

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 4, 2003

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. 02-2687-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CM-275

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JACOB W. HATCHER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Barron County: JAMES C. EATON, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Jacob Hatcher appeals an order denying his motion to suppress evidence and a judgment of conviction for resisting or obstructing an officer, contrary to WIS. STAT. § 946.41(1). Hatcher contends that the officer he

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-2002 version unless otherwise noted.

encountered lacked reasonable suspicion to detain and question him. We disagree and, accordingly, we affirm the trial court's judgment and order.

Background

¶2 The facts of this case are undisputed. At 11:59 p.m. on June 26, 2001, officer Chris Fitzgerald was outside a bar in Rice Lake standing next to a car and speaking to another individual. He then noticed Hatcher, who appeared "very youthful," exit the bar alone and enter the back seat of the car. While Fitzgerald recognized Hatcher from an arrest less than six months earlier, he could not recall Hatcher's name. Fitzgerald also observed that Hatcher looked surprised when he noticed Fitzgerald standing by the car, appeared nervous and placed his hands to his face once in the car. Fitzgerald suspected Hatcher was under twenty-one years of age.

¶3 Fitzgerald walked to Hatcher's window and asked for his name. Hatcher gave his name as "Phil." Fitzgerald did not believe that to be correct, and asked again for Hatcher's name. The response was the same. Fitzgerald asked Hatcher's age and whether Hatcher had been drinking. Hatcher replied that he was twenty-one and that, yes, he had been drinking.

¶4 Fitzgerald asked Hatcher to exit the car and accompany him to the squad car so that he could get Hatcher's information for verification. Hatcher walked to the squad, but continued to maintain that his name was Phil. Fitzgerald told Hatcher he did not believe his name was Phil because he recognized Hatcher from an earlier arrest.

¶5 Fitzgerald asked whether Hatcher had his wallet, and Hatcher replied that he did not. Fitzgerald, however, noticed a bulge resembling a wallet in

Hatcher's pocket. Fitzgerald then advised Hatcher that he was going to conduct a pat-down search for officer safety and to search for the wallet. When Fitzgerald began the frisk at the top of Hatcher's body, Hatcher pushed away and fled. Hatcher was able to elude Fitzgerald but, on the way back to the station, Fitzgerald remembered Hatcher's real name and confirmed his identity with police records.

¶6 Hatcher was charged with resisting or obstructing an officer and filed a motion to suppress claiming Fitzgerald lacked probable cause to detain him. The trial court denied the motion, and Hatcher pled guilty to the charge. He now appeals.

Discussion

¶7 We note that the parties spend a great deal of time debating whether there was actually a stop or detention. We will assume without deciding that Hatcher was stopped. The parties also debate whether the frisk was reasonable—Hatcher contends that if the frisk was only for his wallet, then Fitzgerald should not have started at the top of his body. This is irrelevant because the remedy for an impermissible search would typically be suppression of the evidence obtained. *See State v. Raflik*, 2001 WI 129, ¶15, 248 Wis. 2d 593, 636 N.W.2d 690. In this case, there is nothing from the frisk to suppress. Thus, the sole issue is whether Fitzgerald had reasonable suspicion to detain Hatcher and investigate his identity.

¶8 When we review an order denying a motion to suppress, the trial court's factual findings will be upheld unless they are clearly erroneous. *State v. Fields*, 2000 WI App 218, ¶9, 239 Wis. 2d 38, 619 N.W.2d 279. A person is protected from unreasonable searches and seizures by the Fourth Amendment to the United States Constitution and by article I, section 11, of the Wisconsin

Constitution. Application of constitutional principles to the facts of the case is a question of law that we decide de novo. *Id.*

¶9 An investigatory stop is a “seizure” for constitutional purposes, but an officer may stop to identify a person if the officer reasonably suspects that the person is engaged in activity that constitutes a criminal or civil forfeiture offense. *See State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991). An officer must, however, have specific and articulable facts that, taken together with rational inferences, reasonably warrant the intrusion. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968).

¶10 This is an objective, commonsense test. The question is what a reasonable police officer would suspect, given his or her training and experience. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). The officer’s actions must be reasonable in light of all the facts and circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990).

¶11 Hatcher claims Fitzgerald’s sole purpose in detaining him was to determine his name, not because he suspected any criminal activity. Hatcher is incorrect.

¶12 Fitzgerald testified that as he watched Hatcher exit the bar, he did not believe Hatcher was twenty-one. Rather, Hatcher appeared to be eighteen or nineteen. If Fitzgerald was correct about Hatcher’s age, then under WIS. STAT. §§ 125.02(8m) and (20m) Hatcher would be considered an underage person. Underage persons generally may not consume alcohol. *See* WIS. STAT. § 125.07(4)(a)2 and 125.07(4)(b).

¶13 Hatcher claims that Fitzgerald had no reason to suspect that he was drinking. We disagree. As part of his official duties, Fitzgerald works specifically on combating underage drinking in Rice Lake and thus has particular experience. Fitzgerald observed the “very youthful,” apparently underage Hatcher exit the bar alone. Hatcher visibly reacted when he saw Fitzgerald. We deem these facts alone sufficient to raise a reasonable, commonsense suspicion that Hatcher had been illegally consuming alcohol. However, he also seemed nervous and attempted to conceal his identity. When asked for his name, Hatcher gave an answer Fitzgerald believed to be a lie. With these additional facts, Fitzgerald’s suspicions were patently reasonable.

¶14 In addition, regardless whether any alcohol is consumed, it is a violation for an underage person to be unaccompanied in an establishment licensed to sell alcohol.² WIS. STAT. § 125.07(3)(a) and 125.07(4)(a)3. Hatcher came out of the bar by himself; Fitzgerald had no reason to believe Hatcher had been with anyone of legal drinking age. *See* WIS. STAT. § 125.07(3)(a) (underage persons may consume alcohol if accompanied by a parent, guardian, or spouse who has obtained the legal drinking age).

¶15 Fitzgerald thus had a basis to suspect at least two violations. Hatcher then admitted that he had been drinking. The fact that he really was twenty-one is irrelevant. Without confirmation of Hatcher’s age, Fitzgerald’s suspicion of underage drinking appeared confirmed.

² There are, of course, several exceptions to this, such as when the establishment is a grocery store. *See* WIS. STAT. § 125.07(a)(3). None of the statutory exceptions, however, is applicable in this case.

¶16 Had Hatcher presented his identification to Fitzgerald, or at least given his real name, Fitzgerald would have been able to verify that Hatcher was of legal drinking age. At that point, based on the record, Fitzgerald would have had no further suspicions of criminal activity and would have had to terminate the investigation. Fitzgerald did, however, have reasonable and articulable suspicions that allowed him to initiate the stop.

By the Court.—Judgment and order affirmed.

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

