STATE OF WISCONSIN

C O U R T O F A P P E A L S

DISTRICT III

Case No. 2016 AP 2404-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

XAVIER GRULLON,

Defendant-Appellant.

DEFENDANT-APPELLANT'S BRIEF

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On appeal from the Circuit Court
of Brown County, Hon. Marc A. Hammer,
Circuit Judge, presiding.

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CASES CITED

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ISSUES FOR REVIEW

1. Was the Defendant seized for Fourth Amendment purposes when an officer pulled his squad car into Defendant's driveway and turned on his red and blue lights as Defendant was walking towards his house?

   The Trial Court Answered: "No."

2. Did the anonymous tip create reasonable suspicion sufficient to support the seizure?

   The Trial Court Answered: "Yes."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument and publication are not requested.

STATEMENT OF THE CASE[1]

On July 22, 2015, at approximately 1:45 a.m., Lt. Steven Mahoney of the Green Bay Police Department, was on patrol duty when he heard a dispatch reporting an anonymous call claiming:

> …[a] motorcycle was laying in the roadway and that there was a male that was by the motorcycle that appeared to be intoxicated. The male then picked up the motorcycle, revved the engine, and left eastbound on Western Avenue.

(38:46-47). The motorcycle was not described, other than being a "Harley type" motorcycle.[2] (38:39, 49). The driver was not described other than being male. Mahoney was in a parking lot a few blocks south of Western Avenue. (38:8). He first headed east on a parallel road, then turned north in an attempt to cut off any east-bound motorcycle that might be coming from that general vicinity. (38:8). He was looking for any type of motorcycle. (38:39). While northbound on 13th Avenue, he observed a motorcycle coming towards his left on School Place road and then stopping at the stop sign at 13th Avenue. (38:9). Mahoney did not observe the motorcycle speeding, weaving, or doing anything suspicious. The rider was balanced at the stop sign. (38:24). Mahoney did not see any damage. (38:16, 62[3]). Mahoney continued northbound through the intersection with the motorcycle on

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1 The Statement of the Case and the Statement of Facts are combined.

2 Mahoney did not recall looking for any particular kind of motorcycle, but rather *any* motorcycle. (38:39).

3 The State stipulated there was no evidence of damage to the motorcycle. (38:62).

his left.[4] (38:10).

About 5 to 10 yards after he "cleared" the intersection, Mahoney started looking back at the motorcycle using his mirrors. (38:26) . The motorcycle stayed where it was for "five to ten seconds." (38:10). There was no other traffic. (38:12). Mahoney drove about 50 yards past the intersection and turned around. (38:12). He may have lost sight of the motorcycle for a second or two when he made his turn, although he did not recall exactly how long it was. (38:32, 33). By the time he had turned around, the motorcycle had turned right and was heading southbound on 13th street. (38:12, 25). It proceeded only 25-40 yards when it turned into a driveway. (38:13). Mahoney observed the driver get off the motorcycle and start walking towards the residence. (38:13). Mahoney pulled about two-thirds of his car into the driveway and "activated [his] emergency lights right away in an attempt to get [the driver] to stop from walking away." (38:13; 14, 34). The driver then stopped walking and Mahoney made contact with him. Mahoney detected the odor of "an intoxicating beverage" and slurred speech. (38:16). Grullon does not dispute Mahoney had reasonable suspicion from the point of personal contact onward.

Mahoney testified he stopped Grullon because he believed Grullon may have been attempting to avoid him at the intersection. Grullon allegedly did this by waiting at the stop sign longer than he needed to so Mahoney would be further away when Grullon made his right turn. (38:40, 42). Although it was dark and Mahoney's car was unmarked, Grullon could have identified Mahoney's vehicle as a police car. The car had a flood lamp on the driver's side pillar; 4 or 5 antennas on the top; and two inside light bars on the front and back windows. (38:11, 33).

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4 Mahoney did not recall whether he had a stop sign as well or went straight through. (38:23, 24, 25).

Mahoney conceded he did not observe Grullon commit any traffic violations before he turned on his emergency lights. (38:29, 41). He also conceded there was a large tree trunk to Grullon's right that could have obstructed his view and caused him to take more time to make the turn. (38:28, 29)[5]. He did not recall if there were cars parked on the street that also could have obstructed Grullon's view. (38:43). He did not recall the motorcycle edging forward as he watched it in his mirrors, although he probably wouldn't have noticed if Grullon had only moved inches rather than feet. (38:26). Mahoney agreed that a vehicle coming east on Western Avenue could have turned off on any number of streets before reaching the street Grullon was on. (38:21-22). Even after the arrest, Mahoney was not "100 percent" sure Grullon was the person the tipster saw on Western Avenue. (38:18).

