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COURT OF APPEALS
DISTRICT II

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OF WISCONSIN**

Appeal No. 2017 AP 001555

Racine County Circuit Court Case Nos: 2016TR15524 &
2016TR15525

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ANGELA J. COKER,

Defendant-Appellant.

An Appeal From a Judgment of Conviction and Order
Denying Defendant's Motion to Suppress Evidence
Entered by the Honorable Timothy D. Boyle, Circuit
Judge, Branch 10, Racine County

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF THE ISSUES

1. Does an officer have reasonable suspicion to conduct a traffic stop where dispatch informs the officer of multiple calls describing erratic driving by the suspect vehicle and one caller continues to provide updates of the suspect vehicle and indicates he is willing to stop to give a written statement?

Circuit Court Answer: Yes.

POSITION ON ORAL ARGUMENT AND
PUBLICATION

The Plaintiff-Respondent (“State”) submits that oral argument is unnecessary because the issues can be set forth fully in the briefs. Publication is unnecessary as the issues presented relate solely to the application of existing law to the facts of the record.

STATEMENT OF THE CASE

Given the nature of the arguments raised in the brief of defendant-appellant Angela J. Coker, the State exercises its option not to present a statement of the case. *See* Wis. Stat. (Rule) 809.19(3)(a). The relevant facts and procedural history will be discussed in the argument section of this brief.

ARGUMENT

I. STANDARD OF REVIEW

The constitutional validity of an investigative seizure raises a question of constitutional fact, reviewed under a two-part standard of review, with the circuit court's factual findings reviewed under a clearly erroneous standard, and application of constitutional principles to those facts reviewed independently. *See, e.g., State v. Vorburger*, 2002 WI 105, ¶ 32, 255 Wis. 2d 537.

Appellate courts reviewing an order denying a motion to suppress evidence will uphold a circuit court's findings of fact unless they are clearly erroneous. *State v. Secrist*, 224 Wis. 2d 201, 207, 589 N.W.2d 387 (1999). The reviewing court independently applies constitutional principles to the undisputed facts found by the trial court and makes a de novo determination of whether the police had reasonable suspicion to conduct an investigative stop. *State v. Post*, 2007 WI 60, ¶ 8, 301 Wis. 2d 1.

II. THIS COURT SHOULD FIND THAT TROOPER AMLONG HAD REASONABLE SUSPICION TO CONDUCT A TRAFFIC STOP OF THE DEFENDANT BASED ON THE INFORMATION HE RECEIVED THROUGH DISPATCH FROM MULTIPLE 911 CALLERS.

This Court should affirm the Circuit Court's decision denying the Defendant's Motion to Suppress. Trooper Amlong had reasonable suspicion to conduct a traffic stop of the Defendant's vehicle based on the information he received from dispatch through multiple callers identifying the vehicle and describing its erratic driving. Additionally, one caller informed dispatch that he was following the Defendant's vehicle and was willing to stop and provide a statement. The totality of this information provided Trooper Amlong with reasonable suspicion necessary to initiate a traffic stop of the Defendant.

In order to stop and detain an individual for an investigation, a law enforcement officer must have specific, articulable facts, which would cause a reasonable person to believe the stop was appropriate. *Terry v. Ohio*, 392 U.S. 1, 21, 22, 88 S.Ct. 1868 (1968). Reasonable suspicion is all that is required for a *Terry* stop which is "a particularized and objective basis for suspecting the person stopped of criminal

activity.” *State v. Patton*, 2006 WI App 235 ¶ 9, 297 Wis. 2d 415 (citing *Ornelas v. United States*, 517 U.S. 690, 696, 116 S.Ct. 1657 (1996)).

Trooper Amlong described specific, articulable facts that led him to conduct a traffic stop of the Defendant’s vehicle, and those facts formed the reasonable suspicion that criminal activity was afoot. Therefore, this Court should affirm the Circuit Court’s order denying the Defendant’s motion to suppress.

A. Because the Multiple 911 Callers Were Reliable, Trooper Amlong had Reasonable Suspicion to Conduct an Investigative Stop of the Defendant’s Vehicle.

Police officers may use information described by a reliable citizen caller to stop a driver. Where a caller specifically describes a vehicle driving erratically that caller, “necessarily claimed eyewitness knowledge of the alleged dangerous driving.” *Navarette v. California*, 134 S.Ct. 1683, 1689 (2014). That basis of knowledge lends significant support to the tip's reliability. *Id.*; *See Illinois v. Gates*, 462 U.S. 213, 234, 103 S.Ct. 2317 (1983) (“[An informant's] explicit and detailed description of alleged wrongdoing, along with a statement that the event was observed firsthand,

entitles his tip to greater weight than might otherwise be the case”); *Spinelli v. United States*, 393 U.S. 410, 416, 89 S.Ct. 584 (1969) (a tip of illegal gambling is less reliable when “it is not alleged that the informant personally observed [the defendant] at work or that he had ever placed a bet with him”).

