

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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

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Wisconsin Supreme Court

State v. Rutzinski, 2001 WI 22, 241 Wis.2d 729, 623 N.W.2d 516. 5

ARGUMENT

In support of its argument that the tip was reliable, the State cites to *Navarette v. California*, 134 S.Ct. 1683, 188 L.Ed. 680 (2014). The State suggests that the information possessed by Trooper Amlong herein was greater than that possessed by the officer in *Navarette*, thus making the tip reliable and justifying the stop of Ms. Coker's vehicle.

However, in actuality, a careful look at *Navarette* shows that information possessed by the officer therein, was superior to that possessed by Trooper Amlong in Ms. Coker's case. First, in *Navarette*, the caller reported a specific offending vehicle including make, model and **license plate** number. *Id.* at 1698. Here, no license plate was provided. Furthermore, Trooper Amlong did follow Ms. Coker's vehicle for approximately one mile and observed no signs of erratic driving. In *Navarette*, the officer did not follow the vehicle for a significant amount of time prior to stopping it. (The responding officer observed the vehicle pass it at 4:00 p.m., and at 4:05 p.m., after making a U-turn, pulled the truck over. *Id.* at 1687. It is unclear for how long, if at all, the officer followed Navarette's vehicle before stopping it.

In *Navarette* the court reasoned that “a driver’s claim that another vehicle ran her off the road...implies that the informant knows the other car was driven dangerously.” Likewise, the timing of the report of the offending vehicle’s conduct was significant. “That timeline of events suggests that the caller reported the incident soon after she was run off the road.” *Id.* The fact that the call occurred within five minutes of the traffic stop bolstered the callers’ veracity. *Id.* at 1689.

Here, the call suggests that the vehicle was traveling southbound from Milwaukee. The record here is unclear as to when and where the alleged erratic driving occurred. Unlike the timeline of events in *Navarette*, the timeline here does not bolster the caller’s credibility.

The caller herein was anonymous, which diminishes the reliability. Trooper Amlong suggested that the caller through dispatch helped him find the correct vehicle (which might bolster reliability, ie. the caller was on the scene), however, when asked if he saw the caller’s vehicle, he indicated that “I can’t say that I saw that vehicle.” (R.19:8/ Reply App. 1). Furthermore, the record is silent as to whether Racine County dispatch had any identifying information regarding the caller, and whether the call came in on the 911 emergency system or by

some other means. In *Navarette*, the record revealed that the call came in on the 911 emergency system. (911 has features for identifying and tracing callers, and thus adds to the reliability of the tip. *Navarette* at 1687). While the State in its brief suggests that the call came in on the 911 system, the record is unclear as to how the calls were made.

Finally, the State claims that Ms. Coker's case is "nearly identical to *Rutzinski* and thus because reasonable suspicion existed there, it existed here. Brief of the Plaintiff-Respondent, page 11. First, the actual report in *Rutzinski* is significantly different than the report herein. The *Rutzinski* caller reported that the vehicle was weaving, varying speeds and tailgating. *State v. Rutzinski*, 2001 WI 22, ¶4, 241 Wis.2d 729, 623 N.W.2d 516. Here, the only report was that the vehicle was weaving. Furthermore, the caller in *Rutzinski* identified himself as the vehicle "ahead of" the offending vehicle. *Id.* ¶6. In *Rutzinski*, the arresting officer observed both vehicles pass, and then stopped Rutzinski's vehicle. *Id.* (The reporting motorist pulled over when the officer stopped Rutzinski.) The fact that caller in *Rutzinski* exposed him- or herself to officers at the scene bolstered the reliability and veracity of the tip. Unlike *Rutzinski*, Trooper Amlong specifically testified that he did not

see the caller's vehicle, and there is no testimony that that vehicle pulled over when Trooper Amlong stopped Ms. Coker. The caller herein did not expose him- or herself to identification as the caller did in *Rutzinski*, so there was not the same "threat of arrest" that could have lead Trooper Amlong to conclude that the caller was being truthful. *Id. at* ¶32.

For the reasons stated above, and contrary to the State's contention, it is clear that the facts in *Rutzinski* are not "nearly identical" to those herein.

CONCLUSION

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 8th day of January, 2018.

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 13 pages. The word count is 1634.

Dated this 8th day of January, 2018.

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 8th day of January, 2018.

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 8th day of January, 2018.

Respectfully submitted,

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APPENDIX