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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV**

Appellate Case No. 2022AP644-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

TODD W. VAUGHAN,

Defendant-Appellant.

**APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN
THE CIRCUIT COURT FOR WAUPACA COUNTY, BRANCH III,
THE HONORABLE RAYMOND HUBER PRESIDING,
TRIAL COURT CASE NO. 19-CT-189**

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

I. THE FACTS RELIED UPON BY THE STATE FAIL TO MEET THE CRITERIA NECESSARY TO JUSTIFY A DETENTION UNDER THE “ANONYMOUS TIPSTER” STANDARD.

Much of the State’s brief relies upon a theory that there was something “predictive” about the information the anonymous tipster in the instant case provided to law enforcement. State’s Brief at pp. 8-10.¹ What the State fails to recognize, however, is the distinction between “predictive” information and information which is merely “descriptive.” This is precisely the distinction which the United States Supreme Court cautioned must be carefully examined given that “descriptive” factors are far less corroborative of anonymously tipped information than are “predictive” factors. *Florida v. J.L.*, 529 U.S. 266, 271-72 (2000). As Mr. Vaughan noted in his initial brief, the *J.L.* Court observed that “specific indicia of reliability” in an anonymous tip case requires “the correct forecast of a subject’s ‘**not easily predicted**’ movements.” *J.L.*, 529 U.S. at 269 (emphasis added), quoting *Alabama v. White*, 496 U.S. 325, 332 (1990). The *J.L.* Court warned that:

An accurate description of a subject’s readily observable location and appearance is of course reliable in this limited sense: It will help the police correctly identify the person whom the tipster means to accuse. Such a tip, however, does not show that the tipster has knowledge of concealed criminal activity. The reasonable suspicion here at issue requires that a tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person. *Cf.* 4 W. LaFave, *Search and Seizure*, § 9.4(h), p.213 (3d ed. 1996) (distinguishing reliability as to identification, which is often important in other criminal law contexts, from reliability as to the likelihood of criminal activity, which is central in anonymous-tip cases).

J.L., 529 U.S. at 271-72 (emphasis added).

Among the factors to be considered when determining whether information is, as the *J.L.* Court characterized it, “sufficiently reliable” are, *inter alia*: (1)

¹The State begins numbering the pages of its brief with the notation that its actual page four is page “1,” and then continues on sequentially therefrom using standard Arabic numbers. The State used lower case Roman numerals for its cover page through the last page of its Table of Authorities. The State’s numbering format is contrary to Wis. Stat. § 809.19(8)(bm) which requires “sequential [Arabic] numbering starting at ‘1’ on the cover.” Given this discrepancy, Mr. Vaughan will refer to specific pages of the State’s brief not by the erroneous page numbering employed by the State, but rather by the page’s actual cardinal position if the cover of its brief had been treated as page one (1).

whether the anonymous tipster risked identification; (2) whether “the tip contained only information readily observable by passersby”; (3) whether the information provided contained predictive information about future behavior by the subject; and (4) whether the police either independently corroborated any of the predictive information supplied by the tipster or observed any criminal or suspicious behavior on the part of the subject. *State v. Williams*, 2001 WI 21, ¶¶ 33-34, 37, 39-40, 42, 241 Wis. 2d 631, 623 N.W.2d 106.

Examining the factors which the State cites in its brief as supporting Deputy Mathewson’s decision to detain the Vaughan vehicle, it is not difficult to see that the majority of them are merely descriptive in nature and not predictive. For example, the State notes that the information provided to dispatch indicated: the make of the vehicle (purely descriptive); the model of the vehicle (purely descriptive); the color of the suspect vehicle (purely descriptive); and the identity of the driver (purely descriptive). State’s Brief at p.9.

