

STATE OF WISCONSIN
SUPREME COURT

FWA-
SPD

Case No. 2014AP786-CR & 2014 AP787-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CHRISTOPHER PEETE.

Defendant-Appellant.

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OF WISCONSIN

PETITION FOR REVIEW

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ISSUES PRESENTED

Did the trial court err by finding that Peete is not entitled to a resentencing hearing?

Answer by Court of Appeals: No

Did the trial court err by denying Peete's suppression motion?

Answer by Court of Appeals: No

CRITERIA FOR REVIEW

The first issue presented regards defining the information that is appropriate for the state to provide at sentencing. It is appropriate for supreme court review to clarify what is the proper manner in which questionable information can be provided.

The second issue presented regards clarifying witness credibility. There is a need for officers to provide all important information that they observed by writing complete and accurate reports. It is appropriate for supreme court review to clarify the necessity of providing complete and accurate reports to develop a standard of credibility.

STATEMENT OF THE CASE

In a criminal complaint on case 10CF1227 filed on March 11, 2010, Peete, was charged with one count of possession of a firearm by a felon and on case 10CF3435 filed on July 15, 2010 with three counts of bail jumping. (2). The charge of felon in possession of a firearm in case 10CF1227 arose when Peete was stopped by the police and the police found a gun in the glove compartment. (2). The bail jumping charges in case 10CF3445, were based on Peete's contact with a person that he was ordered not to have contact with. (2).

On April 15, 2011, the trial court heard Peete's suppression motion and denied the motion in case 10CF1227. (1:6).

On July 13 to July 15, 2011 a jury trial was held in case 10CF1227. (1:7-9). On July 15, 2011, Peete was convicted by a jury of one count of Felon in Possession of a Firearm in case 10CF1227. (14AP786:33).

On May 23 to May 24, 2011 a jury trial was held in case 10CF3445. (1:6-7). On May 24 2011, Peete was convicted by a jury of one count of Bail Jumping in case 10CF3435. (14AP787:24).

On August 5, 2011, the trial court sentenced Peete on both cases to forty-two months initial confinement and forty-two months of extended supervision in case 10CF1227 and to 24 months initial confinement and 24 months extended supervision consecutive in case 10CF3435. (14AP787:24; 14AP786:33)

Trial counsel timely filed a Notice of Intent to Pursue Postconviction Relief on August 10, 2011. (14AP786:32; 14AP787:23). Peete's first appellate counsel filed an untimely no-merit report, and the Public Defender's office appointed subsequent counsel. The no-merit was rejected and subsequent counsel was given until March 10, 2014 to file a postconviction motion or notice of appeal. (14AP786:71; 14AP787:39). On March 6, 2014, Peete filed a postconviction motion requesting a new sentencing hearing in front of a new Judge based on the States presenting of Detective Ruud's memorandum, the trial court relying on inaccurate information when sentencing Peete and on the fact that the trial court erred when they denied his motion to suppress. (14AP786:76; 14AP787:42; App. 110-139).

Without holding any hearing on the motion, the circuit court, the Honorable Rebecca Dallet, presiding, denied the motion in an order dated March 17, 2014.

(14AP786:77; 14AP787:43; App. 106-109). A timely Notice of Appeal was filed on April 4, 2014. (14AP786:79; 14AP787:45).

The court of appeals in a decision dated March 9, 2015, found that the officer's testimony was not inherently incredible and the circuit court's findings based upon the testimony were not clearly erroneous. That the citizen informants information along with the officers observations provided adequate corroboration regarding the reliability of the callers. The court of appeals further decided that the memorandum provided at sentencing was relevant and that it was not false. (App. 101-105).

ARGUMENT

I. PEETE IS ENTITLED TO A NEW SENTENCING HEARING IN FRONT OF A NEW JUDGE DUE TO THE FACT THAT THE COURT RELIED ON DETECTIVE RUUD'S MEMORANDUM WHICH IS NOT RELEVANT AND IS INACCURATE

A defendant has a due process right to be sentenced upon accurate information. *State v. Tjepelman*, 2006 WI 66 ¶¶ 9, 26 291 Wis. 2d 179, 717 N.W.2d 1. Whether this right has been denied is a constitutional issue this court reviews de novo. *Tjepelman*, 291 Wis. 2d 179, ¶9. To establish that the defendant is entitled to a resentencing based on the circuit court relying on inaccurate information a defendant must show that (1) that the information was inaccurate and (2) that the circuit court relied on the inaccurate information. *Id.*, ¶ 26. If the defendant is able to meet both of these standards, then the burden shifts to the State to prove the error was harmless. *Id.*

