

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 26, 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. 99-1917-FT

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CITY OF MENOMONIE,

PLAINTIFF-RESPONDENT,

V.

JONATHAN SKIBBE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

¶1 CANE, C.J. Jonathan Skibbe appeals¹ from a judgment finding him guilty of operating while intoxicated, first offense, and operating with a prohibited alcohol concentration, contrary to § 346.63(1)(a) and (b), STATS. Skibbe argues that the City failed to prove that Skibbe was lawfully stopped;

¹ This is an expedited appeal under RULE 809.17, STATS.

therefore, the circuit court erred by failing to suppress all evidence gained as a result of the stop. Because the investigatory stop of Skibbe was reasonable under all the facts and circumstances present, this court affirms the judgment.

¶2 On August 27, 1998, at approximately 1:00 a.m., Menomonie Police Sergeant Frank Bammert observed Skibbe violating various traffic laws, which included operating a motor vehicle during hours of darkness without required lamps lit and making a left turn while straddling two lanes, without signaling. *See* §§ 347.06(1), 346.31(3)(a) and 346.34(1)(a)1 and (b), STATS.

¶3 Bammert first noticed Skibbe's vehicle without its headlights on traveling northbound on Broadway in the City of Menomonie. Because he was separated from Skibbe by a median and because Skibbe eventually turned on his headlights, Bammert did not follow him. Bammert then observed Skibbe traveling southbound on Broadway, and followed him as he made a legal U-turn and headed north again. As he followed Skibbe, Bammert observed him make a left turn without signaling, while straddling both the left-turn lane and the northbound left lane. Bammert then saw Skibbe jump the curb just past the driveway into a restaurant parking lot, squealing the vehicle's tires as it entered the driveway. Skibbe then parked in the lot and exited his vehicle.

¶4 At no time before Skibbe had parked his car did Bammert activate his emergency lights or otherwise direct Skibbe to stop his car. Bammert approached Skibbe as Skibbe exited his vehicle and "noticed that he appeared to be somewhat unsteady." As he got closer to Skibbe, Bammert smelled a slight odor of alcohol and after asking for Skibbe's identification, noticed what appeared to be an open bottle of wine directly behind the driver's seat. Based on his observations, Bammert administered a number of field sobriety tests as well as a

preliminary breath test. Skibbe was arrested for operating a motor vehicle while intoxicated and with a prohibited alcohol concentration.

¶5 Skibbe subsequently filed a motion to suppress all evidence obtained as a result of the stop, asserting that he was stopped and arrested without “probable” cause in violation of his rights under the Fourth and Fourteenth Amendments to the United States Constitution and art. I, §§ 7 and 11, of the Wisconsin Constitution.² The circuit court denied Skibbe’s motion. He subsequently pled no contest to the charges, was found guilty and sentenced. This appeal followed.

¶6 Skibbe argues that the circuit court erred in denying his motion to suppress as the police officer had no reasonable cause to stop him.³ “In reviewing a circuit court order suppressing or denying the suppression of evidence, this court will uphold a circuit court’s findings of fact unless they are against the great weight and clear preponderance of the evidence.” *State v. Williams*, 225 Wis.2d 159, 168, 591 N.W.2d 823, 827 (1999). “However, whether the circuit court’s findings of fact pass statutory or constitutional muster is a question of law that this court reviews de novo.” *Id.*

¶7 Turning to the legality of the stop, “[a] brief investigatory stop is a seizure and is therefore subject to the requirement of the Fourth Amendment to the

² On appeal, Skibbe does not assert a lack of probable cause for his arrest, thereby abandoning this argument. See *Reiman Assocs. v. R/A Advertising*, 102 Wis.2d 305, 306 n.1, 306 N.W.2d 292, 294 n.1 (Ct. App. 1981) (issues not briefed are deemed abandoned).

³ Skibbe’s argument focuses on the supposed stop of his vehicle; however, the police officer did not approach Skibbe until he had already parked and was exiting his vehicle. As such, Skibbe’s arguments regarding the right to privacy within one’s vehicle are misplaced. This court will address whether the police officer had reasonable cause to conduct an investigatory stop of Skibbe after he exited his vehicle.

United States Constitution that all searches and seizures be reasonable.” *State v. Young*, 212 Wis.2d 417, 423, 569 N.W.2d 84, 88 (Ct. App. 1997) (citing *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968)). The *Terry* court recognized, however, 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.” *Terry*, 392 U.S. at 22. “In executing a valid investigatory stop of an individual, a law enforcement officer need only reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place.” *Williams*, 225 Wis.2d at 168, 591 N.W.2d at 827-28 (citing *Terry*, 392 U.S. at 27). This constitutional standard was codified in § 968.24, STATS,⁴ and “in interpreting the scope of the statute, this court must review the facts leading to an investigatory stop in light of *Terry* and its progeny.” *Williams*, 225 Wis.2d at 168, 591 N.W.2d at 828.

¶8 This court must look to the totality of the circumstances to determine what facts are sufficient to authorize police to stop a person and to further determine the reasonableness of an officer’s actions. *See id.* at 169, 591 N.W.2d at 828. In essence, “[t]he ... question is whether the action of the law enforcement officer was reasonable under all the facts and circumstances present.” *Id.* Further, “[i]f a reasonable inference of unlawful conduct can be objectively discerned, [an

⁴ 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 a 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 be conducted in the vicinity where the person was stopped.

officer] may temporarily detain the individual to investigate, notwithstanding the existence of innocent inference which could be drawn.” *Young*, 212 Wis.2d at 430, 569 N.W.2d at 91. “[A] series of acts, each of which are innocent in themselves may, taken together, give rise to a reasonable suspicion of criminal conduct.” *Id.*

¶9 Here, a number of events lead to Bammert’s investigatory stop of Skibbe. After initially noticing that Skibbe was driving at night without his headlights on, Bammert watched Skibbe drive north, then south, then north again on Broadway, thereafter making a left turn without signaling while straddling two lanes of traffic. Bammert then observed Skibbe jump the curb just past the driveway into a restaurant parking lot, squealing the vehicle’s tires as it entered the driveway. Although these actions, save for the blatant traffic violations, may seem innocent when viewed independently, taken together, and in conjunction with the traffic violations, they give rise to reasonable suspicion. This reasonable suspicion was further bolstered by Bammert’s observing Skibbe’s “unsteady” exit from his vehicle and the odor of alcohol as he approached. This court, therefore, concludes that Bammert’s investigatory stop of Skibbe was reasonable under all the facts and circumstances present. *See Williams*, 225 Wis.2d at 169, 591 N.W.2d at 828. As such, the circuit court properly denied Skibbe’s motion to suppress and this court affirms the judgment.

By the Court.—Judgment affirmed.

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

