COURT OF APPEALS
DECISION
DATED AND FILED

October 17, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2915 **Cir. Ct. No. 01-TR-313**

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

VERNON COUNTY,

PLAINTIFF-RESPONDENT,

V.

GARY E. WOLFGRAM,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Vernon County: MICHAEL J. ROSBOROUGH, Judge. *Affirmed*.

¶1 DEININGER, J.[1] Gary Wolfgram appeals a judgment convicting him of operating a motor vehicle while under the influence of an intoxicant

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

(OMVWI) and of operating with a prohibited alcohol concentration. Wolfgram claims the arresting officer lacked the reasonable suspicion required for a police stop, and that the trial court consequently erred in denying his motion to suppress the evidence acquired after the stop. We disagree and affirm.

BACKGROUND

¶2 At approximately 6:30 p.m. on a January evening, the Vernon County Sheriff's Department dispatched an officer to investigate a car accident. On arriving at the accident scene, the officer observed a car lying on its side in a ditch adjacent to a highway. The car was unoccupied. The officer checked the registration of the car and learned that its owner was a female with the last name of Wolfgram. The officer observed that the car window had a sticker commonly displayed in used vehicles and recalled that Gary Wolfgram dealt in used vehicles. A motorist stopped at the scene and reported that he had earlier observed a man who appeared intoxicated exiting the overturned car.[2]

¶3 The officer then observed a pickup truck with three occupants approach the accident scene, which by now included two squad cars with flashing emergency lights. The truck rapidly accelerated past the scene. The officer determined that the truck was of the same make and color as a truck owned by

[2] Wolfgram challenged the accuracy of the officer's recollection of the motorist's statements to the officer. He called the motorist, an eighty-four-year-old man, as a witness at the suppression hearing. The motorist testified that he did not see the man exit the vehicle and that he did not tell the officer that he thought the man had been drinking. He also testified on cross-examination, however, that he did not remember what he had told the officer for a subsequent written statement because "[i]t's so long, I couldn't tell ya." The trial court found the testimony of the police officer regarding the content of the conversation more credible than that of the motorist. Because the trial court "is the arbiter of credibility," we accept the facts as found by the trial court. *See* ***State v. Fields***, 2000 WI App 218, ¶11, 239 Wis. 2d 38, 619 N.W.2d 279.

Wolfgram. Suspecting that Wolfgram was the driver of the overturned car and an occupant of the passing truck, the officer pursued the truck in his squad car and stopped it a short distance from the accident scene.

¶4 The officer approached the truck and identified the three occupants: a female driver and two male passengers, one of which was Wolfgram, who had a "flushed face" and "glassy eyes." The officer instructed Wolfgram to accompany him back to the accident scene. Wolfgram responded by exiting the truck and walking away from the officer. The officer twice instructed Wolfgram to "get back here." Wolfgram ignored the instruction and ran into some nearby woods. The officer gave chase and instructed Wolfgram to stop. Wolfgram continued to run. The officer eventually arrested Wolfgram and took him into custody. Wolfgram agreed to submit a breathalyzer sample, which produced a breath alcohol content of .13.

¶5 Vernon County charged Wolfgram with OMVWI and operating with a prohibited alcohol concentration, in violation of the county traffic ordinance. Wolfgram moved to suppress all evidence obtained as a result of the stop and arrest, claiming that "the officer did not have reasonable and articulable suspicion in which to stop the vehicle in which the defendant was a passenger and did not have probable cause to arrest him." The trial court denied the motion, and after a bench trial on stipulated facts, found Wolfgram guilty of both charges.[3] Wolfgram

[3] Wolfgram initially pled no contest but, with the County's consent, the matter was reopened to permit the court "to determine guilt at a bench trial." *See* ***County of Racine v. Smith***, 122 Wis. 2d 431, 362 N.W.2d 439 (Ct. App. 1984) (holding that "guilty-plea-waiver rule" bars appeals of nonjurisdictional errors following a plea of guilty or no contest to a county ordinance violation).

appeals the subsequently entered judgment of conviction. He challenges only whether the officer had reasonable suspicion for an investigative stop.

ANALYSIS

¶6 When reviewing a trial court's order denying a motion to suppress evidence, we will uphold the trial court's factual findings unless they are clearly erroneous, that is, against the great weight and clear preponderance of the evidence. *See* ***State v. Richardson***, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). Whether the facts as found by the court meet statutory and constitutional standards is a question of law which we review de novo. *See* ***id***. at 137-38.

¶7 An investigative stop is a "seizure" that intrudes upon an individual's right to be free of governmental interference. *See* U.S. CONST. amend. IV; WIS. CONST. art. I, § 11; *see also* ***State v. Harris***, 206 Wis. 2d 243, 254 n.8, 557 N.W.2d 245 (1996). Certain investigative stops are, nevertheless, permitted due to "the strong public interest in 'solving crimes and bringing offenders to justice.'" ***Harris***, 206 Wis. 2d at 259 (citation omitted). Specifically, an investigative stop is constitutionally permissible if "any reasonable suspicion of past, present, or future criminal conduct" can be drawn from the circumstances. ***State v. Jackson***, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989); *see also* ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968); WIS. STAT. § 968.24. Reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [an] intrusion." ***Terry***, 392 U.S. at 21. We may only consider evidence obtained as a result of a lawful stop. *See* ***Harris***, 206 Wis. 2d at 263.

