

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 2003

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. 03-0706-FT
STATE OF WISCONSIN**

Cir. Ct. No. 02TR004464

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF FOND DU LAC,

PLAINTIFF-RESPONDENT,

V.

CHERYL L. THEISEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Fond du Lac County: RICHARD J. NUSS, Judge. *Affirmed.*

¶1 BROWN, J.¹ Cheryl L. Theisen appeals an operating a motor vehicle while intoxicated conviction (OWI), claiming that the officer had no reasonable suspicion to detain her. In particular, she argues that despite the fact

¹ This appeal is decided by one judge pursuant to WIS. STAT. RULE 752.31(2)(c). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

that an anonymous tipster observed her erratic driving, saw her pull into a gas station, gave a description of her car and license plate number, and left a cell phone number, and despite the fact that the officer corroborated the car's identification and license plate number at the gas station, the officer had no reasonable suspicion to detain her because he did not himself corroborate the erratic driving. We hold that Theisen's contention is contrary to the law in Wisconsin and affirm the order denying the motion to suppress and the judgment of conviction.

¶2 Theisen contends that “[i]n anonymous tip cases ... information is typically corroborated when a law enforcement officer first comes upon the vehicle described by the tipster *while it is still being operated*, and personally observes the weaving, speeding, lane deviations, obstruction of other traffic, or some other variation on this theme.” Theisen argues that without corroboration of reckless or intoxicated driving, there can be no reasonable suspicion of OWI.

¶3 As pointed out by the State, however, that is not the law. *State v. Richardson*, 156 Wis. 2d 128, 142, 456 N.W.2d 830 (1990), holds that innocent details of an anonymous tip are enough to supply the reasonable suspicion necessary for detention and that the innocent details need not be of the crime itself. Here, the anonymous tipster provided the color, the make, the license number and the location of the vehicle. These innocent details were confirmed by the officer. This is enough.

¶4 In her reply brief, Theisen also takes issue with whether the anonymous tipster had provided enough information to be considered reliable. Here, the tipster provided a cell phone number where the tipster could be contacted if necessary. Theisen claims that providing a cell phone number is

insufficient because a tipster can give a false number, cell phone numbers change with frequency when customers switch to new companies, are too transient to be trusted, and can be turned off and on at will. If Theisen fails to discuss an alleged error in her main brief, she may not do so in the reply brief. *State v. Chu*, 2002 WI App 98, ¶42 n.5, 253 Wis. 2d 666, 643 N.W.2d 878, *review denied*, 2002 WI 109, 254 Wis. 2d 263, 648 N.W.2d 478. The issue is considered waived. *Id.* Waiver occurred here. Even if we were to address it, we would reject the argument. The focus is not on the type of communication device used to give police information, but on the willingness of a person to lose his or her anonymity if necessary. When a tipster uses a cell phone and gives his or her number, that willingness is exhibited. Theisen's argument is meritless.

By the Court.—Judgment and order affirmed.

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

