

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 18, 2012

A. John Voelker
Acting 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. 2011AP1950-CR

Cir. Ct. No. 2010CT768

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GARY A. SENGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
GERALD P. PTACEK, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Gary A. Senger appeals from a judgment of conviction for operating a motor vehicle while under the influence (OWI), fourth

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.

offense. Senger was stopped by law enforcement for operating a motor vehicle with a revoked driver's license. He contends that the arresting officer lacked the requisite reasonable suspicion to prolong his detention for the purpose of performing field sobriety testing. We disagree. We affirm the judgment.

FACTS

¶2 Corporal Jonathan Schulteis of the Town of Norway police department testified to the facts underlying Senger's arrest. Schulteis testified that on May 23, 2010, at approximately 2:34 a.m., he was on patrol and observed a black Lexus coming toward him. He conducted a registration check on the vehicle and it was registered to Senger. Schulteis then conducted a query as to whether Senger had a valid driver's license and discovered that Senger's license was revoked. Schulteis initiated a traffic stop.

¶3 Schulteis testified that it took Senger approximately a quarter mile in a twenty-five mile per hour zone before he pulled over to the right shoulder of the road. In Schulteis's opinion, Senger did not pull over as far as was safely possible. Schulteis approached the vehicle, confirmed that the driver was Senger and that Senger was aware that he had a revoked driver's license. Schulteis asked Senger for identification. Schulteis testified that Senger "fumbled through his wallet for approximately three minutes prior to finding his driver's license. [Schulteis] observed it multiple times as [Senger] passed it before he pulled it out." Schulteis, who has conducted "[h]undreds" of traffic stops on suspicion of OWI, felt that Senger's inability to locate his driver's license after a three-minute time period demonstrated "an impairment of the simple task of being able to locate an object." During this interaction, Schulteis "could smell a strong odor of alcohol emitting." When asked, Senger stated that he had consumed alcohol. Schulteis returned to

his vehicle to request back up so that he could conduct field sobriety tests. Senger was subsequently arrested for OWI.

¶4 Senger filed a motion to suppress evidence, arguing that Schulteis did not have sufficient evidence to detain Senger for field sobriety testing. Following a hearing, the circuit court denied Senger's motion. The circuit court determined that Schulteis had reason to detain Senger for field sobriety tests. The court based its decision on the following facts: the time of day, "the fumbling through the wallet for three minutes," passing the license multiple times before finding it, the strong odor of intoxicants, Senger's admission that he had been drinking and that he stopped his vehicle in a manner that was not as safe as possible. The court also noted that it took a quarter of a mile for Senger to pull over, which Schulteis had implied in his experience "to be longer than it would normally take going at a slow rate of speed, [twenty-five] miles an hour."

¶5 Senger subsequently pled guilty to OWI, fourth offense. He appeals.

DISCUSSION

¶6 When reviewing the denial of a motion to suppress evidence, we will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996); WIS. STAT. § 805.17(2). Based on the trial court's findings of fact, we review de novo whether reasonable suspicion exists. *See State v. Martwick*, 2000 WI 5, ¶19, 231 Wis. 2d 801, 604 N.W.2d 552.

¶7 Senger does not challenge the officer's initial stop of his vehicle for operating a motor vehicle with a revoked driver's license. Thus, the sole issue on appeal is whether the officer's observations, both in pulling over Senger and in his

subsequent contact with Senger, provided him with reasonable suspicion to subject Senger to field sobriety tests. In reviewing whether the officer's further investigation and request for field sobriety tests was warranted, we apply the same standard as for an initial stop. See *State v. Betow*, 226 Wis. 2d 90, 94-95, 593 N.W.2d 499 (Ct. App. 1999).

If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun. The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop.

Id. “The question of what constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience.” *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). An officer must identify specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the officer's intrusion. *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

¶8 Here, Senger asserts that the officer lacked reasonable suspicion that he was impaired. In so arguing, Senger notes what the officer did not observe—unusual driving maneuvers, slurred speech, or stumbling. However, Senger's argument ignores what the officer did observe—that Senger took longer than is typical to pull over his vehicle, that he did so in a manner that was not as safe as possible, that he had the odor of intoxicants on his breath, that he had admitted drinking and that it was approximately two a.m. on a Sunday morning. We

conclude that these observations could reasonably have led Schulteis to suspect that Senger was impaired.

¶9 We agree with the trial court that Schulteis's decision to further investigate and administer field sobriety tests was reasonable under the totality of the circumstances. *See State v. Williams*, 2001 WI 21, ¶23, 241 Wis. 2d 631, 623 N.W.2d 106. This further investigation is exactly what *Terry* addressed in permitting investigatory stops based on reasonable suspicion. An officer is allowed, based on his or her reasonable suspicion from specific and articulable facts, to conduct further investigation when an officer reasonably suspects a person is about to commit or has committed a crime. *See State v. Anderson*, 155 Wis. 2d 77, 83-84, 454 N.W. 2d 763 (1990); *Terry*, 392 U.S. at 21. The main goal of an investigative stop is to quickly resolve ambiguity associated with suspicious conduct. *Anderson*, 155 Wis. 2d at 84. In this case, “[i]t would have been poor police work ... to have failed to investigate [the defendant's behavior] further.” *Terry*, 392 U.S. at 23.

CONCLUSION

¶10 Based on the totality of circumstances, we conclude that the officer had the requisite reasonable suspicion to subject Senger to field sobriety tests based on observations made and information gathered during a lawful stop for operating after revocation. We therefore uphold the trial court's order denying Senger's motion to suppress and affirm the judgment.

By the Court.—Judgment affirmed.

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

