

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2008

David R. Schanker
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. 2008AP821-CR

Cir. Ct. No. 2006CT356

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SILVIA H. HEUGEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ Silvia Heugel appeals a judgment of conviction for operating a vehicle while intoxicated, second offense. Heugel contends the circuit court erroneously denied her motion to suppress. We disagree and affirm.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

BACKGROUND

¶2 On October 23, 2006, officer James VanDusen arrested Heugel for operating while intoxicated. Heugel filed a motion to suppress, claiming VanDusen did not have reasonable suspicion for the stop. At the motion hearing, VanDusen testified he responded to a report of an erratic driver. At about 7:42 p.m., a citizen informant called and reported she was following a maroon Dodge that had crossed the center line several times and had nearly struck another vehicle head on. The informant gave dispatch her name, date of birth, and phone number and continued to update her location as she followed the vehicle. The informant followed the vehicle until it eventually was parked at a shopping center, where a woman exited the vehicle and entered a natural foods store. The informant did not provide any description of the driver beyond her gender.

¶3 VanDusen then arrived and spoke to the informant, who confirmed the information she had provided to dispatch and pointed out the parked vehicle, which matched the description and license number provided to dispatch. VanDusen, who was stopped about 100 feet away, did not notice whether there was anyone else in the vehicle. Additionally, he could not recall if the informant stated whether there had been more than one person in the vehicle.

¶4 About two to four minutes after he arrived and while still conversing with the informant, VanDusen noticed the vehicle backing out of the parking stall. VanDusen could not recall observing the driver re-enter the vehicle or seeing where she came from. However, as the vehicle pulled away, he could see it was driven by a female. VanDusen followed the vehicle out of the parking lot and pulled it over without observing any driving irregularities, at 7:52 p.m.

¶5 The circuit court determined there was reasonable suspicion for the traffic stop and denied Heugel’s motion to suppress. Heugel pled no contest and this appeal follows.

DISCUSSION

¶6 Heugel does not dispute that the informant’s tip would ordinarily provide reasonable suspicion for the stop. Nonetheless, she contends the parking of the vehicle, and the attendant gap in observation, terminated the basis for the stop.

¶7 Whether an officer had reasonable suspicion to conduct an investigative stop is a question of constitutional fact. *State v. Powers*, 2004 WI App 143, ¶6, 275 Wis. 2d 456, 685 N.W.2d 869. We review whether findings of historical fact are clearly erroneous and review whether reasonable suspicion is met de novo. *Id.* Because neither party asserts the findings of the trial court are clearly erroneous, we are presented only with a question of law. *See id.*

¶8 Traffic stops are seizures under the Fourth Amendment. *Id.*, ¶7. Therefore, an officer initiating an investigative stop must have a reasonable suspicion that the driver or occupants of the vehicle have committed an offense. *State v. Rutzinski*, 2001 WI 22, ¶14, 241 Wis. 2d 729, 623 N.W.2d 516. An officer must base an investigative traffic stop on something more than the officer’s inchoate and unparticularized suspicion or hunch. *Id.* (citation omitted). Thus, “[a]t the time of the stop, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, objectively warrant a reasonable person with the knowledge and experience of the officer to believe that criminal activity is afoot.” *Id.*

¶9 The State analogizes this case to *Rutzinski*, where a traffic stop was found reasonable even though it was based solely on an anonymous informant's tip. There, an informant reported a truck was being driven erratically. *Id.*, ¶4. When the responding officer arrived, the informant, who was still on the line with dispatch, confirmed the officer had pulled in behind the correct truck. *Id.*, ¶6. The officer then stopped the truck without independently observing any erratic driving. *Id.*, ¶7. The court concluded the erratic driving was a possible sign of driving while intoxicated and that the tip bore sufficient indicia of reliability to justify the stop. *Id.*, ¶34. Additionally, the court determined the exigency of the situation contributed to the reasonableness of the stop. *Id.*, ¶38.

¶10 We agree that, ignoring for the moment the gap in observation, *Rutzinski* requires a determination of reasonable suspicion in this case. As there, the informant here gave contemporaneous reports via cell phone as she followed the erratically driven vehicle. She provided a detailed description of the vehicle and the officer confirmed those details upon arrival. Additionally, the informant provided her name and phone number and stopped and spoke with officer VanDusen prior to the traffic stop, adding a layer of reliability not present in *Rutzinski*. Finally, the erratic driving here, involving a near head-on collision, was more serious than the weaving and tailgating in *Rutzinski*. *See id.*, ¶4. Thus, the exigency weighed more heavily in favor of conducting an immediate stop in this instance.

¶11 While not disputing that the preceding facts would give rise to reasonable suspicion for a traffic stop, Heugel argues the informant's observations were interrupted when the driver parked and exited the vehicle. She emphasizes that neither VanDusen nor the informant observed whether the woman who re-entered the vehicle came from the natural foods store, there was no description of

the driver beyond her gender, and VanDusen could not recall the informant stating there had been only one person in the vehicle. Since VanDusen did not observe any bad driving prior to stopping Heugel, she contends no evidence connected the driver of the second episode to the earlier erratic driving.

¶12 Thus, we must determine whether it would be reasonable for VanDusen to infer that the woman who drove out of the parking lot that evening was the same woman who had driven into the lot, parked, and entered the natural foods store less than ten minutes earlier. We conclude it would. Indeed, given the typical course of events, this might be the *most* reasonable inference.

¶13 We first note there is no evidence there was ever more than one person in the vehicle. We acknowledge there might be several plausible scenarios whereby the vehicle was driven to the store by one woman and driven away by another. However, it is well established that police need not dispel every innocent explanation for behavior before initiating a traffic stop. *See State v. Williams*, 2001 WI 21, ¶46, 241 Wis. 2d 631, 623 N.W.2d 106. Rather, “[i]f any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.” *Id.* (quoted source omitted).

¶14 When assessing whether a stop is constitutionally reasonable, we must balance the interests of the individual being stopped against the interests of the State. *Rutzinski*, 241 Wis. 2d 729, ¶¶15, 26. Where, as here, the allegations in the tip suggest an imminent threat to the public safety, “it may be reasonable for an officer ... to conclude that the potential for danger caused by a delay in immediate action justifies stopping the suspect without any further observation.”

Id., ¶26. Therefore, considering the totality of the circumstances, we conclude VanDusen's traffic stop was constitutionally reasonable.

By the Court.—Judgment affirmed.

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

