

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 9, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP3074

STATE OF WISCONSIN

Cir. Ct. Nos. 2004TR647
2004TR648

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JUDE G. TRAUTLEIN,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Buffalo County:
GERALD W. LAABS, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Jude Trautlein appeals an order denying his motion to suppress evidence obtained from a traffic stop. He claims the police did not verify

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

the reliability of an informant's tip and the circuit court erred by applying the reasonable suspicion standard when analyzing the legality of the stop. This court affirms the order.

FACTS

¶2 Just after 8 p.m. on May 8, 2004, Ellen Ellingson was sitting on her deck and noticed a lot of noise and activity at her neighbor's house across the road. She noticed a man lying on the ground for a period of time and went to get her binoculars to get a better look. After noticing that he was moving, she saw others cover him up with what she thought was a tarp. She then saw two men come out with a gun and point it toward him. Concerned for the safety of the man on the ground, Ellingson called the sheriff's department, and while doing so, heard two gunshots. She looked outside again and noticed that the man who had been covered with the tarp was no longer there.

¶3 The sheriff's department told her to keep an eye on the situation and to give a description of any vehicles that arrived at or left that address. The department also told her to call her neighbor to see if everything was all right. She called her neighbor, but when he answered, she froze and hung up the phone. After she called, everyone at the residence dispersed.

¶4 Ellingson described one of the vehicles that left as a red car with a white top and collector license plates. State trooper Jeremy Brunner received this vehicle description and information that a neighbor complained about suspicious activity, that gunshots were fired, and that a body was seen lying on the ground and had been covered with "a blanket." The sheriff's department advised that all vehicles leaving the scene should be stopped and the drivers and occupants

identified. Due to the nature of the complaint, the sheriff's department stated that any stop should be conducted as a "high-risk" stop.

¶5 As Brunner turned onto the road where Ellingson and her neighbor lived, he spotted a red car with a white top and collector plates. He stopped the vehicle and, with more officers arriving, approached Trautlein with weapon drawn. As is normal procedure during a high-risk stop, Trautlein was immediately handcuffed. Brunner then asked Trautlein about what happened at the residence he just left, including the gunshots and the person lying on the ground. Trautlein stated that some drunken men had shown up and "pulled out the gun and start[ed] shooting at stumps." The man laying on the ground was his nephew, who was drunk. He said they were messing with him by putting a blanket over him. After hearing Trautlein's explanation, Brunner determined he was not a threat and took off the handcuffs.

¶6 Brunner did, however, notice an odor of intoxicants coming from Trautlein and asked how much he had to drink. Trautlein replied that he had six beers, and he agreed to perform field sobriety tests. His performance on those tests indicated that he was intoxicated. Trautlein submitted to a preliminary breath test, which indicated a blood alcohol content of .13%. He was then arrested for operating while intoxicated, first offense.

DISCUSSION

¶7 A law enforcement officer may lawfully stop an individual if the officer reasonably suspects "that criminal activity may be afoot." *State v. Williams*, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106. The suspicion must be based on specific, articulable facts. On review, this court considers the totality of the circumstances. *Id.*, ¶¶21-22. An informant's tip may form the basis

of an officer's reasonable suspicion if it is supported by sufficient indicia of reliability. *Id.*, ¶34. Whether reasonable suspicion existed is a question of constitutional fact. *Id.*, ¶18.

¶8 Trautlein's first argument purports to challenge the reliability of Ellingson's tip. He asserts that she saw no criminal activity and was unaware of what was actually happening. These arguments, however, do not address the reliability of Ellingson's tip. Trautlein does not suggest that Ellingson reported anything other than what she actually witnessed. His arguments instead relate to whether Ellingson's observations supported a reasonable suspicion that criminal activity was afoot, which is Trautlein's next claim.

¶9 In addition to the above arguments, Trautlein claims that police lacked a reasonable suspicion because they did not independently investigate the location of the suspicious activity before stopping him. However, he cites no authority for the proposition that police must "touch base" at the scene of suspicious activity before stopping those witnessed to be fleeing that location.² To the extent Ellingson's tip was reliable, police were entitled to rely upon her information. While the fact that Ellingson was uncertain about whether a crime had been committed might be relevant to a probable cause analysis, it does not affect the reasonable suspicion analysis here. Ellingson saw a man lying on the ground for an extended period of time. She saw other men cover him with a tarp or blanket and point a gun at him. She then heard gunshots, and when she looked again, the covered man was gone. After she called her neighbor's house, the

² The record indicates that police were investigating the scene of the suspicious activity contemporaneously with Brunner's stop of Trautlein.

people there dispersed. Trautlein's vehicle was seen leaving, and police spotted him within five miles of the suspicious activity. These facts supported a reasonable suspicion and justified an investigative stop by police. Unfortunately for Trautlein, though the stop revealed a non-criminal explanation for Ellingson's observations, he was breaking the law when police stopped him.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

