

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 24, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 99-1513-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TROY PETRAUSKI,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Sheboygan County: JOHN B. MURPHY, Judge. *Affirmed.*

¶1 SNYDER, J. Troy Petruski was arrested for operating a motor vehicle while under the influence of alcohol (OWI) and with a prohibited blood alcohol concentration (BAC) contrary to § 346.63(1)(a) and (1)(b), STATS., on January 17, 1999, in the city of Sheboygan. Petruski moved the court to suppress the evidence obtained and dismiss the charges because he contended that he was illegally stopped. The trial court denied the motion and Petruski was convicted

of OWI as a repeater upon his plea of no contest.¹ Petruski appeals from the order denying his suppression motion and from his conviction.

¶2 City of Sheboygan police officer Jeffrey M. Mares was the only witness to testify at the motion hearing and the relevant facts are undisputed. Mares testified that he was operating a marked patrol car southbound on Calumet Drive in the left lane at approximately 3:49 a.m. on January 17, 1999, and was approaching the location of a Kwik Trip store.² A blue Ford truck pulled into the right lane of southbound Calumet Drive, signaling a left turn to proceed north on Calumet Drive. The truck was approximately two vehicle lengths from Mares's patrol car and Mares was required to apply his brakes because "I thought the vehicle was going to continue to pull out in front of me." The truck stopped while still in the right lane of Calumet Drive. Mares then turned his patrol car around and stopped the truck as it proceeded north on Calumet Drive.³

¶3 Petruski contended at the motion hearing that Mares lacked reasonable suspicion to justify the stop of Petruski's truck under § 968.24, STATS., and that he was subjected to an unreasonable Fourth Amendment seizure. He argued that Mares needed reasonable suspicion that a traffic violation had occurred in order to justify the stop and that the record is barren of any traffic violation or justifiable reason for Mares to stop his truck. He concluded that because no reasonable suspicion existed for the stop, the evidence obtained as a result of the stop must be suppressed.

¹ The prohibited BAC charge was dismissed.

² Calumet Drive has two southbound lanes.

³ In addition to his testimony, Mares offered into evidence photographs and a diagram depicting the area around Calumet Drive and the Kwik Trip store.

¶4 The trial court framed the issue as whether Mares had sufficient grounds to believe that the truck was not yielding the right-of-way to roadway traffic. Calling the matter “a relatively close call,” the court found:

[A]n officer in that position could believe that given the time of the morning, given the nature of the entry onto the roadway, given the fact that the officer had to brake, there was a perceived view that the [Petrauski] vehicle was entering into the officer’s lane of travel, that all of those things would lead a reasonable officer, under the circumstances, to believe that a traffic violation had occurred.

Even though the proof may not in the end-run be sufficient to prove up such a charge, that’s not the burden of the State. The burden is to show the officer acted with a reasonable suspicion. I am satisfied that he did.

¶5 The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated.” U.S. CONST. amend. IV. In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court held that the Fourth Amendment is not violated when law enforcement officers, in appropriate circumstances, detain and temporarily question a suspect, without arrest, for investigative purposes. The *Terry* rule allowing temporary questioning without an arrest has been codified in Wisconsin in § 968.24, STATS. See *State v. Anderson*, 149 Wis.2d 663, 677, 439 N.W.2d 840, 845-46 (Ct. App. 1989), *rev’d on other grounds*, 155 Wis.2d 77, 454 N.W.2d 763 (1990).

¶6 In reviewing a denial of a motion to suppress, we will uphold the trial court’s findings of fact unless they are against the great weight and clear preponderance of the evidence. See *State v. Waldner*, 206 Wis.2d 51, 54, 556 N.W.2d 681, 683 (1996). However, whether those facts satisfy the constitutional requirement of reasonableness is a question of law and we are not bound by the

trial court's decision on that issue. *See id.* The fundamental focus of the Fourth Amendment and § 968.24, STATS., is reasonableness. *See Waldner*, 206 Wis.2d at 55, 556 N.W.2d at 684. The question of reasonableness is determined by a commonsense test. *See id.* at 56, 556 N.W.2d at 684. We look to what a reasonable police officer would reasonably suspect, given his or her training and in light of the totality of the circumstances. *See id.* at 56, 58, 556 N.W.2d at 684-85.

¶7 Here, the trial court relied upon undisputed facts and considered the totality of the circumstances in concluding that Mares acted reasonably in stopping Petruski. At 3:49 a.m. Mares observed Petruski's truck being operated in a manner that caused him to brake his patrol car and to be concerned about the operation of a vehicle that was obligated to yield the right-of-way to the patrol car. We are satisfied, as was the trial court, that under the circumstances Mares had a reasonable suspicion that Petruski's truck was being operated in a manner inconsistent with established rules of the road. Mares's suspicion was based on "specific, articulable facts" and "rational inferences from those facts." *Terry*, 392 U.S. at 21.

¶8 Petruski asserts that the stop was illegal because Mares did not testify that Petruski had committed, or was suspected of committing, a crime or a specific traffic violation. However, an investigatory stop for a perceived civil traffic violation is authorized under Wisconsin law:

We hold that when a person's activity can constitute ... a civil forfeiture ... a police officer may validly perform an investigative stop pursuant to sec. 968.24, STATS. Suspicious activity justifying an investigative stop is, by its very nature, ambiguous. Unlawful behavior may be present or it may not. The behavior may be innocent. Still, officers have the right to temporarily freeze the situation so as to investigate further.

State v. Krier, 165 Wis.2d 673, 678, 478 N.W.2d 63, 65 (Ct. App. 1991) (citation omitted). In addition, this court has held that “[s]ection 968.24, STATS., explicitly allows an investigative stop based on a reasonable suspicion.” *Krier*, 165 Wis.2d at 678, 478 N.W.2d at 66.

¶9 We are satisfied that Mares’s observations of the operation of Petruski’s truck support a sufficient, reasonable and articulable suspicion to stop the truck. Accordingly, we affirm the order denying the motion to suppress the evidence and the judgment of conviction for OWI.

By the Court.—Judgment and order affirmed.

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

