COURT OF APPEALS
DECISION
DATED AND RELEASED

March 20, 1997

No. 96-2677-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GREGORY M. DAVIS,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County: MICHAEL N. NOWAKOWSKI, Judge. *Affirmed*.

VERGERONT, J.[1] Gregory Davis appeals from a judgment convicting him of operating after revocation in violation of § 343.44, STATS. He contends that the initial stop of the car he was driving violated his rights under the Fourth Amendment to the United States Constitution and the Wisconsin Constitution counterpart, Article I Section 2, and that a further violation took place when the officer asked him for identification and his driver's license after determining that his car was not the suspect vehicle. We conclude there was

[1] This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

not a violation under either the federal or state constitution and we therefore affirm.

The pertinent facts are not disputed. Officer Jeff Loud, an officer for the Wisconsin State Capitol Police, was assisting City of Madison police officers at an accident at 2:45 a.m. one morning when he received a report on his radio that three black males in a green Oldsmobile with a gun were seen in front of the Black Bear Lounge, about two blocks away. Within a minute of that broadcast, Officer Lord saw a light-colored General Motors sedan driving west about one-half block away.

At that point in time, Loud could not tell the color of the sedan or the number or race of the passengers. Loud testified that under street lights, green, silver, gray and some shades of blue look pretty similar, and he knew from experience that complainants do not always accurately report the color of a vehicle. He also testified that Chevrolets and Oldsmobiles are both GM products and can have similar body styles. Loud decided to pursue the sedan because it was a GM product in a similar color range to that reported and was within two blocks of the reported incident within a minute of the report.

Loud activated his emergency lights, followed the sedan, and pulled it over. When Loud was close enough to the car to call in the license plate, he saw that it was a silver Chevrolet. He remained in his squad car for approximately five minutes, waiting for backup to arrive. At about the time his backup arrived, Loud learned from dispatch that this was not the suspect vehicle and also learned that this vehicle was registered to Veronica Hunter. Loud then went up to the car and spoke to the driver. Normally when Loud has contact with a citizen suspect he makes a report to explain the actions he took, and this incident was the type for which he would document what he did, with the names of the individuals and a description of the vehicle.

Loud explained to the driver, Davis, why he had stopped him, and asked Davis his name and address, which Davis gave him verbally. Loud then asked Davis the name of the person to whom the car was registered, and Davis gave Veronica Hunter's name, stating she was a friend or neighbor in response to Loud's question about their relationship. Loud next asked to see Davis' driver's license, and Davis said he did not have one; all he had was an ID card,

but he could not find it right away. Loud went back to his squad car, contacted dispatch and was informed that the name was valid but Davis' driving status was revoked. Loud went back to the car, by which time Davis had found his ID card, and gave it to Loud. The picture on the ID card matched Davis' appearance. Loud wrote Davis a citation for operating after revocation.

The trial court concluded that the initial stop was constitutionally permissible because it was based on an objectively reasonable, articulable suspicion. The court also concluded that the request for identification was not an unconstitutional seizure. The court decided that it was reasonable to explain the stop to Davis as a common courtesy, and reasonable to request a driver's license as identification in order to prepare a report. Then, when Davis stated he did not have his driver's license, it was reasonable, in the court's view, to check Davis' driving status.

Davis first contends that the initial stop of Davis' car was unreasonable and therefore unconstitutional because: (1) Loud saw that it was a silver Chevrolet rather than the green Oldsmobile that was reported; (2) Loud could not determine anything about the passengers when he saw Davis' car; (3) there were an average number of vehicles in the area soon after bar time on a Saturday night; and (4) Loud was not told what direction the suspect vehicle was going or when the alleged crime occurred relative to the report Loud received. We reject these contentions and conclude the initial stop did meet constitutional standards.[2]

To execute a valid investigatory stop consistent with the Fourth Amendment prohibition against unreasonable searches and seizures, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. ***State v. Richardson***, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990). In assessing whether there exists reasonable suspicion for a particular stop, we must consider all the specific and articulable facts, taken together with the rational inferences from those facts. ***State v. Dunn***, 158 Wis.2d 138, 146, 462 N.W.2d 538,

[2] The Wisconsin Supreme Court follows the United States Supreme Court's interpretation of the search and seizure provision of the Fourth Amendment in construing the same provision of the state constitution. ***State v. Fry***, 131 Wis.2d 153, 171-72, 388 N.W.2d 565, 573 (1986).

