Biancardi’s moved significantly left to right several times over a short distance. In fact, while Ms. Biancardi crossed the fog line by one foot, at no point did Ms. Biancardi leave her lane of travel. Using the totality of the circumstances analysis, the anonymous tip combined with Trooper Guderski’s subsequent observations did not rise to the requisite level of suspicion to justify an investigatory stop of Ms. Biancardi’s vehicle.

## CONCLUSION

Because of the above, the trial court erred when it denied Ms. Biancardi's suppression motion. The Court should reverse the judgment of conviction and grant Ms. Biancardi's motion.

Dated this 5th day of August, 2013.

Respectfully Submitted

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## **FORM AND LENGTH CERTIFICATION**

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 18 pages. The word count is 3841.

Dated this 5th day of August, 2013.

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

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, 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 5th day of August, 2013

Respectfully submitted,

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## **APPENDIX CERTIFICATION**

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: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or a 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, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 5th day of August, 2013.

Respectfully submitted,

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## **APPENDIX**