

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 15, 2012

Diane M. Fremgen
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 Nos. 2011AP2313-CR
2011AP2314-CR**

**Cir. Ct. Nos. 2010CM5257
2010TR25480**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOEL ROBERT MEDROW,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER, Judge. *Affirmed.*

¶1 CURLEY, P.J.¹ Joel R. Medrow appeals the judgment, entered upon his guilty plea, convicting him of operating a motor vehicle while intoxicated

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

(third offense), contrary to WIS. STAT. § 346.63(1)(a); operating with revoked license, contrary to WIS. STAT. § 343.44(1)(b); and resisting an officer, contrary to WIS. STAT. § 946.41(1). He also appeals the order denying his motion to suppress. Medrow argues that the trial court erred in denying his motion to suppress evidence because the officer who arrested him lacked probable cause to do so. This court disagrees and concludes that the totality of the circumstances—including information provided by an anonymous tip and the arresting officer’s independent observations—gave rise to reasonable suspicion to detain and probable cause to arrest Medrow. Accordingly, the judgment and order are affirmed.

BACKGROUND

¶2 This appeal involves two consolidated cases arising out of the same set of facts. After being charged with: (1) obstructing/resisting and officer; (2) operating a motor vehicle while under the influence, third offense; (3) operating a motor vehicle with a prohibited alcohol concentration, third offense; and (4) operating after revocation; Medrow filed a motion to suppress all evidence surrounding his arrest. A hearing was held on the motion, at which Cudahy Police Officer Brian Olson and Medrow’s wife, Tanya Medrow, testified.

¶3 Officer Olson testified that on September 2, 2010, he received a call from dispatch relaying information from an anonymous caller.² The dispatcher informed Olson that the caller reported that she was following a possibly impaired

² The caller’s identity was later discovered after Medrow’s arrest. However, because the caller’s identity was unknown to Officer Olson during the time he detained Medrow, this court will refer to the caller as “anonymous.”

driver who had turned into and parked in the front parking lot of the Cudahy Police Department. The caller provided the vehicle's license plate number and described the driver of the vehicle as having long hair. At the time he received the dispatch, Olson did not know the name of the caller.

¶4 After receiving the call, Officer Olson walked out the front doors of the police department and saw the vehicle with the license plate number provided by the caller. Olson did not see anyone exit the vehicle, but observed that the driver's door to the vehicle was open. He also observed Medrow standing next to the vehicle with his left hand on the driver's door, "falling backwards as if he had ... just stepped out of the vehicle and fallen off balance."

¶5 Olson then observed Medrow walk towards another vehicle in the parking lot. That vehicle contained two women. Olson did not know who the women were, but he noticed that Medrow had an "angry" look on his face. Olson yelled out to Medrow, "Hey. Stop. Come here," but Medrow did not respond. Olson consequently walked up to Medrow, put both his hands on one of Medrow's arms, and attempted to direct him away from the vehicle and towards the front doors of the police department. As Olson attempted to escort Medrow away from the vehicle, he detected a strong odor of alcohol emanating from him.

¶6 Olson directed Medrow to the front doors of the police station and asked him to sit down on the concrete stoop. Olson testified that his intention for directing Medrow to the police station door "was to separate [Medrow from the two women in the car] and find out what ... was going on." When Medrow refused to sit and pulled his arm away, Olson directed Medrow to the ground. At that time, other Cudahy police officers arrived and assisted Olson in handcuffing Medrow.

¶7 Tanya Medrow—who was also in the parking lot when Medrow was arrested—remembered the afternoon differently. She testified that she was at the Cudahy Police Station on September 2, 2010, because she had been arrested for a ticket, and her sister had come to the police station to pick her up. When Mrs. Medrow walked out of the building, she was “surprised” to see her husband standing by the car smoking a cigarette. Mrs. Medrow and her sister allegedly walked over to Medrow, talked with him for as long as it takes to smoke a cigarette, and then returned to their vehicle. Mrs. Medrow testified that Medrow followed the women to the vehicle, and then “all of a sudden” he was being led away by the officer.

¶8 As noted, after Medrow was arrested and charged, he brought a motion to suppress evidence of his seizure and arrest. Medrow claimed that Officer Olson had no reasonable suspicion of wrongful activity and no probable cause to seize Medrow. The trial court denied Medrow’s motion, concluding that the officer had reasonable suspicion to detain Medrow and probable cause to arrest him based on the totality of the circumstances. Subsequently, Medrow entered pleas of guilty and was convicted of operating a motor vehicle while under the influence of an intoxicant (third offense), operating a motor vehicle after revocation, and resisting an officer. Medrow now appeals.

ANALYSIS

¶9 The Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution both require that all searches and seizures be reasonable. *State v. Ziedonis*, 2005 WI App 249, ¶13, 287 Wis. 2d 831, 707 N.W.2d 565. “The essential question is whether the action of the law enforcement officer was reasonable under all the facts and circumstances

present.”” *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990) (citation omitted).

¶10 An investigatory stop is constitutional if a law enforcement officer, in light of his or her training and experience, has a reasonable suspicion that an unlawful activity has been committed, is being committed, or is about to be committed. See *State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729. The officer must have more than an “inchoate and unparticularized suspicion or ‘hunch.’” *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (citation and one set of quotation marks omitted). The standard of reasonable suspicion is met when “those facts known to the officer at the time of the stop [are] taken together with any rational inferences, and considered under the totality of the circumstances.” *State v. Washington*, 2005 WI App 123, ¶16, 284 Wis. 2d 456, 700 N.W.2d 305.

