

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 14, 2012

Diane M. Fremgen
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. 2012AP259-CR

Cir. Ct. No. 2009CT2094

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CRAIG R. MOSS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
MARC A. HAMMER, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Craig Moss appeals a judgment of conviction for operating while intoxicated, second offense. Moss argues the State failed to prove

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

the police officer had reasonable suspicion to stop his vehicle, and therefore, the court erred by denying his suppression motion. We disagree and affirm.

BACKGROUND

¶2 At the suppression hearing, officer David Steffens testified that on August 13, 2009, at approximately 2:13 a.m., he encountered a brown Ford Taurus with a license plate number 768-DJL. Steffens explained that earlier in the evening the Brown County Drug Task Force sent a communication seeking to locate a brown Ford Taurus with the same license plate because of allegations that it was carrying one-half ounce of crack cocaine.

¶3 While patrolling a high crime area, Steffens observed the vehicle at the intersection of Clay and Pine Streets and watched it stop briefly in front of 1032 Pine Street. That residence was a known drug house, and Steffens had been at the house more than fifteen times for drug complaints and disturbances. Steffens stated, “[A]s the vehicle approached that area and observed my squad car, [it] immediately left southbound on North Clay, then went west on Walnut, back north on North Webster, and back west on Cherry Street simply going around the block making a circle.”

¶4 Steffens stopped the vehicle and made contact with the driver, who was subsequently identified as Moss. Steffens explained that he stopped the vehicle because of the time of day and because it “was leaving a known drug house, short-term traffic, making a lap around the block, also correlating to [the communication] that was sent out by the Drug Task Force.” A few questions later, Steffens stated that he “stopped the vehicle based on the [communication].”

¶5 The circuit court determined that the task force communication, the time of day, the location in front of a drug house, and the “vehicle itself act[ing] suspiciously ... traveling in a circle so as to arguably avoid law enforcement or to be ready in the event that law enforcement would attempt to secure the vehicle” amounted to reasonable suspicion.² The court denied Moss’s suppression motion. Moss pled guilty to operating while intoxicated, second offense.

DISCUSSION

¶6 To conduct a lawful traffic stop, an officer must have reasonable suspicion that a crime or traffic violation has been or will be committed. *State v. Popke*, 2009 WI 37, ¶¶13, 23, 317 Wis. 2d 118, 765 N.W.2d 569. Whether there is reasonable suspicion to conduct a traffic stop is a question of constitutional fact. *Id.*, ¶10. We uphold the circuit court’s factual findings unless they are clearly erroneous; however, we independently apply those facts to constitutional principles. *Id.*

¶7 Reasonable suspicion exists when, under the totality of the circumstances, “the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.” *State v. Post*, 2007

² Moss points out that Steffens’ description of the path Moss traveled conflicts with Steffens’ testimony that the vehicle traveled in a circle. Moss asserts that to complete a circle, the vehicle would have had to travel east on Cherry Street instead of west as Steffens testified. However, the circuit court, as fact finder, resolved this conflict and determined the vehicle traveled in a circle. Moss offers no legal argument or authority in support of his contention that the circuit court’s determination is erroneous. We will not consider it. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992).

WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634 (citation omitted). “Such a stop must be based on more than an officer’s ‘inchoate and unparticularized suspicion or hunch.’” *Id.*, ¶10 (citation omitted). Instead, the officer “‘must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the intrusion of the stop.” *Id.* (citation omitted). The State bears the burden of proving the constitutionality of the stop. *Id.*, ¶12.

¶8 On appeal, Moss argues the stop was based on the task force communication and the State failed to establish the communication was supported by the collective knowledge of the police department. Moss then contends that, independent of the communication, Steffens did not otherwise possess specific and articulable facts that would support a *Terry* stop.³

¶9 We conclude that, even without the task force communication, Steffens had reasonable suspicion to stop the vehicle. As a result, we do not need to address Moss’s arguments regarding the proof offered by the State to support the task force communication. *See Gross v. Hoffman*, 227 Wis. 296, 300, 277 N.W. 663 (1938) (only dispositive issues need be addressed); *State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W.2d 514 (Ct. App. 1989) (cases should be decided on the “narrowest possible ground”).

¶10 While patrolling a high crime area in the middle of the night, Steffens observed a vehicle stop briefly in front of a known drug house. When the vehicle observed Steffens’ squad car, it left the area, drove around, and reappeared nearby. Although these facts may not, individually, give rise to reasonable

³ *Terry v. Ohio*, 392 U.S. 1 (1968).

suspicion to conduct an investigatory stop, the cumulative effect amounts to reasonable suspicion that criminal drug activity was afoot. *See Post*, 301 Wis. 2d 1, ¶13. Steffens properly conducted an investigative stop on the vehicle.

¶11 Moss argues that, pursuant to *State v. Harris*, 206 Wis. 2d 243, 557 N.W.2d 245 (1996), *State v. Allen*, 226 Wis. 2d 66, 593 N.W.2d 504 (Ct. App. 1999), and *State v. Young*, 212 Wis. 2d 417, 569 N.W.2d 84 (Ct. App. 1997), an individual's mere presence in a high crime area, or briefly parking near a suspect residence at night, does not establish reasonable suspicion. *See Harris*, 206 Wis. 2d at 262 (a vehicle pulling away from a parked position on a residential block near a suspect's address is not reasonably suspicious behavior); *Allen*, 226 Wis. 2d at 75 (pedestrian's presence in a high crime area, brief contact with a car, and subsequent "hanging around a neighborhood" for five to ten minutes, do not, standing alone, amount to reasonable suspicion; however, taken together, the facts create reasonable suspicion to justify a stop); *Young*, 212 Wis. 2d at 433 (short term contact between two individuals in a high crime residential area in the afternoon does not amount to reasonable suspicion).

¶12 We agree with Moss that an individual's presence in a high crime area or a vehicle briefly parking near a suspect's residence would not, by itself, amount to reasonable suspicion. However, as explained above, that is not the test we apply. "We look to the totality of the facts taken together." *State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996). As the building blocks of fact accumulate, "reasonable inferences about the cumulative effect can be drawn." *Id.* The cumulative effect of the facts in this case—particularly including the suspicious driving route—gave rise to reasonable suspicion that criminal activity was afoot and allowed Steffens to stop the vehicle.

¶13 Finally, to the extent Moss’s argument suggests these factors cannot be relied on to support the stop because, at one point, Steffens testified the task force communication was the reason he stopped the vehicle, we disagree. The validity of a traffic stop is assessed by considering objective factors known to the officer at the time of the stop. Steffens’ subjective reason for stopping the vehicle is irrelevant. *See Waldner*, 206 Wis. 2d at 56; *see also State v. Buchanan*, 178 Wis. 2d 441, 447 n.2, 504 N.W.2d 400 (Ct. App. 1993) (“[I]t is the circumstances that govern, not the officer’s subjective belief.”).

By the Court.—Judgment affirmed.

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

