

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 6, 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. 2011AP290-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2010CT299

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RANDY L. TESTROETE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: TIMOTHY M. VAN AKKEREN, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Randy L. TeStroete appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OWI), second offense.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

TeStroete contends that the circuit court erred in denying his motion to suppress evidence based on the lack of reasonable suspicion to stop his vehicle. We reject TeStroete's argument. We affirm the judgment.

¶2 Officer Hang Lor of the city of Sheboygan Police Department testified at the hearing on TeStroete's motion to suppress. Lor stated that on May 15, 2010, at approximately 8:24 p.m., he received a call from dispatch concerning a "possible intoxicated driver." The dispatcher provided information regarding the vehicle's location (heading northbound on Calumet at North Avenue), license plate number, and color (metallic green). The dispatcher also relayed information of "some driving behavior," but Lor did not "recall exactly hearing what it was" because he was on a different call at the time. Lor knew from dispatch that the reporting citizen was in a white vehicle following the suspect vehicle and "there was a named complainant willing to make a statement about the driving behavior." Lor identified the suspect vehicle, which was followed by the complainant's white vehicle, turning into the Kentucky Fried Chicken parking lot. Lor activated his lights and stopped the vehicle in the drive-through lane. The driver was identified as TeStroete.

¶3 Lor testified that prior to the stop of TeStroete's vehicle, he had not observed any poor driving behavior. He had only observed a "very minor" traffic law violation, but "nothing that would raise immediate suspicion." Lor testified that he "intended to follow the vehicle a little bit further, to see if [he] could observe the driving behavior himself; however, it turned into the parking lot right away." Lor stopped the vehicle because "there was a named complainant willing to make a statement about the driving behavior."

¶4 TeStroete moved to suppress evidence resulting from the stop of his vehicle based on lack of reasonable suspicion. Following the motion hearing at which Lor testified, the circuit court denied TeStroete's motion in a written decision. Citing to the supreme court's decision in *State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, the circuit court reasoned:

In this case Officer Lor testified to the effect that the dispatcher had given out some driving behavior but that he did not recall exactly what it was and that he did not exactly hear the details. His recollection of the information caused him to believe that there was a description of a possible intoxicated driver.

The person making the report in this case had given his or her name and indicated that he or she was willing to give a report of what he or she observed.

I believe that it would have been the better practice for the officer to confirm with dispatch what specific behavior had been observed before making the stop. While the officer could not recall the specific behavior, it is clear that the Sheboygan Police Department did have information and that he recalled the general outline of that information to indicate ... a possible intoxicated driver.

In this case the person calling in the information to the police had subjected himself or herself to possible criminal charges for obstructing an officer when he or she gave this report to the police and also provided his or her name.... The caller in question clearly identified the vehicle by providing its vehicle license registration number. That driver also continued to follow the vehicle to the point of the stop.

Under these circumstances it would appear there is considerable reliability in accepting the statement of the caller as to what he or she observed.

The information provided by the caller also suggests an imminent threat to the public safety that warrants immediate police investigation.

TeStroete subsequently pled no contest to OWI, second offense. He now appeals his conviction based on a challenge to the circuit court's order denying his motion to suppress.

¶5 When reviewing a circuit court's order denying a motion to suppress evidence, we will uphold the circuit court's factual findings unless they are clearly erroneous. *See State v. Richardson*, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). Whether the facts as found by the court meet statutory and constitutional standards is a question of law that we review de novo. *Id.* at 137-38.

¶6 Under the Fourth Amendment to the United States Constitution and article I, § 11 of the Wisconsin Constitution, investigatory stops must be supported by reasonable suspicion. *State v. Post*, 2007 WI 60, ¶¶10 & n.2, 11, 301 Wis. 2d 1, 733 N.W.2d 634. "The burden of establishing that an investigative stop is reasonable falls on the state." *Id.*, ¶12.

¶7 To conduct an investigatory stop, 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.* Further, information given by citizen informants may provide a basis for reasonable suspicion.

¶8 Here, TeStroete contends that "all Officer Lor was aware of prior to initiating the stop ... was that the caller reported 'a possible intoxicated driver.'" TeStroete misstates the record. Lor testified that dispatch provided information regarding the vehicle's description, license plate number, and direction of travel.

This information was provided by a “named complainant who was willing to make a statement about the driving behavior” and who was following TeStroete in a white vehicle. Dispatch also provided information regarding the reported driving behavior. Although Lor could not recall exactly what was said, the information provided led Lor to believe there was a possible intoxicated driver.

¶9 Information provided by a citizen informant “should exhibit reasonable indicia of reliability.” *Rutzinski*, 241 Wis. 2d 729, ¶18. Reliability of information depends upon the informant’s veracity and basis of knowledge. *Id.* Information from an identified source has increased reliability because providing false information to the police could lead to arrest. *Id.*, ¶20. Here, Lor knew from dispatch that the complainant had provided a name, was following TeStroete’s vehicle and was willing to make a statement. All of these facts lend to the veracity of the tip.

¶10 Next, in assessing the quality of the basis of knowledge, we must consider (1) whether the tip is verifiable, (2) whether it is predictive, and (3) whether the tip was contemporaneous with the observation. *See id.*, ¶¶24-25, 33. Here, the informant provided verifiable and predictive information. She provided descriptions of both her vehicle and TeStroete’s and advised as to their direction of travel. Further, the citizen informant continued to follow TeStroete’s vehicle while reporting its activities and Lor testified that a white vehicle matching the description of the citizen informant’s was present at the time of the stop.

¶11 TeStroete relies on *State v. Kolk*, 2006 WI App 261, ¶¶16-18, 298 Wis. 2d 99, 726 N.W.2d 337, in support of his contention that the corroboration of a suspect’s identity, make of vehicle and general route of travel is insufficient to conduct a stop of the vehicle without independent police observations of

suspicious conduct. TeStroete's reliance is misplaced. *Kolk* involved a tip from a citizen informant regarding a future drug pick up; it did not involve alleged intoxicated driving. *Id.*, ¶¶2-3, 12. In *Rutzinski*, our supreme court addressed and rejected the argument that an officer, who is relying on an informant's tip regarding erratic driving, should wait until he or she personally observes signs of intoxication before initiating a traffic stop. *Rutzinski*, 241 Wis. 2d 729, ¶¶34-35. The *Rutzinski* court observed that this argument "ignores the tremendous potential danger presented by drunk drivers." *Id.*, ¶35. The court concluded, "In light of the potential for imminent danger that drunk drivers present, the informant's allegations suggesting that [the defendant] may have been intoxicated supplemented the reliability of the tip, and further justified [the officer's] investigative stop." *Id.*, ¶35. Thus, when an informant's tip contains sufficient indicia of reliability and alleges a potential imminent danger to public safety, these factors substantially outweigh the minimal intrusion that a stop would present if the individual proves not to be intoxicated. *Id.*, ¶37.

¶12 According to the factors set forth in *Rutzinski*, the tip provided by the citizen informant was reasonably reliable. *Id.*, ¶18. Further, Lor knew that the Sheboygan Police Department had information regarding TeStroete's driving behaviors that pointed to TeStroete being a "possible intoxicated driver." Under the totality of circumstances, the information possessed by Lor at the time of the stop provided him with the requisite reasonable suspicion, even absent independent observations of suspicious behavior. We therefore uphold the circuit court's ruling denying TeStroete's motion to suppress. We affirm the judgment.

By the Court.—Judgment affirmed.

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

