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CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,
Plaintiff/Respondent,

v.

Case No. 23AP561-CR

TROY A. WRY
Defendant/Appellant.

BRIEF OF PLAINTIFF/RESPONDENT

ON APPEAL FROM THE DECISION AND ORDER ENTERED IN THE
CIRCUIT COURT OF RUSK COUNTY, CASE NO. 21CT3, THE HONORABLE
BEVERLY WICKSTROM PRESIDING.

Brief Submitted by:

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ISSUES PRESENTED

Did the Court err when determining that Deputy Jilek had reasonable suspicion to stop Wry?

The trial court determined that the totality of the circumstances gave Deputy Jilek reasonable suspicion to stop Wry.

The State believes that this Court should find that The totality of the circumstances gave Deputy Jilek reasonable suspicion to stop Wry.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. Further, as a matter to be decided by one judge, this decision will not be eligible for publication. See §809.23(1)(b)4 Wis. Stats.

STANDARD OF REVIEW

Appellate courts review of an order granting or denying a motion to suppress evidence presents a question of constitutional fact. *State v. Tullberg*, 2014 WI 134, ¶ 27. Appellate Courts review a question of constitutional fact under a two-step inquiry: First, the Court will uphold the circuit court's findings of fact unless those findings are clearly erroneous. Second, the Court conduct an

independent, de novo analysis of the application of constitutional principles to the facts found. *State v. Robinson*, 2010 WI 80, ¶ 223.

ARGUMENT

I. THE FACTUAL BASIS FOR DEPUTY JILEK'S REASONABLE SUSPICION

At the outset, the State acknowledges that both the United States and Wisconsin Constitutions protect its citizens from "unreasonable" searches and seizures. Further, the State acknowledges that under long standing precedent an investigative stop is a seizure of a person under the law. See *Terry v. Ohio*, 392 U.S. 1, 16 (1968) and *State v. Williams*, 2002 WI 94 ¶20. A law enforcement officer need only have "reasonable suspicion", which is determined by the totality of circumstances, that a crime or violation of law has been committed, is being committed or is about to be committed. See *Terry v. Ohio*, 392 U.S. 1, 22 (1968), *State v. Young*, 2006 WI 98 ¶20 (citing *State v. Waldner*, 206 Wis.2d 51, 56 (1996) and §968.24 Wis. Stats.

The facts in this case are straight forward and there is little disagreement between the parties. Deputy Jilek received at least two calls sometime around 11:35pm from his dispatcher reporting that that dispatch had received a call from a citizen ("Caller") advising that an intoxicated

driver ("Driver") had "showed up" in their driveway. The caller had asked the intoxicated driver to leave and the driver left only to return sometime later (Tr. 4). There was no indication how the caller determined that the driver was intoxicated. Deputy Jilek was provided with a description of the vehicle and while on his way to investigate the call encountered a vehicle matching the description. Deputy Jilek began to follow the vehicle and noticed that the vehicle was swerving within the lane of travel and at least on one occasion "narrowly missed a couple of mailboxes". (Tr.5) Deputy Jilek continued to follow the vehicle observing it swerve in its own lane until the vehicle left Rusk County and entered Chippewa County. Deputy Jilek did not follow the vehicle outside of his jurisdiction. Having run the plate and having identified the owner of the vehicle, Deputy Jilek then proceeded to a location near the owners listed residence and waited for the vehicle to appear. Approximately 10 to 15 minutes later the vehicle appeared and Deputy Jilek initiated the traffic stop in question and identified the driver as Troy A. Wry.

II. DEPUTY JILEK HAD REASONABLE SUSPICION TO MAKE THE STOP.

A. Deputy Jilek's Reasonable Suspicion

Before initiating the traffic stop Deputy Jilek had the following information. First that an alleged drunk driver had been at the residence of the caller not once but twice (*Tr.* at 4). Second, that upon observation of the vehicle, once encountered, that the vehicle was swerving within his lane *Tr.* at 5). Third, that the vehicle had almost hit some mailboxes as it travelled down the road (*Tr.* at 5). Fourth, what when they reached Highway 27 the driver continued south out of the county while still weaving within his lane (*Tr.* at 5). Mr. Wry cites to *State v. Post*, 2007 WI 60 for the proposition that weaving within one's lane is insufficient to establish probable cause to initiate an investigative stop (Appellant's Br. 16). Mr. Wry is incorrect. *Post* at ¶¶13-14, itself states that the totality of the circumstances governs whether a law enforcement officer has reasonable suspicion to initiate an investigative stop. In *Post* the Officer deduced from the defendant's weaving within his own lane that the defendant was intoxicated. The Wisconsin Supreme Court in no uncertain terms indicated that they rejected that repeated weaving within a single lane alone gives rise to reasonable suspicion. Rather, their determination was based on the totality of the circumstances. *Post* at 26. Deputy Jilek articulated the basis for his suspicions at the motion

hearing. A call for service related to a potentially drunk driver that had "showed up" at the caller's driveway not once but twice. The driver weaving within his lane. The driver almost hit a number of mailboxes. For the purposes of a reasonable suspicion analysis Deputy Jilek had far more than Wry (the driver) weaving within his own lane.

B. Deputy Jilek Could Incorporate the Information Received From the Citizen-Informant into his Reasonable Suspicion Analysis.

