

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 23, 2009

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. 2008AP1104

Cir. Ct. No. 2006TR5886

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COLUMBIA COUNTY,

PLAINTIFF-RESPONDENT,

V.

HANS G. OELKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County:
JAMES O. MILLER, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, P.J.¹ Hans G. Oelke appeals a judgment convicting him of operating while intoxicated, first offense, following the circuit

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

court's denial of his motion to suppress evidence obtained during a traffic stop. We affirm.

¶2 The parties stipulated to the facts contained in the police reports for purposes of deciding the suppression motion. On July 28, 2006, at approximately 5:30 p.m., the Columbia County Communication Center received a call from a motorist who provided her name to the dispatcher and reported seeing a black SUV weaving and hitting the curb on the side of the roadway while following the SUV southbound on Highway 51. She reported that the black SUV had since turned onto Highway 16 eastbound, while she continued on Highway 51. The motorist identified the first four characters of the vehicle's license plate, 319-C. Sergeant William Laughlin, who received the complaint from the Communication Center, asked Officer Aeriond Liu, who was monitoring traffic several miles south on Highway 16, to watch for the suspect vehicle.

¶3 Shortly after receiving this dispatch, Officer Liu observed a black SUV with license plate 319-CXZ traveling approximately one-half car length behind the vehicle in front of him. Liu made a traffic stop of the vehicle and waited for Sheriff's Deputy Sergeant Laughlin to arrive. Laughlin conducted field sobriety tests on the driver of the vehicle, Hans Oelke, and subsequently arrested Oelke for operating a motor vehicle while intoxicated.

¶4 Oelke filed a suppression motion, contending that the traffic stop was not supported by reasonable suspicion. In an oral ruling, the trial court denied the motion. Oelke appeals.

¶5 Oelke contends that Officers Liu and Laughlin lacked reasonable suspicion to stop his vehicle. An officer may initiate an investigative stop of a vehicle if the officer reasonably suspects that a criminal or traffic violation is

about to occur, is occurring or has occurred. *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. Whether a stop is reasonable is based upon the totality of the facts and circumstances. *Id.* The reasonableness of a traffic stop is a question of constitutional fact. *Id.*, ¶8. We review independently the application of an undisputed set of facts to constitutional principles. *Id.*

¶6 Information provided by an informant’s tip may provide a reasonable basis for a traffic stop, depending upon the reliability and content of the tip. *State v. Rutzinski*, 2001 WI 22, ¶17, 241 Wis. 2d 729, 623 N.W.2d 516. In assessing the reliability of an informant’s tip, we consider the informant’s (a) veracity and (b) basis of knowledge. *Id.*, ¶18. “A deficiency in one consideration may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability.” *Id.* (citation omitted).

¶7 Oelke argues that because Officer Liu relied only on the informant’s tip in making the stop and not on personal observation of Oelke’s driving the stop was not reasonable. We disagree. We conclude that Lui had reasonable suspicion to conduct the stop without personally observing Oelke’s driving based on the overall reliability of the informant’s tip.

¶8 First, we observe that the informant provided her name to the dispatcher. A tip from a person who identifies him- or herself shows greater indicia of reliability than a tip from an anonymous informant because the informant exposes him- or herself to the threat of prosecution for making false statements. See *Rutzinski*, 241 Wis. 2d 729, ¶20 (discussing *Adams v. Williams*, 407 U.S. 143, 146-47 (1972)).

¶9 Second, the informant provided the dispatcher with many details that demonstrated that she had a reliable basis of knowledge. The informant provided the vehicle's color and type to the dispatcher, a partial license plate number, the vehicle's location, and the direction in which the vehicle was traveling. The caller provided a nearly contemporaneous report of Oelke's driving, including the highway on which Oelke's vehicle had just turned and the direction in which the vehicle was traveling. See *Rutzinski*, 241 Wis. 2d 729, ¶33 (contemporaneous observation of a driver indicates that informant possesses "inside information" demonstrating reliable basis of knowledge). Shortly thereafter, Officer Liu spotted a vehicle matching the informant's description traveling on the highway and in the direction reported by the informant. Collectively, these facts persuade us that the information provided by the tipster was sufficiently reliable to justify the stop of Oelke's vehicle.

¶10 Oelke contends that the informant could have provided a false name to the dispatcher, or could have been providing completely false information. True enough, but just as officers are not required to rule out the possibility of innocent behavior before initiating a stop, *State v. Waldner*, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996), they are likewise not required to rule out the possibility that an informant may be lying before relying on the informant's tip.

¶11 Oelke contends that his case is distinguishable from *Rutzinski*, a case in which the supreme court upheld a stop based on an informant's tip, the substance of which was not corroborated by the officer's own observations. The *Rutzinski* court concluded that the tip was sufficiently reliable based largely on the informant's contemporaneous observation of the suspect's driving, and by the informant exposing him- or herself to the threat of prosecution for making false statements by revealing that he or she was traveling immediately behind the

suspect's vehicle. *Rutzinski*, 241 Wis.2d 729, ¶¶32-33. Oelke argues that *Rutzinski* is distinguishable because the informant there followed the suspect until the officer made contact with the driver and here the informant stopped following Oelke several miles before the stop. However, Oelke fails to explain why this distinction is meaningful. Certainly, the informant might have observed additional instances of erratic driving had she continued to follow Oelke. But Oelke does not argue that the informant's reported observations were themselves insufficient to constitute reasonable suspicion for a stop. Moreover, because the informant here provided her name to the dispatcher, the tip arguably had stronger indicia of veracity than the tip in *Rutzinski*, which was from a person who did not give his or her name. *Id.*, ¶4.

¶12 In sum, we conclude that Officer Lui had reasonable suspicion to conduct the stop without personally observing Oelke's driving based on the overall reliability of the informant's tip.² Accordingly, we affirm.

By the Court.—Judgment affirmed.

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

² Because this conclusion is dispositive, we need not address whether the stop was also justified on grounds that Oelke was in violation of WIS. STAT. § 346.14(1) for following one-half car length behind another vehicle.

