COURT OF APPEALS
DECISION
DATED AND FILED

February 15, 2012

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2011AP1538-CR **Cir. Ct. No. 2009CT1026**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SHERRI A. WITTROCK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: THOMAS J. GRITTON, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.[1] Sherri A. Wittrock appeals from a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

(OWI), fourth offense. Wittrock contends that the State failed to provide sufficient facts justifying the initial stop of her vehicle and, therefore, the circuit court erred in denying her motion to suppress evidence. We conclude that the officer, relying on the collective knowledge of the police department at the time of the initial stop, had the requisite reasonable suspicion. We therefore affirm the judgment.

BACKGROUND

¶2 The facts underlying the stop of Wittrock's vehicle were testified to at a suppression hearing by City of Neenah Police Officer Amanda Moe. Moe testified that on June 26, 2009, at approximately 2:18 p.m., she stopped Wittrock's vehicle in response to an "attempt to locate" (ATL) put out by the City of Oshkosh Police Department which described Wittrock in a Ford Focus and provided her license plate number. Moe testified that the ATL indicated that the responder was to stop and detain Wittrock until the Oshkosh police department could follow up with her in relation to a reported disturbance.

¶3 When Moe stopped Wittrock's vehicle, Moe notified the Oshkosh police department. Moe spoke with Officer Marilyn Harvot of the Oshkosh police department who informed her that they wanted to speak to Wittrock regarding a disturbance at either the Winnebago county mental health center or resource center. The Oshkosh police department had been informed of Wittrock's behavior by the staff at the mental health center or resource center. Moe testified that Harvot told her there "was some concern for [Wittrock's] behavior with the driving due to possible intoxication."

¶4 Moe testified that the ATL provided information that Wittrock was involved in a disturbance; however, Moe did not learn that Wittrock was possibly

intoxicated until after she stopped Wittrock's vehicle and spoke to Harvot. The information provided by Harvot was that "there was some concern from some of the staff members that [Wittrock] was acting in a way that would describe her being intoxicated and possibly had an odor on her as well." Moe did not receive reports of, nor did she personally observe, any erratic driving prior to stopping Wittrock's vehicle. However, after making contact with Wittrock, Moe observed Wittrock's slurred speech and an odor of intoxicants on her breath. Wittrock was subsequently arrested for OWI.

¶5 Wittrock moved to suppress evidence, arguing that Moe did not have reasonable suspicion to stop her vehicle. The circuit court denied Wittrock's motion based on its determination that Moe acted reasonably in relying on the ATL communication in initiating the investigatory stop and that sufficient reasonable suspicion existed to stop Wittrock's vehicle. Wittrock was subsequently convicted of OWI, fourth offense, on November 30, 2009. She appeals.

DISCUSSION

¶6 "When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. However, the application of constitutional principles to the facts is a question of law we decide without deference to the circuit court's decision." ***State v. Fields***, 2000 WI App 218, ¶9, 239 Wis. 2d 38, 619 N.W.2d 279 (citations omitted). A law enforcement officer may lawfully conduct an investigatory stop if, based upon the officer's experience, he or she reasonably suspects "that criminal activity may be afoot." ***State v. Williams***, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106 (quoting ***Terry v. Ohio***, 392 U.S. 1, 30 (1968)). Reasonable suspicion is dependent on

whether the officer's suspicion was grounded in specific, articulable facts, and reasonable inferences from those facts, that an individual was committing a crime. ***State v. Waldner***, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996).

¶7 Where, as here, an officer relies on information provided by dispatch, "reasonable suspicion is assessed by looking at the collective knowledge of police officers." *See* ***State v. Pickens***, 2010 WI App 5, ¶11, 323 Wis. 2d 226, 779 N.W.2d 1 (WI App 2009). If a defendant moves to suppress, the prosecutor must prove the collective knowledge that supports the stop. ***Id.***, ¶13. When an officer relies on an ATL or bulletin in making a stop, the inquiry is whether the officer that initiated the ATL or communication, not the responding officer, had knowledge of specific and articulable facts supporting reasonable suspicion at the time of the stop. *See* ***United States v. Hensley***, 469 U.S. 221, 231-32, 233 (1985) (evidence uncovered in the course of a ***Terry*** stop "is admissible if the police who *issued* the flyer or bulletin possessed a reasonable suspicion justifying a stop").

¶8 Wittrock argues on appeal that the State failed to demonstrate at the suppression hearing that the police had collective knowledge of specific, articulable facts supporting a reasonable suspicion to perform a traffic stop. Thus, the issue is whether the police—namely, Moe and the Oshkosh police department that issued the ATL—possessed sufficient reasonable suspicion, grounded in specific and articulable facts, to justify the investigative stop of Wittrock's vehicle. Because the suppression hearing was limited to Moe's knowledge at the

time of the stop[2] and the State was not able to elicit testimony regarding the knowledge possessed by the Oshkosh police department prior to initiating the ATL, this court remanded to the circuit court for further findings.

¶9 At the evidentiary hearing on remand, Harvot testified as to what the Oshkosh police department knew at the time it issued the ATL. Harvot testified that she received a report of a disturbance at the Drug Abuse Correctional Center (DACC). Harvot went to the DACC and talked to two staff members, Captain Nancy Tierney and Anita Harris. Tierney told Harvot that Wittrock was "extremely belligerent; her speech was slurred [and] she was having difficulty standing." Tierney reported that Wittrock had driven into a prohibited area of the DACC, had contact with staff, appeared to be intoxicated, and then left. Harris told Harvot that Wittrock had grabbed her arm and shoved her out of the way in order to get into her vehicle. While Harvot did not personally observe Wittrock in an impaired state, three people witnessed Wittrock's behavior and tried to prevent her from driving. Based on the information provided by Tierney and Harris, Harvot issued an ATL for Winnebago law enforcement.

¶10 Following the supplemental hearing, the circuit court found that the ATL was based on Harvot's investigation, the facts of which supported a

[2] We note that the State attempted to question Moe regarding the specifics of what Harvot reported to her. The State asked, "Can you tell the Judge what Officer Harvot told you that [the Oshkosh police department] knew when they asked for the attempt to locate?" However, the court erroneously ruled that evidence as to what Harvot told Moe after Moe had initiated the stop and after Wittrock had been arrested was both hearsay and not relevant. As discussed in the body of this opinion, evidence as to what Harvot knew at the time she issued the ATL is relevant to whether reasonable suspicion existed for the stop. Further, as to hearsay concerns, we note that WIS. STAT. § 901.04(1) provides that in making a determination on the admissibility of evidence, "the judge is bound by the rules of evidence only with respect to privileges and as provided in [WIS. STAT. §] 901.05." ***State v. Jiles***, 2003 WI 66, ¶29, 262 Wis. 2d 457, 663 N.W.2d 798.

reasonable articulable suspicion that Wittrock was operating a motor vehicle while intoxicated. We agree. Based on our review of both the original record and the transcript of the supplemental evidentiary hearing, we are satisfied that the police had reasonable suspicion, grounded in specific and articulable facts as possessed by the Oshkosh police department at the time of the ATL and Moe at the time of Wittrock's arrest.

CONCLUSION

¶11 We conclude that the police had the requisite reasonable suspicion to stop Wittrock's vehicle. We therefore uphold the circuit court's order in denying the motion to suppress and affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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