

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 12, 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. 2010AP723-CR

Cir. Ct. No. 2008CT505

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVE J. WILL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County:
ALAN J. WHITE, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ Steve Will appeals the judgment of conviction for operating a motor vehicle while intoxicated (OWI), third offense, in violation

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) and (3) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

of WIS. STAT. § 346.63(1)(a). He contends that a sheriff's deputy who was looking for suspects from a nearby marijuana growing operation did not have reasonable suspicion to stop his vehicle, and therefore the circuit court erred in denying his motion to suppress evidence. For the reasons we explain below, we conclude that under the totality of the circumstances the deputy had reasonable suspicion to stop Will's vehicle. Accordingly, the court properly denied the motion to suppress, and we affirm the judgment of conviction.

BACKGROUND

¶2 Will was stopped by Columbia County Deputy Sheriff Cory Miller at approximately 9 p.m. on October 8, 2008. At the evidentiary hearing on Will's motion to suppress evidence, Deputy Miller and the arresting officer, Village of Rio Police Sergeant Jeff Becker, testified to the circumstances of the stop as follows.

¶3 The Columbia County Sheriff's Department had learned that marijuana plants were growing in a cornfield and had set up an alarm that would be tripped by someone walking in the field toward the plants. Deputy Miller responded when the alarm was tripped on the evening of October 8, 2008. Two deputies were hiding in the cornfield so that they could observe whoever was in the field, and, Deputy Miller believed, they had been there a few hours before the alarm was tripped. Deputy Miller's responsibility and that of a fourth deputy was to watch for vehicles and stop suspects coming from the marijuana operation along Hall Road, an approximately two-mile stretch that ends at Highway C on one end and at another road on the other end. Deputy Miller parked his vehicle at the corner of Hall Road and Highway C, about a quarter-mile from the alarm's

location. Initially, the fourth deputy was stationed at the other end of Hall Road, but at some point he was reassigned to another location.

¶4 After waiting twenty minutes without seeing a vehicle on Hall Road or hearing from the hidden deputies, Deputy Miller, who was standing outside his vehicle, saw Will's truck coming toward him on Hall Road. He shined his flashlight into the vehicle and observed one male, the operator of the vehicle. As the vehicle turned onto Highway C, the deputy shined his flashlight on the license plate and obtained the number. Deputy Miller believed, but was not sure, that the fourth deputy originally stationed at the other end of Hall Road had been reassigned by that time.

¶5 Deputy Miller did not immediately follow Will. He first tried to make radio contact with the deputies in the cornfield to ascertain whether the truck or its driver were associated with the marijuana operation, but he received no response from them. However, a detective sergeant familiar with the case told him over the radio that anyone leaving the area could be a suspect. Deputy Miller did not see any other vehicles on Hall Road while he was trying to contact the deputies. When he was unable to contact the deputies in the cornfield, he decided to follow Will's truck and stop it because he believed the driver could be someone involved in the marijuana operation.

¶6 Deputy Miller caught up to Will's truck after about eight to ten miles and pulled it over. He did not observe Will commit any traffic violations. After making contact with Will, he noticed the odor of intoxicants coming from him and that he had bloodshot eyes. Sergeant Becker arrived on the scene as backup, at which point Deputy Miller returned to his post at Hall Road because the suspects connected with the marijuana operation had not yet been apprehended and his

assistance was needed there. Sergeant Becker administered field sobriety tests and subsequently arrested Will.

¶7 The circuit court denied the motion to suppress and the motion for reconsideration. The court concluded that Deputy Miller had the requisite reasonable suspicion to make an investigative stop.

DISCUSSION

¶8 On appeal, Will renews his contention that Deputy Miller lacked reasonable suspicion that he was involved in the marijuana operation and the stop therefore violated his Fourth Amendment rights.

¶9 The Fourth Amendment to the United States Constitution protects against unreasonable searches and seizures, and an investigative stop is a seizure under the Fourth Amendment. *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634. To be lawful, an investigatory detention must be supported by reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that a person is or was violating the law. *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394. The supreme court has explained that the focus of this test is on reasonableness, with “[t]he fundamental question [being] at what point does the important societal interest in solving crime and bringing offenders to justice *reasonably* justify the specific intrusion on personal security, i.e., an investigative stop.” *State v. Guzy*, 139 Wis. 2d 663, 676, 407 N.W.2d 548 (1987) (emphasis in original).

¶10 In reviewing the circuit court’s determination, we accept the court’s findings of fact unless they are clearly erroneous, and we review de novo the application of those facts to the constitutional standard. *State v. Young*, 2006 WI

98, ¶17, 294 Wis. 2d 1, 717 N.W.2d 729. In this case, Deputy Miller and Sergeant Becker were the only witnesses and the circuit court accepted their testimony as credible. We therefore apply the constitutional standard to the events and circumstances described by the officers.

