

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 15, 2005**

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. 04-2195-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 04CT12**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**RUTH E. PETERSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Pierce County:  
ROBERT W. WING, Judge. *Affirmed.*

¶1 PETERSON, J.<sup>1</sup> Ruth Peterson appeals a judgment of conviction for one count of operating a motor vehicle while intoxicated, third offense. She argues the evidence resulting from the police officer's stop of her vehicle should

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

be suppressed because the officer did not have reasonable suspicion sufficient to justify the stop. We disagree and affirm the judgment.

## BACKGROUND

¶2 On December 24, 2003, Pierce County dispatch received a complaint from a citizen who observed a vehicle she suspected was being driven by an intoxicated person. The informant described the vehicle as a dark blue Ford Probe with Minnesota license plates. The informant said the vehicle was being operated erratically. As the informant's vehicle came up behind the vehicle, the vehicle slowed and pulled off to the side of the road. The informant gave dispatch her name and stated she was willing to give a written statement.

¶3 Officer Robert Funk observed a vehicle matching the informant's description. He confirmed that it was the vehicle identified by the informant and advised dispatch he was stopping the vehicle. Funk activated his emergency lights and the vehicle pulled onto the shoulder of the road and made an abrupt stop.

¶4 Funk identified the driver as Peterson. Peterson stated she had been reaching over to get ice from a cup and that may have been why her driving was erratic. Funk asked if she had been drinking and Peterson responded she had had one drink. Peterson failed field sobriety tests and Funk arrested her for operating a motor vehicle while intoxicated. Peterson was charged with one count of operating a motor vehicle while intoxicated, third offense, and one count of driving with a prohibited alcohol concentration, third offense.

¶5 Peterson filed a motion to suppress evidence resulting from the stop. She argued Funk did not have reasonable suspicion justifying the stop. The trial court denied Peterson's motion. It determined that if Funk had himself seen the

behavior as the informant, he would have been justified in stopping Peterson. Peterson subsequently pled guilty to operating a motor vehicle while intoxicated, third offense. The court sentenced her to sixty-five days in jail, twenty-four months' revocation of her driver's license and a \$1,186 fine.

## DISCUSSION

¶6 We will uphold a trial court's order denying the suppression of evidence unless the trial court's findings of fact are clearly erroneous; however, the legality of the police stop of the vehicle is a question of law to be reviewed independently. *State v. Harris*, 206 Wis. 2d 243, 249-50, 557 N.W.2d 245 (1996). To execute a legal investigative stop, a police 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 (1990). The reasonable suspicion must be based on specific and articulable facts that, along with valid inferences from those facts, reasonably warrant the police intrusion. *State v. Williams*, 2002 WI App 306, ¶12, 258 Wis. 2d 395, 655 N.W.2d 462. Information from a confidential informant can be the basis for an investigative stop. *State v. Rutzinski*, 2001 WI 22, ¶17, 241 Wis. 2d 729, 623 N.W.2d 516. However, informants vary greatly in their reliability. Therefore, before an informant's tip can justify an investigative stop, the police must consider its reliability and content. *Id.*

¶7 Peterson does not argue that the informant's tip was unreliable. We therefore proceed to determine whether the informant's report contained sufficient information to justify the stop of Peterson's vehicle. Peterson argues the driving behavior the informant observed was not sufficient to give Funk reasonable suspicion that criminal activity was afoot.

¶8 The informant stated that she saw a vehicle driving erratically. As the informant approached from behind, the vehicle slowed, then pulled over to the side of the road and the informant passed the vehicle. Funk could reasonably conclude, based on his experience, that people do not normally drive on the highway in the manner the informant described and, therefore, that some type of illegal activity may have been taking place.

¶9 “Suspicious conduct by its very nature is ambiguous, and the principal function of the investigative stop is to resolve quickly that ambiguity.” *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). Consequently, police are not required to rule out the possibility of innocent behavior before initiating a brief stop. *Id.* We therefore conclude that Funk’s stop of Peterson’s vehicle was reasonable and the circuit court properly denied Peterson’s suppression motion.

*By the Court.*—Judgment affirmed.

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