Apart from the foregoing, the State relies heavily upon the fact that the anonymous tipster also provided “predictive” information in the form of a tip that the Vaughan vehicle “was heading to Marion.” *Id.* In so doing, it discounts the fact that the vehicle’s “direction of travel” was “unknown.” *Id.* at pp. 9-10. Deputy Mathewson even conceded on direct examination that her dispatcher “gave out [an] unknown direction of travel.” R70 at 8:23-24; 17:13 to 18:6. The State attributes the uncertainty inherent in this “prediction” to the fact that the tipster did not know whether the vehicle was “heading to Marion either through Manawa or by taking back roads.” *Id.* at p.9. Regrettably for the State, this uncertainty is a “bigger deal” than it would apparently care to admit.

Indicating that a vehicle is heading to Marion “through Manawa” is predictive of little, if anything, because any reasonable route from the Cedar Springs Golf Course in a northerly direction will likely take a vehicle through Manawa. *See* <https://www.mapquest.com/us/wisconsin/manawa-wi-282023265>.² First, the only route out of the golf course is *north* before the two major intersecting roads turn west *toward* Manawa. *Id.* Downtown Manawa itself is only three miles from the

²This Court is permitted to take judicial notice of adjudicative facts capable of accurate and ready determination pursuant to Wis. Stat. § 902.01(2)(b) (2021-22). Because the location of Wisconsin cities, towns, and villages generally remain unchanged, as do the roadways which connect them, Mr. Vaughan relies upon the above-cited cartographic description of the Manawa area in support of his argument.

location of the golf course. *Id.* It is no surprise whatsoever that virtually any vehicle leaving Cedar Springs Golf Course is going to be going through Manawa. In naval terms, it would be the equivalent of the Coast Guard mooring a ship at the mouth of the St. Lawrence Seaway because it learned that a ship suspected of carrying contraband was departing from the Port of Milwaukee and was headed to the Atlantic Ocean. There is no other way for a ship to get from the Port of Milwaukee to the Atlantic without traversing the St. Lawrence Seaway. A tip in such a case would not be considered predictive of much because *every* ship outbound from the Great Lakes to the Atlantic would be taking this route. So too the tipster's information that the Vaughan vehicle would be heading "through Manawa" is hardly predictive given that the vast majority of vehicle's departing Cedar Springs Golf Course are likely heading "through Manawa." *Id.*

Similarly, the anonymous tipster's "basis of knowledge" remains unknown. The State *assumes* that the tipster "was present at the site at the time of the described events." State's Brief at p.9. As the *Williams* court acknowledged, the fact that the tipster remained anonymous and did not risk identification undercuts the potential reliability and credibility of the information provided. The tipster failed to demonstrate or explain how they knew about the unlawful behavior in which they claimed Mr. Vaughan engaged. The tipster did not provide any information regarding *how* it was that he or she knew this information—a primary concern about which the *J.L.* Court warned. *J.L.*, 529 U.S. at 271-72. As Mr. Vaughan asked in his initial brief:

Did the tipster observe the alleged driving behavior firsthand or was it merely relayed to him or her by another individual? Did the tipster merely hear a commotion outside and report about what s/he thought might have caused it? Does the tipster have an "axe to grind" with Mr. Vaughan?

Defendant-Appellant's Initial Brief, at p.15. These questions remain unanswered and the State's *assumptions* about whether the tipster actually witnessed the alleged behavior are inferential only. For purposes of contrast, the tipster in *Williams* made it clear that she was an *eyewitness*. *Williams*, 2001 WI 21, ¶ 4. There is no information in the instant case that the anonymous tipster actually eyewitnessed the alleged misbehavior.

In the end, "predicting" that a vehicle departing from Cedar Springs Golf Course is "heading to Manawa" is hardly revelatory. This fact—in the absence of

any bad driving and any evidence of damage to the Vaughan vehicle—are not sufficient under *J.L.*.

CONCLUSION

Mr. Vaughan respectfully requests that this Court reverse the decision of the lower court and remand this matter for further proceedings not inconsistent with the Court's judgment.

Dated this 22nd day of August, 2022.

Respectfully submitted:
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Electronically signed by:
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CERTIFICATION OF LENGTH

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 1,325 words.

I also certify that I have submitted an electronic copy of this brief which complies with the requirements of Wis. Stat. § 809.19(12).

Dated this 22nd day of August, 2022.

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