

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 13, 2016

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. 2015AP1277-CR

Cir. Ct. No. 2014CF12

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL A. SHEPARD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Forest County:
LEON D. STENZ, Judge. *Affirmed.*

Before Stark, P.J., Hruz and Seidl, JJ.

¶1 PER CURIAM. Michael Shepard appeals a judgment, entered upon his guilty pleas, convicting him of operating while intoxicated (“OWI”) as a seventh offense and attempted escape. Shepard argues the circuit court erred by

denying his motion to suppress evidence obtained from a traffic stop. We reject Shepard's arguments and affirm the judgment.

BACKGROUND

¶2 According to an incident report, the Crandon Police Department received 911 calls reporting a domestic disturbance between Mike Olds and Lori Thomas, in which Thomas stated she feared for her life. Deputy William Hujet responded to the calls at the home of Olds's mother. At the suppression motion hearing, Hujet testified that Thomas met him in the driveway of the home and informed him that Olds was in the house. Olds's mother told Hujet her son "might be in the basement." Hujet did not locate Olds in the basement, but he noticed one set of footprints in new snow leading from a back door at the landing atop the basement steps.

¶3 Hujet and his canine tracked the footsteps toward a residence on a nearby street. When Hujet was within approximately seventy-five feet of the residence, he observed two vehicles leaving the home in different directions. One—a dark-colored Chevy Blazer—drove away at what Hujet deemed to be a "high rate of speed" compared to the posted speed limit. Hujet presumed Olds might be in one of the vehicles, and he directed officer Darrel Wilson, who was coming from the direction in which the Blazer was headed, to stop the vehicle.

¶4 When Wilson stopped the Blazer, he did not locate Olds. Rather, the Blazer was driven by Shepard. During Wilson's interaction with Shepard, the officer noticed Shepard had a strong odor of intoxicants, blood shot eyes, and slurred speech. Shepard attempted to run from the scene but was apprehended by Wilson.

¶5 The State charged Shepard with operating while intoxicated and with a prohibited alcohol concentration, each as a seventh offense, operating after revocation, obstructing an officer, attempted battery of an officer, and resisting an officer. Shepard filed a motion to suppress evidence, claiming law enforcement lacked reasonable suspicion to stop his vehicle. Shepard's motion was denied after a hearing. In exchange for his guilty pleas to seventh-offense OWI and an amended charge of attempted escape, the State agreed to dismiss and read in the remaining charges and join in defense counsel's recommendation of four years' initial confinement and four years' extended supervision for the OWI offense, with a consecutive three-year probation term for attempted escape. The circuit court imposed a sentence consistent with the joint recommendation. This appeal follows.

DISCUSSION

¶6 Shepard argues the police lacked reasonable suspicion to stop him. We are not persuaded. Officers may stop and detain individuals if they have reasonable suspicion that the individual committed a crime. *See Terry v. Ohio*, 392 U.S. 1, 30 (1968); *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). The test for determining whether reasonable suspicion exists is based on an objective standard and takes into account the totality of the circumstances. *State v. Williams*, 2001 WI 21, ¶22, 241 Wis. 2d 631, 623 N.W.2d 106. Reasonable suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant” the intrusion of the stop. *Terry*, 392 U.S. at 21. An “inchoate and unparticularized suspicion or ‘hunch’” will not suffice. *Id.* at 27. Notably, *Terry* does not require that the officer be able to rule out innocent explanations for the suspicious conduct. *State v. Waldner*, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996).

¶7 “The crucial question is whether 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 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. That commonsense approach “balances the interests of the State in detecting, preventing, and investigating crime and the rights of individuals to be free from unreasonable intrusions.” *Id.* Further, reasonable suspicion is assessed by looking at the collective knowledge of the police officers. *See State v. Pickens*, 2010 WI App 5, ¶12, 323 Wis. 2d 226, 779 N.W.2d 1. “Under the collective knowledge doctrine, an investigating officer with knowledge of facts amounting to reasonable suspicion may direct a second officer without such knowledge to stop and detain a suspect.” *Id.* The State, however, must prove the collective knowledge that supports the stop. *Id.*, ¶13.

¶8 In *State v. Williams*, 2002 WI App 306, ¶14, 258 Wis. 2d 395, 655 N.W.2d 462, this court reversed an order suppressing evidence discovered after police stopped a vehicle based on the mistaken belief that the vehicle’s driver was a domestic abuse suspect. There, as here, police responded to a domestic abuse incident and were unable to locate an alleged suspect in the incident. *Id.*, ¶2. Law enforcement officers were informed that the suspect was a young black man driving a four-door Chevrolet Euro with a red pinstripe and tinted windows. *Id.* Four days later, law enforcement stopped a black man driving a Chevrolet Euro with a red pinstripe a few blocks from the scene of the domestic abuse incident. *Id.*, ¶3. As in the present matter, neither the driver nor anyone else in the vehicle was actually connected to the domestic incident the police were investigating. *Id.* However, the stop led to the driver’s arrest for cocaine possession. *Id.*, ¶¶4, 7. Although the police were wrong about who was driving the car in *Williams*, this

court determined the stop was a product of reasonable suspicion, concluding it was a means to quickly get information with minimal intrusion. *Id.*, ¶14. While the facts supporting reasonable suspicion for the stop in *Williams* were arguably stronger than those in the instant case, we nevertheless conclude Hujet had specific and articulable facts which, taken together with rational inferences from those facts, reasonably warranted the intrusion of the stop.

¶9 Upon receiving complaints of a domestic disturbance and being told by both Thomas and Olds's mother that Olds was inside the house, Hujet had reasonable suspicion to both search for Olds and, upon seeing footprints trailing from the back door, assume he had fled, thus suggesting a consciousness of guilt. *See State v. Winston*, 120 Wis. 2d 500, 505, 355 N.W.2d 553 (Ct. App. 1984) (fact of accused's flight or related conduct is circumstantial evidence of consciousness of guilt). When Hujet and his canine tracked the footsteps toward a neighboring residence, Hujet had a reasonable, articulable basis to believe Olds was in one of the two departing vehicles—especially the Blazer, which Hujet deemed to have departed quickly. Because there was sufficient reasonable suspicion to believe Olds was in the Blazer, Wilson was justified, under the collective knowledge doctrine, to stop the vehicle and investigate further. Although from a Fourth Amendment perspective Shepard was in the wrong place at the wrong time, society's interest in accomplishing the stop outweighed Shepard's personal interest in being free from the temporary, investigative detention. Given the chain of events, we conclude the police had reasonable suspicion to stop Shepard's vehicle; therefore, the circuit court properly denied the motion to suppress evidence obtained from the stop.

By the Court.—Judgment affirmed.

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

