

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 6, 2014

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. 2013AP1686-CR

Cir. Ct. No. 2012CF266

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

KENNETH J. ROY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
RANDY R. KOSCHNICK, Judge. *Affirmed.*

Before Blanchard, P.J., Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Kenneth Roy appeals a judgment convicting him of a fourth offense within a five-year period of operating a motor vehicle while under the influence of an intoxicant (OWI-4th). The sole issue on appeal is whether the police lacked reasonable suspicion to conduct an investigatory stop of

Roy's vehicle.¹ For the reasons discussed below, we conclude that the stop satisfied constitutional standards, and therefore affirm the judgment of conviction.

¶2 According to *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be based 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. “The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?” *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989).

¶3 The totality of the circumstances test takes into account “both the content of information possessed by police and its degree of reliability.” *State v. Sisk*, 2001 WI App 182, ¶7, 247 Wis. 2d 443, 634 N.W.2d 877 (quoted source omitted). The police may reasonably deem information provided by a citizen informant about a crime in progress to be reliable when the citizen has identified himself or herself, or the officer is able to corroborate some of the information provided. *Id.*, ¶¶7-11; *State v. Powers*, 2004 WI App 143, ¶14, 275 Wis. 2d 456, 685 N.W.2d 869.

¶4 Here, Sergeant Alan Witte of the Lake Mills Police Department responded to a dispatch call made shortly after midnight about a possible impaired

¹ Although the State also disputes the moment at which a Fourth Amendment seizure occurred, we will assume for the purposes of this appeal that the stop occurred when the officer apparently boxed in Roy's vehicle with the officer's squad car.

driver. Dispatch informed the officer that a McDonald's employee had called to report that a drive-through customer was exhibiting slurred speech and smelled of alcohol. The McDonald's employee provided her own contact information as well as a description of the customer's vehicle, including the license plate. When the officer arrived at the McDonald's, he observed the vehicle that the informant had described parked in a stall, and he parked behind the vehicle to make contact with the driver.

¶5 We are satisfied that the information the officer possessed was both sufficiently detailed and sufficiently reliable to provide reasonable suspicion that Roy had been driving under the influence. That the employee could smell alcohol on the driver all the way from the drive-through window and that she noticed the driver's speech was slurred provided an articulable basis for her opinion that the driver was intoxicated, and the officer could reasonably suspect from the employee's call that the driver was in fact intoxicated. The employee gave her contact information to the dispatcher, and had no apparent reason for making the report other than being a concerned citizen. Moreover, the officer was able to verify the description of the vehicle given by the informant before making contact. We conclude that the stop was reasonable under the Fourth Amendment.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

