

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 7, 2002

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. 02-1002-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CT-71

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANIEL J. KUEHT,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marquette County:
RICHARD O. WRIGHT, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Daniel J. Kueht appeals from a judgment of conviction for operating a motor vehicle while under the influence of an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

intoxicant. Kueht contends that his motion to suppress evidence should have been granted because the officer who arrested him did not personally have reasonable suspicion to stop his vehicle. We affirm.

BACKGROUND

¶2 On the night of July 20, 2001, Gregory Kemnitz was driving on Interstate 39 and witnessed a vehicle cross the center-line and fog line while traveling on a curvy portion of the highway. Kemnitz saw the vehicle veer out of its own lane when other cars passed it. He called the sheriff's department from his car to report the erratic driving. He identified himself to the police and provided a detailed description of the vehicle, including the construction company name painted on its side. Kemnitz continued to watch the vehicle until he exited the highway, where he gave a statement to a police officer.

¶3 Officer McCoy responded to a dispatch report that a vehicle was veering out of its lane of traffic. The dispatcher relayed the description of the vehicle and the identity of the informant. Officer McCoy knew who Kemnitz was, but could not vouch for his credibility. After locating the vehicle on a straight portion of the interstate, Officer McCoy followed it for about a mile and observed no erratic driving but stopped the vehicle because of the tip. Kueht was the driver of the vehicle. After Kueht failed field sobriety tests, Officer McCoy arrested him.

ANALYSIS

¶4 When reviewing a trial court's determination regarding the suppression of evidence, we will uphold the trial court's findings of fact unless those findings are clearly erroneous. *State v. Richardson*, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). Whether an investigatory stop meets constitutional and

statutory standards is a question of law that we review de novo. See *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991). In the present case, the trial court's findings are not clearly erroneous. Therefore, we consider only whether the investigatory stop by Officer McCoy met constitutional and statutory standards.

¶5 The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution guarantees citizens the right to be free from unreasonable searches and seizures. *Richardson*, 156 Wis. 2d at 137. Wisconsin courts interpret the state constitution in accordance with the Supreme Court's interpretations of the search and seizure provisions under the federal constitution. *State v. Fry*, 131 Wis. 2d 153, 172, 388 N.W.2d 565 (1986).

¶6 Kueht argues that Officer McCoy could not rely on the collective knowledge of the police department to establish reasonable suspicion. To stop a person, a police officer must have reasonable suspicion that criminal activity is afoot. *State v. Waldner*, 206 Wis. 2d 51, 55, 556 N.W.2d 681 (1996). Reasonable suspicion does not need to derive from personal knowledge. See *State v. Mabra*, 61 Wis. 2d 613, 625, 213 N.W.2d 545 (1974). An officer "may rely on all the collective information in the police department" as long as "there is police-channel communication to the arresting officer" and the officer acts in good faith. *Id.* The Wisconsin Supreme Court reiterated this principal in *Mabra*, where an officer arrested the occupants of a vehicle because police dispatch stated the vehicle was involved in a crime. *Id.* at 617. The facts known to the police department were sufficient to establish probable cause for an arrest. *Id.* at 626. Because the "police force is considered as a unit," the facts constituting probable cause were imputed to the arresting officer acting in concert with the department. *Id.* at 625.

¶7 If the police department does not communicate the police data to the arresting officer, then the collective-knowledge theory cannot apply. *State v. Friday*, 140 Wis. 2d 701, 713-14, 412 N.W.2d 540 (Ct. App. 1987), *rev'd on other grounds*, 147 Wis. 2d 359, 434 N.W.2d 85 (1989). For instance, the police department cannot impute knowledge creating probable cause to an officer after an arrest. *Id.* at 715. The collective knowledge can only constitute probable cause if the arresting officer relied upon the police communication. *Id.* at 714.

¶8 We explained another limitation to the collective-knowledge theory in *State v. Black*, 2000 WI App 175, 238 Wis. 2d 203, 617 N.W.2d 210, *cert. denied*, 531 U.S. 1182 (2001). Our discussion primarily concerned the reasonableness of an officer's decision to check a person's identification. In *Black*, two police detectives asked an officer to check a person's identity without providing any basis for their suspicion. *Id.* at ¶¶2-3. The officer's identification check ultimately led to seizing cocaine from the person. *Id.* at ¶6-8. We held that the state's need to ascertain a person's identity is great; thus, the minimal search was reasonable. *Id.* at ¶19. We noted: “[C]ollective police data cannot support an officer's search when the data is not in fact communicated to the officer prior to the time the search is made.” *Id.* at ¶17 n.4. This principle derives from *Friday* and is consistent with *Mabra*. *Friday*, 140 Wis. 2d at 713-14; *Mabra*, 61 Wis. 2d at 625-26.

