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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appeal No. 2017 AP 001555
Racine County Circuit Court Case Nos.2016TR015524
2016TR015525

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANGELA J. COKER,

Defendant-Appellant.

AN APPEAL FROM THE JUDGEMENT OF CONVICTION AND OF THE TRIAL COURT'S RULING DENYING THE DEFENDANT'S MOTION FOR SUPPRESSION OF EVIDENCE IN THE CIRCUIT COURT FOR RACINE COUNTY, THE HONORABLE TIMOTHY D. BOYLE, PRESIDING

THE BRIEF AND APPENDIX OF THE DEFENDANT-APPELLANT ANGELA J. COKER

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STATEMENT OF THE ISSUES

Did Wisconsin State Patrol Trooper Amlong possess the requisite level of suspicion to stop Ms. Coker's vehicle, where there was a report of an erratic driver and the caller did not subject him- or herself to identification and where Trooper Amlong followed Ms. Coker for one mile and observed no signs of erratic driving and no traffic law violations?

The trial court answered: Yes.

STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION

Because this is an appeal within Wis. Stats. Sec. 752.31(2), 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, Angela J. Coker, (Ms. Coker) was charged in Racine County with having operated a motor vehicle while under the influence of an intoxicant and operated a motor with a prohibited alcohol concentration contrary to Wis. Stat. §346.63(1)(a) and (b) on June 18, 2016. By counsel on June 24, 2016, Ms. Coker entered written not guilty pleas to both charges. On the same date, counsel filed a motion for suppression of evidence challenging the stop of her vehicle. On December 5, 2016, a hearing on the defendant's motion was held, the honorable Timothy D. Boyle, Racine County Circuit Court, presiding. The Court orally denied the defendant's motion on that date. A written order denying Ms. Coker's motion was signed and filed on July 19, 2017. (R. 13:1/App. 1). A trial to the court was held on July 12, 2017. On that date, the court, the Honorable Timothy D. Boyle, presiding, found Ms. Coker guilty of both operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a prohibited alcohol concentration in violation of Wis. Stat. §§346.63(1)(a) and (b), respectively.

Mr. Coker timely filed a Notice of Appeal on August 3, 2017. The appeal stems from the judgment of conviction, and

the court order denying Ms. Coker's motion for suppression of evidence.

The pertinent facts to this appeal were adduced at the motion hearing held on December 5, 2016 through the testimony of Wisconsin State Patrol Trooper Kyle Amlong. Trooper Amlong testified that he has been a trooper with the State Patrol since January of 2007. (R.19:2-3/ App. 2-3). Amlong testified that he was working in Racine and Kenosha counties on June 18, 2016. ***Id.*** At approximately 11:16 p.m. Amlong was alerted to a report of a vehicle, a white Ford Flex van, traveling southbound from Milwaukee weaving all over the road. ***Id.*** Amlong testified that there was a caller that provided updates of the location. Amlong testified he was not provided with the names of the caller. (R.19:4/ App. 4). Amlong testified that the caller directed him to the correct vehicle. The record is silent as to whether the caller revealed his/her identity, however, Amlong testified that he thought the caller was willing to make a statement. (R.19:8/ App. 7). Amlong did not recall receiving a license plate number on the vehicle, or any other identifying information other than a white Ford Flex vehicle. However, Amlong did not immediately stop the vehicle, but rather followed it for approximately one mile from Racine County into Kenosha County. He testified

that he did not see the vehicle that was allegedly following Ms. Coker's vehicle. (R.19:8/ App. 7).

While following the vehicle, Trooper Amlong observed no traffic violations. (R.19:5/ App. 5). In fact, he testified that he observed nothing concerning the operating of the motor vehicle that was consistent reports that had been relayed to him via dispatch. (R.19:7/ App. 6). Eventually, Amlong stopped Ms. Coker's vehicle.

Defense counsel argued that the call coupled with the observations made by Trooper Amlong, did not justify the stop of Ms. Coker's vehicle. The State argued that the officer had the requisite level of suspicion to stop Ms. Coker's vehicle (R.19:9/ App. 8). The Court found that Trooper Amlong had sufficient suspicion to stop Ms. Coker's vehicle, and denied the motion. (R.19:10-11/ App. 9-10). A written order denying the motion was entered on July 19, 2017. (R.13:1/ App. 1).

