COURT OF APPEALS
DECISION
DATED AND FILED

September 10, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-0796-FT

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

CITY OF KIEL,

PLAINTIFF-RESPONDENT,

V.

MICHAEL T. ROEHRIG,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Manitowoc County: FRED H. HAZLEWOOD, Judge. *Affirmed.*

NETTESHEIM, J. Michael T. Roehrig appeals from a forfeiture judgment of conviction for operating a motor vehicle while intoxicated (OWI) pursuant to a City of Kiel ordinance adopting § 346.63(1)(a), STATS., 1993-94. On appeal, Roehrig contends that the arresting officer's initial detention of him was illegal under ***Terry v. Ohio***, 392 U.S. 1 (1968). We reject Roehrig's argument. We affirm the judgment.

FACTS

The facts are not in dispute. On January 21, 1996, at approximately 12:00 a.m., Officer Jeff Mueller observed a vehicle make a very wide left turn at the corner of First Street and Water Street in the city of Kiel. In making this turn, the vehicle nearly struck the curb and a curbside mailbox. Mueller proceeded to stop the vehicle, believing that the operator was either inattentive or some other factor was affecting the driver. Mueller additionally testified that he stopped the vehicle out of safety concerns for the driver and "everybody else that was driving or anybody else that was on the roadway." After stopping the vehicle, Mueller identified Roehrig as the driver. Further investigation revealed that Roehrig might be intoxicated. Roehrig submitted to a chemical test which yielded a result above the legal limit.

In the municipal court, Roehrig brought a motion to suppress evidence based upon his claim that Mueller did not have a reasonable suspicion to stop and detain him. The municipal court denied Roehrig's motion and Roehrig was convicted of OWI. Roehrig appealed his conviction to the circuit court. There, Roehrig renewed his motion. The circuit court denied the motion and, following a trial to the court, Roehrig was convicted of OWI. Roehrig appeals.

DISCUSSION

The Law

We begin by reviewing the law governing a temporary stop and detention. In ***Terry***, the United States Supreme Court held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." ***Id.*** at 22. This level of suspicion requires that the police officer be able to point to specific and articulable facts which, taken

together with rational inferences from those facts, reasonably warrant that intrusion. *See* ***id***. at 21. The question under this test is whether the facts available to the officer at the moment of the seizure or the search would warrant a person of reasonable caution in the belief that appropriate action was taken. *See* ***id.*** at 22. Despite adopting this lesser level of suspicion, the Court also noted that "notions which underlie both the warrant procedure and the requirement of probable cause remain fully relevant in this context." ***Id.*** at 20. We take this statement to mean that all of the legal principles which underpin probable cause apply to a ***Terry*** stop.

We now restate these principles in terms of the reasonable suspicion test under ***Terry***. Reasonable suspicion exists where the officer, at the time of the detention, has knowledge of facts and circumstances sufficient to warrant a person of reasonable prudence to suspect that the person may be committing or has committed an offense. *See* ***County of Dane v. Sharpee***, 154 Wis.2d 515, 518, 453 N.W.2d 508, 510 (Ct. App. 1990). Reasonable suspicion does not involve a technical analysis; rather, it invokes the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act. *See* ***id.*** The test is one which invokes considerations of commonsense. *See* ***id***. A court must look to the totality of the circumstances to determine whether the officer reasonably suspected that the defendant had committed an offense. *See* ***id***.

The test for a ***Terry*** stop is reasonableness. *See* ***State v. Guzy***, 139 Wis.2d 663, 675, 407 N.W.2d 548, 554 (1987). This test seeks to balance the individual's protection against unwarranted government intrusion with the societal interest in enabling police officers to solve crimes. *See* ***id***. at 675-76, 407 N.W.2d at 554. "Nevertheless, the law must be sufficiently flexible to allow law enforcement officers under certain circumstances, the opportunity to temporarily

freeze a situation, particularly where failure to act will result in the disappearance of a potential suspect." ***Id***. at 676, 407 N.W.2d 554.

The Law Applied to the Facts

Here, Mueller observed Roehrig engage in unusual driving activity consisting of a wide turn which caused Roehrig's vehicle to nearly strike the curb and a curbside mailbox. These were specific and articulable facts which, taken together with reasonable inferences therefrom, raised a reasonable suspicion that the operator of the vehicle might be guilty of inattentive driving. We also conclude that this driving reasonably suggested that the operator might be intoxicated.[1] Erratic driving is an evidentiary fact which is present in most drunk driving cases. Commonsense teaches that drunk drivers often operate motor vehicles in an erratic fashion even if such driving does not violate a particular rule of the road. An OWI conviction does not require proof of a violation of the vehicle code. Nor does it require that the driver's impairment be demonstrated by particular acts of unsafe driving. *See* WIS J I—CRIMINAL 2663. If proof of those facts is not required for purposes of obtaining a conviction, it obviously is not required for purposes of a reasonable suspicion under ***Terry***.

Roehrig stresses that his operation of his vehicle might also have been the result of innocent conduct. We agree that the facts observed by Mueller allow for this conclusion. But the prospect of innocent conduct does not bar an officer from effectuating a ***Terry*** stop if the officer otherwise has a reasonable

[1] We are not bound by the subjective intentions of the officer making the ***Terry*** stop. Instead, we objectively assess whether the officer had probable cause or reasonable suspicion to detain in the first instance. *See* ***State v. Gaulrapp***, 207 Wis.2d 598, 607, 558 N.W.2d 696, 700 (Ct. App. 1996).

basis for suspecting that illegal activity is afoot. *See* ***State v. Krier***, 165 Wis.2d 673, 678, 478 N.W.2d 63, 65 (Ct. App. 1991).

We affirm the trial court's ruling that Mueller's initial stop of Roehrig was a valid ***Terry*** detention.

By the Court.—Judgment affirmed.

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