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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2018AP001437CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

KEVIN IAN END,

Defendant-Appellant

BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM JUDGMENT OF CONVICTION
AND AN ORDER DENYING SUPPRESSION OF EVIDENCE
ENTERED IN THE CIRCUIT COURT FOR WASHINGTON COUNTY,
THE HON. ANDREW T. GONRING, PRESIDING

Respectfully submitted,

STATE OF WASHINGTON,
Plaintiff-Respondent

BY: Mandy A. Schepper
Assistant District Attorney
State Bar No. 1052580

Washington County
432 East Washington Street
West Bend, WI 53090
(262) 335-4311

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ISSUE PRESENTED

Did the officer have reasonable suspicion to effect the stop of the vehicle that ultimately led to the arrest of Kevin Ian End?

- The trial court implicitly answered "Yes."
- This court should answer "Yes."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiff-Respondent recognizes that this appeal, as a one judge appeal, does not qualify under this Court's operating procedures for publication. Hence, publication is not sought. Plaintiff-Respondent does not seek oral argument as the briefs should adequately present the issues on appeal.

STATEMENT OF THE CASE

The Mr. End-Appellant provided an appropriate description of the procedural history of the case.

STATEMENT OF THE FACTS

In addition to the facts provided by Mr. End, the State submits that the following facts were also presented at the motion hearing:

Officer Albea testified that in addition to changing lanes without a turn signal at Highway 60/East Sumner Street and North Wilson, the vehicle straddled the centermost line of the westbound lanes. (R.53:8/A.App. 4). The officer also testified that after the End vehicle turned left onto Grand Avenue where he observed the vehicle strike and

go over the curb at the southwestern most corner of Grand Avenue and East Lincoln, where the officer then activated his emergency lights to stop the End vehicle. (R.53:9/ A.App. 5). Additionally, Officer Albea testified that he was aware that the citizen complainant was willing to make a statement prior to effecting the traffic stop. (R.53:14/ A.App.6).

ARGUMENT

I. THE TRIAL COURT PROPERLY FOUND THAT OFFICER ALBEA HAD REASONABLE SUSPICION TO STOP THE END VEHICLE.

A. Standard of review for reviewing Motion to Suppress.

In reviewing a denial of a motion to suppress, the trial court's findings of fact are upheld unless those facts are clearly erroneous. *State v. Horngren*, 2000 WI App 177, ¶7, 238 Wis.2d 347, 617 N.W.2d 508; *see also State v. Richardson*, 156 Wis.2d 128, 137, 456 N.W.2d 830 (1990). To perform an investigatory traffic stop, an officer must have reasonable suspicion that the person stopped has committed, or is about to commit, a law violation. *State v. Colstad*, 2003 WI App 25, ¶ 11, 260 Wis.2d 406, 659 N.W. 2d 394. Whether reasonable suspicion exists is a question of constitutional fact. *State v. Powers*, 2004 WI App 143, ¶ 6, 275 Wis.2d 456, 685 N.W.2d 869. When reviewing questions of constitutional fact, a two-step standard of review is applied. First, a circuit court's findings of historical fact will be upheld unless they are clearly erroneous. *Id.* Second, a de novo review determines whether reasonable suspicion justified the stop. *Id.*

Mr. End disputes that he struck a curb, and he further argues that the video fails to show him striking the curb. When evidence in the record consists of disputed testimony and a video recording, the Court

will still apply the clearly erroneous standard of review in reviewing the trial court's findings of fact. *State v. Walli*, 2011 WI App 86, ¶ 17, 334 Wis. 2d 402, 799 N.W.2d 898. The Court will then review de novo whether those facts support the court's ultimate finding on the constitutionality of a traffic stop. *Id.*, ¶ 10. Under this standard, the trial court's finding of fact will not be set aside unless "it is against the great weight and clear preponderance of the evidence." *State v. Arias*, 2008 WI 84, ¶ 12, 311 Wis.2d 358, 752 N.W.2d 748 (citation omitted).

What is reasonable in a given situation depends wholly upon the totality of the circumstances. *See State v. Anderson*, 155 Wis.2d 77, 83-84, 454 N.W.2d 763 (1990). As such, individual facts that would be insufficient to give rise to a reasonable suspicion when viewed alone may amount to a reasonable suspicion when taken together. *State v. Waldner*, 206 Wis.2d 51, 58, 556 N.W.2d 681 (1996). Therefore, when considering whether the standard for reasonable suspicion has been met, the Court may include in the totality of circumstances everything beginning with the tip from the concerned motorist to the initiation of the stop by Officer Albea.

