COURT OF APPEALS DECISION DATED AND RELEASED

October 29, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* § 808.10 and RULE 809.62, STATS.

NOTICE

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No. 96-1382-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMES STANKIEWICZ,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: ELSA C. LAMELAS, Judge. *Affirmed*.[1]

CURLEY, J. James Stankiewicz appeals from a judgment convicting him of operating a motor vehicle while under the influence of an intoxicant, following his entry of a no contest plea which resulted in a guilty finding by the trial court. Stankiewicz raises one issue for review—whether the trial court erred when it denied his motion to suppress evidence police procured after they stopped him. He argues that police did not have reasonable

[1] The Hon. Charles F. Kahn, Jr., presided over the suppression hearing. The Hon. Elsa C. Lamelas entered the judgment of conviction.

suspicion for an investigative stop after observing him parallel park his automobile and walk away. Because the trial court could validly conclude that under the totality of the circumstances the police had reasonable suspicion to detain Stankiewicz, this court concludes the trial court properly denied the motion to suppress and the judgment of conviction is affirmed.[2]

Milwaukee police first observed Stankiewicz parallel parking his auto at approximately 2 a.m. After observing him exit his car, the police officer saw Stankiewicz either stumble getting out of his car, or stumble walking over the curb. After noticing the stumbling, the officer then left his squad car and advanced towards Stankiewicz. Upon approaching him, the officer noticed that Stankiewicz's eyes were bloodshot; he had a strong odor of alcoholic beverages about him; and his speech was slurred. Several field sobriety tests were then administered to Stankiewicz which he performed unsatisfactorily. Following the administration of the tests, the police arrested Stankiewicz and the State charged him with operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a prohibited blood alcohol concentration.

Stankiewicz brought a motion to suppress the initial stop by the officer. At the suppression hearing he argued that the police officer did not have sufficient probable cause to stop and question him, having only witnessed the end of his parallel parking maneuver and his stumbling while walking away from his car. The trial court denied his motion. Subsequently, Stankiewicz entered a plea of no contest to the operating a motor vehicle while under the influence of an intoxicant. The second charge was dismissed and this appeal follows.

"In reviewing an order suppressing evidence, this court will uphold a trial court's findings of fact unless they are against the great weight and clear preponderance of the evidence." ***State v. Richardson***, 156 Wis.2d 128, 137, 456 N.W.2d 830, 833 (1990). The legality of the stop, however, is a question of law and is reviewed *de novo* by this court. *See* ***State v. Baudhuin***, 141 Wis.2d 642, 648-49, 416 N.W.2d 60, 62 (1987).

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[2] This appeal is decided by one judge pursuant to § 752.31(2)(b), STATS.

The validity of an investigatory stop is governed by the landmark case of ***Terry v. Ohio***, 392 U.S. 1 (1968), which has been codified by § 968.24, STATS.[3] As this court stated in ***State v. King***, 175 Wis.2d 146, 499 N.W.2d 190 (Ct. App. 1993):

> ***Terry*** and its progeny require that a police officer reasonably suspect, in light of his or her experience, that some criminal activity has taken or is taking place before stopping an individual. The focus of an investigatory stop is on reasonableness, and the determination of reasonableness depends on the totality of the circumstances.

Id. at 150, 499 N.W.2d at 191 (citation omitted). "The test is an objective test. Law enforcement officers can infringe on the individual's interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime." *See* ***State v. Guzy***, 139 Wis.2d 663, 675, 407 N.W.2d 548, 554 (1987).

Stankiewicz argues in his brief that the officer's "investigative stop ... was not reasonable under the totality of the circumstances.... [Because the officer] did not receive any information that Stankiewicz had committed, committed or was about to commit a crime." Further, Stankiewicz argues that "[the officer did not] receive any information that [Stankiewicz's] vehicle was involved in any criminal activity." Stankiewicz contends that this case can be

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[3] Section 968.24, STATS., provides:

> **Temporary questioning without arrest**. After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

distinguished from several others upholding a “stop” of an automobile because the officer never actually saw any erratic driving or witnessed any traffic violations. The District Attorney's Office argues that while the trial court neglected to make any specific findings as to when the stop actually occurred, sufficient factual findings can be inferred from the testimony at the suppression hearing to justify the officer's actions.

Contrary to the district attorney's assertions, a careful review of the record reflects that the trial court did make findings with regard to the stop by the police. As the trial court stated:

> Here the issue is whether there was enough ... indicia of the commission of a crime for [the officer] to first, stop and question Mr. Stankiewicz and then whether there was probable cause for his arrest on the charge of driving under the influence of an intoxicant.
>
> Initially [the officer] saw Mr. Stankiewicz operating the vehicle.
>
> And [the officer] then also observed Mr. Stankiewicz exit the vehicle, and also [the officer's] attention was brought to Mr. Stankiewicz because of Mr. Stankiewicz's unsteadiness in his walking....
>
> And obviously, at that time of night without a lot of activity going on there, these officers took the opportunity to watch someone who got out of his vehicle and noticed that Mr. Stankiewicz was unsteady and was stumbling, tripping, and had difficulty walking. *There, by itself, is sufficient reason for the officers to pursue the matter further*.
>
> [T]heir duty requires that the officers investigate further and question Mr. Stankiewicz as to the possibility of impaired -- of driving while under the influence of an intoxicant.

From this record, one can deduce that the trial court found the officers had a reasonable belief on the basis of their observations to suspect that Stankiewicz had committed the crime of operating while under the influence of an intoxicant.

As was articulated by our supreme court in ***Guzy***: "[c]ertain investi-gative stops, prompted by an officer's suspicion that the occupants have committed a crime, may in certain circumstances be constitutionally permissible even though the officer lacks probable cause to arrest." ***Id***. at 675, 407 N.W.2d at 554. Here, there may not have been reason enough to initially arrest Stankiewicz for operating an automobile while under the influence of an intoxicant without the additional confirming evidence of intoxication; but the facts which presented themselves to the officer were sufficient for an investigatory stop. An officer with four-and-one-half years of experience who sees a car being parked late at night and then notices the operator of the automobile stumbling along after alighting from the car can reasonably suspect that the crime of operating while under the influence of an intoxicant may have been committed.

These facts lead to the suspicion of a specific crime; that is, operating an automobile while under the influence of an intoxicant and the reasons for the officer's suspicion went beyond a mere "hunch" and could be verbalized. It is common knowledge that stumbling and staggered walking on the part of healthy adults are frequently indicative of intoxication. This is a conclusion that any reasonable police officer could make. Additionally, the officer had just witnessed this person exit a car. It is entirely reasonable to believe this combination of factors led the officer to think a crime had just been committed. While it is possible that the officer might have discovered the driver was not intoxicated and merely clumsy or having difficulty seeing at night, given all the factors it was reasonable to suspect that alcoholic consumption was the reason for Stankiewicz's inability to walk. As a result, under the totality of the circumstances, the officer could properly detain Stankiewicz for further investigation.

Accordingly, the trial court properly denied the suppression motion. For these reasons, the judgment of the trial court is affirmed.

By the Court.—Judgment affirmed.

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