

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 20, 2011**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

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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. 2010AP3156-CR**

**Cir. Ct. No. 2010CM566**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MICHAEL D. WALTERS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Ozaukee County:  
PAUL V. MALLOY, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.<sup>1</sup> Michael D. Walters appeals from a judgment of conviction for possession of THC, as a party to the crime. Walters contends that

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<sup>1</sup> 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.

the trial court erred in denying his motion to suppress evidence because the initial stop of his vehicle was not justified and that, after the stop, the officer unreasonably prolonged his detention. We reject Walters' arguments and affirm the judgment.

### **Facts**

¶2 On September 10, 2010, Walters was charged with possession of marijuana and possession of drug paraphernalia, both as a party to the crime. The facts underlying Walters' arrest were testified to by Ozaukee County Deputy Sheriff John Passet at the hearing on Walters' motion to suppress. Passet testified that, at approximately 7:00 p.m. on August 11, he received a dispatch call alerting him of a citizen informant's 911 call indicating possible drug use in a vehicle traveling northbound on I-43 from Pioneer Road. The informant identified herself by name, provided her phone number, gave a description of her vehicle, the direction she was traveling, her proximate location and remained on the line with dispatch to further update her position.

¶3 Passet then proceeded from his position in the park and ride lot on Pioneer Road and entered I-43 northbound. Based on the information provided by the citizen informant, dispatch gave Passet a physical description of the vehicle, the license plate number, mile marker location, and advised that there were two male subjects in the vehicle who were passing "possible THC or a joint back and forth." Passet did not have visual contact with the suspect vehicle, but based on the mile marker information provided by dispatch, he estimated that the suspect vehicle was approximately one mile ahead of him at the onset of the pursuit.

¶4 Passet continued northbound on I-43 at speeds up to 113 mph in order to catch up to the suspect vehicle. During the pursuit, dispatch gave Passet

ongoing locations of the suspect vehicle via updates provided by the citizen informant. The citizen informant also informed dispatch that the suspect vehicle was following her extremely closely, passed her and “accelerat[ed] at a high rate of speed.”

¶5 During the pursuit, Passet passed the informant’s car and continued another mile before locating the suspect vehicle. After about eight minutes and eleven miles of pursuit, Passet activated his emergency lights and the suspect vehicle pulled over on the Port Washington Road exit ramp.

¶6 As Passet approached the vehicle, he noticed Walters “make a quick jerk movement with his left hand” between the driver’s side door and the driver’s side seat. As he approached the driver, Passet noticed Walters’ eyes were bloodshot and his pupils were small in aperture. While speaking with Walters, Passet also noticed a leafy substance on Walters’ pants that he suspected may be marijuana. When questioned about the leafy substance, Walters claimed it was tobacco from a cigar he and the passenger were passing back and forth. Walters denied using marijuana.

¶7 Passet returned to his squad car to run the driver’s licenses of Walter and his passenger. At this point another officer arrived. Passet briefed her on the case and “suggested that she contact a drug dog based on the information that [he] had so far.”

¶8 Passet then called the citizen informant to further inquire about what information she had. In addition to the information she provided to dispatch, the informant reported that as Walters’ vehicle passed her, she smelled burnt marijuana. She noted that she was familiar with the smell because of her occupation as a school teacher and her experiences growing up in the 1980s.

¶9 After the phone call, Passet began filling out paperwork and completing administrative tasks associated with the incident, including completing forms identifying the parties and vehicle involved and documenting warnings for speeding and following too closely. Passet intended to further interview Walters in reference to the information provided by the informant.

¶10 At this point, twenty-six minutes after the traffic stop, an officer arrived with the police dog. The dog was led to the vehicle where it indicated illegal drugs were in the car. Walters then stopped his paperwork to discuss the situation with the other officers. The car was searched and the officers found a pipe which contained burnt marijuana residue, a pipe filled with marijuana, a bag of marijuana, and alcohol. After the search, Walters' passenger admitted that Walters and he were smoking marijuana. Walters was arrested and charged with possession of THC and possession of drug paraphernalia.