An evidentiary hearing was held on January 13, 2016 and February 10, 2106. The circuit court found that Mahoney *did not* have a reasonable suspicion to stop Grullon. All Mahoney had were hunches. He had a "hunch" that Grullon "is the guy who dumped the motorcycle" because Grullon "is the only person that's out at 1:45 in the morning that this officer knows that driving a motorcycle." Further, Mahoney had "to guess that [the guy] dumped the motorcycle because he was drunk, but [Mahoney] doesn't know that." There were "no observations of speeding, of weaving, of failing to obey a traffic signal, of failing to obey a stop sign, …, so I don't think there's any articulable facts that would justify the officer stopping the defendant." (39:29-30 (Appendix ("A:"), p. 17-18)).

Nonetheless, the circuit court questioned whether Grullon had been seized, and asked the parties to further brief the issue. (32, 39 (A:20, 27)). While the State would not be prohibited from addressing reasonable suspicion if it chose to do so, the circuit

5 Mahoney later testified he did not believe any of the trees would have blocked a rider's view, but also conceded he did not know what may or may not have been blocking the rider's view. (38:43).

court "want[ed] the record to be clear" it was "not persuaded that there are sufficient building blocks to develop a cogent [reasonable suspicion] argument." (39:36 (A:24)).

The circuit court issued a written decision on May 24, 2016, denying Grullon's motion to suppress. Grullon was not seized under the Fourth Amendment because Mahoney's actions "did not rise to a sufficient display of authority so as to constitute a seizure of Grullon on the night in question." (15:7 (A:9)). Mahoney did not use his emergency lights to restrain Grullon's liberty, the circuit court reasoned, but rather, used them to "draw [Grullon's] attention to the presence of law enforcement and the desire by law enforcement to engage Grullon in conversation." (15:6 (A:8)). No reasonable person would conclude they were not free to walk away. (15:6 (A:8)).

The circuit court also changed its mind on reasonable suspicion. The tip *was* sufficient to create reasonable suspicion. While the tip was anonymous, the "CAD" report included the number and address of the phone used to make the call. (15:8 (A:10)). The tip was also contemporaneous with the event, and "verified" by the fact that a motorcycle was in the vicinity a short time after the tip was called in.

In addition, while Grullon's "longer than normal" delay at the intersection did not, of itself, constitute reasonable suspicion, "the combination of both the anonymous tip and the prolonged stop in conjunction with" Mahoney's "sixteen years of experience" were sufficient to create reasonable suspicion. (15:10 (A:12)).

ARGUMENT

I. GRULLON REASONABLY BELIEVED HE WAS NOT FREE TO LEAVE WHEN A SQUAD CAR PULLED BEHIND HIM IN HIS DRIVEWAY AND TURNED ON ITS RED AND BLUE LIGHTS.

The Fourth Amendment, U.S. Const. amend. IV, and Wis. Const. art. I, § 11 are not implicated until a government agent "seizes" a person. *County of Grant v. Vogt*, 2014 WI 76, ¶19, 356 Wis. 2d 343, 850 N.W.2d 253. A seizure occurs when police have in some way restrained the liberty of a citizen by means of physical force *or show of authority*. *Id*., at ¶20. The test is objective and considers whether an innocent reasonable person, in view of all the circumstances surrounding the incident, would have believed that he or she was not free to leave. *Id*.; *United States v. Mendenhall*, 446 U.S. 544, 552, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980). Examples of circumstances that might suggest a seizure include: the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled. *Vogt*., at ¶23; *Mendenhall*, at 554.

Police use of red and blue emergency lights will generally constitute a seizure. See *State v. Gottschalk*, 2013 WI App 55, ¶9, 347 Wis. 2d 551, 830 N.W.2d 723 (unpublished authored opinion) ("It is difficult to imagine a situation where a reasonable person would feel free to leave in response to an officer stopping and activating red-and-blue emergency lights behind the person's vehicle.") (A:29-31); see also *State v. Kramer*, 2008 WI App 62, ¶22, 311 Wis. 2d 468, 750 N.W.2d 941 (court agreed with defendant that officer's activation of his red-and-blue emergency lights constituted a display of authority); *State v. Truax*, 2009 WI App 60, ¶¶5, 11, 318 Wis. 2d 113, 767 N.W.2d 369 (State did not dispute that officer who pulled behind a just-stopped vehicle and activated the emergency lights had seized the vehicle).