Ms. Coker timely appealed after the court found her guilty of both operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a prohibited alcohol concentration in violation of Wis. Stat. §346.63(1)(a) and (b), respectively. The appeal herein stems from the court Order denying Ms. Coker's motion for

suppression of evidence. Ms. Coker timely filed a Notice of Appeal on August 3, 2017.

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

A. TROOPER AMLONG DID NOT HAVE THE REQUISITE LEVEL OF SUSPICION TO STOP MS. COKER'S WHERE THERE WAS A REPORT OF AN ERRATIC DRIVER, AND WHERE TROOPER AMLONG FOLLOWED MS. COKER FOR ONE MILE AND OBSERVED NO SIGNS OF ERRATIC DRIVING

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 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). In determining whether a tip provides reasonable suspicion, a court must consider (1)"the quality of the information, which depends upon the reliability of the source" and (2) the "quantity or content of the information." ***State v. Miller,*** 2012 WI 61, ¶31, 341 Wis.2d 307, 815 N.W.2d 349. ***Miller*** recognized the "inversely proportional" relationship that exists between these factors, ***Id.*** as set forth in ***Alabama v. White,*** 496 U.S. 325, 332 (1990):

> [I]f an informant is more reliable, there does not need to be as much detail in the tip or police corroboration in order for police to rely on that information to conduct an investigatory stop. On the other hand, if an informant has limited reliability- for example, an entirely anonymous informant- the tip must contain more significant details or future predictions along with police corroboration. The relevant question is whether the tip contained "sufficient indicia of reliability"

In some circumstances, if the tip alleges an imminent threat to public safety, "it may be reasonable for an officer in such a situation to conclude that the potential for danger caused by a delay in immediate action justifies stopping the suspect without any further observations." ***Rutzinski*** at ¶26.

Here, the record is silent as to the identity of the tipster. However, while the testimony revealed that the officer believed the caller was following Ms. Coker's vehicle (so it might not have been a totally anonymous tip), the officer testified that he could not say that he actually saw a vehicle behind Ms. Coker. Where the tip is anonymous, 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, because the caller was not known to officer, the tip falls on the low end of the reliability spectrum. However, if a tip "contains strong indicia of an informant's basis of knowledge, there need not be any indicia of the informant's veracity." ***Rutzinski*** at ¶25.

In ***Rutzinski,*** the caller indicated to the officer that he or she "was in the vehicle in front of Rutzinski's pickup." ***Rutzinski*** at ¶32. The Court found that the arresting officer, "could infer that by revealing that he or she was in a particular vehicle, the informant understood that the police could discover his or her identity by tracing the vehicle's license plates or directing the vehicle to the side of the road." ***Id.***

In finding the tip reliable**,** the ***Rutzinski*** court considered that the tipster exposed "himself or herself to being identified." ***Id.***

Unlike ***Rutzinski,*** here, the caller did not expose him- or herself to being identified. The record is unclear as to where the caller was located. In fact, Trooper Amlong specifically testified that he could not say that he actually saw the caller's vehicle. (R.19:8/ App. 7). The reliability and veracity of the tip is diminished where the caller does not subject him- or herself to being identified. Because Trooper Amlong could not even testify as to the caller's location, it would be remiss to determine that the caller exposed him- or herself to being identified and thus enhancing his or her reliability. Thus unlike ***Rutzinski***, here because the caller did not subject him- or herself to being

identified, it is unreasonable to conclude that the unidentified caller was being truthful.

Furthermore, the observations actually made by Trooper Amlong contradict the information provided by the caller. Trooper Amlong followed Ms. Coker's vehicle for one mile prior to activating his emergency lights and conducting the traffic stop. During that time, Trooper Amlong observed no erratic driving and no traffic law violations. Amlong conceded that the driving he observed was inconsistent with the reports of the unidentified caller. These contradictory observations weigh against the veracity of the caller. So not only does the caller fail to subject him- or herself to being identified, but additionally, the alleged report by the caller is not substantiated by the Trooper as he follows Ms. Coker's vehicle.

CONCLUSION

Because of the above, Trooper Amlong did not possess the requisite level of suspicion to stop Ms. Coker's vehicle. Thus, the trial court erred in denying Ms. Coker's suppression motion. The Court should vacate the judgment of conviction and reverse the trial court's order.

Dated this 9th day of October, 2017.

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 3952.

Dated this 9th day of October, 2017.

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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 9th day of October, 2017.

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 9th day of October, 2017.

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APPENDIX

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