

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

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**Appeal No. 2015AP000332
Columbia County Circuit Court Case Nos. 2014TR001077
2014TR001254**

COLUMBIA COUNTY,

Plaintiff-Respondent,

v.

JESSICA N. JOHNSON

Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND THE DECISION OF THE TRIAL
COURT DENYING THE DEFENDANT-APPELLANT'S
MOTION FOR SUPPRESSION OF EVIDENCE IN THE
CIRCUIT COURT FOR COLUMBIA COUNTY, THE
HONORABLE DANIEL S. GEORGE, JUDGE,
PRESIDING**

**THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT JESSICA N. JOHNSON**

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ARGUMENT

In arguing that anonymous call contained sufficient indicia of reliability providing reasonable suspicion for the encounter, the County attempts to compare Ms. Johnson's case to that of *Navarette v. California*, 572 U.S. ____, 134 S.Ct. 1683, 188 L.Ed.2d 680 (2014) and *State v. Rutzinski*, 2001 WI 22, 241 Wis.2d 729, 623 N.W.2d 516. Brief of Plaintiff-Respondent page 9. However, comparing the facts in each case to those herein reveal significant differences. Here, the caller reported that Ms. Johnson's vehicle was speeding, there was no report that Ms. Johnson was weaving, crossing the centerline, or driving in an otherwise erratic manner. Conversely, in *Navarette*, the caller reported being run off the road by the defendant's vehicle. Likewise, in *Rutzinski*, caller reported the offending vehicle to be "weaving within its lane, varying its speed from too fast to too slow, and 'tailgating'". *Rutzinski* at ¶4. Furthermore, in *Rutzinski*, a significant difference is that the caller was following the vehicle when the officer located it and pulled behind the defendant's vehicle, the caller who was still on the line with dispatch indicated that he or she was in the vehicle ahead of the defendant's vehicle. *Id.* at ¶6. In Ms. Johnson's case, there is no indication that the caller was continuing to

follow Ms. Johnson's vehicle or that the caller was in the vicinity of the stop.

What can be gleaned from both *Navarette* and *Rutzinski* is that the observed infractions could have suggested possible impairment. However, the *Navarette* court specifically found that "not all traffic infractions imply intoxication." For instance, a speeding or seatbelt violation are "so tenuously connected to drunk driving that a stop on those grounds alone would be constitutionally suspect." *Id.* at 1689-1691. The anonymous call in Ms. Johnson's case simply suggested a speeding violation. There was no suggestion that Ms. Johnson was driving her vehicle in a manner that was erratic. Thus, contrary to the County's contention, the call alone did not rise to a reasonable suspicion that Ms. Johnson was operating her motor vehicle while impaired.

Finally, the County argues that the additional observations made by Deputy Kaschinske after contacting Ms. Johnson provided sufficient justification to continue the detention of Ms. Johnson. Brief of Plaintiff-Respondent page 15-16. An investigative detention 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. An inchoate and unparticularized hunch will not suffice. *State v. Guzy*, 139 Wis.2d 663, 675, 407 N.W.2d 548 (1987).

As argued *supra*, the anonymous tip did not provide Deputy Kaschinske with sufficient reasonable suspicion that Ms. Johnson was operating her motor vehicle while impaired. Furthermore, the additional observations of Ms. Johnson made by Deputy Kaschinske after the contact did not support the continued investigation.

Clearly, an officer is permitted to extend a traffic stop “[i]f, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer’s intervention in the first place, the stop may be extended and a new investigation begun.” *State v. Betow*. 226 Wis.2d 90, 593 N.W.2d 499 (Ct.App. 1999) at 94-95.

“The question of what constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably

suspect in light of his or her training and experience.” *State v. Young*, 212 Wis.2d 417, 424, 569 N.W.2d 84 (Ct.App. 1997). To meet this test, the officer must show sufficient specific and articulable facts, which taken together with rationale inferences from those facts, reasonably warrant the officer’s continued intrusion. *Terry v. Ohio*, 392 U.S.1, 21, 88 S.Ct. 1868, 20 L. Ed.2d 889 (1968).

The additional observations made Deputy Kaschinske upon contact with Ms. Johnson, was that he observed only an odor of intoxicant. Kaschinske testified that from said odor, he could not determine if Ms. Johnson was impaired. (R. 42:20/ ReplyApp. 2), and he acknowledged that he did not question Ms. Johnson as to how much she had consumed or when she was consumed the alcohol. (R.42:21/ ReplyApp. 3). Furthermore, Kaschinske did not observe any problems with Ms. Johnson’s speech, eyes, or motor coordination suggesting that Ms. Johnson was impaired. He made no observations of erratic driving, and no observations that corroborated the anonymous caller’s statement that Ms. Johnson was vomiting outside the vehicle. Kaschinske acknowledged that he observed no signs of vomiting on the door or the door frame. (R.42:11/ ReplyApp. 1).

Deputy Kaschinske's observations of Ms. Johnson after the initial contact did not provide sufficient additional suspicion supporting the continued detention. Thus, the continued detention of Ms. Johnson violated her right to be free from unreasonable seizures thus violating her rights under both the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution.

CONCLUSION

Because of the above, and contrary to the County's contention, Deputy Kaschinske did not possess sufficient reasonable suspicion for the continued detention of Ms. Johnson, the trial court erred in denying Ms. Johnson's motion for suppression of evidence. The Court should reverse the trial court's ruling and vacate the judgment of conviction.

Dated this 2nd day of August, 2015.

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 14 pages. The word count is 2088.

Dated this 2nd day of August, 2015.

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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 2nd day of August, 2015.

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 2nd day of August, 2015.

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APPENDIX