¶11 A law enforcement officer may rely on information provided by an informer to justify an investigative stop, as long as the tip “exhibit[s] reasonable indicia of reliability.” *State v. Rutzinski*, 2001 WI 22, ¶¶17-18, 241 Wis. 2d 729, 623 N.W.2d 516. When assessing the reliability of an anonymous tip, the court considers a spectrum of reliability by giving due weight to the informer’s veracity and basis of knowledge. See *id.*, ¶18. The tip may be deemed reliable if it contains “‘inside information’ or a similar verifiable explanation of how the informant came to know of the information in the tip, which the police in turn independently corroborate.” *Id.*, ¶25 (citation omitted). In some circumstances, the reliability of a tip that might otherwise be insufficient to justify an investigative stop may be supplemented where the allegations of the tip suggest an exigency, such as an imminent threat to public safety, that warrants immediate law enforcement investigation. *Id.*, ¶26.

¶12 When reviewing a trial court's denial of a motion to suppress evidence, this court will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Eason*, 2001 WI 98, ¶9, 245 Wis. 2d 206, 629 N.W.2d 625. Applying the facts to the constitutional standards is a question of a law, which is subject to *de novo* review. See *State v. Guzman*, 166 Wis. 2d 577, 586, 480 N.W.2d 446 (1992).

¶13 This court concludes that Officer Olson had a reasonable suspicion to stop and seize Medrow and probable cause to arrest him. While Medrow argues that the tip provided by the anonymous caller was unreliable and that Olson did not have reasonable suspicion to stop him, this court disagrees.

¶14 First, the anonymous tip exhibited reasonable indicia of reliability to warrant Officer Olson's initial investigation. The caller's description of a possibly impaired driver was the product of the caller's personal observations and was contemporaneously reported to the police. See *Rutzinski*, 241 Wis. 2d 279, ¶33 (One way to establish an informant's basis of knowledge is to consider whether the tip contained contemporaneous observations.). Additionally, the tip contained "inside information" because the informant reported specific details that showed how she came to know of the illegal activity. See *id.*, ¶25 (citation omitted). While Olson did not know the name of the informant at the time of the investigation, he was able to confirm the informant's knowledge: that a vehicle with a specific license plate number driven by an individual with long hair was indeed in the Cudahy Police Department parking lot immediately after the call. See *id.*

¶15 Second, this case provides "additional factual component[s], separate and apart from the information provided by the [informant], that

contributed to a reasonable suspicion to detain” Medrow. *See State v. Patton*, 2006 WI App 235, ¶22, 297 Wis. 2d 415, 724 N.W.2d 347 (emphasis omitted). When Olson walked out of the police station, he observed the vehicle with the license plate number the informant had given in the parking lot that the informant had described. He also observed Medrow standing next to the open driver’s side door falling backwards, as if he had “just stepped out of the vehicle and fallen off balance.” Medrow then angrily walked towards another car in the parking lot, and he did not respond to the officer when he yelled out to him. Finally, when Olson attempted to direct Medrow away from the vehicle, Olson detected a strong odor of alcohol.

¶16 Indeed, Medrow’s case is highly analogous to *Patton*, 297 Wis. 2d 415, ¶¶22-23, in which this court concluded that an anonymous tip, combined with a police officer’s observations, provided the officer with reasonable suspicion that the defendant was involved in criminal activity, justifying a *Terry*³ stop. In *Patton*, an anonymous caller described the location, direction of travel, and attire of three men who supposedly had just committed an armed robbery. *Id.*, 297 Wis. 2d 415, ¶2. The caller did not provide any information regarding the basis of his or her knowledge of the alleged armed robbery. *Id.*, ¶19. However, an officer observed three men matching the informant’s description as he was receiving the information via dispatch. *Id.* The officer notified other officers of his observation, and soon heard the siren of one of the responding vehicles. *Id.*, ¶¶3-4. At the same time, the officer observed the three men stop and look in the direction of the siren. *Id.*, ¶4. The men entered a restaurant, from which they

³ See *Terry v. Ohio*, 392 U.S. 1 (1968).

emerged approximately fifteen to twenty seconds after the siren was turned off. *Id.* This court concluded that the added factual component—the siren component—in conjunction with the information provided by the informant, was enough for the officer to have a reasonable suspicion to detain the three suspects. *Id.*, ¶23. Likewise, when considering the totality of the circumstances in Medrow’s case, the added factual components Olson observed, in conjunction with information provided by the caller’s tip, justified the seizure of Medrow. *See id.*, ¶¶22-23.

¶17 In light of the foregoing facts, this court also concludes that Officer Olson had probable cause to arrest Medrow. Though Medrow directs this court to a version of the facts that he contends falls short of establishing probable cause, even if this court were to conclude that his version creates a reasonable competing inference, “[w]hen a police officer is confronted with two reasonable competing inferences, one justifying arrest and the other not, the officer is entitled to rely on the reasonable inference justifying arrest.” *State v. Kutz*, 2003 WI App 205, ¶12, 267 Wis. 2d 531, 671 N.W.2d 660. Neither the Fourth Amendment nor Article I, Section 11 required him “to idly stand by in hopes that [his] observations [would] reveal suspicious behavior before the imminent threat [came] to its fruition.” *Rutzinski*, 241 Wis. 2d 729, ¶26.

By the Court.—Judgment and order affirmed.

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