Most jurisdictions have come to the same conclusion. See e.g. *State v. Anderson*, 362 P.3d 1232, 1236 (UT 2015) (most courts agree that few if any citizens would simply drive away when police pulled up with their emergency flashers on); *State v. Morris*, 72 P.3d 570, 573-74, 577-79 (Kan. 2003) (most appellate courts considering the issue have concluded a seizure occurs when officer activates emergency lights behind parked vehicle, citing cases from Arkansas, California, Connecticut, Florida, Oregon, Tennessee, Vermont, Virginia, and Washington); See also *People v. Brown*, 353 P.3d 305, 308, 310 (California 2015) (reasonable person would not believe they were free to leave when squad car pulled behind parked vehicle and activated emergency lights); *State v. Gonzales*, 52 S.W.3d 90, 97 (Tenn. Crim.App. 2000) (turning on blue emergency lights behind parked vehicle conveyed message occupants were not free to leave).

Whether someone has been seized presents a two-part standard of review. An appellate court will uphold the circuit court's findings of fact unless they are clearly erroneous, but the application of constitutional principles to those facts presents a question of law subject to de novo review. *Vogt*., at ¶17.

The material facts are undisputed. Grullon pulled into his driveway and parked his motorcycle. He started walking towards the house when Officer Mahoney pulled his car part-way into Grullon's driveway and turned on his emergency lights. (38:13, 34). According Mahoney, "I pulled into the driveway and activated my emergency lights right away *in an attempt to get* [Grullon] *to stop* from walking away." (Emphasis added) (38:13). It worked. Grullon stopped walking and Mahoney made contact with him. (38:13).

Grullon was seized for fourth amendment purposes the moment Mahoney activated his emergency lights. As any motorist knows, police emergency lights are a clear and unambiguous signal to stop. Mahoney admitted his intent to stop Grullon when he activated his lights, and Grullon responded accordingly. The way Mahoney hurriedly pulled into Grullon's driveway, moreover, blocking

Grullon's exit and leaving his trunk sticking out into the roadway, did not suggest a casual visit, especially at two o'clock in the morning. As this was a residential street with no other traffic, Grullon had no reason to believe the emergency lights were directed at someone else or were being used for safety reasons. If there was any doubt who or what the lights were meant for, a reasonable person would still error on the side of stopping. See e.g. *Brown*, at 314; *Anderson*, at 1236. In short, no reasonable person would have felt free to walk away under these circumstances. *Gottschalk*, 2013 WI App 55, at ¶9. The circuit court's finding has not only been repeatedly rejected in appellate decisions, it defies common practice.

II. NEITHER THE ANONYMOUS TIP NOR THE "DELAY" AT THE STOP SIGN PROVIDED REASONABLE SUSPICION FOR A SEIZURE.

1. Legal Standards

An investigatory stop constitutes a seizure within the meaning of the Fourth Amendment. *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996); *State v. Post*, 2007 WI 60, ¶12, 301 Wis. 2d 1, 733 N.W.2d 634. Before conducting an investigatory stop a police officer must have a reasonable suspicion, grounded in specific articulable facts, that an individual is violating the law. *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623; *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569 The analysis is focused on whether a particular person has violated the law. *Berkemer v. McCarty*, 468 U.S. 420, 439, 104 S. Ct. 3138, 82 L. Ed. 2d 317 (1984).

The State has the burden of establishing that an investigative stop of a particular individual was reasonable. *Post*, 2007 WI at ¶12. On appeal, the issue of whether an officer had reasonable suspicion to stop a vehicle is a question of constitutional fact with a two-step standard of review. *Post*, ¶10. The circuit court's findings of fact will be upheld unless they are clearly erroneous, but the application of those facts to constitutional principles is reviewed de novo. *Id.* In this

case, the facts are not disputed. Whether Officer Mahoney had reasonable suspicion is therefore a question of law reviewed de novo.

2. The anonymous tip did not supply reasonable suspicion.

The circuit court relied on the anonymous tip to establish reasonable suspicion. Whether an anonymous tip is sufficient to justify a seizure "is dependent upon both the content of the information possessed by police and its degree of reliability." *Navarette v. California*, --- U.S.---, 134 S. Ct. 1683, 1687, 188 L. Ed. 2d 680 (2014), citing *Alabama v. White*, 496 U.S. 325, 330 (1990).

