COURT OF APPEALS
DECISION
DATED AND FILED

November 26, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1255-CR **Cir. Ct. Nos. 02TR3823**

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

COUNTY OF SHEBOYGAN,

PLAINTIFF-RESPONDENT,

V.

TODD A. HENDRIKSE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Affirmed*.

¶1 BROWN, J.[1] Where an officer received a dispatch that he understood to alert him to be on the lookout for a dark-colored truck which had just damaged a mailbox and was now heading eastbound on a particular county

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

highway and the officer immediately proceeded to that highway, saw a truck matching that general description two miles from the reported infraction, and no other vehicles matching that description were seen during this time, the officer had reasonable suspicion to make a ***Terry***[2] stop. On that basis, we affirm the ultimate investigation following the stop which resulted in Todd A. Hendrikse's citation of operating a motor vehicle while intoxicated.

¶2 The parties raise and discuss two issues. First, they note that when the officer originally confronted Hendrikse, it was after he had turned into a driveway, gotten out of his car along with a passenger, and was proceeding with the passenger to the front door of a home. The officer called out to Hendrikse to wait because he wanted to talk to them. The parties dispute whether this amounted to a seizure or whether Hendrikse voluntarily, and not pursuant to a show of authority, stopped to talk to the officer. We will assume without deciding that the officer exhibited a show of authority and that Hendrikse was compelled to stop and be investigated by the officer.

¶3 Assuming a seizure, the remaining issue is whether the stop and seizure was justified as a ***Terry*** stop. Hendrikse says it was not. First, he notes that the genesis of the complaint, vandalism of a mailbox, was generated by a tipster who provided no information about the color, make, model or license plate number of the vehicle the alleged perpetrators were driving. Further, Hendrikse asserts that the complainant was unsure of the direction the vehicle was traveling and made no observations of the contemporaneous actions of the vehicle other than that it was a loud truck. Hendrikse further argues that the officer was six

[2] ***Terry v. Ohio***, 392 U.S. 1 (1968).

miles away at the time he received the dispatch and the point where the officer confronted Hendrikse was a "good two to three" miles from the damage scene. Further, Hendrikse points out that he was not driving a "truck" but a Blazer SUV. Moreover, there is no evidence that the Blazer was loud. Thus, there could be no reasonable suspicion that the operator of the vehicle the officer saw was the one involved in the vandalism complaint.

¶4 Officers may stop and detain individuals if they have reasonable suspicion that the individual has committed a crime. ***Terry v. Ohio***, 392 U.S. 1, 30 (1968). The reasonable suspicion necessary to detain a suspect for investigative questioning must be bottomed on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot, and that action would be appropriate. ***Id***. at 21-22. The question of what constitutes reasonable suspicion is a commonsense test. Under all the facts and circumstances present, what would a reasonable police officer suspect in light of his or her training and experience? ***State v. Jackson***, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). Reasonable suspicion is determined from the totality of circumstances within an officer's knowledge. ***State v. Amos***, 220 Wis. 2d 793, 800, 584 N.W.2d 170 (Ct. App. 1998).

¶5 From this law, we deem it to be inconsequential what the officer did not know. While it may be that the complainant turned out not to be the person whose mailbox was damaged, or that the complainant did not actually observe the damage occurring, or that the complainant did not tell the dispatcher that it was a "dark truck" or that the dispatcher said it was a "dark truck," all of this is irrelevant. The officer testified that he heard a dispatch to be on the lookout for a dark truck, he saw a truck matching the description and it was the only truck

traveling east on the road where he was supposed to be looking for the perpetrator. These are the facts and circumstances within his knowledge and justified him in making the stop.

¶6 We also observe that the detention was short and unobtrusive. All the officer intended to do at first was ask Hendrikse and his passenger if they knew anything about the mailbox vandalism. The officer also peered into the car for any items that could have been used to vandalize mailboxes and found none. Had it not been for the smell of alcohol on Hendrikse's breath, the officer would have been on his way. Thus, when balancing the personal intrusion into the suspect's privacy with the societal interests in solving crime and bringing offenders to justice, the initial intrusion was minimal. *See* ***State v. Guzy***, 139 Wis. 2d 663, 680, 407 N.W.2d 548 (1987). We affirm.

By the Court.—Judgment affirmed.

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