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STATE OF WISCONSIN
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DISTRICT IV

Case No. 2022AP644-CR

Waupaca County Circuit Court Case No. 19CT189

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

TODD W. VAUGHAN

Defendant-Appellant.

On Appeal from a Judgment of Conviction
Entered in the Circuit Court for Waupaca County,
The Honorable Raymond Huber, Presiding

BRIEF OF PLAINTIFF RESPONDENT

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ISSUE PRESENTED

Does an anonymous tip exhibit sufficient degree of reliability to support a reasonable suspicion for an investigatory stop regarding an alcohol-impaired driver where the driver was observed drunk driving all over the golf course and hitting a pole, where the caller who was present at the driver's location provided the driver's name, detailed information regarding his vehicle and his travel destination and where the police corroborated prior to the stop all identifying information about the vehicle and its driver and stopped the driver at a location and time consistent with the reported destination and travel time?

Circuit Court answered: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. The resolution of the issue will rely primarily on legal arguments that can be developed and argued within the briefs.

STATEMENT OF THE CASE

On June 16, 2019, at approximately 8 pm, Deputy Brittany Mathewson¹ stopped the defendant's car after dispatch sent a request to locate a green convertible Mazda Miata with a single male occupant whose name was Todd Vaughan and who was heading to Marion via an unknown route. (R.72 at 8:4-8, 34:23 to 35:4)

The tip came from Cedar Springs Golf Course. An anonymous caller stated that she was present at the Cedar Springs Golf Course for the Father's Day dinner, that Todd Vaughan was there "drunk," that "he just drove all over the golf course," that he was going to Marion, that the direction of his travel to Marion was unknown and that he took off after hitting a pole. (R. 51, R. 72 at 6:21 to 7:1, 9:3-4, 8:1-8 and 11:17-20, 13:6-9,

¹ Between the time of the stop and the motion hearing the Deputy changed her name to Goodreau.

34:23 to 35:4)

Deputy Mathewson saw the suspect vehicle in Manawa, approximately 3-4 miles from the Cedar Springs Golf Course. (R.72 at 11:21-25) She corroborated that the vehicle was a green convertible Mazda Miata. (R. 72 at 14:5-12) The location and timing of the arrival of the Mazda at the Deputy's location was consistent with the distance between Cedar Springs Golf Course and the Deputy's location as well as consistent with the reported path of travel to Marion. (R 70 at 12:1-4, 17:19-23, 35:22 to 36:13) The Deputy followed the vehicle and corroborated that it was registered to Todd Vaughn. (R. 9: 21-24) She then performed an investigative stop.

The defendant filed a Motion to Suppress arguing that the investigative stop was not supported by a reasonable suspicion that defendant was impaired by alcohol because the anonymous tip was not sufficiently corroborated.

The Circuit Court, Hon. Raymond Huber presiding, denied the motion. The Court found that prior to the stop Deputy Mathewson corroborated the color, the make and the model of the vehicle. The Court found that she corroborated the name of its driver to be Todd Vaughan. The Court further found that Deputy Mathewson knew that the defendant travelled to Marion; that the stop in Manawa was consistent with the defendant's northerly direction of travel to Marion; and that the time of the stop -- 5 to 6 minutes from the 911 call -- was consistent with the time of travel from the golf course to Manawa. The Court noted that the caller stated that she attended a Father's Day dinner party at the Cedar Springs Golf Course at the time of her call which added an additional layer of credibility that increased the reliability of her tip. (R. 72 at 35:13 to 37:25)

STATEMENT OF FACTS

On June 16, 2019, Waupaca County dispatch received a 911 call referencing a complaint involving an alcohol impaired driving by a single male driver in a green Mazda Miata convertible. (R. 72 at 6:21-25 to 7:1). The call came at approximately 8 pm from the Cedar Springs Golf Course. (R. 72 at 8:1-8 and 11:17-20) An anonymous caller reported that the male driver of the green convertible Mazda Miata was drunk, that he “just drove all the golf course,” that he hit a post, that he drove to Marion and that he took off in an unknown direction of travel. (R. 72 at 32:14 to 35:4) The caller identified the driver as a Todd Vaughn. (R. 52, R.72 at 13:8-9)

The Computer Aided Dispatch [CAD] call notes specifically stated:

Green Mazda Miata convertible. He’s drunk. He’s Todd Vaughan. He just drove all over the golf course. He’s going to Marion. Unknown, abbreviated as U-N-K, direction of travel. He ran over a pole there and took off. He is in the vehicle by himself.

