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DISTRICT IV

May 25, 2023

To:

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Circuit Court Judge
Electronic Notice

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Clerk of Circuit CourtA
Dodge County Justice Facility
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You are hereby notified that the Court has entered the following opinion and order:

2022AP1748 State of Wisconsin v. Aaron Arthur Staude (L.C. # 2022TR3477)

Before Nashold, J.[1]

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Aaron Arthur Staude appeals from a judgment of conviction for refusal to submit to chemical testing in violation of WIS. STAT. § 343.305(9). Based upon my review of the briefs and record, I conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21.

Staude was arrested for operating a motor vehicle while intoxicated (OWI), third offense. Following the arrest, the arresting officer read Staude the Informing the Accused form and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2021-22). All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

requested that he submit to a blood test. Staude refused and the officer provided Staude with a Notice of Intent to Revoke Operating Privilege. Staude requested a hearing. At the refusal hearing, the officer testified as to the facts surrounding the stop of Staude's vehicle and Staude's subsequent arrest. Based on the evidence presented and arguments from the parties, the circuit court determined that Staude was guilty of a refusal violation and ordered license revocation and ignition interolock.

Staude challenges his refusal conviction on two grounds. First, he argues that the circuit court failed to determine whether reasonable suspicion supported the stop of his vehicle. Second, he contends that law enforcement did not have reasonable suspicion to stop his vehicle. I reject these arguments.

A police officer may make an investigatory stop of a vehicle if the officer reasonably suspects that the driver has committed or is about to commit a crime or reasonably suspects that a person is violating a noncriminal traffic law. ***County of Jefferson v. Renz***, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999). The stop of a vehicle, however, must be based on more than an officer's unsubstantiated suspicion or hunch. ***State v. Post***, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634. Instead, the officer's suspicion must be grounded upon "'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop.'" ***Id.*** (quoted source omitted). This court determines the reasonableness of the stop "based on the totality of the circumstances." ***Id.***, ¶26. Whether there is reasonable suspicion to conduct a stop is a question of constitutional fact, to which this court applies a two-step standard of review: the circuit court's findings of fact are upheld unless they are clearly erroneous, and the determination of reasonable suspicion is reviewed de novo. ***State v. Williams***, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106.

Staude first argues that the circuit court failed to determine whether reasonable suspicion supported the stop of his vehicle. In support of this argument, Staude relies on the following statement the court made prior to its ruling: "[T]he question is whether reasonable suspicion is an issue [in a refusal hearing]. Frankly, I don't think it is an issue and I've been told that by a lot of courts over the course of years … but I will just address it." The court then proceeded to discuss the facts known to the officer at the time of the traffic stop. After discussing these facts, the court stated, "So at that point he then pulls the vehicle over." Staude argues that there was "no determination explicitly made as to the legality of the stop" and that therefore "the court did not properly determine whether reasonable suspicion existed."

The State appropriately concedes that, contrary to the circuit court's suggestion, a defendant may contest at a refusal hearing whether reasonable suspicion supported the traffic stop. *See* ***State v. Anagnos***, 2012 WI 64, ¶¶4, 42, 341 Wis. 2d 576, 815 N.W.2d 675. However, the State argues that the circuit court did in fact address this issue. I agree.

Although the circuit court questioned whether reasonable suspicion for the stop is a proper subject for a refusal hearing, the court immediately followed up by explicitly stating that it would "just address it," meaning the court would address the issue of whether reasonable suspicion supported the stop. The court then discussed the facts known to the officer prior to stopping Staude's vehicle, concluded that discussion with, "So at that point [the officer] then pulls the vehicle over," and then proceeded to discuss additional evidence of OWI the officer

obtained following the stop. Thus, contrary to Staude's assertion, the record shows that the court properly considered, and rejected, Staude's challenge to the traffic stop.[2]

Staude next argues that the officer did not have reasonable suspicion to stop Staude's vehicle. Staude does not dispute the facts as found by the circuit court and as testified to by the officer, namely, that the officer received through dispatch the following information: an individual reported to law enforcement that a person identified as Staude dropped off his son in Juneau and appeared to be intoxicated; Staude has a history of drinking a 12-pack per day and is an alcoholic; Staude was driving a copper-colored[3] Jeep; and Staude was traveling from Juneau back to Beaver Dam. The officer was informed through dispatch of the name of the person reporting this information and that the person was willing to "make a statement." The officer also received the vehicle's registration information. The officer went to a location consistent with someone traveling from Juneau to Beaver Dam. While at that location, the officer observed a copper-colored Jeep, which the court described as a "unique vehicle," that matched the registration information.