¶11 Walters filed a motion to suppress evidence claiming a lack of reasonable suspicion to initiate the traffic stop. He also argued that the length of the traffic stop was unreasonable and therefore illegal. After extensive testimony from Passet and thorough examination of the issues by the trial court, the court found that the information given by the citizen informant, who was willing to make a statement or testify, was sufficient to provide reasonable suspicion. Additionally, the twenty-six minutes between the traffic stop and arrival of the dog was not excessive. Therefore the trial court denied the motion. Walters pled guilty to possession of THC. He appeals his conviction.

### **Discussion**

¶12 Walters raises two issues. First, Walters claims that the information provided by the citizen informant did not provide Passet with reasonable suspicion

to legally initiate the traffic stop. Second, Walters claims that the duration of the traffic stop based on the circumstances was illegal.

*A. Whether the Traffic Stop was Supported by Reasonable Suspicion*

¶13 A police officer may temporarily detain an individual for the purposes of investigating possible criminal behavior when the officer has reasonable suspicion that the detained party has committed, or is about to commit, a violation of law. *State v. Colstad*, 2003 WI App 25, ¶11, 260 Wis. 2d 406, 659 N.W.2d 394. This detention triggers a seizure within the meaning of the Fourth Amendment and triggers its protections. *See State v. Harris*, 206 Wis. 2d 243, 253, 557 N.W.2d 245 (1996); *see also* WIS. CONST. art. 1, §11. Whether a traffic stop is based on reasonable suspicion is a question of constitutional fact. *State v. Powers*, 2004 WI App 143, ¶6, 275 Wis. 2d 456, 685 N.W.2d 869. Reviewing a question of constitutional fact requires application of a two-step standard of review. *Id.* First, a trial court’s findings of historical fact will be upheld unless they are determined to be clearly erroneous. *Id.* Then, using those facts, the court will review de novo whether an investigatory stop was justified by reasonable suspicion. *Id.*

¶14 For an investigatory stop to be constitutionally valid, the officer’s suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts reasonably warrant that intrusion” on the citizen’s liberty. *See Terry v. Ohio*, 392 U.S. 1, 21 (1968). What constitutes reasonable suspicion in a given situation depends on the totality of the circumstances. *See State v. Anderson*, 155 Wis. 2d 77, 82-84, 454 N.W.2d 763 (1990). Assessing the totality of the circumstances requires “view[ing] the quantity and the quality of the information” available to the officer. *State v.*

*Williams*, 2001 WI 21, ¶22, 241 Wis. 2d 631, 623 N.W.2d 106. If the information provided in a citizen tip contains a number of components which strengthen its reliability, an officer can establish reasonable suspicion with little additional information. *Id.*

¶15 An informant's reliability is strengthened when identifying information is provided that places his or her anonymity at risk. *Id.*, ¶35. Additionally, identifying oneself exposes the informant to potential criminal punishment if he or she is determined to be lying. *State v. Rutzinski*, 2001 WI 22, ¶20, 241 Wis. 2d 729, 623 N.W.2d 516. The verification of contemporaneously viewed innocent details such as description and location of a vehicle further enhances the reliability of a witness. *Id.*, ¶¶15, 33. Informants who identify themselves are considered citizen informants. *See Williams*, 241 Wis. 2d 631, ¶36. The court views information provided by such a witness as reliable and allows the officer to act accordingly. *Id.*

¶16 Walters argues that the information provided by the witness and relayed to Passet by dispatch was, standing alone, not sufficiently reliable to provide the reasonable suspicion necessary for a legal traffic stop. Walters relies on the fact that Passet did not personally witness any suspicious or illegal behavior prior to the stop. However, the State contends, and we agree, that the information provided by the informant was sufficiently reliable to provide Passet with reasonable suspicion to initiate the traffic stop.

