

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 17, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2009AP2071-FT

Cir. Ct. No. 2008TR15528

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF RACINE,

PLAINTIFF-RESPONDENT,

V.

MICHAEL ALBERT SCHROER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
ALLAN B. TORHORST, Judge. *Affirmed.*

¶1 BROWN, C.J. Michael Albert Schroer appeals his conviction of operating while intoxicated, first offense. He claims that the police officer lacked the requisite information to have reasonable suspicion that he was committing a crime, the stop was therefore unlawful and the trial court should have granted his motion to suppress all evidence. But we agree with the trial court that where

police receive information from a citizen informant that a suspicious pickup truck is slowly going back and forth down a residential street at 3:30 in the morning and “approaching various houses,” a police officer has reasonable suspicion that crime may be afoot and has authority to freeze the situation to investigate. We affirm.

¶2 A Racine sheriff’s deputy testified that on November 1, 2008, at about 3:38 a.m., he received a call from dispatch of a suspicious vehicle in the area of North Sixth Street in the area of the Village of Waterford. The caller indicated that there was a newer model blue pickup truck “going up and down the street and approaching various houses.” The deputy proceeded to the area and observed a vehicle matching the description. The deputy pulled in behind the vehicle and activated the red and blue squad lights. The vehicle did not immediately stop, but continued for another block, turned right into a cul-de-sac, went to the end of the cul-de-sac and made a 180-degree turn at the end of the cul-de-sac. At this point, the deputy shined the squad spotlight directly into the cab of the pickup truck and the truck finally came to a halt. The deputy made contact, observed the usual symptoms of an intoxicated driver and eventually arrested the driver, defendant Schroer.

¶3 Schroer’s appellate brief focuses on case law that defines when a law enforcement officer may consider flight as one of the factors in whether there is reasonable suspicion that a crime is, was or will be committed. But we need not go there. It is irrelevant, for purposes of this appeal, whether Schroer was fleeing from the deputy or merely did not know that the deputy was behind him when he drove for another couple of blocks before stopping. The deputy himself testified that he did not consider Schroer to be fleeing and did not factor that into the decision on whether to stop Schroer.

¶4 In reviewing the deputy's decision to stop the vehicle, the test is one of common sense. We ask, under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience? See *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). The test invokes the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act. See *County of Dane v. Sharpee*, 154 Wis. 2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990). A determination of reasonableness depends on the totality of the circumstances. See *State v. Waldner*, 206 Wis. 2d 51, 53, 556 N.W.2d 681 (1996). “[I]f any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶5 In *Waldner*, the supreme court concluded that lawful but unusual and suspicious driving may be the basis of an officer's reasonable suspicion if a “reasonable inference of unlawful conduct can be objectively discerned.” *Waldner*, 206 Wis. 2d at 60. In this case, the late hour, the suspicious behavior of driving back and forth on a residential street and information supplied to the deputy that houses were being “approached” was enough to justify further investigation. Whether it was a home invasion, burglary, something else equally or more nefarious, or some innocent behavior such as a person who was simply lost, the deputy had the right to freeze the situation and find out. This is what a reasonable and prudent mind would conclude. We affirm the trial court.

By the Court.—Judgment affirmed.

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

