

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

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OF WISCONSIN**

Case No. 2019AP001650-CR

STATE OF WISCONSIN,

Plaintiff- Respondent

vs.

KELLY C. RICHARDSON,

Defendant- Appellant

APPEAL FROM THE JUDGMENT OF CONVICTION
ENTERED IN THE CIRCUIT COURT FOR WAUKESHA
COUNTY, THE HONORABLE MARIA LAZAR,
PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT

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BRIEF OF PLAINTIFF-RESPONDENT

**STATEMENT ON ORAL ARGUMENT AND
PUBLICATION**

The State does not believe that oral argument is necessary since the briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side. Publication of the opinion is not warranted since the issues involve no more than the application of well-settled roles of law.

STATEMENT OF THE CASE

Defendant-appellant, Kelly C. Richardson, was found guilty of operating a motor vehicle while intoxicated, third offense after her plea of no contest. (R:1-1). She was sentenced to 270 days in jail, in addition to a fine, license suspension, and an alcohol assessment. (R:1-1-2). Richardson appeals the denial of her motion to suppress all of the evidence following the investigatory stop by Sergeant Monreal. (Brief of Defendant-Appellant at 8).

The following evidence was developed at the motion to suppress hearing on August 15, 2018. Jeffrey Monreal, a sergeant with the City of Muskego Police Department, testified that on December 15, 2017, at approximately 11:30 a.m., he was dispatched to the PNC Bank located on Janesville Road due to a report by the bank's employees that a customer in the building was possibly intoxicated. (R:2-4-5). The bank's employees reported that they smelled an odor of intoxicants coming from Richardson and noted she had slurred speech. (R:2-5). The bank's employees further reported that the customer left the bank in a black Jeep Wrangler, and provided its license plate number. (R:2-5). Sergeant Monreal eventually observed the Jeep Wrangler at the corner of Janesville and Moorland, while waiting at a stop sign. (R:2-6). Because Sergeant Moreal was stuck at a red light, he was unable to catch up to the vehicle; however, he saw the vehicle turn northbound on Moorland and eventually turn right into the Walmart parking lot on Moorland Road. (R:2-6). Sergeant Monreal testified that from the time he first observed the vehicle to the time it pulled into the Walmart parking lot, only one to two minutes elapsed. (R:2-12).

Once Sergeant Moreal found the vehicle in the Walmart parking lot, the driver was no longer in the vehicle. (R:2-6-7). Consequently, Sergeant Monreal waited for the driver to return. (R:2-7). Approximately five to ten minutes later, Sergeant Moreal observed Richardson returning to the vehicle. (R:2-7). Sergeant Moreal was able to identify Richardson based on the description provided by the bank employees, who had described the customer as a white woman, wearing a pair of blue jeans and grey coat, with short blonde hair. (R:2-7). Based on the complaint made by the bank employees about Richardson being intoxicated, Sergeant Monreal approached Richardson in the Walmart parking lot. (R:2-8).

While speaking with Richardson, Sergeant Monreal detected an odor of intoxicants emanating from Richardson, noted that her speech was slurred, and observed her eyes to be bloodshot and glossy. (R:2-8). Sergeant Monreal testified that his observations of Richardson were consistent with those made by the bank's employees. (R:2-8). He testified that it was based on the bank's employees' reports as well as his own observations of Richardson that he decided to conduct an investigatory stop at the Walmart parking lot. (R:2-10). Based on this testimony, the trial court denied Richardson's motion to suppress. (R:2-33). Thereafter, on December 3, 2018, Richardson pled no contest to operating while intoxicated, third offense and a charge for operating while revoked was dismissed and read in. (R:1-2). The Circuit Court accepted Richardson's plea and entered judgment accordingly. (R:1-1).

SUMMARY OF THE ARGUMENT

The trial court appropriately denied Richardson's motion to suppress by finding that Sergeant Monreal had reasonable suspicion to conduct the investigatory stop .

Sergeant Monreal approached Richardson at the Walmart parking lot based on the observations made by the PNC Bank employees that Richardson was intoxicated. During the initial contact with Richardson, Sergeant Monreal verified that she was the driver of the vehicle described by the PNC Bank employees and verified that she had driven to Walmart. It was during this exchange that Sergeant Monreal was able to make his own observations of Richardson, which were consistent with what the PNC employees had reported.