For example, in *Navarette v. California*, 134 S.Ct. 1683 (2014), the United States Supreme Court held a tip from an anonymous 911 caller provided enough information to amount to reasonable suspicion of drunk driving. *Navarette v. California*, 134 S.Ct. 1683, 1691 (2014). In *Navarette*, an anonymous 911 caller reported that a silver Ford truck ran the caller off of the roadway. *Id.* at 1687. Shortly after dispatch provided the officer with a description of the truck, the officer observed the truck and conducted a traffic stop approximately five minutes after first observation. *Id.* The officer did not personally observe the defendant driving erratically, but based his reasonable suspicion to stop the suspect vehicle on the 911 call. *Id.* The Supreme Court held that the anonymous call was “sufficiently reliable to credit the caller’s account” because by reporting a specific vehicle, including the license

plate number, the caller claimed eyewitness knowledge of the alleged dangerous driving. *Id.* at 1691.

The Court also found that anonymous callers are reliable because the 911 system provides specific safeguards that allow police to track the callers by number or location. *Id.* These circumstances taken together justify an officer's reliance on information reported in a 911 call. *Id.*

Similar to *Navarette*, in the present case, Trooper Amlong's reasonable suspicion was based on anonymous emergency 911 calls. Like *Navarette*, the 911 callers provided information regarding the color of the vehicle, the type of vehicle it was, the location of the vehicle, and the type of driving the callers were observing. Further, one of the 911 callers continued to follow the Defendant and continued to provide more information regarding the Defendant's location. The 911 caller informed the officer through dispatch that he was behind the correct vehicle and offered to provide a written statement.

Moreover, unlike *Navarette* where there was a single 911 caller, in the present case there were *multiple* 911 callers giving a description of the vehicle and the erratic driving. Additionally, in *Navarette*, the officer stopped the suspect

vehicle approximately five minutes after first observing the suspect vehicle, whereas, in the present case, Trooper Amlong followed the Defendant for approximately one mile, and just under one minute. Considering in the present case there were multiple callers, more information provided, and a shorter period of time between the officer's first observation and the stop, than in *Navarette*, the reasonable suspicion standard is satisfied here.

B. Because One of the 911 Callers Exposed Himself or Herself to Being Identified, Trooper Amlong Could Reasonably Rely on the 911 Caller's Tip.

Trooper Amlong had reasonable suspicion to conduct a traffic stop of the Defendant because Trooper Amlong was provided reliable information from multiple 911 callers, one of which exposed himself or herself to being identified. When an informant exposes himself or herself to being identified, and thus, susceptible to arrest if the tip proves to be false, a reasonable officer could conclude that the informant is being truthful. *State v. Rutzinski*, 2001 WI 22, ¶32, 241 Wis. 2d 729. Additionally, if a known informant provides information indicating there is an imminent threat of danger to the public, a law enforcement official may stop a defendant for an investigation without corroborating the information. *Id.* at ¶

34. Given that erratic driving is one possible sign of intoxicated use of a motor vehicle, where an informant provides information regarding erratic driving, an officer could reasonably suspect that the driver is intoxicated. *Id.*

For example, in *Rutzinski*, the Wisconsin Supreme Court held that a tip from a 911 caller provided sufficient justification for an investigative traffic stop. *Id.* at ¶ 3 In *Rutzinski*, an officer conducted a traffic stop of a vehicle after an unidentified motorist calling from a cell phone reported seeing a black pickup truck driving erratically. *Id.* at ¶¶ 4, 7. The unidentified motorist provided updates of the black pickup truck's location and continued following the black pickup truck until the officer was behind it. *Id.* at ¶¶ 5, 6. The unidentified motorist then informed dispatch that he or she was in front of the black pickup truck and that the officer was behind the correct vehicle. *Id.* at ¶ 6. The officer did not independently observe any signs of erratic driving and never made contact with the anonymous caller.¹ *Id.* at ¶ 7.

¹ The unidentified motorist did pull over when the officer conducted the traffic stop and spoke with the arresting officer's supervisor. *State v. Rutzinski*, 2001 WI 22, ¶ 7, 241 Wis. 2d 729. However, "there is no record of the motorist's name or other identification, or any indication of what was said between [the officer's] supervisor and the motorist. *Id.*

The Wisconsin Supreme Court held that the information provided by the unidentified motorist provided reasonable suspicion for the officer to conduct a traffic stop. *Id.* at ¶ 38. The Court reasoned that the unidentified motorist could be considered truthful since he or she exposed himself or herself to being identified. *Id.* at ¶ 32. Additionally, the Court reasoned that the tip suggested that the suspect driver presented an imminent threat to the public's safety. *Id.* at ¶34. Therefore, the officer was justified in initiating an investigative traffic stop. *Id.*

Contrary to the Defendant's contention, the present case is nearly identical to *Rutzinski* and arguably has a stronger basis for the investigative stop of the Defendant, given the multiple callers. First, in both *Rutzinski* and the present case, an anonymous informant followed the suspect vehicle and provided law enforcement with a description and location of the vehicle. Second, in both cases the informant directed an officer to the correct vehicle, exposing himself or herself to being identified because the officer knew he or she was nearby the suspect vehicle. Additionally, in the present case, the informant stated he or she was willing to make a written statement. Therefore, given the 911 caller's provided

information, including directing the officer to the Defendant's vehicle, and the 911 caller's willingness to make a statement, reasonable suspicion was established and the investigative stop was proper.

