

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 28, 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. 2006AP1924-CR

Cir. Ct. No. 2005MC366

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DENNIS L. RHOADES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waushara County:
WILLIAM M. McMONIGAL, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ Dennis Rhoades appeals the judgment of conviction for operating a vehicle while under the influence, second offense, in violation of WIS. STAT. § 346.63(1)(a). He contends the circuit court erred in

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

denying his motion to suppress evidence because, he asserts, the arresting officer did not have reasonable suspicion to detain him. We conclude the officer did have reasonable suspicion and we therefore affirm.

BACKGROUND

¶2 Rhoades was charged with operating a motor vehicle while under the influence of an intoxicant and operating with a prohibited alcohol content in violation of WIS. STAT. § 346.63(1)(a) and (b) as a result of an incident that occurred on June 25, 2005. He moved to suppress evidence on the ground that the arresting officer, Scott Rasmussen of the Wautoma Police Department, did not have reasonable suspicion when he detained him.

¶3 Officer Rasmussen was the only witness at the hearing on the motion to suppress. He testified as follows. He was on duty in the City of Wautoma on the evening of June 25, 2005, when he was informed by dispatch that it had received a call from the Movie Gallery and that an intoxicated male subject was at the Movie Gallery and could barely stand. The officer was informed that the caller reported that the male got into a green Cadillac and went across the street to the Shell gas station; the caller provided a possible license plate number, 466GHK. The officer went to the Shell station across from the Movie Gallery and observed a male, later identified as Rhoades, coming out of the Shell station and getting into a green Cadillac with the license plate number 466JHK. The officer did not see Rhoades stagger or have any trouble getting into his vehicle. The officer started to get out of his vehicle and as he did so, Rhoades proceeded to back out of the parking stall. The officer told Rhoades to stop. The officer did not observe any erratic driving before he told Rhoades to stop. The officer was not told by

dispatch whether the person who called from the Movie Gallery was an employee or another person who was there.

¶4 The circuit court concluded that the officer had reasonable suspicion to stop Rhoades based on the information he had obtained from dispatch and the corroboration of the facts given by the caller to dispatch concerning the driver of the vehicle, the identity of the vehicle, and the location of the vehicle.

DISCUSSION

¶5 On appeal, Rhoades argues that the police officer did not have enough information regarding the anonymous informant's veracity or basis for knowledge to constitute reasonable suspicion for the stop.

¶5 To execute a valid investigatory stop consistent with the Fourth Amendment prohibition against unreasonable searches and seizures, a law enforcement officer must reasonably suspect, in light his or her experience, that some kind of criminal activity has taken or is taking place. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). In assessing whether there exists reasonable suspicion for a particular stop, we must consider all the specific and articulable facts, taken together with the rational inferences from those facts. *State v. Dunn*, 158 Wis. 2d 138, 146, 462 N.W.2d 538 (Ct. App. 1990).

¶6 The constitutionality of the stop is an issue that this court reviews de novo. See *State v. Guzman*, 166 Wis. 2d 577, 586, 480 N.W.2d 446 (1992). However, we accept the trial court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2).

¶7 In *State v. Rutzinski*, 2001 WI 22, ¶4, 241 Wis. 2d 729, 623 N.W.2d 516, the supreme court addressed a situation in which an unidentified motorist

called from a cell phone reporting that he or she was looking at a black pickup truck weaving within its lane, varying its speed from fast to slow, and tailgating. After identifying the black pickup, the officer pulled behind it and, without independently observing any signs of erratic driving, stopped the pickup. *Id.*, ¶7. The court concluded that the officer had reasonable suspicion to believe the driver of the pickup was operating under the influence of an intoxicant. *Id.*, ¶38.

¶8 In reaching this conclusion, the court in *Rutzinski* noted that when the basis for an investigative stop depends solely on an informant's tip, the officer must consider the reliability of the tip, which includes weighing the veracity of the informant and the informant's basis of knowledge. *Id.*, ¶18. A deficiency in one consideration may be compensated by a strong showing as to the other, *id.* (citation omitted), and an exigency can in some circumstances supplement the reliability of the informant's tip that might otherwise be insufficient to justify an investigative stop. *Id.*, ¶26. The court concluded that the officer was entitled to rely on the information provided by the motorist on the cell phone because, by giving the location of his or her vehicle with respect to the suspect vehicle, the informant exposed himself or herself to being identified by police, the informant provided police with verifiable information indicating his or her basis of knowledge, and the tip suggested that the pickup truck posed an imminent threat to public safety. *Id.*, ¶¶32-34.

¶9 The supreme court has also explained that when an ordinary citizen, as opposed to a police informant, is the source of information provided the police, a more relaxed test of reliability applies that "shifts from a question of personal reliability to 'observational reliability.'" *State v. Williams*, 2001 WI 21, ¶36, 241 Wis. 2d 631, 623 N.W.2d 106 (citations omitted). "[W]e view citizens who purport to have witnessed a crime as reliable, and allow the police to act

accordingly, even though other indicia of reliability have not yet been established.” *Id.*, ¶36.

¶10 In this case the informant was a citizen. Although the informant did not provide a name, dispatch knew the call was from the Movie Gallery and it is likely the informant provided that information. Given this and the other information the informant gave dispatch, the informant would likely expect that a police officer would be coming to the Movie Gallery or to the Shell station across the street to investigate. Thus, it is unlikely the informant would believe he or she could remain anonymous. If the informant was an employee working at the Movie Gallery, an officer would be able to readily learn his or her identity. If, on the other hand, the informant was a customer at the Movie Gallery, he or she would likely expect that an officer arriving promptly in response to the call would be able to locate him or her at the Movie Gallery or to make inquiries of an employee to learn the description or identity of the person who had just left the store.

¶11 The base of the informant’s knowledge was apparent from the information that the call was from the Movie Gallery and the informant was observing the male leave the Movie Gallery. The details of the vehicle provided by the informant were specific as was the information on the driver’s destination. When the officer saw a male coming out of the Shell station and getting into a green Cadillac with a license plate only one numeral different than that reported, it was reasonable for the officer to believe that this was the man the informant had seen.

¶12 Finally, a reasonable officer could infer from the information provided by the informant that, if the man was permitted to drive away from the Shell station, he would pose an imminent threat to public safety. Although the

officer did not observe signs of intoxication himself, he could reasonably rely on the observation provided by the informant.

¶13 We conclude the information from the informant and the officer's confirmation of some of those details from his own observations were sufficient, when considered with all reasonable inferences from those facts, to lead a reasonable officer to suspect that the man getting into the green Cadillac at the Shell station had been operating and was about to be operating the vehicle while under the influence of an intoxicant.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