¶17 Walters contends that the facts in this case are similar to the facts in *Florida v. J.L.*, 529 U.S. 266 (2000), and are unlike those in *Rutzinski*. In *J.L.*, an anonymous caller informed police that a young, black male wearing a plaid shirt at a bus stop was carrying a gun. *J.L.*, 529 U.S. at 268. The caller provided no

additional information as to how he or she knew the information or any personal identifying information. *Id.* The police proceeded to the bus stop and found J.L. wearing a plaid shirt, executed an investigative stop and found a gun. *Id.* The police had no reason outside of the informant's tip to suspect criminal activity. *Id.* The court examined whether the anonymous phone call was sufficient to provide the reasonable suspicion necessary to initiate an investigative stop. *Id.* at 270. The court found that because (1) there was no predictive information that could be tested by the police to establish credibility and (2) the call was made by an anonymous, unaccountable informant who did not explain the basis of his or her knowledge, the information provided in the anonymous tip was insufficiently reliable to provide the reasonable suspicion required to execute an investigative stop. *Id.* at 271, 274.

¶18 The Wisconsin Supreme Court in *Rutzinski* recognized that in some circumstances the information contained in an informant's tip alone is sufficient to justify an investigative stop; however, the police must consider the reliability of the witness before the tip can give rise to grounds for an investigative stop. *Rutzinski*, 241 Wis. 2d 29, ¶¶20-21. In assessing whether a tip is sufficiently reliable, the court determined that due weight must be given to two considerations: (1) the informant's veracity and (2) the informant's basis of knowledge. *Id.*, ¶18.

¶19 In *Rutzinski*, the police received an anonymous tip that a truck was driving erratically. *Id.*, ¶4. The informant provided information that he or she was in the car directly in front of the truck and remained on the line with dispatch and updated his or her position allowing a police officer to move into a position to intercept the suspect vehicle. *Id.*, ¶¶5-6. The officer executed a traffic stop and determined that the driver was intoxicated. *Id.*, ¶7. Prior to the traffic stop, the officer did not observe any traffic violations or illegal activity by the driver. *Id.*

¶20 The court determined that unlike *J.L.*, the informant in *Rutzinski* (1) identified his or her position in relation to the suspect vehicle, exposing himself or herself to the possibility of being identified, (2) provided verifiable contemporaneous observations indicating his or her basis of knowledge, and (3) provided information suggesting the suspect vehicle was a threat to public safety. *Id.*, ¶¶32-34. Thus, based on the informant’s veracity and basis of knowledge, the court ruled that the information provided by the informant was sufficiently reliable to provide the reasonable suspicion necessary to execute the traffic stop. *Id.*, ¶37.

¶21 With the rulings in *J.L.* and *Rutzinski* as guidance, we turn to whether the information provided by the informant in this case was sufficiently reliable to justify Passet to stop Walters’ vehicle.

¶22 Walters contends that the witness in this case is akin to the informant in *J.L.*, claiming she is an “anonymous, but identifiable person.” However, this contradictory classification overlooks the facts of the case. The informant in this case identified herself by name, provided her phone number and further identified what car she was driving, the direction she was traveling, her proximate location and remained on the line to further update her position. Unlike the informant in *J.L.*, the informant identified herself and gave information as to the basis of her knowledge by reporting that she had just witnessed the offending behavior. This witness was anything but anonymous and is properly classified as a citizen informant.

¶23 According to *Williams*, a citizen informant, barring any specific information to the contrary, is to be considered a reliable source and an officer may take action in reliance on the information. *Williams*, 241 Wis. 2d 631, ¶36.



The fact that the citizen informant identified herself and was in no way anonymous made the information she provided highly reliable. Moreover, before he made the traffic stop, Passet was able to confirm the location of the informant's vehicle, the license plate and location of Walters' vehicle, and that Walters' vehicle had two male passengers. All of this information provided by the citizen informant gives credence to the basis for her knowledge and further increases her reliability.