¶9 Kueht asserts that the collective-knowledge rule does not apply in this case because the dispatcher did not communicate the citizen informant's observations of Kueht to Officer McCoy. We disagree, and conclude that *Mabra* governs this case. Because Officer McCoy relied upon a police communication when he responded to a dispatch report about Kueht's erratic driving, the police department may impute its collective knowledge to Officer McCoy. With the tip,

the police department's collective knowledge establishes reasonable suspicion to stop Kueht.

¶10 Neither exception to *Mabra* applies to this case. Contrary to Kueht's argument, neither *Friday* nor *Black* hold that the dispatcher must relay the tip, word for word, to the responding officer. Rather, *Friday* requires the police communication to occur prior to the stop, which occurred in this case. *Friday*, 140 Wis. 2d at 715. *Black* merely restates the general proposition that an officer must rely on police communication, without further defining the communication. *Black*, 2000 WI App 175 at ¶17 n.4. At the very most, *Black* stands for the proposition that simply instructing an officer to check someone's identity is not sufficient police communication. *Id.* at ¶¶2-3, ¶17 n.4. Here, dispatch provided Officer McCoy with more information than was given to the officer in *Black*; specifically, dispatch relayed Kemnitz's allegation about erratic driving. Therefore, Kueht's argument that *Black* bars the collective-knowledge theory as defined by *Mabra* fails.

¶11 Kueht also argues that the totality of the circumstances negated the reliability of the tip, diminishing reasonable suspicion for the stop. Information given by citizen informants "should exhibit reasonable indicia of reliability." *State v. Rutzinski*, 2001 WI 22, ¶18, 241 Wis. 2d 729, 623 N.W.2d 516. Reliability of information depends upon the informant's veracity and basis of knowledge. *Id.* Compared to anonymous tips, information from an identified source has an increased reliability because providing false information to the police could lead to arrest. *See id.* at ¶20. When assessing the quality of the basis of knowledge considerations include: (1) whether the tip is verifiable; (2) whether it is predictive; and (3) whether the tip was contemporaneous with the observation. *Id.* at ¶33. The factors are not rigid tests and an informant that is more veracious

can have a less reliable basis of knowledge and vice versa. *See id.* at ¶21. Moreover, if the tip is reasonably reliable, an officer needs less corroborating personal knowledge. *See State v. Paszek*, 50 Wis. 2d 619, 631-32, 184 N.W.2d 836 (1971).

¶12 Kueht proffers two reasons for why the initial reliability of the tip dissipated, resulting in the stop being based upon a mere hunch. First, Kueht claims the tip was not contemporaneous because the road conditions changed and fifteen minutes lapsed until Officer McCoy located his vehicle. Contemporaneousness is a factor to consider when assessing reliability. *See Rutzinski*, 2001 WI 22 at ¶33. The pertinent inquiry, however, is whether the witness's observations were contemporaneous to the reported information. *See id.* *Rutzinski* gave no consideration to how quickly the officers must respond to the tip. *See id.* Second, Kueht contends that the court must consider Officer McCoy's personal observations when evaluating the totality of the circumstances. *Rutzinski* does not require an officer to corroborate a reasonably reliable tip with personal observation. Therefore, we must first evaluate how reliable Kemnitz's information was before determining how much corroborating evidence is necessary.

¶13 According to the factors set forth in *Rutzinski*, the tip was reasonably reliable. *Rutzinski*, 2001 WI 22 at ¶18. First, the veracity of the tip was significant because Kemnitz identified himself and provided a statement to an officer at the interstate exit. Moreover, Officer McCoy knew the informant, although he could not vouch for his credibility. Second, there was a reasonable basis of knowledge for the tip; Kemnitz reported his personal observations to the police while he was driving on the interstate.

¶14 Because the tip was reasonably reliable, Officer McCoy's minimal corroborating evidence was sufficient; namely that Officer McCoy located Kueht's vehicle from the dispatcher's detailed description of the vehicle and location of where Kueht was traveling. Thus, the highly reliable tip and corroborating evidence constituted reasonable suspicion for Officer McCoy to stop Kueht.

¶15 Finally, Kueht argues that "McCoy's observations 'negated' any of the initial suspicion" established by the tip. However, a reasonable police officer could still reasonably suspect that a driver may be intoxicated even after observing that driver comply with traffic laws for one mile on a straight road. Thus, Officer McCoy's personal observations do not negate or dissipate the initial reliability of Kemnitz's tip.

By the Court.—Judgment affirmed.

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

