COURT OF APPEALS
DECISION
DATED AND FILED

November 25, 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. 03-1068-CR **Cir. Ct. No. 01CT000278**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DALE BECKER,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: RAYMOND THUMS, Judge. *Affirmed*.

¶1 CANE, C.J.[1] Dale Becker appeals from a judgment convicting him upon a plea of no contest of operating a motor vehicle while under the influence of an intoxicant (OWI), fourth offense, and from an order denying his motion to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

suppress evidence. The sole issue on appeal is whether the trial court erred by denying Becker's motion to suppress evidence. Becker argues that although the arresting officer had a legal basis to initially stop his vehicle, the officer impermissibly expanded the scope of his investigation and, therefore, the subsequent detention, search, and arrest were illegal. We are not persuaded, and the judgment of conviction and the order denying the motion to suppress are affirmed.

¶2 The essential facts are undisputed. While on routine patrol at approximately 2 a.m., officer Matthew Barnes of the Wausau Police Department, observed a vehicle without it headlights on coming toward him.[2] The officer engaged his emergency lights and stopped the vehicle driven by Becker. The officer stated that his normal response to seeing a vehicle driving at night without its headlights on is to conduct a traffic stop and investigate if the driver is impaired or for safety reasons inform the driver that the headlights are off.

¶3 As the officer approached the vehicle, Barnes held out his license with both hands, which the officer considered odd. Immediately, the officer noticed that Becker's eyes were red and glassy. He also detected an odor of intoxicants coming from Becker's vehicle. When asked whether he had been drinking that evening, Becker responded that he had come from a local tavern

[2] WISCONSIN STAT. § 347.06 provides in part:

> **When lighted lamps required**. (1) Except as provided in subs. (2) and (4), no person may operate a vehicle upon a highway during hours of darkness unless all headlamps, tail lamps and clearance lamps with which such vehicle is required to be equipped are lighted. Parking lamps as defined in s. 347.27 shall not be used for this purpose.

where he drank eight beers, but insisted he was not intoxicated. When Becker exited his car, he used both hands on the door and doorframe while he placed both feet on the ground. While talking to the officer, Becker needed to use his left arm on the car in order to balance himself.

¶4 The officer attempted to conduct field sobriety tests. He carefully explained the horizontal gaze nystagamous test twice to Becker who failed to comply with the instructions. Becker also refused to do the one leg stand test and the walk and turn test. After the officer warned Becker that his refusal to perform these three tests would result in his arrest for OWI, Becker consented to a preliminary breath test resulting in a .15% breath alcohol content.

¶5 Becker argues that even though the officer had a sufficient basis to initially stop his vehicle because the headlights were off, the officer impermissibly expanded the scope of the investigation to investigate a possible OWI violation. We agree with Becker that the initial stop and investigation must relate to the purpose of the initial stop, but disagree with his conclusion that the investigation was impermissibly expanded.

¶6 When reviewing a trial court's ruling on a suppression motion, we will uphold its factual findings unless they are clearly erroneous. ***State v. Roberts***, 196 Wis. 2d 445, 452, 538 N.W.2d 825 (Ct. App. 1995). However, whether a stop meets constitutional and statutory standards is a question of law, which we review de novo. ***State v. Krier***, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

¶7 The law of investigative stops allows police officers to stop a person when they have less than probable cause. ***State v. Waldner***, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996). To justify an investigatory seizure, the police must have a reasonable suspicion, grounded in specific articulable facts and reasonable

inferences from those facts, that an individual is violating or has violated the law. ***State v. Colstad***, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394. "The question of what constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience." ***State v. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

¶8 There is no question that a police officer may stop a vehicle when he or she reasonably believes the driver is violating a traffic law; and, once stopped, the driver may be asked questions reasonably related to the nature of the stop—including his or her destination and purpose. ***United States v. Johnson***, 58 F.3d 356, 357 (8th Cir. 1995). Such a stop and detention is constitutionally permissible if the officer has an "articulable suspicion that the person has committed or is about to commit [an offense]." ***State v. Goyer***, 157 Wis. 2d 532, 536, 460 N.W.2d 424 (Ct. App. 1990).

¶9 The key is the "reasonable relationship" between the detention and the reasons for which the stop was made. If such an "articulable suspicion" exists, the person may be temporarily stopped and detained to allow the officer to "investigate the circumstances that provoke suspicion," as long as "[t]he stop and inquiry [are] reasonably related in scope to the justification for their initiation." ***Berkemer v. McCarty***, 468 U.S. 420, 439 (1984) (internal quotation marks omitted). Thus, the questions asked during an investigative stop must be reasonably related in scope to the justification for its initiation. ***United States v. Brignoni-Ponce***, 422 U.S. 873, 881 (1975).

¶10 However, once a justifiable stop is made, as is the case here, the scope of the officer's inquiry, or the line of questioning, may be broadened beyond

the purpose for which the person was stopped if additional suspicious factors come to the officer's attention—keeping in mind that these factors, like the factors justifying the stop in the first place, must be "particularized" and "objective." ***United States v. Perez***, 37 F.3d 510, 513 (9th Cir. 1994). In other words, if, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended for an expanded investigation. The validity of the extension is tested in the same manner and under the same criteria as the initial stop. ***State v. Betow***, 226 Wis. 2d 90, 94, 98, 593 N.W.2d 499 (Ct. App. 1999).

¶11 Here, after the justified initial stop, additional suspicious factors for OWI came to the officer's attention justifying an expanded investigation. Becker admitted coming from a tavern after drinking at least eight beers, his eyes were red and glassy, he had a strong odor of alcohol coming from his car, and he produced his driver's license in an odd manner. These facts are sufficient to expand the investigation from a traffic violation for operating a motor vehicle without its headlamps on to a reasonable suspicion for OWI.

¶12 In addition to these facts, Becker's refusal to participate in three of the field sobriety tests, his difficulty in exiting the vehicle, his difficulty in maintaining his balance without leaning on the car, and his testing .15% blood alcohol content on the preliminary breath test constituted probable cause to arrest him for OWI.

¶13 Therefore, the court was correct in denying Becker's motion to suppress the evidence. The OWI 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.