

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 21, 2001

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-2810-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JERILINE CAMPBELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
DENNIS J. BARRY, Judge. *Affirmed.*

¶1 ANDERSON, J.¹ Jeriline Campbell challenges the denial of her suppression motion in this appeal from a conviction for obstructing an officer in violation of WIS. STAT. § 946.41(1). Campbell insists that the police officer had

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

nothing more than an inchoate and unparticularized hunch when he stopped the automobile in which she was a passenger. After our independent review of the undisputed facts, we conclude that under the totality of the circumstances, the arresting officer did have specific and articulable facts that amounted to a reasonable suspicion to justify the stop of the automobile. Accordingly, we affirm.

¶2 In reviewing an order denying a motion to suppress, this court will uphold the trial court's findings of historical facts unless they are clearly erroneous. *State v. Harris*, 206 Wis. 2d 243, 249-50, 557 N.W.2d 245 (1996). "Whether those facts satisfy the constitutional requirement of reasonableness is a question of law, which we review de novo." *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

¶3 The only witness at the suppression hearing was City of Racine Police Officer John Finnigan, the arresting officer. Finnigan testified that he was a fifteen-month veteran, and on April 5, 2000, at approximately 12:30 a.m., he was patrolling an area of Racine that he characterized as "high crime." He also testified that he routinely patrolled this area. His attention was first drawn to a vehicle because it was making a distinctive squealing sound, like a belt. During the next thirty minutes, he saw the same vehicle five times in the two-square mile area he was patrolling. Each time the vehicle was at a different location. Finnigan testified that the vehicle appeared to have no particular destination.

¶4 The first few times Finnigan saw the vehicle there were no passengers. On one occasion, Finnigan was behind the vehicle on Randolph Street and the driver "paused" and allowed Finnigan to pass him. There was no passenger in the vehicle when Finnigan passed. Finnigan observed the vehicle

pull out into traffic after he passed. Finnigan decided to stop the vehicle when he saw it again, now with a passenger in it.

¶5 During the hearing, Finnigan explained that a “vehicle traveling around the area, changing directions, going from places, you know, stopping at different sites” raised his suspicions. He testified that many people put license plates on vehicles that are unregistered but look like the vehicle the plate is assigned to, and he stopped the vehicle to make sure it was registered and was using the proper plates. He explained that it has been his experience that when a vehicle pauses to let him pass and then pulls out into traffic, it was usually because the driver did not live in the area or did not have a driver’s license, “there is something hinky about the vehicle.” He did admit that he did not have any reports that the vehicle had been involved in the commission of any crimes and that he did not observe either drug activity inside the vehicle or the commission of any traffic offenses.

¶6 While commenting that this was a close case, the trial court denied the motion to suppress. The court succinctly and precisely summarized Finnigan’s testimony:

This is a case of the officer frankly, in the Court’s opinion, given his explanation that he believed this was a high crime area, that this, that the vehicle was acting consistent with someone who may have been casing homes within that area for burglaries, that may have been looking for drug activity or involved in some type of drug activity, and I understand there was no observation of drugs or anyone else coming up to sell the drugs but I think that there was at least a reasonable suspicion with a number of sightings, short period of time in this area, randomness over the area, that the officer was justified in exercising a stop for temporary questioning under [WIS. STAT. §] 968.24, that the officer could ask the questions.

¶7 On appeal, Campbell argues that Finnigan did not have anything more than an inchoate hunch that criminal activity was afoot. She asserts that it is not enough that the officer concluded that the behavior he had observed was suspicious. She contends that we do not have to accept Finnigan’s observations as reasonable because of his experience; rather, she asks us to objectively review Finnigan’s observations. Campbell maintains that Finnigan was unable to explain why the behavior he observed would lead to the reasonable suspicion that either she or the driver might have been engaged in criminal behavior.