In *Navarette,* a 911 caller reported a vehicle "as having run her off the road." The caller identified the make, model, and color of the offending vehicle, together with its license plate. The caller also identified the pickup truck's location and direction of travel. A highway patrolman found the truck a short time later on the same roadway and pulled it over. The Court acknowledged that "an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity." *Id*. at 1688 (quoting *White*, 496 U.S. at 329). While the facts were "close," the tip was sufficient to support reasonable suspicion for three reasons. *Id*., at 1692.

First, by reporting she had been run off the road by a specific vehicle—a silver Ford F-150 pickup, license plate 8D94925—the caller not only clearly identified the vehicle but in so doing necessarily claimed eyewitness knowledge of the alleged dangerous driving. *Id*., at 1689. An informant's "explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand, entitles the tip to greater weight than might otherwise be the case." *Id*.

Second, based on when and where the truck was stopped, the report was contemporaneous to the events alleged, which also entitles it to greater weight.

Third, the caller's use of the 911 system is "[a]nother indicator of veracity. *Id*., at 1689. This does not make 911 calls per se reliable, but "a reasonable officer could conclude that a false tipster would think twice before using such a system." The use of a 911 call is therefore "one of the relevant circumstances" an officer may rely on. *Id*., at 1689-90.

Fourth, the tip provided an objective basis to believe the stopped person was, or was about to be, engaged in criminal activity. *Id*., at 1690. The caller reported "more than a minor traffic infraction and more than a conclusory allegation of drunk or reckless driving." *Id*., at 1691. Running another vehicle off the road implies a host of recognized drunk driving cues.[6] *Id*., at 1691. A police officer could reasonably conclude that a driver who almost strikes a vehicle or another object is likely intoxicated. *Id*., at 1691. While this was a "close case," the call was sufficient to provide reasonable suspicion to seize the reported vehicle.

In this case, the anonymous call was also made through the 911 system and appears to describe an eyewitness account of a contemporaneous event. That is where the similarity with *Navarette* ends, however. *Navarette* is distinguishable for several reasons: First, the tip failed to adequately identify the driver or the vehicle. Second, the tip lacked reliability because of the potential for bias and the lack of any meaningful corroboration. Third, the caller failed to provide an objective basis to believe the stopped person was, or was about to be, engaged in criminal activity. Each of these will be addressed in turn.

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6 See, e.g., *People v. Wells*, 38 Cal. 4th 1078, 1081, 45 Cal. Rptr. 3d 8, 136 P. 3d 810, 811 (2006) ("'weaving all over the roadway'"); *State v. Prendergast*, 103 Haw. 451, 452-453, 83 P. 3d 714, 715-716 (2004) ("cross[ing] over the center line" on a highway and "almost caus[ing] several head-on collisions"); *State v. Golotta*, 178 N.J. 205, 209, 837 A. 2d 359, 361 (2003) (driving "'all over the road'" and "'weaving back and forth'"); *State v. Walshire*, 634 N.W. 2d 625, 626 (Iowa 2001) ("driving in the median"). *Id*., at 1690-91.

a. The tip failed to adequately identify the driver of the vehicle.

Regardless of the tip's reliability or content, it fails to supply reasonable suspicion because it did not provide sufficient information to identify the individual or vehicle involved. The tipster identified a "male" on a "Harley type" motorcycle heading east on Western Ave. (38:39, 49). Mahoney admitted he was looking for anyone on a motorcycle. (38:39). As Mahoney did not find Grullon heading east on Western Ave., and did not see any sign of damage from the alleged tip-over, the most one can say is that Mahoney stopped the first motorcycle he saw in the general vicinity of the caller's report. (38:16, 62).

In contrast, the caller in *Navarette* provided detailed information, including the make, model, color, and license plate number of the offending vehicle. *Navarette*, at 1686. See also *White*, 496 U.S. at 332 (officers found and followed a car "precisely matching the caller's description" to specific, predicted addresses). Reasonable suspicion requires an objective basis to believe *a particular individual* is engaging in, or is about to engage in, criminal conduct. *Post*, at ¶12. The anonymous tip did not provide enough information to make that possible. Even after the arrest, Mahoney was not sure Grullon was the guy the tipster reported. (38:18). Based on Mahoney's search criteria, any motorcycle he ran into would have been fair game. This does not constitute a particularized suspicion.

b. The tip was not sufficiently reliable.

