

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II**

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**CLERK OF COURT OF APPEALS
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**Appeal No. 2018AP001437 CR
Washington County Circuit Court Case No. 2017CM001361**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KEVIN IAN END,

Defendant-Appellant.

**AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND THE DECISION OF THE TRIAL
COURT DENYING DEFENDANT-APPELLANT'S
MOTION FOR SUPPRESSION OF EVIDENCE IN THE
CIRCUIT COURT FOR WASHINGTON COUNTY, THE
HONORABLE ANDREW T. GONRING, JUDGE,
PRESIDING**

**THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT KEVIN IAN END**

**By: Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997**

**Piel Law Office
500 W. Silver Spring Drive
Suite K-200
Milwaukee, WI 53217
(414) 617-0088
(920) 390-2088 (FAX)**

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<i>State v. Rutzinski</i> , 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516.	3
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ARGUMENT

Initially, the State contends the information provided by the caller “helped establish reasonable suspicion.” The State suggests the information relayed by the caller concerning the vehicle description, observed driving and the caller’s willingness to provide a statement tend to support reasonable suspicion Mr. End was committing a violation.

What is lacking from the caller’s description first off, is any registration information. The caller simply provided a generic vehicle description – a white Tahoe. Furthermore, based on the record herein, there is nothing suggesting the caller was even in the area when the stop was made. The caller did not confirm Officer Albea stopped the correct vehicle. See *State v. Rutzinski*, 2001 WI 22, 241 Wis.2d 729, 623 N.W.2d 516. In *Rutzinski*, the citizen caller remained on the phone with dispatch as the officer positioned his vehicle behind Rutzinski. *Id.* at ¶5. The caller relayed to dispatch the officer positioned his squad behind the correct vehicle. Dispatch advised the officer he had been following the correct truck. The Court found the call reported contemporaneous observations of Rutzinski’s erratic driving. *Id.* at ¶38. Conversely, here, the caller is not identified,

the caller did not confirm that Officer Albea had the correct vehicle, in fact it seems the caller was not even in the area. Comparing the call in *Rutzinski* to the call herein, it is clear, the call in *Rutzinski* had significantly more indicia of reliability than the call herein.

Because of this, the State's argument that the call "helped establish reasonable suspicion" fails.

Finally, the State contends that Officer Albea's observations of Mr. End's driving behavior "equate to reasonable suspicion for the traffic stop." Brief of Plaintiff-Respondent, page 8. Undersigned counsel addressed each argument in its brief-in-chief, but will reiterate here. The State claims three driving behaviors would independently justify the traffic stop, first, failing to use a turn signal to change lanes through a controlled intersection. Because this is only a violation when other traffic is affected, and because there is nothing in the record suggesting other traffic was affected, this driving behavior would not justify the stop. Second, straddling the center-most line of the westbound lanes—this was the effect of the vehicle changing lanes and was not used as justification for the stop by the Court. See (R.53:18/ R.App. 1). Third, striking

the curb after turning onto Grand Ave—the Court after viewing the video found the vehicle clearly struck the curb as it turned left onto Grand Ave. Mr. End claims this finding is clearly erroneous. A careful review of the video shows Mr. End’s vehicle did not strike the curb as it turned onto Grand Ave.

Based on the above, the State’s claim that the independent observations made by Officer Albea would justify the traffic stop also fails.

CONCLUSION

Because neither the call nor Officer Albea’s independent observations would justify the traffic stop, the court erred when it denied Mr. End’s motion for suppression of evidence. The Court should reverse the trial court’s ruling and the judgment of conviction.

Dated this 4th day of January, 2019.

Respectfully Submitted

Piel Law Office

Walter A Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

Mailing Address:

500 W. Silver Spring Drive

Suite K200

Milwaukee, WI 53217

(414) 617-0088

(920) 390-2088 (FAX)

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 10 pages. The word count is 1369.

Dated this 4th day of January, 2019.

Respectfully Submitted

Piel Law Office

Walter A Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

Mailing Address:

500 W. Silver Spring Drive
Suite K200
Milwaukee, WI 53217
(414) 617-0088
(920) 390-2088 (FAX)

**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 4th day of January, 2019

Respectfully submitted,

Piel Law Office

Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

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 4th day of January, 2019.

Respectfully submitted,

Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

APPENDIX