

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

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**Appellate Case No: 2013AP001351  
Manitowoc County 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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**BRIEF AND APPENDIX OF THE  
PLAINTIFF-RESPONDENT**

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## **STATEMENT OF THE ISSUES**

**DID THE ANONYMOUS TIP COUPLED WITH  
TROOPER GUDERSKI'S SUBSEQUENT  
OBSERVATIONS PROVIDE SUFFICIENT  
REASONS TO STOP MS. BIANCARDI?**

The trial court answered: Yes.

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

Since this is an appeal within Wis. Stats. Sec. 752.31(2) Stats., the decision is not eligible for publication. The issues in the appeal can be resolved through established caselaw and the briefs of the parties will adequately address the arguments presented; therefore, oral argument is not necessary.

## **STATEMENT OF THE CASE**

The State of Wisconsin wishes to supplement the facts presented by Sandra Biancardi as to the testimony of Trooper Mitchell Guderski. Trooper Guderski testified that the 911 caller stated he was scared for his life and the driver was intoxicated. (R:12:6/ R-App.106) The informant initially stated that they were at mile marker 168 and later markers 164 and 163, indicating southward travel on I-43. (R:12:6/ R-App. 106) Trooper Guderski testified that when he observed the black Honda SUV, he observed the vehicle cross over the fog line completely with the two right tires and then move back into its lane. (R:12:7/ R-App.107) Trooper Guderski was unable to get the license plate number due to the bicycles in the back of the vehicle and backed off.

Trooper Guderski then observed the Honda SUV cross over the fog line a second time, at least by approximately a foot with both right side tires. (R:12:7/ R-App.107) Trooper Guderski then determined that he would stop the vehicle to check on the driver's safety and to see if she was falling asleep or possible impairment. (R:12:9/ R-App.109) When Trooper Guderski activated his emergency lights, it took

approximately nine seconds for the brake lights to be activated and the vehicle was driving on top of the fog line at that time. (R:12:9/ R-App.109)

## **ARGUMENT**

### **THE ANONYMOUS CALL COUPLED WITH TROOPER GUDERSKI'S INDEPENDENT OBSERVATIONS DID RISE TO THE LEVEL OF REASONABLE SUSPICION TO STOP MS. BIANCARDI'S VEHICLE**

In *State v. Rutzinski* the Wisconsin Supreme Court held that when determining the reliability of a tip, appropriate weight should be given to: (1) the informant's veracity; and (2) the informant's basis of knowledge. 2001 WI 22 at ¶18, 241 Wis. 2d 729, 739, 623 N.W. 2d 516. In cases in which an anonymous informant contacts police with a tip, independent police investigation or other corroboration by police can demonstrate that the informant has "inside information." *Id.* at ¶22. Inside information is not just easily obtainable facts but information that explains how the informant came to know of the information which police can corroborate. *Id.* at ¶25. The court must balance the individual's interest to be free from unnecessary searches and seizures against the interest of the state to fight crime. *Id.* at ¶15.

In this case, the informant did not provide his name, but the circumstances of the informant's calls showed that the person making the calls was in a position to know what he was talking about and therefore was reliable. The 911 calls indicated that the informant wanted the police to know the location of the vehicle he was in and to intervene. It is reasonable to expect that when the vehicle was located by law enforcement the informant's identity would become known. As in *Rutzinski*, the informant in this case ran the risk of being identified, and if the information he provided proved to be false, he could be arrested, and "this threat of arrest could lead a reasonable police officer to conclude that the informant is being truthful." *Id.* at ¶32.

In *Ruzinski*, the informant provided a description of the vehicle as a "black pick-up truck," and provided information indicating the direction of travel and the locations the truck passed supporting the informant's reliable basis of knowledge. *Id.* at ¶¶ 4-6. Similarly, the informant's calls in this case showed that he was making personal observations as they occurred by describing the vehicle and calling out the mile markers the vehicle passed, which also indicated the

direction of travel. The informant's calls indicated to Trooper Guderski that he was reporting events in real time and showed the informant had a reliable basis of knowledge. (R:12:6/ R-App. 106)

The reported fear of the informant created a sense of urgency that also warranted follow-up by Trooper Guderski. The informant expressed fear for his safety and was either hanging up or being disconnected on multiple occasions when on the telephone with dispatch.(R:12:6/ R-App.106) The informant reported that the driver was intoxicated, thereby heightening the safety concerns of the officer and letting the officer know that he may be looking for signs of an impaired driver.

As the Court stated in *Ruzinski*, in cases where some allegations in the tip suggest an imminent threat to the public safety or other exigency that warrants immediate police investigation, the police are not required to "idly stand by in hopes that their observations reveal suspicious behavior before the imminent threat comes to its fruition." *Id.* at ¶26. In such cases, it may be reasonable for an officer to conclude that the potential for danger caused by a delay in immediate



action justifies stopping the suspect without further observation. Exigency can supplement the reliability of an informant's tip in order to form the basis for an investigative stop. *Id.*

In this case Trooper Guderski did make further independent observations which confirmed the report of the informant that the driver was “intoxicated”. Those observations, coupled with the informant’s information, created reasonable suspicion for the traffic stop. Referencing the facts in *State v. Post*, 2007 WI 60, ¶ 5, 301 Wis.2d 1, 5, 733 N.W. 2d 634, Ms. Biancardi argues that the driving observed by Trooper Guderski does not give rise to reasonable suspicion since her driving was gradual and minimal, like the weaving described in *Post*.

However, Ms. Biancardi’s driving did not keep her vehicle in her designated lane of travel, unlike the driving in *Post*. Trooper Guderski testified that the right tires of her car crossed the fog line on two occasions, and on the second occasion, she crossed the fog line with the right tires of her vehicle by approximately one foot. (R:12:7/ R-App.107) These observations led to Trooper Guderski stopping the

vehicle to check on the driver's safety and to determine whether the driver was sleepy or impaired. The trooper's independent observations, combined with the information provided by the informant's tip established reasonable suspicion warranting an investigative stop.

### **CONCLUSION**

For the reasons stated above, the trial court properly denied Ms. Biancardi's suppression motion and therefore, the Court should affirm the trial court's order denying the suppression motion and deny the request for reversal of the judgment of conviction.

Dated this 5<sup>th</sup> day of September, 2013.

Respectfully submitted,

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## **FORM AND LENGTH CERTIFICATION**

The undersigned hereby certifies 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 1,030 words.

Dated this 5th day of September, 2013.

Respectfully submitted,

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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 5<sup>th</sup> day of September, 2013.

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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. 8-9.19(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 be so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 5<sup>th</sup> day of September, 2013.

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