¶24 Here, Passet initiated the pursuit of Walters' vehicle based on a tip provided by an identified citizen informant who had just witnessed Walters and his passenger passing "possible THC or a joint back and forth." He then was able to verify details provided by the informant about the description and location of the suspect vehicle. Thus, we conclude that the information provided by the citizen informant was reliable, and when viewed in the totality of the circumstances, Passet had reasonable suspicion to execute the investigative stop of Walters' vehicle.<sup>2</sup>

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<sup>2</sup> During Passet's phone conversation with the informant he mentioned his belief that case law requires information beyond just "somebody saying somebody is smoking marijuana." Walters argues that Passet's understanding of the case law shows that he did not have reasonable suspicion to make the traffic stop. However, Walters does not identify any such case, and Passet's mistaken belief as to the law is irrelevant in determining whether the information available to him meets an objective standard of reasonable suspicion. See *State v. Buchanan*, 178 Wis. 2d 441, 448 n.2, 504 N.W.2d 400 (Ct. App. 1993) (we apply an objective standard in reviewing the actions of law enforcement officers; it is the circumstances that govern, not the officer's subjective belief). Likewise, Walters points to Passet's statement that he "can't prove anything at this point." We do not view this statement as undermining the reasonable suspicion analysis. Whether Passet had obtained "proof" of marijuana use after the stop is not dispositive for the purpose of determining whether he had reasonable suspicion to initiate the traffic stop.

*B. Whether the Duration of the Investigatory Stop was Legal*

¶25 When a temporary detention is justified, we still examine the circumstances of the detention to determine (1) whether the investigative means used in the continued seizure are the least intrusive means reasonably available to verify or dispel the officer's suspicion and (2) whether it lasted only as long as necessary to effectuate the purpose of the stop. *State v. Arias*, 2008 WI 84, ¶32, 311 Wis. 2d 358, 752 N.W.2d 748 (citing *Florida v. Royer*, 460 U.S. 491, 500 (1983)). We will uphold the trial court's factual findings unless they are clearly erroneous. *Arias*, 311 Wis. 2d 358, ¶12. Walters argues that the duration of the investigatory stop was unlawfully extended to allow for the arrival of the dog. We disagree.

¶26 The trial court found that no such extension occurred. It determined that at the time the police dog arrived, Passet was still completing paperwork associated with the investigatory stop. Based on our review of Passet's testimony, such a finding is not clearly erroneous. Thus, we hold that there was no unlawful extension of the investigatory stop.

¶27 However, we also note that the trial court identified several suspicious factors occurring after Walters' vehicle was stopped that provided further reasonable suspicion of marijuana use: (1) as Passet approached the vehicle, he saw Walters make a quick jerk movement with his left hand between the driver's seat and driver's door; (2) Passet noticed Walters' eyes were bloodshot and his pupils were small in aperture; (3) Passet observed a leafy substance on Walters' pants that he suspected may be marijuana; (4) the passenger refused to open the glove box to search for an insurance card; and (5) the informant reported that as Walters' vehicle passed her, she smelled burnt

marijuana. The original reason for the traffic stop was to investigate possible illegal drug use. The information gathered by Passet during the investigatory stop furthered the informant's observation that Walters was smoking marijuana. Thus, the increased suspicion of marijuana use clearly supported an extension of the investigation to allow for the arrival of the police dog. *See State v. Malone*, 2004 WI 108, ¶24, 274 Wis. 2d 540, 683 N.W.2d 1 (if, during a valid traffic stop, police become aware of suspicious factors or additional information that provide a reasonable suspicion of criminal activity, an investigation may be extended beyond the scope of the initial stop).

¶28 We conclude that the information provided by the citizen informant was reliable and gave rise to a reasonable suspicion justifying the stop of Walters' vehicle. We further conclude that the initial stop was not unreasonably extended. We uphold the trial court's denial of Walters' motion to suppress evidence; we affirm the judgment.

*By the Court.*—Judgment affirmed.

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