The state should not have been able to present the memorandum of Detective Ruud because she is not a victim as defined in *Wis. Stat. §950.02(4)(a)*. The trial

court can consider any relevant statement by any other person under *Wis. Stat. §972.14(3)(a)*. The memorandum is not relevant to his convictions for the crimes of felon in possession of a firearm and bail jumping because the memo dealt with gang involvement. (14AP787:19; App. 140-142). The trial court opined that any character evidence is relevant. To allow the state to provide a memo from a Detective to explain Peete's dangerousness is not appropriate or relevant to sentencing. Instead it has a chilling effect as to Peete's character to use information that does not provide dates of when these allegations occurred, or sources as to who actually provided any of this information besides stating that the information is provided by other latin king members.

Peete states that the information in the memorandum was inaccurate. Peete's trial attorney Michael Hicks called Mario Gonzales a prosecutor who prosecuted Latin Kings cases and he stated that he had not heard of Peete. (64:20; App.117). Further Attorney Hicks talks about Peete not being in a gang, not having a latin kings tattoo, and no prior gang activity cases ie guns, drugs, or robberies. (64:21; App.118). Also, Peete in his statement to the court denies any gang involvement. (64:28; App.119). Further the information in the memo, does not provide dates of when any of the alleged gang activity occurred and does not provide sources as to who actually provided any of this information besides stating that the information is provided by other latin king members. (14AP787:19; App. 140-142). Therefore, the information that was provided by Detective Ruud in her memorandum was inaccurate.

The court relied on this information when promulgating its sentence. The court stated that Peete was a want to be. (64:42; App.120). The court discusses that based on the behavior in front of the court, that this is something that Peete identified with, wanted to be a part of and was another way to violate the rules. (64:43; App.121). These statements show that the court relied on the memo when making a decision because

clearly Peete was considered a want to be gang member. Based on the fact that the court relied on inaccurate information that was already presented Peete would ask for a new sentencing in front of a different judge because the judge already read and considered the memo.

II. THE TRIAL COURT ERRED WHEN IT DID NOT GRANT PEETE'S SUPPRESSION MOTION

Whether reasonable suspicion exists for a stop is a question of constitutional fact. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. A two-step standard is applied to review to questions of constitutional fact. *Id.* First, the circuit court's findings of historical fact are reviewed. *Id.* When the evidence in the record consists of testimony and a video recording, the circuit court's findings of fact will be upheld unless they are clearly erroneous. *See State v. Walli*, 2011 WI App 86, ¶14, 334 Wis. 2d 402, 799 N.W.2d 898. Under the clearly erroneous standard, "we are bound not to upset the trial court's findings of historical or evidentiary fact unless they are contrary to the great weight and clear preponderance of the evidence." *State v. Popke*, 2009 WI 37, ¶20, 317 Wis. 2d 118, 765 N.W.2d 569 (quoting another source). Second, the determination whether the facts amount to reasonable suspicion as a question of law is subject to de novo review. *Williams*, 241 Wis. 2d 631, ¶18.

Officer Rosado testified that he decided to pull over the vehicle that Peete was in based on its actions of 1) speeding up, 2) abrupt turn, without a turn signal, and 3) the belief that the vehicle was going to elude them. (64:15-16; App.128-129). Officer Rosado also testified that he reviewed his report before testifying, that it was accurate, and that he tries to include all of the important details in the report. (64:28-29; App. 135-136). Officer Rosado testified that the report doesn't include any reference of the vehicle accelerating in an

unusual way, the vehicle making an abrupt turn, the vehicle failing to use a turn signal and also no indication that the vehicle was attempting to allude the officer. (68:Exhibit 3, App. 126-127). The officer should have written his observations of the car down in his report as they were important observations. Therefore, it was not reasonable for the trial court to accept the officer's observations because they were not in his report.

Further Officer Rosado testified about a maroon vehicle but no where on the CAD reports was the word maroon listed to describe the vehicle. (64:26, App.122-125). Therefore, it was not reasonable for the trial court to accept the officer's testimony regarding the maroon vehicle because it was not in the CAD report.

It is disconcerting that the officer is not required to list all of the reasons a person was pulled over in a vehicle that they witnessed in their report. If the report does not list all of these important observations the officers credibility should be in question. Especially due to the fact that they review their reports to testify so if the information is not in the report how do they come up with or remember that information. If the trial court is acting as the fact-finder, then there should be a standard of credibility.