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[2] In addition, prior to defense counsel's closing arguments, the circuit court asked counsel if reasonable suspicion was an issue for the hearing. When counsel stated that he believed it was, the court said "okay," to which counsel responded, "Well, if you think different, then we're done. I mean if you don't think that's an issue, then I'm not going to waste my breath." The court responded, "Go ahead, Counsel, make your record." This discussion further indicates that the court considered the lawfulness of the traffic stop.

Separately, it bears noting that Staude fails to demonstrate, or even present an argument, as to how any failure on the part of the circuit court to address this issue would affect either the legality of the traffic stop or this court's review of that issue. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (we need not address undeveloped arguments). I further observe that, because review of the reasonable suspicion determination is de novo, any such failure on the part of the circuit court would not preclude this court's review of that issue.

[3] The circuit court stated that the Jeep was "gold" in color; however, the officer testified it was "copper" in color.

Staude argues that this information is insufficient to establish reasonable suspicion for the stop, particularly given the officer's admission that he did not himself observe any traffic infractions prior to stopping Staude's vehicle and was not informed of *why* the caller believed that Staude was intoxicated. In response, the State argues that the officer had reasonable suspicion to stop Staude's vehicle. The State relies primarily on ***State v. Rutzinski***, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516. In ***Rutzinski***, the officer received a tip from dispatch that an unidentified motorist called to report a black pickup truck weaving within its lane, varying its speed, and tailgating. ***Id.***, ¶4. Following a second call from the informant, the officer determined that the vehicle was heading toward him. ***Id.***, ¶5. When the officer pulled his squad car behind the black pickup truck, the informant saw the officer's squad car, and confirmed through dispatch that the officer was following the correct truck. ***Id.***, ¶6. The officer did not independently observe any signs of impairment before stopping the truck. ***Id.***, ¶7.

The ***Rutzinski*** court concluded that the stop was supported by reasonable suspicion, relying on the following: (1) the informant exposed him- or herself to being identified; (2) the informant provided the police with verifiable information indicating the basis of the informant's knowledge, including "a description of Rutzinski's vehicle and the direction in which it was traveling"; and (3) the tip indicated that Rutzinski posed an imminent threat to public safety, namely, driving while intoxicated. ***Id.***, ¶¶32-34.

The instant case presents even stronger facts in support of the informant's reliability. Here, the officer was provided the name of the caller, and the caller informed law enforcement that she was willing to give a statement. "[W]hen an average citizen tenders information to the police, the police should be permitted to assume that they are dealing with a credible person in the absence of special circumstances suggesting that such might not be the case." ***State v. Sisk***,

2001 WI App 182, ¶9, 247 Wis. 2d 443, 634 N.W.2d 877 (alteration in original; internal quotation marks and quoted source omitted). Our courts "view citizens who purport to have witnessed a crime as reliable, and allow the police to act accordingly, even though other indicia of reliability have not yet been established." ***State v. Williams***, 2001 WI 21, ¶36, 241 Wis. 2d 631, 623 N.W.2d 106. In addition, our courts have recognized that a tipster's willingness to be identified exposes that person to arrest should the tip prove to be fabricated, thus providing further indicia of reliability. ***Rutzinski***, 241 Wis. 2d 729, ¶32. Here, the caller also appeared to have personal knowledge of the driver, Staude, stating that she knew Staude to be an alcoholic and providing information as to how many beers Staude typically drinks per day.

Further, as in ***Rutzinski***, the caller also provided verifiable information, including Staude's name, that he had recently dropped off his son in Juneau, the make and color of Staude's vehicle, and the direction he was headed. The officer was able to verify several of these facts by observing a vehicle matching the description in a location consistent with the information provided by the caller and by his contact with Staude upon stopping Staude's vehicle.

Finally, as in ***Rutzinski***, the information provided to the officer demonstrated that Staude posed an "imminent threat to the public's safety." *See* ***id.***, ¶34. Prior to initiating the stop, the officer knew that the caller had said that Staude appeared intoxicated and was driving. Significantly, in ***Rutzinski***, our supreme court rejected Rutzinski's argument that the officer in that case "should have waited until he personally observed signs that Rutzinski may have been intoxicated before initiating the traffic stop," concluding that this argument "ignores the tremendous potential danger presented by drunk drivers." ***Id.***, ¶35. The court quoted favorably an opinion from the Vermont Supreme Court in which that court stated, "'An officer in pursuit of

a reportedly drunk driver on a freeway does not enjoy such a luxury. Indeed, a drunk driver is not at all unlike a "bomb," and a mobile one at that.'" ***Id.*** (quoted source omitted).

Notably, Staude does not file a reply brief in this case and thus fails to present any response to the State's analysis of ***Rutzinski*** or its argument that the facts establish reasonable suspicion for the traffic stop. Based on the foregoing, I conclude that the circuit court's determination is supported by legal precedent and the facts of record.

Accordingly,

IT IS ORDERED that the judgment of conviction for refusing to submit to chemical testing is affirmed.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals