

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**August 10, 2010**

A. John Voelker  
Acting 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. 2010AP348-CR**

**Cir. Ct. No. 2008CT84**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GLENN L. EARHART,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Bayfield County:  
JOHN P. ANDERSON, Judge. *Affirmed.*

¶1 HOOVER, P.J.<sup>1</sup> Glenn Earhart appeals a judgment of conviction for operating while intoxicated, third offense. Earhart argues the police did not

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

have reasonable suspicion to temporarily detain him, because the complaining witness lacked credibility. We reject Earhart's argument and affirm.

### **BACKGROUND**

¶2 Bayfield County Sheriff's Deputy Jeffrey Kistner responded to a dispatch concerning Bonnie Hitchon. Hitchon, who was at work, reported she received a phone call from her former boyfriend, Glenn Earhart. According to Hitchon, Earhart stated, "I know where you are, I know where you live, bitch," and then hung up the phone. Hitchon told Kistner the caller ID displayed the call as "unavailable," but she recognized his voice.

¶3 Hitchon further informed Kistner she had a restraining order against Earhart. Kistner did not locate a restraining order, but did find a Sawyer County case pending against Earhart that had a no-contact bond provision regarding Hitchon. Kistner then verified the bond condition with the Sawyer County jail and made arrangements to meet with a Sawyer County deputy.<sup>2</sup>

¶4 Kistner and the other deputy decided to question Earhart about the alleged phone call. They proceeded to Earhart's residence, but nobody was home. As the deputies were leaving in their vehicles, however, a truck entered the driveway, proceeded past them, and stopped in the driveway. After the driver, later identified as Earhart, exited, the deputies walked up and spoke with him outside his vehicle. While conversing with Earhart, Kistner smelled the odor of an intoxicant from Earhart and noticed his speech was slightly slurred. Kistner

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<sup>2</sup> Earhart's residence was located approximately on the border of Sawyer and Bayfield Counties.

administered field sobriety tests and a preliminary breath test, and arrested Earhart for operating while intoxicated.

¶5 Earhart moved to suppress the evidentiary fruits of the encounter, arguing the police lacked reasonable suspicion to temporarily detain him. Following an evidentiary hearing, the circuit court denied the motion. Earhart pled no contest and now appeals.

### DISCUSSION

¶6 For an investigatory stop to be constitutional, a law enforcement officer must reasonably suspect “that a crime has been committed, is being committed, or is about to be committed.” *State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729. Whether reasonable suspicion existed for an investigatory stop is a question of constitutional fact, to which we apply a two-part standard of review. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. We uphold a circuit court’s findings of historical fact unless they are clearly erroneous. *Id.* Whether those facts constitute reasonable suspicion is a question of law that we decide independently of the circuit court. *Id.*

¶7 As an initial matter, we observe the facts of this case suggest Earhart was not the subject of an investigatory stop so as to require reasonable suspicion in the first place. Nonetheless, because the State does not address this issue, we will assume for the sake of argument that reasonable suspicion was required.

¶8 Earhart concedes that all of the facts known to the deputies would constitute reasonable suspicion if the officers could reasonably rely upon the information Hitchon provided. He argues, however, the deputies should have sought further corroboration because she was an unreliable witness. Earhart

argues there were “special circumstances” indicating Earhart was unreliable, citing the following language: “When an average citizen tenders information to the police, the police should be permitted to assume that they are dealing with a credible person in the absence of special circumstances suggesting that such might not be the case.” *State v. Sisk*, 2001 WI App 182, ¶9, 247 Wis. 2d 443, 634 N.W.2d 877 (quoting *State v. Kerr*, 181 Wis. 2d 372, 381, 511 N.W.2d 586 (1994)).

¶9 Earhart argues Kistner unreasonably relied on Hitchon’s report because she was a known criminal. Earhart’s argument flows entirely from the following testimony by Kistner when asked whether he knew Hitchon had pending cases against her: “I may have been aware that she was stopped for driving after revocation. But, I was unaware of how many, or – you know, with certainty, no.” Earhart contends that, based on this knowledge, Kistner should have inquired into Hitchon’s criminal record, which, in turn, would have revealed she had a single misdemeanor conviction and several pending criminal traffic cases. According to Earhart, this would have significantly undermined Hitchon’s credibility. Thus, Earhart insists Kistner should have further corroborated Hitchon’s allegation, suggesting Kistner should have reviewed phone records.

¶10 We reject Earhart’s absurd argument. Police need not conduct a criminal record search on a victim as a prerequisite to questioning the alleged actor, regardless of whether the investigating officer knows the victim has been arrested in the past. “In considering the totality of the circumstances, ... our focus is upon the reasonableness of the officers’ actions in the situation facing them. “The essential question is whether the action of the law enforcement officer was reasonable under all the facts and circumstances present.” *Williams*, 241 Wis. 2d

631, ¶23 (quoting *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990)).

¶11 Here, Kistner set out to investigate Hitchon's complaint further, seeking Earhart for voluntary questioning. This was eminently reasonable. At worst, Earhart was inadvertently temporarily detained due to the timing of his return home. Hitchon's minor criminal record and pending operating after revocation charges do not constitute special circumstances that would appreciably undermine her credibility as a victim witness. In any event, those circumstances were unknown to Kistner at the time and, therefore, are not part of the totality of the circumstances bearing on reasonable suspicion.

*By the Court.*—Judgment affirmed.

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