B. Officer Albea possessed the requisite reasonable suspicion to stop the End vehicle under the totality of the circumstances.

Under the totality of the circumstances on February 27, 2017, did Officer Adam Albea of the Hartford Police Department have reasonable suspicion to initiate a traffic stop can be broken into two sub-issues: (1) the status accorded to the citizen tipster and (2) the direct observations made by the officer before the traffic stop.

End argues that there was not enough specific information provided by the citizen tipster to corroborate that the vehicle stopped by Officer Albea was the vehicle called in by the citizen witness. End argues that the citizen call should carry no weight in the totality of the

circumstances calculus because, as he states, there was not enough corroborating information and the officer would not be justified in stopping the End vehicle only on the caller's complaint.

The State disagrees. Prior to the traffic stop on the End vehicle, Officer Albaea was aware that the citizen witness "was willing to make a statement." This information implies not an anonymous tipster, but an identified citizen who wished to describe all of the observations made of the driving behavior. Citizen tips carry an inherent reliability. *See State v. Sisk*, 2001 WI App 182, ¶ 9, 247 Wis.2d 443, 634 N.W.2d 877. In addition, the tip provided the a first-hand account of poor driving behavior. It contained enough information to state the concern about the driving of the vehicle swerving into the caller's lane of travel and speed control issues, the vehicle's description and location, as well as the citizen's willingness to provide a statement. These observations help establish reasonable suspicion.

The officer subsequently located a vehicle matching the description, heading in the described direction, so he followed it. By doing so, he employed his own ad hoc balancing test between containing an immediate threat to public safety and safeguarding the rights of Mr. End. The officer's choice not to immediately stop the vehicle does not diminish the observations of the citizen witness, nor does it signify that there was no immediate threat to public safety. Instead, it allowed for Officer Albaea to make his own direct observations of the vehicle's driving behavior.

Officer Albaea's observations of the End vehicle's driving behavior equated to reasonable suspicion for a traffic stop. Here, Albaea had more than an "inchoate and unparticularized suspicion or hunch." *State v. Post*, 2007 WI 60, ¶ 10, 301 Wis.2d 1, 733 N.W.2d 634. He observed specific issues with regard to the operation of the End vehicle: a turn through a controlled intersection without use of its turn signal, straddling the center-most line of the westbound lanes, and striking a


curb. Additionally, the officer also observed Mr. End traveling over the centerline on Grand Avenue; however, the officer testified that he related this to the fact that there were vehicles parked on the street. He discounted this traffic infraction as reasonable related to driving conditions. When all of the officer's observations are evaluated with the citizen complaint, there is ample reasonable suspicion for a traffic stop.

CONCLUSION

Because the totality of the circumstances known to and observed by Officer Albea at the moment time of the traffic stop would lead any officer to reasonably conclude there was reasonable suspicion to effect a traffic stop. The circuit court properly denied Mr. End's motion to suppress the evidence arising from the traffic stop.

For the reasons given, the State respectfully requests this Court affirm the trial court's finding that the officer had reasonable suspicion effect a traffic stop of Mr. End's vehicle.

Respectfully submitted,


Mandy A. Schepper
Assistant District Attorney
State Bar No. 1052580

Washington County
432 East Washington Street
West Bend, Wisconsin 53095-7986
(262) 335-4311

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 1,265 words.

Dated this 12th day of December 2018.


Mandy A. Schepper

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 § 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 pursuant to § 809.19(b)(12)(f), Wis. Stat., that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

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 12th day of December 2018.


Mandy A. Schepper

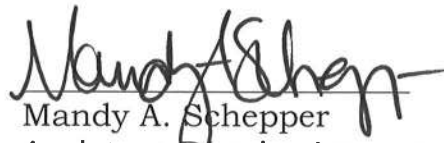
CERTIFICATION OF MAILING

Pursuant to § 809.80(3)(b), Wis. Stats., I hereby certify that on the 25th day of June, 2010, in the City of West Bend, Washington County, Wisconsin, I routed this brief to our office station in a properly enclosed postage-paid boxes the original and required copies of the Plaintiff-Respondent's Brief addressed to the following named person(s) at the following post office address:

Clerk
Court of Appeals, District II
110 East Main Street, Suite 215
P.O. Box 1688
Madison, Wisconsin 53701-1688

Attorney Walter A. Piel, Jr.
Piel Law Office
500 W. Silver Spring Drive
Suite K-200
Milwaukee, WI 53217

Dated this 12th day of December 2018.


Mandy A. Schepper
Assistant District Attorney
State Bar No. 1052580

Washington County
432 East Washington Street
West Bend, Wisconsin 53095-7986
(262) 335-4311