COURT OF APPEALS
DECISION
DATED AND FILED

April 2, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP771-CR **Cir. Ct. No. 2011CT760**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

MATTHEW M. MOSKOPF,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Kenosha County: JASON A. ROSSELL, Judge. *Reversed and cause remanded.*

¶1 NEUBAUER, P.J.[1] The State of Wisconsin appeals from an order suppressing evidence obtained from the arrest of Matthew Moskopf in this

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

operating a motor vehicle while intoxicated (OWI) case. The arresting officer received information from dispatch, including the fact that Moskopf was "highly intoxicated," and pulled him over. The people who called 911 about Moskopf did not say that he was intoxicated. The circuit court granted Moskopf's motion to suppress, reasoning that neither dispatch nor the arresting officer had reason to suspect that Moskopf was intoxicated. We conclude that the arresting officer had reasonable suspicion to stop Moskopf based on reasonable inferences from the collective knowledge of the police department.

FACTS

¶2 Officer Jurgens, the arresting officer, testified as follows at the suppression hearing. Jurgens was on patrol at about 10:30 p.m., on November 2, 2011, when he heard, from dispatch, about multiple calls from the Sunnyside Tavern. An off-duty police officer at the tavern called 911 and reported that a man was "going ballistic" after "we kicked him out of the bar," "he's just going nuts" and "trying to break in the front door of the bar." The caller reported that the man was wearing a "long sleeved gray T-shirt." In a second 911 call, the bartender told the dispatcher, "I got a guy here that we kicked out and he won't leave. He just keeps coming back in the front door." She said he was white and was wearing a "gray T-shirt" and jeans and "being combative."

¶3 The dispatcher indicated on the radio that the man was a "highly intoxicated" white male wearing a gray hooded sweatshirt and jeans and "refusing to leave and being real combative with the staff, now he's tryin' to kick the door down and get back in." Jurgens heard Officer DeWitt, another police officer on duty, say over the radio that he was responding to the call when his patrol vehicle was almost struck by a black Escalade, no plates, which then headed north.

Jurgens radioed in that he was going to canvass the area to see if he saw the black Escalade. Jurgens spotted the vehicle just west of Spanky's Tavern. While Jurgens waited for back-up to go with him into the tavern, he saw someone get into the vehicle wearing a gray top and blue jeans. Jurgens watched the vehicle drive away, followed it for about a block, then conducted a traffic stop and arrested Moskopf for OWI, second offense, and operating with a prohibited alcohol concentration. At the time he stopped Moskopf, Jurgens had not seen Moskopf violate any traffic laws.

¶4 The circuit court granted Moskopf's motion to suppress, ruling that Jurgens "did not have reasonable suspicion supported by the collective knowledge of the Police Department to make the traffic stop." The circuit court reasoned that because the 911 callers had not told the dispatcher that Moskopf was intoxicated, and the intoxication was the only reason Jurgens had to pull Moskopf over, there was no reasonable suspicion to stop Moskopf. Additionally, the circuit court noted that the dispatcher had said that Moskopf wore a gray sweatshirt, while the callers had indicated a gray shirt. "So, the 911 dispatch out to officers contained a number of errors."

DISCUSSION

¶5 "When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. However, the application of constitutional principles to the facts is a question of law we decide without deference to the circuit court's decision." ***State v. Fields***, 2000 WI App 218, ¶9, 239 Wis. 2d 38, 619 N.W.2d 279 (citation omitted).

¶6 A law enforcement officer may lawfully conduct an investigatory stop if, based upon the officer's experience, he or she reasonably suspects "that

criminal activity may be afoot." ***State v. Williams***, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106 (quoting ***Terry v. Ohio***, 392 U.S. 1, 30 (1968)). Reasonable suspicion is dependent on whether the officer's suspicion was grounded in specific, articulable facts, and reasonable inferences from those facts, that an individual was committing a crime. ***State v. Waldner***, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996). "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. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). "[A] police officer may, under the appropriate circumstances, detain a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest." ***Waldner***, 206 Wis. 2d at 55. Police officers are not required to rule out the possibility of innocent behavior before initiating a ***Terry*** stop. ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). "[S]uspicious conduct by its very nature is ambiguous," ***id.***, and when there is reason to suspect wrongful conduct, "officers have the right to temporarily freeze the situation in order to investigate further," ***State v. Jackson***, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989).

¶7 Where, as here, an officer relies on information provided by dispatch, "reasonable suspicion is assessed by looking at the collective knowledge of police officers." *See* ***State v. Pickens***, 2010 WI App 5, ¶11, 323 Wis. 2d 226, 779 N.W.2d 1. When an officer relies on information from dispatch in making a stop, the inquiry is whether the dispatcher, not the responding officer, had knowledge of specific and articulable facts supporting reasonable suspicion at the time of the stop. *See* ***United States v. Hensley***, 469 U.S. 221, 231-32 (1985)

("[E]vidence uncovered in the course of the stop is admissible if the police who *issued* the flyer or bulletin possessed a reasonable suspicion justifying the stop.").

¶8 Moskopf argues on appeal that the State failed to demonstrate at the suppression hearing that the police had collective knowledge of specific, articulable facts supporting a reasonable suspicion to perform a traffic stop. Therefore, the issue is whether the dispatcher, DeWitt, and the police department possessed reasonable suspicion, grounded in specific and articulable facts, to justify the investigative stop of Moskopf's vehicle.

¶9 The record contains not only the testimony at the suppression hearing but also transcripts of the 911 and dispatch calls. At the time of the stop, the dispatcher knew, and had told Jurgens, that Moskopf had been trying to get back into a bar he had been kicked out of, was combative, and was wearing a gray shirt and jeans. Furthermore, Jurgens knew that DeWitt had reported that a black Escalade had almost hit DeWitt's vehicle. Moskopf makes much of the fact that the dispatcher described him as "highly intoxicated" while the 911 callers had not used this phrase. This is of no moment. Reasonable suspicion is formed from articulable facts and the reasonable inferences from those facts. ***Waldner***, 206 Wis. 2d at 55-56. Reasonable suspicion is based on the totality of the circumstances. *See* ***Young***, 212 Wis. 2d at 424. Here, the dispatcher could reasonably infer from the reported facts—Moskopf had been kicked out of the bar, it was around 10:30 p.m., Moskopf was trying to get back into the bar, and Moskopf was combative with the bartender—that Moskopf was intoxicated. This information, combined with the report that the black Escalade almost hit DeWitt's vehicle, supports reasonable suspicion that Moskopf was intoxicated.

¶10 Moskopf further asserts that his black Escalade was not sufficiently described because the dispatcher said it did not have license plates when in fact it

had one or both. A black Escalade heading north from the Sunnyside Tavern is a sufficient description for Jurgens to infer that it was the same vehicle that had left the Sunnyside Tavern and had almost hit DeWitt's vehicle. Jurgens' observation of the driver further supported the inference that the driver was the combative, rejected patron.

¶11 Based on our review of the record, we are satisfied that the police had reasonable suspicion, grounded in specific and articulable facts as possessed by the police department at the time of the dispatch call and by Jurgens at the time of Moskopf's arrest, to stop Moskopf.

CONCLUSION

¶12 We conclude that the police had the requisite reasonable suspicion to stop Moskopf's vehicle. Because we conclude there was reasonable suspicion to stop Moskopf, we need not decide if there was probable cause to arrest Moskopf for disorderly conduct. *See* ***Sweet v. Berge***, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (we need not address all issues raised when deciding case on other grounds.) We therefore reverse the circuit court's order granting the motion to suppress.

By the Court.—Order reversed and cause remanded.

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