

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**September 9, 2020**

**Sheila T. Reiff  
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. 2019AP2127-CR**

**Cir. Ct. No. 2017CM1652**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ANDREW W. BUNN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Milwaukee County:  
HANNAH C. DUGAN, Judge. *Affirmed.*

¶1 DONALD, J.<sup>1</sup> Andrew W. Bunn, *pro se*, appeals the judgment of conviction, following guilty pleas, to two counts of carrying a concealed weapon.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2017-18). All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

*Appendix A ¶1*

As best as we can tell, Bunn contends that police lacked reasonable suspicion to stop his vehicle. We affirm.

## BACKGROUND

¶2 On May 13, 2017, Bunn was charged with three counts of carrying a concealed weapon. According to the criminal complaint, police were dispatched to the area of South 24th Street, Milwaukee, after a citizen witness complained that she witnessed two individuals engaging in oral sex in a parked car. When police made contact with the driver—Bunn—they recovered three firearms from his vehicle.

¶3 Bunn filed a motion to suppress the evidence, arguing that he “was seized and detained in the absence of an arrest warrant” and that police lacked reasonable suspicion to stop his vehicle because there was no evidence that he had committed or was committing an offense. Bunn argued that none of the information provided by the citizen witness was actually verified by police observation.

¶4 At a hearing on the motion, Sergeant Kieran Sawyer testified that on May 11, 2017, he was working on patrol with other officers in a marked squad. They were parked in a church parking lot, near a playground. At about 6:20 p.m., while it was still light out, a woman approached the squad car and pointed to a blue pick-up truck on the other side of a nearby chain link fence, and told the officers that two adults in that pickup truck were engaging in oral sex in sight of her and children playing in the area. Sawyer saw the truck, but could not see any activity inside the truck from his location. When the truck began to drive away, the officers followed.

¶5 Sawyer caught up with the truck and conducted a traffic stop, which ultimately led to Bunn's arrest. Following the arrest, Sawyer went back to the parking lot, but the woman who had made the complaint was gone. Sawyer testified that he had no further contact with her.

¶6 The circuit court denied Bunn's motion, finding that based on Sawyer's long-standing experience and familiarity with the neighborhood, Sawyer testified credibly. The circuit court noted that Sawyer was able to "observe exactly what [the citizen witness] was ... referring to, the proximity of this truck to the playground, and of course the reasonableness of her being on the playground or being in the location and that ... she did report to the police and the totality of the circumstances makes that much more reliable report of a citizen." The circuit court also noted that Sawyer did not act on a "hunch," rather, he only pursued Bunn after being approached by the citizen witness. The circuit court found that Sawyer simply investigated a complaint.

¶7 Bunn pled guilty to two counts of carrying a concealed weapon. The remaining count was dismissed and read in at sentencing. The circuit court sentenced Bunn to pay fines on both counts and to serve, in aggregate, three days in the House of Correction. This appeal follows.

## DISCUSSION

¶8 On appeal, Bunn provides a rambling, incoherent brief. As best as we can tell, the crux of his argument is that the circuit court erred in denying his motion to suppress because there was no reasonable suspicion to stop his vehicle based on the complaint of a citizen witness. We disagree.

¶9 A circuit court's decision on a motion to suppress evidence presents a mixed question of fact and law. *State v. Casarez*, 2008 WI App 166, ¶9, 314 Wis. 2d 661, 762 N.W.2d 385. The reviewing court will uphold the circuit court's findings of fact unless they are clearly erroneous. *Id.*; WIS. STAT. § 805.17(2) (made applicable to criminal proceedings by WIS. STAT. § 972.11(1)). We review the circuit court's application of constitutional principles *de novo*. See *Casarez*, 314 Wis. 2d 661, ¶9.

¶10 An officer may perform an investigatory stop of a vehicle for a noncriminal traffic violation if the officer has reasonable suspicion that a violation occurred. *State v. Colstad*, 2003 WI App 25, ¶11, 260 Wis. 2d 406, 659 N.W.2d 394. To decide whether circumstances demonstrate reasonable suspicion, we look at all of the information available to the officer at the time the stop was made. See *State v. Guzy*, 139 Wis. 2d 663, 679, 407 N.W.2d 548 (1987).

¶11 Whether there is reasonable suspicion to conduct a traffic stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. We apply a two-step standard of review to questions of constitutional fact. See *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. First, we review the circuit court's findings of fact and uphold them unless they are clearly erroneous. See *id.* Second, we review the determination of reasonable suspicion *de novo*. See *id.* Reasonable suspicion should be analyzed in light of the totality of the circumstances. See *Popke*, 317 Wis. 2d 118, ¶27.

