

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 28, 2011

A. John Voelker
Acting 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. 2010AP2004-CR

Cir. Ct. No. 2008CF121

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHARLES J. COPPENS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Oconto County: RICHARD D. DELFORGE and MICHAEL T. JUDGE, Judges.
Affirmed.

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Charles Coppens appeals a judgment convicting him of seventh-offense drunk driving and an order denying his postconviction motion to withdraw his no contest plea. Coppens entered the plea after the court

denied his motion to suppress evidence resulting from the investigative stop of his vehicle. Coppens' motion to withdraw his plea was based on the same suppression issue. Coppens argues that the police did not have reasonable suspicion to stop his vehicle because the anonymous telephone tip that led to the stop lacked reliability and the officer only corroborated readily observable innocent details alleged by the caller. Because we conclude that the anonymous tip gave police reasonable suspicion to perform the investigative stop, we affirm the judgment and order.

¶2 The Oconto County sheriff's dispatcher received an anonymous phone call reporting a drunk driver. The dispatcher did not have the caller's phone number because the call came through the sheriff's "admin line," which does not have caller identification. The caller reported that a male driver of a black car with license plate number 953 NRS had nearly hit him in the parking lot of a market. The caller reported that the man "could hardly walk into the store."

¶3 The dispatcher relayed this report to officer Brad Olson, who testified that he arrived at the scene within two to four minutes. As Olson drove into the parking lot, he observed a black car leaving the lot. Olson pulled behind the car, verified that it had the same license number as reported by the anonymous caller, and recognized the driver as Coppens. Olson stopped the car before personally observing any erratic driving or traffic violations.

¶4 After stopping the car, Olson smelled intoxicants from inside the car and Coppens stated he had consumed a few beers. Olson then walked Coppens over to a nearby police department to perform field sobriety tests because there was a lot of traffic and pedestrians in the area of the traffic stop. Olson then

brought Coppens to a local hospital to have blood drawn. The chemical blood test indicated that Coppens' blood alcohol content was .268 %.

¶5 An officer initiating an investigative stop must have a reasonable suspicion that the driver has committed an offense. *State v. Rutzinski*, 2001 WI 22, ¶14, 241 Wis. 2d 729, 623 N.W.2d 516. 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.* To determine whether a set of facts could have led to reasonable suspicion, we use an independent objective analysis to balance the interest of the individual being stopped to be free from unnecessary or unwarranted intrusive searches and seizures, and the interests of the State to effectively prevent, detect and investigate crimes. *Id.*, ¶15.

¶6 Information from an anonymous caller can create reasonable suspicion to justify an investigative stop when the caller provides reasonable indicia of reliability. *Id.*, ¶¶17-18. There is no per se rule of reliability, but three factors inform our decision: (1) the caller's veracity; (2) the caller's basis of knowledge; and (3) whether, under the totality of the circumstances, the activity described by the caller describes an imminent threat to public safety. *Id.*, ¶¶18, 26, 32-34. Drunk driving falls into the category of serious threats to public safety, and an officer is not required to wait to personally observe signs of erratic driving or intoxication. *Id.*, ¶35.

¶7 Applying these factors, we conclude that the caller presented sufficient indicia of reliability to justify the traffic stop. The record contains no reason to believe the caller would have known that the number he called was not

equipped with caller identification. He had no basis for knowing how long it would take the police to respond and the officer could have arrived before the caller left the parking lot. Under the circumstances, a caller making a false report would run the risk of being identified and prosecuted if he deliberately lied. *See* § 946.41 (2009-10). There is also no reason to conclude that the caller purposefully withheld any identifying information or would not have provided his name if he had been asked. Under these circumstances, the record provides no reason to doubt the caller's veracity.

¶8 The caller also demonstrated sufficient basis of knowledge. He reported that he personally observed the driving and the degree of impairment. He reported specific details that showed how he came to know of the illegal activity. Olson was able to confirm that a black car driven by a male with a specific license plate number was present at the location the caller identified within a few minutes of the call. Even if some of these details were “innocent,” they provided Olson with a basis to test the reliability of the anonymous caller. *See State v. Williams*, 2001 WI 21, ¶37, 241 Wis. 2d 631, 623 N.W.2d 101. If “an informant is right about some things, he is probably right about other facts that he has alleged, including the claim that the object of the tip is engaged in criminal activity.” *Alabama v. White*, 496 U.S. 325, 331 (1990).

¶9 Finally, the anonymous caller reported an imminent threat to public safety. Olson stopped Coppens on a busy roadway with both vehicle and pedestrian traffic. He was not required to endanger public safety by delaying the traffic stop until he could independently confirm Coppens' intoxication.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5 (2009-10).