Contrary to Wry's position, Deputy Jilek could incorporate the statements of the caller into his determination of reasonable suspicion. Although this case does not involve an anonymous caller or informant *State v. Richardson*, 156 Wis.2d 128, 142-43 (1990) weighed in on tips given by anonymous informants finding that when significant aspects of an anonymous tip are independently corroborated by the police, the inference arises that the anonymous informant is telling the truth about the allegations of criminal activity. Under this principle, police who have corroborated significant aspects of a tip are allowed the reasonable inference under the circumstances that if an informant is correct as to these significant aspects, he or she is more probably than not correct as to the ultimate fact of criminal activity.

Applying the standard in *Richardson* to the present case, Deputy Jilek had been informed of an intoxicated driver in a vehicle that matched the description of the vehicle driven by Wry. He encounters a vehicle matching the description of the vehicle in question on his way to the caller's location. He observes the vehicle weaving in its lane and he observes the vehicle almost hit some mailboxes by the side of the road. These observations, and the inferences derived from them, are enough to give rise to reasonable suspicion that Deputy Jilek is dealing with an intoxicated driver.

As previously indicated, the informant in this case was not anonymous. This person had called dispatch and at a minimum given his home address. Courts have recognized that citizen informants who provide "some self-identifying information is likely more reliable than an anonymous informant because "[r]isking one's identification intimates that, more likely than not, the informant is a genuinely concerned citizen as opposed to a fallacious prankster. This is so because an informant who discloses his or her identity to police could potentially be held responsible if [his or] her allegations turned out to [have been] fabricated." *State v. Williams*, 2001 WI 21 ¶¶35, 38 (citing *Florida v. J.L.*, 529 U.S. 266 at 270 120 S.Ct. 1375

(2000)). Courts apply a relaxed test of reliability to information provided by citizen informants, that "shifts from a question of personal reliability to 'observational' reliability." *State v. Boggess*, 110 Wis.2d 309, 316, 328 N.W.2d 878 (Ct.App.1982) (citing *State v. Doyle*, 96 Wis.2d 272, 287, 291 N.W.2d 545 (1980), overruled on other grounds by *State v. Swanson*, 164 Wis.2d 437, 475 N.W.2d 148 (1991)).

Wry's reliance on *State v. Kolk*, 2006 WI App 261 for rejecting the reliability of the citizen informant is misplaced. *Kolk* 2006 WI App at ¶13 links the reliability of the informant to the same test announced in *Richardson* when the Court stated "[t]he reliability of such a person should be evaluated from the nature of his report. The report was based on the interaction between the citizen informant the driver of the vehicle called dispatch and reported an intoxicated driver. The State concedes that there was no testimony from the citizen informant why he believed that Wry was intoxicated, but there was clearly something about his interaction with Wry that triggered that thought. Perhaps it was the time of night and his initial contact with Wry. Perhaps it was Wry's return minutes thereafter. What we do know is that the citizen informant felt strongly enough regarding the interaction to call law enforcement, identify at a minimum his address so that he could later be

identified, provided a description of the vehicle and identified the driver as being intoxicated. The State believes that the personal contact that the citizen witness had with Wry and the information provided to dispatch which was relayed to Deputy Jilek, was sufficient to allow Officer Jilek to incorporate the erratic driving into his probable cause assessment.

Lastly, Wry suggests that even if there was reasonable suspicion initially, the ten to fifteen minutes when Deputy Jilek lost contact with the vehicle somehow made that reasonable suspicion go stale. The State might agree with Wry if we were talking about a matter of hours or days. But Wry provides no legal support for his position that the reasonable suspicion had become stale after only minutes had elapsed. In doing so he mischaracterizes a statement by the Court when it suggested that someone else may have been driving the vehicle and that Mr. Wry may have taken over driving after the original drunken driver arrived at his destination, *App. Br. 18*. The circuit court was summarizing Wry's argument. These statements didn't originate with the Circuit Court, they are the defendant's argument as recited and later rejected by the Circuit Court when it decided that Deputy Jilek had developed sufficient reasonable suspicion to initiate the stop of Wry's vehicle.

Even if the scenario of someone else driving the vehicle into Chippewa County where Wry took over and drove home were true, that just makes Wry the victim of bad luck to have loaned his vehicle to a impaired driver who provided reasonable suspicion to Deputy Jilek, then drive that vehicle home, while impaired, to be stopped based on the probable cause already developed on the alleged previous driver of that particular vehicle.

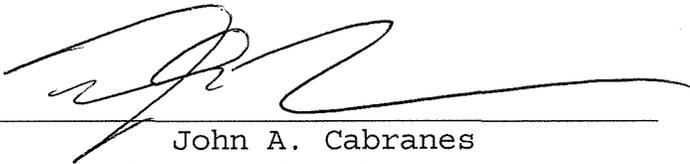
CONCLUSION

For the reasons stated above the State requests that this Court deny the appeal.

Dated this 11th day of June, 2024.

Respectfully Submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b), (bm), and (c) for a brief. The length of the brief is 1896 words.



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CERTIFICATE OF EFILING

Re: *State of Wisconsin v. Troy A. Wry*
Case No. 2023AP000561-CR
District III

I hereby certify that on June 11, 2024 Respondent's Brief was electronically filed with the Clerk of the Wisconsin Court of Appeals.

Respectfully submitted,

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