¶12 Bunn essentially argues that the traffic stop was not supported by reasonable suspicion because it was based on an unreliable complainant's tip. “[T]here is no per se rule of reliability” when assessing a tip from a complainant. *State v. Rutzinski*, 2001 WI 22, ¶18, 241 Wis. 2d 729, 623 N.W.2d 516. Instead,

reliability considerations "should be viewed in light of the 'totality of the circumstances,' and not as discrete elements of a more rigid test." *Id. Rutzinski* gave great weight to indicia of reliability when an informant "expose[s] him- or herself to being identified." *See id.*, ¶32.

¶13 Here, the circuit court found that Sawyer's experience and familiarity with the neighborhood made him a credible witness and an appropriate assessor of the weight to give to the citizen witness's tip. The circuit court noted that Sawyer explained why he was in the neighborhood, why he found the citizen's concern credible, and why he chose to pursue the truck. The witness personally approached the officers, potentially exposing her identity, and expressed concern for the presence of her own child and other children playing on a nearby playground. It was reasonable for Sawyer to conclude that the witness acted out of concern for public welfare—specifically the children in the immediate area. The witness pointed to a specific vehicle, which contained both a male and female passenger. Given all of the information known to Sawyer at the time of the stop, we conclude that Sawyer had reasonable suspicion to stop Bunn's vehicle.

¶14 For the foregoing reasons, we affirm.

*By the Court.*—Judgment affirmed.

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

OFFICE OF THE CLERK



Supreme Court of Wisconsin

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January 20, 2021

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You are hereby notified that the Court has entered the following order:

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No. 2019AP2127-CR      State v. Bunn L.C. #2017CM1652

A petition for review pursuant to Wis. Stat. § 808.10 having been filed on behalf of defendant-appellant-petitioner, Andrew W. Bunn, pro se, and considered by this court;

IT IS ORDERED that the petition for review is denied, without costs.

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Sheila T. Reiff  
Clerk of Supreme Court

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Appendix B

FILED

01-29-2019

John Barrett

Clerk of Circuit Court

2017CM001652

STATE OF WISCONSIN

CIRCUIT COURT

BRANCH 31

STATE OF WISCONSIN,

Plaintiff,

-vs-

Case No. 17CM001652

ANDREW W. BUNN,

Defendant.

## DECISION

November 3, 2017

Hon. Hannah C. Dugan

## CHARGE

Count 1: Carrying a concealed weapon.  
Count 2: Carrying a concealed weapon.  
Count 3: Carrying a concealed weapon.

## APPEARANCES

Kristyn Kuzniar, Attorney at Law, appeared on behalf of the State of Wisconsin.

Benjamin Van Severen, Attorney at Law, appeared on behalf of the Defendant.

(This proceeding was digitally recorded)

Appendix A 17

1 P R O C E E D I N G S  
2

3 THE COURT: Okay. State of Wisconsin  
4 versus Andrew W. Bunn. 2017CM1652. Appearances,  
5 please.

6 ATTORNEY KUZNIAR: Kristyn Kuzniar  
7 for the state.

8 ATTORNEY VAN SEVEREN: Good morning,  
9 Your Honor. Benjamin Van Severen on behalf of  
10 Andrew Bunn, who is present.

11 THE COURT: Good morning, Mr. Van  
12 Severen. And hello, Mr. Bunn. How are you?

13 THE DEFENDANT: Doing well. Thanks,  
14 Judge.

15 THE COURT: We're here today for  
16 decision. We had a motion hearing on October  
17 24th at which time additional cases were cited  
18 and I wanted to double check those, including the  
19 Florida case and the Williams case and the -- and  
20 I wanted to check the facts against the Redsinsky  
21 (phonetic) and the what's the last one? I'm not  
22 sure if it's Goozy (phonetic)?

23 Okay. So it's a motion to suppress  
24 for an unlawful stop. And the standard is set  
25 out is a reasonable suspicion. The stop has to  
have -- the officers have to have reasonable

Apd 2  
12

1 suspicion that the driver in this case was  
2 committing or had committed an offense.

3 The other legal issue addressed in  
4 this case is the reliability of the -- what --  
5 what's the defense titles as an informant. And  
6 whether or not there's a -- that -- that's  
7 reliable and that the officers not just going on  
8 unreliable, unidentified callers or informants.  
9 And whether or not there's a reasonable  
10 suspicion, it's just not a hunch or an inchoate  
11 thought that maybe something might be occurring.

12 In this case we have an officer  
13 testified who was credible. And I think  
14 consistent in his testimony who had been  
15 assigned -- had a long experience with that  
16 neighborhood. His assignments in that  
17 neighborhood, including the vice squad  
18 experience, and that he had that night along with  
19 other officers been assigned to Journey House for  
20 I think they said a community meeting or  
21 something like this, so that there are lots of  
22 people around. And community house is also  
23 located in the Prince of Peace where there's a  
24 play -- a school church where there's a  
25 playground there on the south side near there.

