

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

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SANDRA L. BIANCARDI,

Defendant-Appellant.

**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**

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

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ARGUMENT

The County argues that because the caller provided information including the direction of travel that this somehow bolsters the reliability of the tip, because the caller had “inside information.” The problem with this argument, is that the information provided by the caller was not unique, it contained only “easily obtained facts.” *Alabama v. White*, 496 U.S. 325, at 332, 110 S.Ct.2412 (1990) citing to *Illinois v. Gates*, 462 U.S. 213, 245, 103 S.Ct. 2317, 76 L.Ed. 527 (1983). In upholding the stop, the *White* court concluded “that it is also important that, as in *Gates*, “the anonymous [tip] contained a range of details relating not just to easily obtained facts and conditions existing at the time of the tip, but to future actions of third parties ordinarily not easily predicted.” *Alabama v. White*, at 332.

Here the information provided by the tipster did not suggest that the tipster had inside information, and did not provide a range of details. The caller did not have “inside information,” and thus, details of the tip do not bolster the reliability.

Additionally, the County states that the caller “expressed fear for his safety and was either hanging up or being disconnected.” However, the fact that the caller continued to call then hang up suggest that the caller was playing games, which additionally calls into question the reliability of the tip.

Finally, the County contends that the independent observations of Ms. Biancardi’s driving made by Trooper Guderski justified the investigatory stop. Ms. Biancardi stayed on her half of the road, never crossing the white dotted line that separated the right and left hand lanes of traffic. (R.12:13/ReplyApp. 1). Her vehicle stayed on the paved portion of the roadway. “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. Ms. Biancardi’s movement in her lane was gradual and minimal.

Because the anonymous tip was not reliable, and because Trooper Guderski’s independent observations did not support the stop, the stop was improper.

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 25th day of September, 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 10 pages. The word count is 1332.

Dated this 25th 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 25th day of September, 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 25th day of September, 2013.

Respectfully submitted,

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APPENDIX