A traffic stop is a form of seizure triggering Fourth Amendment protections from unreasonable searches and seizures. *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987); *State v. Longcore*, 226 Wis. 2d 1, 6, 594 N.W.2d 412 (Ct. App.1999), *aff'd*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620. Whether reasonable suspicion exists for a stop is a question of constitutional fact. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. In considering the totality of the circumstances, however, the focus is upon the reasonableness of the officers' actions in the situation facing them. "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).

Reasonable suspicion may be based on an informant's tip, provided the tip exhibits "reasonable indicia of reliability" in light of the totality of the circumstances. *State v. Rutzinski*, 2001 WI 22, ¶¶17-18, 241 Wis. 2d 729, 623 N.W.2d 516. The reliability of a tip is measured by viewing the totality of the circumstances with regard to: "(1) the informant's veracity; and (2) the informant's basis of knowledge." *Id.*, ¶18. The deficiency in one consideration may be compensated for in determining overall reliability of the tip by a strong showing as to the other or by some other indicia of reliability. *Id.* Thus, where less is known about an informant, the tip may nonetheless be sufficiently reliable if more is known about the informant's basis of knowledge, and vice versa. *See id.*, ¶25. For example, in the case of an anonymous tip, the corroboration of details provided by the informant bolsters the tip's reliability. *See, e.g., Alabama v. White*, 496 U.S. 325, 327-332 (1990) (corroboration by police of tips provided by anonymous tipster bolstered the tip's reliability "well enough to justify the stop"); *State v. Williams*, 2001 WI 21, ¶39, 241 Wis. 2d 631, 623 N.W.2d 106 (corroboration of "innocent, although significant, details of the tip" bolstered reliability of anonymous tip).

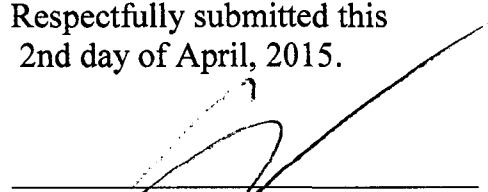
Here there were anonymous tips and tips that were made by someone with a name and phone number. The tips were as follows: 1) big sedan, 2) two door, dark, vehicle not sure of license plate, 3) description of two black males, 4) two door vehicle, license plate 805-LST. (64:24-26; App.131-133). These tips do not show an indicia of reliability as they are all over the place with the type of vehicle and description. There is no significant corroboration of the tips as Peete was a passenger in a Dodge Intrepid, 4 door, license plate 805LRC. (64:23,27; App.130,134). The vehicle was not close to any of the descriptions and the license plate was not the same. Therefore, the officer did not have

reasonable suspicion to pull over the vehicle that Peete was in.

CONCLUSION

For, the reasons stated above Peete asks this Court to accept this case for review.

Respectfully submitted this
2nd day of April, 2015.



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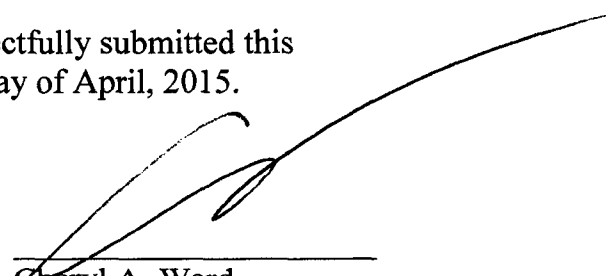
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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stats. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is **2,128** words.

Respectfully submitted this
2nd day of April, 2015.



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CERTIFICATION OF ELECTRONIC FILING

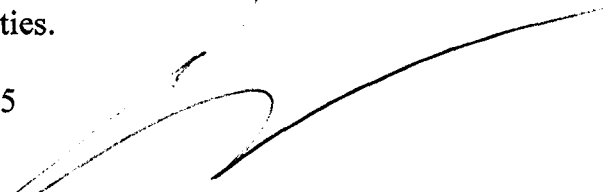
I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of s. 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief report filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated: April 2, 2015



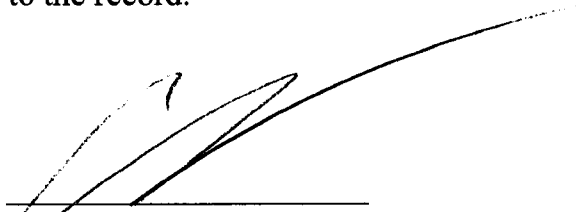
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APPENDIX CERTIFICATION

I hereby certify that filed with this brief either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stats. §809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings, or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juvenile and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated: April 2, 2015



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