¶8 Wolfgram argues that the officer lacked the reasonable suspicion required for an investigative stop of the truck in which he was a passenger, and

that the trial court consequently erred in denying his motion to suppress the evidence acquired after the stop.[4] We disagree. At the suppression hearing, the officer articulated a number of facts that demonstrated suspicious behavior sufficient to justify an investigative stop of the truck. Specifically, the officer: (1) observed an abandoned, overturned vehicle that had a number of factual connections to Wolfgram; (2) knew that a possibly intoxicated man had left the overturned vehicle earlier that evening; and (3) observed a truck of the same make and color as Wolfgram's truck approach and then rapidly accelerate past the accident scene. These facts, taken together, demonstrate that the officer's decision to stop the pickup truck was based on significantly more than the "inchoate and unparticularized suspicion or 'hunch'" that courts uniformly find lacking as a basis for an investigative stop. *See* ***Terry***, 392 U.S. at 27; *see also* ***State v. Fields***, 2000 WI App 218, ¶21, 239 Wis. 2d 38, 619 N.W.2d 279.

¶9 Wolfgram attempts to avoid this result by arguing that the officer lacked crucial facts that were necessary to provide sufficient information to form a reasonable suspicion to conduct an investigative stop. Specifically, Wolfgram points out that the officer did not know with certainty the identity of the driver of the overturned car or the precise time or circumstances of the accident. Nor, Wolfgram notes, did the officer know for sure that the pickup truck that drove past the accident scene was Wolfgram's truck or that Wolfgram was inside the truck at the time.

[4] The County does not dispute that Wolfgram has the requisite standing to challenge the legality of the stop. *See* ***State v. Harris***, 206 Wis. 2d 243, 257, 557 N.W.2d 245 (1996) ("[W]hen police stop a vehicle, all of the occupants of that vehicle are seized and have standing to challenge the stop.").

¶10 Wolfgram's argument is flawed in that it "would require police to have *knowledge* of criminal activity rather than mere *suspicion* of criminal activity before performing an investigative stop," a result that we have previously rejected as untenable. *See* ***State v. Krier***, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991). "[S]uspicious activity by its very nature is ambiguous ... [and] the principal function of the investigative stop is to quickly resolve the ambiguity and establish whether the suspect's activity is legal or illegal." ***Jackson***, 147 Wis. 2d at 835. Although the officer may not have had answers to all of the factual questions Wolfgram now raises prior to making the stop, he was not required to. Rather, so long as the officer had "any reasonable suspicion of past, present, or future criminal conduct," he had "the right to temporarily freeze the situation in order to investigate further," notwithstanding the existence of other inferences that could be drawn from the circumstances. ***Id***.

¶11 Wolfgram also challenges the legality of the stop by analogizing the facts at hand to ***State v. Fields***, 2000 WI App 218, 239 Wis. 2d 38, 619 N.W.2d 279, a case in which we held that a single fact (a longer-than-normal pause at a stop sign) did not provide reasonable suspicion justifying an investigative stop. ***Id***. at ¶¶4, 23. For example, Wolfgram points to the fact that the officer stated in one portion of his testimony that he stopped the pickup truck "based on the fact that it [was] a vehicle similar to one that [he] had seen Mr. Wolfgram drive in the past." Wolfgram argues that this single fact provides insufficient justification for the stop. Although the cited fact in isolation may not have justified an investigative stop, Wolfgram's argument ignores substantial other testimony by the officer in which he details the variety of facts that contributed to his suspicion that illegal activity was afoot and that an occupant of the truck which approached and then sped away from the accident scene might be involved. *See* ¶¶2-3.

¶12 The reasonableness of a stop depends on "all the facts and circumstances that are present at the time of the stop." ***State v. King***, 175 Wis. 2d 146, 152, 499 N.W.2d 190 (Ct. App. 1993). Thus, to the extent that Wolfgram's argument rests on any isolated portion of the officer's testimony, we conclude that it is unavailing. We specifically distinguished the facts at hand in ***Fields*** from cases in which an accumulation of articulable facts created reasonable suspicion. *See* ***Fields***, 2000 WI App 218 at ¶¶13-19 (citing ***State v. Anderson***, 155 Wis. 2d 77, 454 N.W.2d 763 (1990) (finding reasonable suspicion where defendant observed a squad car in an alley, turned his car, and sped away) and ***State v. Waldner***, 206 Wis. 2d 51, 556 N.W.2d 681 (1996) (finding reasonable suspicion where defendant drove slowly, stopped at an unmarked intersection, turned and accelerated at a high rate of speed, and then parked and poured liquid and ice from a plastic glass onto the road)). As discussed above, this case presents a number of articulable facts that provided reasonable suspicion of illegal activity. *See* ¶¶2-3. Thus, Wolfgram's reliance on ***Fields*** is misplaced.

CONCLUSION

¶13 For the reasons discussed above, we affirm the appealed judgment.

By the Court.—Judgment affirmed.

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