C. Because Intoxicated Drivers Present an Immediate and Significant Danger, an Officer Does not Need to Observe Any other Suspicious Conduct After Receiving a Reliable 911 Tip to Initiate a Traffic Stop.

Trooper Amlong was not required to observe additional signs of intoxicated driving by the Defendant to establish reasonable suspicion for an investigative stop. The absence of additional suspicious conduct, after a vehicle is first spotted by an officer, does not dispel the reasonable suspicion of drunk driving. *Navarette*, 134 S.Ct. at 1691. "It is hardly surprising that the appearance of a marked police car would inspire more careful driving for a time." *Id.*; *Cf. United States v. Arvizu*, 534 U.S. 266, 275, 122 S.Ct. 744 (2002) (" '[s]lowing down after spotting a law enforcement vehicle' " does not dispel reasonable suspicion of criminal activity).

The Supreme Court in *Navarette* discussed this situation at length, stating:

Extended observation of an allegedly drunk driver might eventually dispel a reasonable suspicion of intoxication, but the 5-minute

period in this case hardly sufficed in that regard. Of course, an officer who already has such a reasonable suspicion need not surveil a vehicle at length in order to personally observe suspicious driving.

Id.; *See Adams v. Williams*, 407 U.S. 143, 147, 92 S.Ct. 1921 (1972) (repudiating the argument that “reasonable cause for a[n investigative stop] can only be based on the officer’s personal observation”). “Once reasonable suspicion of drunk driving arises, ‘[t]he reasonableness of the officer’s decision to stop a suspect does not turn on the availability of less intrusive investigatory techniques.’” *Id.*; (citing *United States v. Sokolow*, 490 U.S. 1, 11, 109 S.Ct. 1581 (1989)). “This would be a particularly inappropriate context to depart from that settled rule, because allowing a drunk driver a second chance for dangerous conduct could have disastrous consequences.” *Id.*

Moreover, the Wisconsin Supreme Court discussed this same topic in *Rutzinski*, quoting *State v. Boyea*, 765 A.2d 862, 171 Vt. 401 (Vt. 2000),

“An anonymous report of an erratic or drunk driver on the highway presents a qualitatively different level of danger, and concomitantly greater urgency for prompt action. . . . Indeed, a drunk driver is not at all unlike a ‘bomb,’ and a mobile one at that.”

Rutzinski, 2001 WI at ¶ 35; (quoting *State v. Boyea*, 765 A.2d 862, 867, 171 Vt. 401 (Vt. 2000)). The Court went further making note of *State v. Tucker*, 19 Kan.App.2d 920, 878 P.2d 855 (1994), where that Court stated, “The risk of danger presented to the public by a drunken driver is so great that we cannot afford to impose strict, verifiable conditions on an anonymous tip before an investigatory stop can be made in response to such tip.” *Id.*; (quoting *State v. Tucker*, 19 Kan.App.2d 920, 878 P.2d 855, 864 (1994)).

On the contrary, the Defendant argues this Court should deviate from the *Navarette* and *Rutzinski* decisions and impose a strict rule on officers who receive reliable, anonymous tips regarding possible intoxicated drivers. The Defendant asks this Court to rule that when an officer receives multiple calls from concerned citizens regarding a suspected intoxicated driver, upon locating the vehicle the officer *must* immediately initiate a traffic stop or risk losing the reasonable suspicion established by the multiple 911 callers. Certainly, this is not what the United States and Wisconsin Supreme Courts determined was appropriate and contradicts public policy.

CONCLUSION

For all the foregoing reasons, the State respectfully requests this Court affirm the Circuit Court's decision and deny the motion to suppress.

Dated this 7th day of December, 2017.

Respectfully,

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CERTIFICATION OF BRIEF

I hereby certify that this document conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c), for a brief and appendix produced with monospaced font. The length of this brief is 3,017 words long.

Dated this 8th day of December, 2017.

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CERTIFICATION OF MAILING

I hereby certify that this this petition for leave to appeal a non-final order was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on the 8th day of December, 2017.

Dated this 8th day of December, 2017.

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CERTIFICATE OF COMPLIANCE WITH
WIS. STAT. § (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 Wis. Stat. § 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 certification has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 8th day of December, 2017.

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as 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 8th day of December, 2017.

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