¶8 Police “may only infringe on an individual’s interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed,” is committing, or is about to commit a crime. *Harris*, 206 Wis. 2d at 259 (citation omitted); *see also* WIS. STAT. § 968.24.² Such “[r]easonable suspicion is a less demanding standard than probable cause not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.” *Alabama v. White*, 496 U.S. 325, 330 (1990). The question of what constitutes reasonable suspicion is a commonsense test: What would a reasonable police officer reasonably suspect in light of his or her

² WISCONSIN STAT. § 968.24 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 be conducted in the vicinity where the person was stopped.

training and experience? *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). “Determining whether there was reasonable suspicion requires [this court] to consider the totality of the circumstances.” *State v. Allen*, 226 Wis. 2d 66, 74, 593 N.W.2d 504 (Ct. App.), *review denied*, 228 Wis. 2d 168, 599 N.W.2d 409 (Wis. June 7, 1999) (No. 98-1690-CR).

¶9 In *State v. Anderson*, 155 Wis. 2d 77, 454 N.W.2d 763 (1990), our supreme court addressed the policy considerations at work in a case involving a *Terry* stop.³ The court said that the focus of the Fourth Amendment and WIS. STAT. § 968.24 is reasonableness. *Anderson*, 155 Wis. 2d at 83. This contemplates a commonsense balancing between individual privacy and the societal interest in allowing the police a reasonable scope of action in discharging their responsibilities. *Id.* at 87. The court noted that suspicious conduct by its very nature is ambiguous, and the principal function of the investigative stop is to quickly resolve that ambiguity. *Id.* at 84. Consequently, the court held that police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop. *Id.* However, the court has also said an “inchoate and unparticularized suspicion or ‘hunch’ ... will not suffice.” *Waldner*, 206 Wis. 2d at 56 (citation omitted).

¶10 Nevertheless, conduct that has innocent explanations may also give rise to a reasonable suspicion of criminal activity. *See id.* at 61. “If a reasonable inference of unlawful conduct can be objectively discerned, the officers may temporarily detain the individual to investigate, notwithstanding the existence of innocent inferences which could be drawn.” *Young*, 212 Wis. 2d at 430. It is also

³ *Terry v. Ohio*, 392 U.S. 1 (1968).

true that a series of acts, each of which is innocent in itself, taken together, may give rise to a reasonable suspicion of criminal conduct. *See id.* But the test in any case is whether all the facts—including those which, individually, are consistent with innocent behavior—taken together are indicative of criminal behavior. *See United States v. Sokolow*, 490 U.S. 1, 9-10 (1989).

¶11 In *Waldner*, 206 Wis. 2d at 60, the supreme court concluded that lawful, but unusual, driving may be the basis of an officer's reasonable suspicion if a "reasonable inference of unlawful conduct can be objectively discerned." In that case, the officer observed a vehicle at 12:30 a.m. driving slowly, stopping at a corner without a stop sign, accelerating quickly, and then legally parking on the road and pouring some liquid on the street. The court held that the totality of the circumstances coalesced to form the basis for a reasonable suspicion. *Id.* at 53.

¶12 Campbell attempts to distinguish *Waldner* by arguing that there the driver operated at a slow rate of speed, stopped at an uncontrolled intersection and accelerated at a high rate of speed after turning a corner. She points out that in this case there is no evidence of such erratic driving. We are satisfied that *Waldner* does not limit unusual driving to such examples of management and control of the vehicle; rather, unusual driving encompasses any activity out of the ordinary. In this case, it is unusual to see the same vehicle at least five times, driving randomly within a two-square mile area, classified as a high crime area, at 12:30 a.m. It is also odd for the vehicle to pause to let a marked squad car pass. Moreover, it is peculiar for the vehicle to have no passenger for most of its travels and then to have a passenger. Like *Waldner*, each activity, in isolation, might be viewed as innocent behavior, but when joined together, they are indicative of criminal behavior.

¶13 We determine that a reasonable police officer viewing the same unusual activities would reasonably suspect that criminal activity was afoot. In view of the totality of the circumstances, we conclude that Finnigan's stopping of the vehicle containing Campbell was based upon reasonable suspicion. Therefore, we affirm.

By the Court.—Judgment affirmed.

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

