

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 15, 2002

Cornelia G. Clark
Clerk of Court of Appeals

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.

**Appeal No. 02-1196-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CT-938

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MICHAEL STELLA,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: JEFFREY A. WAGNER and CARL ASHLEY, Judges. *Affirmed.*

¶1 CURLEY, J.¹ Michael Stella appeals the judgment convicting him of operating while intoxicated (3rd offense), contrary to WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

§ 346.63(1)(a).² He also appeals from the order denying his motion to suppress. Stella argues that the trial court erred in denying his motion challenging the stop of his vehicle. Because this court is satisfied that the trial court correctly determined that the State had met its burden of proof that the stop by the Oak Creek police was reasonable, as the officer who stopped Stella's car did so after witnessing Stella violate several traffic laws, this court affirms.

I. BACKGROUND.

¶2 On April 22, 2000, shortly after closing time for area taverns, an Oak Creek police officer, Daniel Morris, observed Stella driving south on 27th Street in a red 1995 Dodge Neon. The officer followed Stella's auto and saw the vehicle cross over the line marking the traffic lanes. However, before Officer Morris could stop Stella's car, the officer was called away. He then radioed a fellow officer, Lieutenant Joseph Noel, told him what he had seen, and asked him to stop Stella's car. Lieutenant Noel spotted Stella's car and eventually stopped it. Before stopping the car, he observed the car make two turns without signaling and also stop in the roadway for no apparent reason. Additionally, Lieutenant Noel saw the car turn into a private driveway, but then back up and drive off. After stopping the vehicle and approaching Stella, Lieutenant Noel believed Stella was intoxicated, and, after administering field sobriety tests, charged Stella with operating while intoxicated, third offense, and operating a motor vehicle with a blood alcohol content in excess of .08%.

² All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

¶3 Stella brought a motion seeking to suppress any physical evidence obtained after the traffic stop, contending that the officer's stop was unreasonable because the officer who stopped him was doing so on behalf of the first officer and the first officer did not have probable cause to arrest him or reasonable suspicion to stop the automobile. The trial court denied the motion to suppress, finding the officer's actions in stopping Stella to be reasonable. Stella then pled guilty to operating while intoxicated, third offense, and the State dismissed the other charge.³ Stella was sentenced to serve six months in the Milwaukee County House of Correction and fined \$700 plus numerous costs.

II. ANALYSIS.

¶4 Stella argues that the stop was unreasonable because the first officer, Officer Morris, did not observe any conduct that would warrant a stop of his car, and the observations of the second officer, Lieutenant Noel, are irrelevant because he testified that he was planning on stopping Stella's car based solely on Officer Morris's request to do so. Thus, Stella submits, that the trial court should have granted his motion to dismiss all evidence obtained after the stop. This court disagrees.

¶5 In reviewing the denial of a motion to suppress, we will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996); *see also* WIS. STAT. § 805.17(2). Whether a search is valid, however, is a question of constitutional law which we review *de novo*. *State v. Guzman*, 166 Wis. 2d 577, 586, 480 N.W.2d 446 (1992).

³ A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. WIS. STAT. § 971.31(10).

¶6 “The Fourth Amendment to the United States Constitution and art. I, § 11, of the Wisconsin Constitution both protect against unreasonable searches and seizures.” *State v. Phillips*, 218 Wis. 2d 180, 195, 577 N.W.2d 794 (1998). Stopping an automobile and detaining its occupants constitutes a “seizure” within the meaning of the Fourth Amendment, even if the purpose of the stop is limited and the resulting detention quite brief. *Berkemer v. McCarty*, 468 U.S. 420, 436-37. Therefore, under the Fourth Amendment, an officer who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke suspicion. *Id.* at 439. An investigatory stop is also permissible if the suspect’s conduct would merely constitute a civil forfeiture. *See State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991).

¶7 Consequently, a constitutional traffic stop may be based on reasonable suspicion:

Such reasonable suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” These facts must be judged against an “objective standard: would the facts available to the officer at the moment of the seizure ... ‘warrant a [person] of reasonable caution in the belief that the action taken was appropriate?’” This test applies to the stopping of a vehicle and detention of its occupants. The focus of an investigatory stop is on reasonableness, and the determination of reasonableness depends on the totality of circumstances....

State v. Richardson, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (citations omitted).⁴

¶8 When a motion is filed requesting that evidence be suppressed as a result of a traffic stop, the State has the burden of establishing the existence of probable cause by a preponderance of the evidence. *State v. Taylor*, 60 Wis. 2d 506, 519, 210 N.W.2d 873 (1973).

¶9 Here, the State met its burden. Under the totality of the circumstances test, Lieutenant Noel had reasonable suspicion to conduct an investigative stop. Officer Morris testified that he saw Stella’s car cross over the lane marker and return to the lane the car was traveling in, and he reported these facts to Lieutenant Noel.⁵ Lieutenant Noel also independently witnessed suspicious conduct which would have permitted him to stop the car: (1) he observed two unsignaled turns (WIS. STAT. § 346.34(1)(b) requires a signal when “other traffic may be affected by such movement.”); and (2) he observed the car stopping in the roadway for no apparent reason. These observations, coupled with the lane deviation observed by Officer Morris, gave rise to reasonable suspicion and, therefore, Lieutenant Noel’s stop was reasonable.

¶10 Stella argues that Lieutenant Noel’s observations are irrelevant because he decided to stop the car before observing the traffic violations. This

⁴ Our legislature has codified the constitutional standard established in *Terry* in WIS. STAT. § 968.24 (1993-94).

⁵ The trial court mistakenly believed that the officer witnessed the car cross the center line. The officer testified he saw the car cross over the lane marker on the right side of the car. In either event, the movement of the car outside of its lane, under the circumstances present here, was improper. See Wis. Stat. § 346.13.

court disagrees. In determining whether the stop was reasonable, this court must take into consideration the totality of all the circumstances. Here, Lieutenant Noel observed traffic violations, as well as other suspicious conduct before the stop was effectuated. Contrary to Stella's suggestion, Lieutenant Noel's observations are not irrelevant. Moreover, facts may give rise to reasonable suspicion permitting a traffic stop, even when none of a driver's actions were illegal, if the facts suggest that "something unlawful might well be afoot." *Waldner*, 206 Wis. 2d at 51. Thus, this court is satisfied that the trial court correctly determined that Lieutenant Noel had reasonable suspicion to stop Stella's car. Based upon the foregoing, Stella's conviction is affirmed.

By the Court.—Judgment and order affirmed.

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