The tip was anonymous. The caller was never identified or contacted by police. While use of the 911 system is a "relevant circumstance" a police officer can take into account, it does not make the contents of the call per se reliable. *Navarette*, at 1689-90. The fact remains that nothing is known about the caller other than his or her location at the time the call was made. Any marginal reliability the state may gain from the caller's use of the 911 system, moreover, is

offset by the potential for bias. The incident occurred at 1074 Western Ave., and the report was made from 1070 Western Ave., a mere two houses away. In other words, a neighbor was calling the police on another neighbor, or at least one of the neighbor's guests. We know nothing about these neighbors or their history, but there is a good chance they know each other. Unlike *Navarette*, this was not a stranger to stranger report where a motive to make false, anonymous accusations is far less likely to exist.

Further, the caller provided no relevant predictive behavior or anything else which would have allowed independent corroboration of the described event. The only "predictive" fact the caller provided was that a male on a "Harley-type" motorcycle was heading east on Western Ave. This is not, however, the kind of predictive fact that matters. See *People v. Smulik*, 964 N.E.2d 183, 187 (App. Ill. 2012); citing *White*, 496 U.S. at 327 and *Florida v. J.L.*, 529 U.S. 266, 271, 120 S. Ct. 1375, 146 L. Ed. 2d 254 (2000) (That a vehicle fitting a certain description would be found at a particular place, or heading some general direction, is not enough to establish the requisite degree of reliability.) Even then, the motorcycle was not found east-bound on Western Ave. Nor did the Officer see any damage to the motorcycle from the alleged tip-over. The tipster's veracity was not only uncorroborated, but arguably contradicted.

c. The caller failed to provide an objective basis to believe the stopped person is, or is about to be, engaged in criminal activity.

Reasonable suspicion "requires that a tip be reliable *in its assertion of illegality*, not just its tendency to identify a determinate person." *J.L.*, at 271. In this case, the tip did not provide an objective basis to believe the stopped person had been, or was about to be, engaged in criminal activity. *Id*., at 1690. The caller does not say he or she saw the rider consuming alcohol. The caller does not say he or she saw the rider driving erratically. The caller merely alleged the rider "appeared intoxicated," whatever that means. We have no idea why other than to assume it was based on the caller's allegation that the

rider's bike had fallen over. Nothing in the tip, however, provides an objective basis for believing that intoxication caused the motorcycle's tip-over. Unlike *Navarette,* the allegation in this case does not constitute a "host" of drunk driving "cues," such as "weaving all over the roadway"; "cross[ing] over the center line" on a highway and "almost caus[ing] several head-on collisions"; driving "all over the road" and "weaving back and forth"); or "driving in the median". Navarette, at 1690-91. The tipster in this case did not, in contrast to *Navarette,* report "*more than* a minor traffic infraction and *more than* a conclusory allegation of drunk or reckless driving." (emphasis added) *Id*., at 1691. If *Navarette* was a "close case," this case is not. See also, e.g., *People v. Smulik,* 964 N.E.2d 183, 187-188 (Ill. App. 2012) (Anonymous 911 caller who claimed she saw defendant drinking in two bars and believed he was intoxicated, and followed him to a convenience store, where the police officer found him, not sufficient to support reasonable suspicion of wrongdoing because the officer's personal observations corroborated only the noninculpatory aspects of the tip, namely, that a vehicle fitting a particular description could be found as a certain location.)

Nor do the facts in this case come anywhere close to *White*. In *White*, the caller stated that "Vanessa White would be leaving 235-C Lynwood Terrace Apartments at a particular time in a brown Plymouth station wagon with the right taillight lens broken, that she would be going to Dobey's Motel, and that she would be in possession of about an ounce of cocaine inside a brown attache case." *White*, 496 U.S. at 327. Officers proceeded to the Lynwood Terrace Apartments, where they observed a station wagon meeting the description given by the caller in the parking lot in front of the 235 building. Officers observed a woman leave the 235 building, enter the station wagon, and proceed directly to "Dobey's Motel." *Id*.

White was, like *Navarette,* a "close case." *White*, at 496 U.S. at 332. What tipped the balance was information which went well-beyond the "facts and conditions existing at the time of the tip." Anyone can observe and report conditions existing at the time of the call, such as the color and location of defendant's car. Far more

important was the caller's ability to predict the defendant's future behavior. It demonstrated inside information — i.e. a special familiarity with defendant's affairs. *Id*., at 332. Being privy to White's itinerary, it was reasonable to think the caller "also ha[d] access to reliable information about [White's] illegal activities. *Id*., at 332.