Before approaching Richardson, Sergeant Monreal had been provided a physical description of Richardson, a description of the vehicle she was driving, and the license plate number of that vehicle. Sergeant Monreal had also been told by the PNC employees that they believed Richardson was intoxicated. The PNC employees specifically reported detecting an odor of intoxicants emanating from her person and observing slurred speech while she was at the bank.

Because the PNC employee's reports were reliable and independently confirmed by Sergeant Monreal when he made contact with Richardson, the stop was justified by reasonable suspicion that Richardson was operating while under the influence contrary to Wisconsin Statute Section 346.63(1)(a). Therefore, the State respectfully requests that this Court affirm the trial court's decision and affirm the conviction.

ARGUMENT

I. The Information the Police Received from the PNC Employees Provided the Reasonable Suspicion Needed to Justify Detaining Kelly Richardson and Investigating the Report that She was Driving While Intoxicated.

A. Richardson contends that the police did not have sufficient information to form the basis for reasonable suspicion to stop her.

Richardson argues that when Sergeant Monreal approached her, he did not possess sufficient information to provide reasonable suspicion that she was engaging in or had engaged in some illegal activity. (Brief of Defendant-Appellant at 15). Richardson further contends that because Sergeant Monreal did not have reasonable suspicion, the stop was illegal and it violated her rights under the Fourth Amendment of the United States Constitution and Article I, § 11 of the Wisconsin Constitution. *Id.* at 20. Richardson concludes that because the stop was illegal, this Court should reverse the trial court's order denying the suppression motion and grant her motion to suppress evidence seized subsequent to the stop. *Id.* at 21.

Specifically, Richardson argues that the information possessed by Sergeant Monreal was insufficient to provide reasonable suspicion that some kind of illegal activity had taken place because: (1) the PNC employees' observations of odor of intoxicants and slurred speech do not constitute specific articulable facts giving rise to reasonable suspicion that Richardson was driving while intoxicated; and (2) when Sergeant Monreal observed Richardson's vehicle, he did not observe any erratic driving and found the car parked correctly in the Walmart parking lot. *Id.* at 15.

B. Standard of Review

In reviewing an order denying the suppression of evidence, this Court will uphold the trial court's findings unless they are clearly erroneous. *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84, 88 (Ct. App. 1997); *see State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991); *State v. Richardson*, 156 Wis. 2d 128, 137, 456 N.W.2d

830, 833 (Wis. 1990). Whether those facts satisfy the constitutional requirements of reasonableness under the Fourth Amendment, however, presents a question of law subject to *de novo* review. *Krier*, 165 Wis. 2d at 676, 478 N.W.2d at 65; *Richardson*, 156 Wis. 2d at 138, 456 N.W.2d at 833.

C. Police have reasonable suspicion to conduct an investigatory stop based on another person's conclusion that the driver was intoxicated.

It is well established that a police officer may conduct a temporary, investigatory stop to determine the identity of the driver and to obtain other relevant information if the officer has reasonable suspicion to believe that the driver has or is in the process of committing a law violation. *See United States v. Hensley*, 469 U.S. 221, 226 (1985); *State v. Rutzinski*, 2001 WI 22, ¶14, 241 Wis. 2d 729, 623 N.W.2d 516. For a stop to be reasonable, “the officer must be able point to specific and articulable facts which taken together with rational inferences from those facts, objectively warrant a reasonable person with the knowledge and experience of the officer to believe that criminal activity is afoot.” *Rutzinski*, 2001 WI 22, ¶14. In determining whether a set of facts gives rise to reasonable suspicion, “courts should apply a commonsense approach to strike a balance between the interests of the individual being stopped to be free from unnecessary or unduly intrusive searches and seizures, and the interests of the State to effectively prevent, detect, and investigate crimes.” *Id.* at ¶15.

In this case, Sergeant Monreal relied on the information provided by the PNC employees that Richardson was intoxicated to approach Richardson in the Walmart parking lot. (R:2-5). The Supreme Court has held that information obtained from an informant can form the basis for an investigatory stop. *Rutzinski*, 2001 WI 22, ¶17. Specifically, police may rely on this information as long as the information comes from a reliable source and there is sufficient information provided for them to rely on. *See State v. Miller*, 2012 WI 61, ¶31, 341 Wis. 2d 307, 815 N.W.2d 349. The sufficiency of information depends upon the reliability of the source. *Id.* As such, an informant who provides self-identifying information is more reliable than an anonymous informant because he or she is risking his or her identification, which intimates that the informant is a genuinely concerned citizen. *Miller*, 2012 WI

61, ¶ 33. Moreover, independent police corroboration of the informant's information imparts a degree of reliability to the other facts relayed by the informant. *See Alabama v. White*, 496 U.S. 325, 332 (1990). These considerations should be viewed in light of the totality of the circumstances. *Rutzinski*, 2001 WI 22, ¶18.