(R. 72 at 34:23 to 35:4)

The female caller further stated that she had a dinner at the Cedar Springs Golf Course for Father’s Day and that the driver may be coming through Manawa or taking back roads. (R. 52, R. 72 at 28:7-11, 31:9-13, 34:23 to 35:4)

Deputy Mathewson was stationed in her squad car at a gas station in Manawa located approximately three to four miles from the Cedar Springs Golf Course. (R.72 at 9:8-14 and 11:23-25) She saw a green convertible Mazda Miata with a single male occupant. (R. 72 at 8:21-24, 9:14) The Deputy followed the vehicle for approximately three to four city blocks and checked its registration. (R. 72 at 10:9-14, 16: 18-20) Dispatch informed the Deputy that per the Department of Transportation records, the vehicle was registered to Todd Vaughan. (R. 72 at 15-20)

The Deputy testified that the drive from the Cedar Springs Golf Course to the Deputy's location was approximately 5 to 6 minutes which was consistent with the timing of the phone call and the arrival of the defendant's car at the Deputy's location. (R 72 at 12:1-4, 14:5-12) Further, the defendant was travelling through Manawa in northerly direction consistent with a path of travel to Marion. (R. 72 at 37: 13-22)

ARGUMENT

1. STANDARD OF REVIEW.

Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact. *State v. Mitchell*, 167 Wis.2d 672, 684, 482 N.W.2d 364 (1992); *State v. Williams*, 2001 WI 21, ¶ 18, 241 Wis.2d 631, 623 N.W.2d 106. A finding of constitutional fact consists of the circuit court's findings of historical fact, which we review under the “clearly erroneous standard,” and the application of these historical facts to constitutional principles, which is subject to a de novo. *Id.*, ¶¶ 18–19. *See also State v. Popke*, 2009 WI 37, ¶ 10, 317 Wis. 2d 118, 126, 765 N.W.2d 569, 573.

2. AN ANONYMOUS TIP ABOUT AN ALCOHOL IMPAIRED DRIVER WAS SUFFICIENTLY RELIABLE WHERE THE CALLER DESCRIBED AND THE DEPUTY VERIFIED PRIOR TO THE STOP THE MAKE, MODEL AND COLOR OF THE VEHICLE, THE NAME OF THE DRIVER, HIS ROUTE AND TIME OF TRAVEL AND WHERE THE CALLER PROVIDED CREDIBLE INFORMATION REGARDING DRIVER'S ALCOHOL IMPAIRMENT AND DANGEROUS DRIVING BEHAVIOR.

A traffic stop based on an anonymous tip passes the constitutional muster when the tip combined with other information known to the police supplies “sufficient indicia of reliability to provide reasonable suspicion.” *See Alabama v. White*, 496 U.S. 325, 326–27, 110 S.Ct. 2412, 110 L.Ed.2d 301 (1990), *State v. Sherry*, 2004 WI App 207, ¶ 5, 277 Wis. 2d 194, 199, 690 N.W.2d 435, 438. The *Sherry* Court commented,

The most apt guidance on this topic is found in two decisions of the United States Supreme Court: *White*² and *Florida v. J.L.*, 529 U.S. 266, 120 S.Ct. 1375, 146 L.Ed.2d 254 (2000). [...] The primary difference between the information found sufficient in *White* and the information found insufficient in *J.L.* is that the anonymous caller in *White* demonstrated familiarity with the suspect, whereas the anonymous caller in *J.L.* did not.

Sherry, 2004 WI App at ¶6.

A recognized “indicia of reliability” of an anonymous tip is police corroboration of details, particularly details involving predicted behavior. *Sherry* at ¶19, quoting *Illinois v. Gates*, 462 U.S. 213, 241, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983). In *Sherry*, police received a dispatch call in which an anonymous caller said that a vehicle would be travelling from the Readstown to Soldiers Grove and that it would have a large amount of marijuana either in the center console or under the seat. The caller described the make, color, license plate of the car, named its female owner who would be travelling in the car. The caller also named a male who could be driving. The police followed the suspect car and verified that (1) the car’s make matched the tipster’s description and (2) the car was driven by a male and had a female passenger. The officer stopped the car in the Soldiers Grove. *Sherry*, 2004 WI App at ¶11-12. The court held that the tip contained sufficient predictive information and that it was reasonable for the officer to believe that a person with access to such information also had access to reliable information about *Sherry*’s illegal activities. *Sherry*, 2004 WI App at ¶13.