The circuit court got it right the first time when it concluded Mahoney was acting on a "hunch" based on a series of *assumptions.* (39:29). Mahoney didn't believe the tip was sufficient or he would have stopped Grullon when he first saw him at the intersection.

3. The "prolonged" stop did not provide reasonable suspicion.

The circuit court found reasonable suspicion based solely on the anonymous tip. The alleged "delay" at the intersection was not, standing alone, sufficient for reasonable suspicion. (15:9-10 (A:11-12)). However, "the combination of both the anonymous tip and the prolonged stop in conjunction with Lieutenant Mahoney's sixteen years of experience" do create reasonable suspicion. (15:10 (A:12)). The circuit court is not clear as to whether the combination of the anonymous tip and the "delay" at the intersection support reasonable suspicion *if* neither would standing alone.

Grullon has already addressed why the anonymous tip is insufficient to support reasonable suspicion. Therefore, he will first address whether the "delay," standing alone, is sufficient. He will then address whether the combination of the anonymous tip and the "delay" supports reasonable suspicion, even if they do not do so individually.

a. The alleged "delay," standing alone, does not support reasonable suspicion.

The problem with the circuit court's analysis is two-fold. First, a 5-10 second delay does not constitute suspicious behavior and therefore adds nothing to the reasonable suspicion calculus. Second,

and alternatively, Mahoney's belief Grullon was attempting to avoid him has no objective basis.

The State's argument has already been rejected by this Court. See *State v. Fields*, 2000 WI App 218, ¶14, 239 Wis.2d 38, 44, 619 N.W.2d 279, 283 (Driver's 5 to 10 second delay at intersection not basis for reasonable suspicion).

Second, Mahoney's "police avoidance" by delay scenario has no objective basis. While reasonable suspicion may be based on lawful conduct, the lawful conduct must be such that "a reasonable inference of *unlawful conduct*" can be "*objectively discerned*,…." *State v. Waldner*, 206 Wis. 2d 51, 60, 556 N.W.2d 681, 686 (1996).
To begin with, there's no evidence Grullon knew Mahoney was a police officer. Mahoney was driving an unmarked car at night. See *Fields*, at ¶15. (Driver's delay at intersection not relevant to reasonable suspicion when record devoid of any facts from which an inference can be made as to whether defendant could identify the other vehicle as a squad car at night.) Even if Grullon *may have* noticed the side-light, the antennas, or the emergency lights inside the car; *and may have* recognized these attributes as belonging to a police car, his subsequent actions don't prove anything. If Grullon were trying to distance himself from the police car, it made more sense for him to turn immediately. Mahoney was traveling in the direction opposite to Grullon's turn, so the sooner Grullon turned, the more distance he would have put between them. Had Grullon hurried rather than delayed his turn, Mahoney would have probably drawn the same conclusion. In short, Mahoney's contention that Grullon "may have" been avoiding him is no more likely because Grullon delayed his turn rather than turned quickly.

b. The alleged "delay" does not bolster the anonymous tip.

The circuit court fails to articulate how the anonymous tip and the delay, when considered together, are greater than the sum of their individual parts. The alleged "delay" does nothing to shore up the

anonymous tip in this case because it does not constitute "suspicious" behavior in the first place. *Fields*, at ¶14. Further, the delay and the anonymous tip have nothing to do with each other. The mere possibility Grullon *may* have been avoiding Mahoney does not remedy the deficits in the anonymous tip: the failure to adequately identify the driver or the vehicle; the lack of any meaningful corroboration; potential bias; and the caller's failure to articulate his or her basis of knowledge for criminal activity.

In short, neither the anonymous tip nor the "delay" at the intersection create reasonable suspicion that Grullon was driving while intoxicated, whether combined or not. The circuit court erred as a matter of law when it ruled to the contrary.

CONCLUSION

This Court should reverse the conviction and remand to the circuit court with directions to suppress all evidence obtained during and after the stop.

Respectfully submitted this 24th day of April, 2017

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I certify that this brief meets the form and length requirements of Rule 809.19(8)(b)&(c), as modified by the Court's Order, and that the text is:

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Dated this 24th day of April, 2017.

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CERTIFICATION OF MAILING

I certify that this brief or appendix was deposited in the United States Mail for delivery to the Clerk of the Court of Appeals by First Class Mail on April 24, 2017. I further certify that the brief or appendix was correctly addressed and postage was prepaid.

Dated this 24th day of April, 2017

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APPENDIX OF DEFENDANT-APPELLANT

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