As stated above, the information relied on was provided by PNC Bank employees who identified themselves when they called dispatch. (R:2-5). These employees were present at the bank when officers arrived. (R:2-5). Moreover, Sergeant Monreal was able to corroborate the following information provided by the bank's employees: (1) the vehicle matched the description provided in make, model, and license plate; (2) Richardson's appearance matched the description provided; (3) the vehicle was observed traveling in the direction the employees described; and (4) Sergeant Monreal verified the employees' observations of slurred speech and the odor of intoxicants himself when he made contact with Richardson in the Walmart parking lot. (R:2-5-9). Therefore, the information provided by the bank's employees was sufficiently reliable to support reasonable suspicion, because it included details and future predictions. *See Miller*, 2012 WI 61, ¶ 41.

Furthermore, the exigency of the situation affects the determination of reasonable suspicion. *Rutzinski*, 2001 WI 22, ¶26. In *Rutzinski*, the Court cited "the tremendous potential danger presented by drunk drivers" as a factor weighing in favor of immediate police investigation. 2001 WI 22, ¶¶35, 38. Similarly to the circumstances in *Rutzinski*, exigency is an important factor in this case, as the bank employees were concerned that Richardson was driving while intoxicated, which is why they decided to call the police.

Richardson contends that the observations relayed by the bank employees to dispatch, both the odor of intoxicants and slurred speech, were insufficient to constitute reasonable suspicion to justify the investigatory stop. (Brief of Defendant-Appellant at 15). Richardson's argument is contrary to the this Court's holding in *State v. Powers*, 2004 WI App 143, 275 Wis. 2d 456, 685 N.W.2d 869. In *State v. Powers*, the officer conducted an investigatory stop based on the store clerk's report that the defendant had gone into the store intoxicated to buy beer and other items. 2004 WI App, ¶ 2. Although the clerk did not observe the defendant driving, she did provide a

description of the truck and its license plate number. *Id.* The officer later conducted an investigatory stop without making any observations of traffic infractions or other violations, solely based on the clerk's report. *Id.* ¶ 3. In *Powers*, this Court held that the officer could rely on the clerk's report that the defendant was intoxicated even though she did not provide any specific information as to why she believed the defendant was intoxicated. *See id.* at ¶13. In part, this Court explained its reasoning by holding that "in Wisconsin, a layperson can give an opinion that he or she believes another person is intoxicated" and this opinion can be used as a basis to conduct an investigatory stop. *See id.* at ¶13 (citing *State v. Bailey*, 54 Wis. 2d 679, 685, 196 N.W.2d 664 (1972)).

In this case, similar to the circumstances in *Powers*, the bank's employees reported that they believed that Richardson was intoxicated. (R:2-5). The PNC employees went further than the clerk in *Powers* and reported an odor of intoxicants and slurred speech. (R:2-5). The employees also provided a description of Richardson, a description of her vehicle, and her license plate number. (R:2-5,7). Sergeant Monreal was able to independently verify all of the information provided when he made contact with Richardson. (R:2-6-8). The fact that the employees only mentioned the odor of intoxicants and the slurred speech as indicators of intoxication does not diminish their overall conclusion that Richardson was intoxicated. After all, these employees had face to face contact with Richardson and through that contact concluded that she was intoxicated and were concerned enough to call dispatch and report Richardson. Because Sergeant Monreal was able to independently verify the information provided, there was sufficient indicia of reliability to justify the *Terry* stop.

Under the standards just described, Sergeant Monreal had reasonable suspicion to stop Richardson to investigate whether she was operating a motor vehicle while intoxicated.

CONCLUSION

The totality of the circumstances justifies Sergeant Monreal's stop of Richardson as an investigatory stop. Therefore, the State respectfully requests that this Court affirm the decision of the trial court and affirm the judgment of conviction.

Dated this 12th day of December, 2019.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The word count of this brief is 3,028.

Dated this 12th day of December, 2019

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**CERTIFICATE OF COMPLIANCE WITH RULE
809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief, including 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 12th day of December, 2019

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PLAINTIFF-RESPONDENT APPENDIX

1. Judgment of Conviction
2. Transcript of Motion Hearing

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, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or 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 12th day of December, 2019.

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