

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 24, 2003**

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. 02-2657  
STATE OF WISCONSIN**

**Cir. Ct. No. 01-TR-7467**

**IN COURT OF APPEALS  
DISTRICT IV**

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**COUNTY OF JEFFERSON,**

**PLAINTIFF-RESPONDENT,**

**v.**

**SEAN S. LYNCH,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Jefferson County:  
JACQUELINE R. ERWIN, Judge. *Affirmed.*

¶1 VERGERONT, P.J.<sup>1</sup> Sean Lynch appeals the judgment of conviction for operating a motor vehicle while under the influence of an intoxicant in violation of an ordinance adopting WIS. STAT. § 346.63(1)(a). He contends the

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

trial court erred in concluding that the arresting officer had reasonable suspicion to stop his vehicle. We affirm.

¶2 Kenneth Tennes, deputy sheriff for the Jefferson County Sheriff's Department, testified at the hearing on Lynch's motion to suppress evidence as follows. He was on duty the evening of October 6, 2001, and was stopped on Christberg Road at a stop sign waiting to turn onto Highway 18. A vehicle that was traveling westbound on Highway 18 turned off the highway, driving directly toward the officer's squad car, came to a sudden stop, then turned around and pulled up next to the officer's car. Both the driver of the vehicle and a passenger told the officer to go after the car that just passed because they thought he was a drunk driver, since he was "all over the road." They indicated the car was driving westbound on Highway 18. They also indicated that they had been attempting to contact dispatch, but when they saw the officer's squad car they decided to stop and talk to him instead of calling in. The startling manner in which this vehicle approached him indicated to the officer that the driver and passenger were in a hurry to give him this information. He told them to call dispatch to give them their phone number, and they indicated to him that they were going to do that.<sup>2</sup> The officer immediately took off to catch up to the vehicle they described.

¶3 The officer did not see the vehicle they were referring to while they were talking to him, but after he pulled out onto the highway, in less than a minute, he saw a vehicle driving west on Highway 18. He saw no other vehicles. He caught up to approximately four to five car lengths from this vehicle. He

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<sup>2</sup> The driver and passenger who stopped to give the officer the information did contact dispatch and gave their phone number and name, and the officer later spoke to them.

observed the vehicle driving onto the centerline while going up a hill, and then on the downside of the hill driving onto the fog line; in between that time the vehicle was going back and forth between the fog line and the centerline. The officer did not observe anything unusual about the speed of the vehicle and he did not observe the vehicle traveling outside of its lane. He followed the vehicle for approximately one minute and then stopped it just as it was approaching the city limits of Jefferson. Lynch was the driver of the vehicle, and the officer subsequently arrested him for driving under the influence of an intoxicant.

¶4 The only other witness at the hearing was a private investigator called by Lynch who testified that when one is stopped at the stop sign where the officer was, one can see only approximately 1,000 feet toward the west because the road curves to the right.

¶5 The trial court concluded that the information given by the two citizens, coupled with the officer's observations of Lynch's vehicle within a minute, was sufficient to provide reasonable suspicion for the stop. Accordingly, the trial court denied Lynch's motion to suppress evidence gathered after the stop.

¶6 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 of 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, 834 (1990). An investigatory stop is permissible when the person's conduct may constitute only a civil forfeiture. *State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63, 65-66 (Ct. App. 1991). Upon stopping the individual, the officer may make reasonable inquiries to dispel or confirm the suspicions that justified the stop. *Terry v. Ohio*, 392 U.S. 1, 22

(1968). 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, 541 (Ct. App. 1990).

¶7 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, 448 (1992). However, we accept the trial court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2).

¶8 Lynch argues on appeal that the officer did not have reasonable suspicion because the citizen informants were unknown to him at the time and did not provide any identifying information; they did not provide a description of the vehicle; and the officer did not observe Lynch's vehicle driving in a manner that posed a threat to public safety. We disagree and conclude that the trial court correctly determined that the information provided by the citizens, coupled with the officer's observations of Lynch's driving, was sufficient to meet the standard of reasonable suspicion.

¶9 In *State v. Rutzinski*, 2001 WI 22, 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. 241 Wis. 2d 729, ¶4. 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.

¶10 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.*, 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.*, ¶¶32-36.

¶11 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, 631, ¶36, 241 Wis. 2d 631, 623 N.W.2d 106. "[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 been established." *Id.*, ¶36.

¶12 In this case, the informants were citizens and the urgency with which they approached the officer added to the reliability of their description of the vehicle's driving and the danger it presented. Although they did not provide a name, the officer saw them and saw their vehicle, making it unlikely they believed they could remain anonymous. In addition, the fact that they had told him they were attempting to call dispatch when they saw him, makes it reasonable to infer

that they would call dispatch as he directed and would give identifying information to dispatch.

¶13 Although the citizens did not describe the vehicle, the information that it had just passed the location, coupled with the officer immediately taking off and within less than a minute seeing only Lynch's vehicle, makes it reasonable to infer that Lynch's vehicle was the one the citizens had seen. Finally, the officer's observation of Lynch's driving corroborated the information given to him by the citizens. We do not agree with Lynch that because he was not driving outside his lane, the weaving within his lane did not present a danger. It did. We conclude the officer's observation of Lynch's driving, coupled with the information from the citizens, provided specific and articulable facts which, taken together with rational inferences from those facts, would lead a reasonable officer to suspect that the driver of the vehicle was operating under the influence of an intoxicant.

*By the Court.*—Judgment affirmed.

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

