

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 25, 2013

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 No. 2013AP986

Cir. Ct. No. 2011TR437

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF MANITOWOC,

PLAINTIFF-RESPONDENT,

V.

RYAN A. SPATCHEK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Manitowoc County: PATRICK L. WILLIS, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Ryan A. Spatchek appeals from a judgment of conviction for operating while intoxicated (OWI). Spatchek was stopped after the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

County of Manitowoc received an anonymous tip that Spatchek was driving drunk and the arresting officer observed Spatchek cross the fog line approximately three times in about one mile. Spatchek challenged his stop on the ground that the evidence was insufficient to justify the stop. The trial court denied the motion to suppress, concluding that, given the totality of the circumstances, the officer had reasonable suspicion to stop Spatchek's vehicle. We agree and affirm Spatchek's subsequent conviction.

FACTS

¶2 Manitowoc County Sheriff's Deputy Marcus Anderson testified at the hearing on the motion to suppress. Anderson related the following facts. On January 7, 2011, while Anderson was on duty, he received notice from dispatch about an anonymous tip from a friend of Spatchek's, indicating that Spatchek was operating while intoxicated. The caller "was concerned for [Spatchek's] safety, ... he could hear him bouncing off the curbs when he was talking to him." The caller identified Spatchek by name and indicated that Spatchek was "in the Collins area and ... would be coming to the Reedsville area." Dispatch received the call at 11:58 a.m.

¶3 After receiving the dispatch about Spatchek, Anderson was traveling southbound on County Highway W just south of Reedsville when he saw a silver pickup truck heading north. Anderson ran a plate check on the vehicle, and it came back registered to Ryan A. Spatchek.² Anderson turned around and

² Anderson could not recall why he ran the plate on the vehicle. When asked, he testified, "I believe I was given that plate from dispatch ... of the vehicle belonging to Mr. Spatchek."

followed Spatchek north on Highway W. He observed Spatchek cross the fog line approximately three times and come up to the center line approximately three times while he followed Spatchek at a distance of about one to two car lengths for about one mile at fifty-five miles per hour. The vehicle made a right turn on Manitowoc Street in the village of Reedsville, after which Anderson activated his emergency lights and pulled the vehicle over. Anderson asked for the driver's license and identified the driver as Spatchek. Spatchek failed field sobriety tests, and a blood test showed an alcohol concentration of .256 grams per 100 milliliters.

¶4 The trial court denied Spatchek's motion to suppress, finding that the combination of the anonymous tip and the officer's observation of Spatchek crossing the fog line three times gave the officer reasonable suspicion to stop Spatchek's vehicle. The matter was tried to the court, and Spatchek was found guilty of OWI and operating with a prohibited blood alcohol concentration. Spatchek appeals.

DISCUSSION

¶5 A police officer may temporarily detain an individual to investigate possible criminal behavior when the officer has reasonable suspicion that the individual has committed or is about to commit a crime. *State v. Colstad*, 2003 WI App 25, ¶11, 260 Wis. 2d 406, 659 N.W.2d 394. The detention is a seizure within the meaning of the Fourth Amendment of the United States Constitution and art. I, § 11 of the Wisconsin Constitution and triggers their protections. *See State v. Harris*, 206 Wis. 2d 243, 253, 256, 557 N.W.2d 245 (1996). Whether a traffic stop is based on reasonable suspicion is a question of constitutional fact requiring a two-step standard of review. *State v. Powers*, 2004 WI App 143, ¶6, 275 Wis. 2d 456, 685 N.W.2d 869. First, we uphold the trial court's findings of

historical fact unless they are clearly erroneous. *Id.* Second, we review de novo whether an investigatory stop was justified by reasonable suspicion. *Id.*

¶6 For an investigatory stop to be constitutionally valid, the officer's suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion" on the citizen's liberty. See *Terry v. Ohio*, 392 U.S. 1, 21 (1968). What constitutes reasonable suspicion in a given situation depends on the totality of the circumstances. See *State v. Anderson*, 155 Wis. 2d 77, 82-84, 454 N.W.2d 763 (1990). Assessing the totality of the circumstances requires "view[ing] the quantity and the quality of the information" available to the officer. *State v. Williams*, 2001 WI 21, ¶22, 241 Wis. 2d 631, 623 N.W.2d 106. If the information provided by an informant is reliable, an officer can establish reasonable suspicion with little additional information. *Id.* Finally, there need not be a violation of the law to support an investigative stop. *State v. Anagnos*, 2012 WI 64, ¶47, 341 Wis. 2d 576, 815 N.W.2d 675. "The law allows a police officer to make an investigatory stop based on observations of lawful conduct so long as the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot." *State v. Waldner*, 206 Wis. 2d 51, 57, 556 N.W.2d 681 (1996).

¶7 We weigh an informant's reliability by the informant's veracity and basis of knowledge. *State v. Rutzinski*, 2001 WI 22, ¶18, 241 Wis. 2d 729, 623 N.W.2d 516. These considerations should be viewed "in light of the 'totality of the circumstances,' and not as discrete elements of a more rigid test." *Id.* "[A] deficiency in one [consideration] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." *Id.* (alterations in original; citations omitted). Factors that lend reliability to a tip include: (1) the tipster's self-identification, which exposes

him or her to possible identification and arrest if the tip is false, and (2) verifiable information and contemporaneous observations indicating his or her basis of knowledge, such as description and location of a vehicle. *Id.*, ¶¶20, 33.

Additionally,

where the allegations in the tip suggest an imminent threat to the public safety or other exigency that warrants immediate police investigation ... the Fourth Amendment and Article I, Section 11 do not require the police to idly stand by in hopes that their observations reveal suspicious behavior before the imminent threat comes to its fruition. Rather, it may be reasonable for an officer in such a situation to conclude that the potential for danger caused by a delay in immediate action justifies stopping the suspect without any further observation. Thus, exigency can in some circumstances supplement the reliability of an informant's tip in order to form the basis for an investigative stop.

Id., ¶26.

¶8 Anderson testified that “[t]he caller identified Mr. Spatchek in person,” telling dispatch “that Mr. Spatchek had been operating while intoxicated, that he was somewhere in the Collins area. The caller was concerned for his safety, that he could hear him bouncing off the curbs when he was talking to him.” Anderson believed that the caller was a friend of Spatchek’s, which would presumably put the caller in a better position to recognize Spatchek’s intoxication. Additionally, the caller did provide verifiable information; the caller told dispatch that Spatchek was in the Collins area and traveling toward Reedsville, a location that was later confirmed. Finally, the caller identified a possible imminent threat to public safety.

¶9 In addition to the information in the call, Anderson made independent observations of Spatchek’s impaired driving. Anderson saw Spatchek

cross the fog line approximately three times in one mile; Spatchek was unable to stay in his lane for a full minute. Furthermore, Anderson testified that, in that same mile, in addition to crossing the fog line three times, Spatchek came up to the center line approximately three times.

¶10 We need not decide if either the call or the driving observations alone would be enough to support the traffic stop. To determine whether there was reasonable suspicion, we look at all of the information Anderson had at the time of the stop. *Williams*, 241 Wis. 2d 631, ¶22. Anderson knew that dispatch had received a call that Spatchek was driving drunk, he knew that the silver pickup truck was registered to Spatchek, and he knew that the person driving the pickup truck registered to Spatchek was weaving and crossing the fog line multiple times in one mile. We agree with the trial court that the totality of the circumstances demonstrates reasonable suspicion to stop Spatchek.

By the Court.—Judgment affirmed.

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