*Atte 19*

So it wasn't -- it was an assignment in order to kind of police -- literally police the area while this community meeting was going on to make sure that there was order and safety and being able to respond to any wellness calls or checks. So is that type of assignment as -- and I think that's largely what he had -- what he had testified to.

And during that time where he was in that area, a woman came up with a daughter and separate -- separate from the daughter said that she had observed and pointed to a truck -- a pickup truck, excuse me, where she had said that it was oral sex being performed at that moment alongside this area as -- as described in -- in -- in the alley and pointed to it. At the time she pointed to it, it was stopped at that location and the truck started to move as testified to and that the officers left to pursue that truck and stopped it a short while later with the defendant and another passenger -- a woman passenger in the -- in the truck. And because it was a fence there had to go around the fence. So it wasn't a direct -- lost sight of the truck for a few seconds while -- while

Aug C 19

1 that was being executed.

2 So the real question, first of all,  
3 is whether or not -- and then stopped -- and then  
4 proceeded to ultimately arrest -- ask questions  
5 and then search -- do -- perform an arrest. And  
6 then found the weapon -- concealed weapon in the  
7 car without -- as alleged without a permit.

8 So the question, first of all, for  
9 the court to really answer in terms of whether  
10 this is an informant or not. And in this  
11 instance I don't think it's an informant. It's  
12 not somebody that's being paid. As the officer  
13 testified to, it was not somebody who was being  
14 familiar with the officers. Obviously because  
15 they didn't get the name so it was -- it's not  
16 really an informant in that sense. It is -- It  
17 is, however, more a -- a contact. And the  
18 question of reliability -- then it becomes a  
19 reliability of that -- of the caller in this case  
20 in Redsinsky and in this case of the woman coming  
21 up with the daughter in the playground area to  
22 the officers. And they provided reason why they  
23 did not get a name. It's a -- and they couldn't  
24 find her later.

25 In terms of being able to identify

*APR 20*

her later, it's a much more reliable person -- reliable ability to identify her versus a caller. The officers were able to observe exactly what she was referring -- what she was referring to, the proximity of this truck to the playground, and of course the reasonableness of her being on the playground or being in the location and that she would have been able to -- that she did report to the police and the totality of the circumstances makes that much more reliable report of a citizen.

And more reliable -- in fact, you know, it's a person although they did not get the ID, it is -- was a person in person in -- in the locality. It was not a hunch by the officers, although somebody experienced in -- in the vice squad in this area could have easily looked up and thought there was something amiss. The officer didn't do that at all. Officers did not act until approached by the citizen and so it wasn't an inchoate hunch by the officers. It was actually on a complaint and a complaint by someone who flagged down the officers. And at some level they are -- the officers have really a duty to investigate too when a citizen does make

Agg C 21

1 a reasonable complaint.

2 So therefore, I'm going to deny the  
3 motion based on the case law and the facts in  
4 this case, the testimony, the credibility of the  
5 testimony under cross-examination. This was a  
6 person whose identity was not -- the facts of the  
7 person identity, name and date of birth and so  
8 forth are unknown. But that did not make her an  
9 anonymous tipster nor -- and therefore, I am  
10 going to deny the motion. The reasonable  
11 suspicion -- the reasonable suspicion was  
12 satisfied based on reliable citizen complaint.  
13 And therefore, the stop was reasonable. How  
14 would you like to go forward?

15 ATTORNEY VAN SEVEREN: Judge, if we  
16 could schedule it for a plea hearing.

17 THE COURT: Okay.

18 ATTORNEY VAN SEVEREN: I think that's  
19 the next step here.

20 THE COURT: Okay. Plea and  
21 sentencing?

22 ATTORNEY VAN SEVEREN: Yes.

23 THE COURT: Okay.

24 (Off the record for a date.)

25 THE CLERK: December 18th at 8:30,

*Agg C* *22*

1       plea and sentencing?

2                   THE COURT: Yes. Okay. So,  
3       Mr. Bunn, we'll see you back here then. I'm  
4       looking at the pretrial services report. You  
5       know -- You've been there -- you've kept your  
6       appointments and you know that they're supposed  
7       to be there on the seventh, right?

8                   THE DEFENDANT: Correct.

9                   THE COURT: All right. Okay. So  
10      keep that up and we'll see you back here on the  
11      18th of December.

12                  ATTORNEY VAN SEVEREN: Thank you,  
13      Your Honor.

14                  THE COURT: You're welcome. Thank  
15      you.

16                  - - - - -

17                  (Proceedings concluded.)

App C

23

167.31(2)(a)(1). The firearm is unloaded or is a handgun.

808.03(1)(1) APPEALS AS OF RIGHT. A final judgment or a final order of a circuit court may be appealed as a matter of right to the court of appeals unless otherwise expressly provided by law. A final judgment or final order is a judgment, order or disposition that disposes of the entire matter in litigation as to one or more of the parties, whether rendered in an action or special proceeding, and that is one of the following:

Appendix D <sup>M</sup>  
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