¶11 Will asks us to consider the following six factors utilized by the supreme court in *Guzy* to determine whether an investigatory stop was reasonable: (1) the particularity of the description of the defendant or the vehicle in which he fled; (2) the size of the area in which the defendant might be found, as indicated by such facts as the elapsed time since the crime occurred; (3) the number of persons about in that area; (4) the known or probable direction of the defendant's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation. *Guzy*, 139 Wis. 2d at 677 (citing 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE § 9.3(d) at 461 (2d ed. 1987)).

¶12 The State agrees that consideration of these factors is appropriate and adds the following factors considered by the court in *Guzy*: (1) whether alternative means of further investigation are available, short of an investigative stop; (2) whether the opportunity for further investigation would be lost if the officer does not act immediately; and (3) what actions following the stop would be necessary for the officer to determine whether to arrest or release the suspected individual. *Guzy*, 139 Wis. 2d at 678.

¶13 We conclude that the above nine factors are all appropriate to consider. After considering these factors as they apply to the facts of this case, we conclude for the following reasons that Deputy Miller had reasonable suspicion to stop Will's vehicle.

¶14 While Deputy Miller was unable to get a description of the suspect or suspects from the hidden deputies, he knew that Hall Road was “probably the only means of travel from the ... marijuana grow operation,” and that it was in a “very rural” and remote area. He also knew Hall Road was not heavily travelled and that it would make the most sense for anyone travelling through the area to use Highway C, rather than zigzag onto this short road. It was 9 p.m. and dark outside, from which a reasonable officer could infer that even fewer vehicles would opt to take Hall Road.

¶15 In addition, Will’s truck was the only vehicle Deputy Miller saw on Hall Road during the first twenty minutes after the alarm was activated *and* during the additional time he was attempting to gain more information over the radio. Also significant is the twenty minutes between the alarm being tripped and the sighting of Will’s vehicle. Given that Will’s location was about a quarter-mile from the location of the alarm, twenty minutes is consistent with the time it would take for a suspect to leave the marijuana plants, walk to a vehicle on Hall Road, and drive to the corner of Hall Road and Highway C. *See Guzy*, 139 Wis. 2d at 681 (“the time the deputies sighted the vehicle and its location was consistent with the time of the robbery and the distance a vehicle could have traveled from the robbery scene in that amount of time”).

¶16 After seeing Will’s truck emerge from Hall Road, Deputy Miller was suspicious, but instead of stopping the vehicle then to investigate, he used alternative means of investigation by attempting to contact the other deputies. Because he was unable to make contact with the deputies hidden in the field, he was unable to obtain a description of any suspect or learn if anyone had yet been apprehended. However, from the detective sergeant’s statement to him over the

radio—that anyone leaving the area could be a suspect—it was reasonable for him to infer that a suspect or suspects were still at large.

¶17 Considering the alternatives available to Deputy Miller, we reject Will’s contention that the deputy acted unreasonably in stopping him instead of having the deputies in the cornfield look at a photo of Will to determine whether he was seen in the cornfield. According to Will, by using the license plate number, the deputy could have obtained Will’s photo from his vehicle registration or driver’s license (apparently based on the assumption that Will owned the vehicle). We note that there is no evidence on whether, through what procedure, and in what time frame Will’s photo was available to Deputy Miller in this way. However, in any case Deputy Miller would have lost the opportunity to investigate Will’s connection to the marijuana operation at the time when Will was readily available to him and when he might have evidence of the crime with him. The same is true of the alternative of using the license plate number to obtain an address for Will (assuming he owned the vehicle) and trying to locate him at that address.

¶18 We agree with Will that his presence in an area of expected criminal activity, standing alone, is not enough to support reasonable suspicion. However, “officers are not required to ignore the relevant characteristics of a location in determining whether the circumstances are sufficiently suspicious to warrant further investigation.” *Illinois v. Wardlow*, 528 U.S. 119, 124 (2000). Thus, while any of the above facts considered alone may well be insufficient to constitute reasonable suspicion, “such facts accumulate, and ‘as they accumulate, reasonable inferences about the cumulative effect can be drawn.’” *Post*, 301 Wis. 2d 1, ¶37 (quoting *State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996)).

¶19 It is also true, as Will argues, that a suspect could have turned the other way down Hall Road where there may not have been a deputy present. However, this does not make it unreasonable for Deputy Miller to suspect that the vehicle that passed his location was connected with the marijuana operation. Deputy Miller did not know whether there were one or more vehicles involved in the events that triggered the alarm. More importantly, the existence of an alternative exit route does not undermine the factors—the amount of time from the alarm and the low probability that someone was driving on Hall Road for another reason—made it reasonable to suspect that the vehicle using *this* exit route (where Deputy Miller was stationed) was coming from the marijuana operation.

CONCLUSION

¶20 We conclude that the stop of Will's truck was supported by the requisite reasonable suspicion. Accordingly, we affirm.

By the Court.—Judgment affirmed.

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