541 (Ct. App. 1990). 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. Jackson***, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989). If any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, police officers have the right to temporarily detain the individual for purposes of inquiry. ***State v. Anderson***, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990).

Loud observed a vehicle similar to the reported suspect vehicle within a minute of the report and within two blocks of the reported incident, driving away from the incident location. Because Loud had been told the passengers in the suspect vehicle had a gun, the importance of immediately detaining the car Loud observed in order to investigate further was considerable. Although the color and make of the car Loud observed were not an exact match, they were sufficiently close, so that, in view of Loud's testimony about the reliability of color observation and vehicle description under such conditions, it was reasonable for Loud to stop the car he observed in order to investigate further. The degree of certainty that Davis argues for is simply not required in order to meet the test of having a reasonable suspicion.

Davis next argues that, once Loud determined that Davis' car was not the suspect one, it was constitutionally impermissible to ask him for his driver's license as identification. Again, we do not agree. It was reasonable for Loud to make a report of the stop, even though he had determined that Davis' car was not the suspect car. For that purpose, it was reasonable to ask Davis' name and address.[3] We also conclude that it was reasonable for Loud to ask for

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[3] There is no question that Loud could have asked Davis for his name and address as part of an investigative stop, had he not learned Davis' car was not the suspect vehicle before speaking to Davis. Section 968.24, STATS., provides:

> **Temporary questioning without arrest.** After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall

Davis' driver's license as a means of identification, and that request did not transform the lawful stop into an unlawful seizure.

In ***State v. Ellenbecker***, 159 Wis.2d 91, 464 N.W.2d 427 (Ct. App. 1990), we held that a request for a driver's license from a driver whose vehicle was disabled, and a status check on the license, did not transform a lawful "motorist assist" into an unlawful seizure. We noted first the reasons that a report by the officer and identification of the motorist may be necessary: it may be required that the officer record citizen contact; it may be helpful to the officer in the event of later citizen complaints against the officer; and it may aid in an investigation of a crime, such as theft of a car, even though at the time the activity--refueling a disabled vehicle as in ***Ellenbecker***--may be innocuous. ***Id.*** at 97, 464 N.W.2d at 430.

We next stated that § 343.18(1), STATS., gives law enforcement officers the authority to require a driver of a motor vehicle to display his or her license on demand.[4] While we recognized that officers do not have unfettered discretion to stop driver's and request display of their licenses, we pointed out that Ellenbecker had not been singled out for a spot check of his license but was already stopped under lawful circumstances. We concluded that the request for Ellenbecker's license under these circumstances was reasonable. We also concluded that the check on the license's validity was reasonable because the authority to demand the license would be meaningless without that, and would not promote the purpose of § 343.18(1), which is to deter persons from driving without a valid license. ***Ellenbecker***, 159 Wis.2d at 97-98, 464 N.W.2d at 430. We held that the public interest in requesting the license and running the check did not outweigh the very minimal intrusion on the driver. ***Id.***

(..continued)

be conducted in the vicinity where the person was stopped.

[4] Section 343.18, STATS., provides in part:

> (1) Every licensee shall have his or her license document, including any special restrictions cards issued under s. 343.10(7)(d) or 343.17(4), in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon demand from any judge, justice or traffic officer.

We recognize that ***Ellenbecker*** involved a motorist assist--where the vehicle was already stopped because it was disabled--while Davis was stopped by Loud to investigate a possible crime. However, we have already held that Davis was lawfully stopped by Loud. The issue here is therefore similar to that in ***Ellenbecker***: whether the request for a driver's license transforms that lawful stop into an unlawful seizure. Under the circumstances of this case, we think our reasoning in ***Ellenbecker*** applies, and the conclusion as well: Loud did not violate Davis' Fourth Amendment rights by requesting his driver's license. Once Davis stated he did not have one, Loud had an objectively reasonable and articulate suspicion sufficient to check on his license status, although we hasten to add that under ***Ellenbecker***, even if Davis had had shown his license, Loud could check on the status of Davis' license without offending the Fourth Amendment.

By the Court.—Judgment affirmed.

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