Here, the dispatcher received a call from a female who stated that she was present for a Father’s Day dinner at the Cedar Springs Golf Course and that the defendant was also present at the Cedar Springs Golf Course. The call came at approximately 8 pm, a

² *Arizona v. White*, 496 U.S. 325, 326-27, 110 S. Ct. 2412, 110 L. Ed.2d 301 (1990)

time consistent with finishing dinner. (R. 72 at 8:3-8) Father's Day was in three days: on June 19, 2022. While the caller did not specifically say that she personally saw the defendant drive erratically, she stated that he "just" drove all over the golf course and hit a pole and left" which indicates that she was present at the site at the time of the described events. (R. 72 at 34:23 to 35:4) It is reasonable to infer that that she observed his impaired driving and immediately called 911.

While dispatch did not tell Deputy Mathewson that the caller was having a dinner celebrating Father's Day, this information added a layer of credibility that led the dispatcher to take the call seriously and to radio out dispatch to the deputies on duty. (R. 72 at 18:21-25, 28:7-11)

The caller identified the make of the car (Mazda), the model (Miata convertible), and its color (green). Deputy Mathewson verified all that information prior to the stop.

The caller identified the driver as Todd Vaughan. Deputy Mathewson verified that information prior to the stop.

Deputy Mathewson knew that the call originated at the Cedar Springs Golf Course and that the defendant "just" left that location. She knew the Cedar Springs Golf Course was approximately 3-4 miles away from her location, about 5 minutes in travel time. The timing of the stop was consistent with that travel time.

Deputy Mathewson knew that the defendant was heading to Marion. The CAD call notes indicate that dispatch gave Deputy Mathewson two pieces of information: "He's going to Marion. Unk direction of travel." (R. 72 at 34:23 to 35:4) While seemingly inconsistent, the information is logical: the caller told dispatch that Vaughan was heading to Marion either through Manawa or by taking back roads. (R. 72 at 28:7-11,

R. 52) Once the Deputy identified the defendant's car travelling in Manawa in the northerly direction, she knew that the defendant was on a travel route from the Cedar Springs Golf Club to Marion.

It is true that Deputy Mathewson did not observe impaired driving while she followed the defendant's vehicle. She testified that she followed the defendant maybe for three or four blocks. (R. 72 at 16:15-20) At that point she corroborated most of the anonymous caller information.

A recognized "indicia of reliability" of an anonymous tip is police corroboration of details, particularly details involving predicted behavior. *Sherry*, 2004 WI App at ¶ 19. In this case, the information provided by the caller and the police corroboration of that information exhibited sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop. Both the defendant and the caller are at the same golf club, a place that serves alcohol. They are there at the same time, approximately 8 pm, a typical time when people finish dinner. The caller states that the defendant "just" drove all over the golf course and hit a pole, a fact from which one could reasonably infer that she "just" observed him drive dangerously and immediately called 911. The caller provides accurate description of defendant's car, she provides his name and she provides his destination with two possible routes of travel, one of them being through Manawa. Deputy Mathewson corroborates all car and driver identifying information via her independent observations and record checks. She corroborates the route of travel via Manawa towards the reported destination in Marion. She further corroborates the time of the dispatch call with the expected time of travel from the Cedar Springs Gold Club to Manawa and finds them consistent. Accordingly, consideration of the totality of circumstances compels the

conclusion that Deputy Mathewson acted reasonably in deciding to perform an investigatory stop based on reasonable suspicion that the defendant was alcohol-impaired.

CONCLUSION

Based on the foregoing, the State respectfully requests that this Court finds that the anonymous tip, as corroborated by Deputy Mathewson, “exhibited sufficient indicia of reliability to justify the investigatory stop” and uphold the decision of the circuit court.

Dated this 8th day of August, 2022.

Respectfully submitted:

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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 2,638 words.

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 one or more initials or other appropriate pseudonym or designation 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.

I hereby certify that I have submitted both electronic copy of this brief which complies with the requirements of Wis. Stat. § 809.19.

Dated this 8th day of August, 2022.

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