

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

November 7, 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

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1635

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

COUNTY OF JEFFERSON,

Plaintiff-Respondent,

v.

LESLIE L. CROOK,

Defendant-Appellant.

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

DEININGER, J.¹ Leslie Crook appeals from a judgment finding him guilty of operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a prohibited alcohol content. Crook claims that the police did not have the reasonable suspicion required for

¹ This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

a police stop and that the evidence obtained as a result of the stop should have been suppressed. We disagree and affirm.

BACKGROUND

The facts are not in dispute. On April 22, 1995, Jefferson County Deputy Sheriff Mark Miller received a call at 1:25 a.m. from the police dispatcher informing him that a private citizen had spotted a "possible drunk driver" operating a "blue-colored older model Ford truck" heading eastbound on Interstate 94. The anonymous citizen reported the vehicle's registration number and stated that the vehicle was "all over the road."

Miller was headed toward the location identified by the anonymous citizen when the dispatcher contacted him again and stated that the citizen had reported that the truck had taken the exit to state Highway 89. As Miller exited the interstate, he spotted a truck matching the citizen's description on Highway 89 and began to follow it. The truck headed north on Highway 89 briefly, then drove onto the westbound on-ramp for Interstate 94. Upon approaching the truck, Miller observed that the registration number matched that given to him by the dispatcher. He also noted that the truck crossed the white shoulder line twice by approximately two feet. At the suppression hearing, Miller testified that the anonymous tip and the truck's uneven driving led him to suspect that the driver of the blue truck was a drunk driver. He stopped the truck and, after determining that the driver was Leslie Crook and performing field sobriety tests, arrested him for operating a motor vehicle while under the influence of intoxicants (OMVWI).

Crook brought a motion to suppress all evidence obtained as a consequence of the stop by Miller on the basis that Miller did not have a reasonable suspicion sufficient to make the stop. The trial court denied the motion and found Crook guilty of OMVWI and of operating with a prohibited alcohol concentration after a stipulated trial.

ANALYSIS

When reviewing a trial court's determination regarding the suppression of evidence, we will uphold the 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). However, whether an investigative stop meets statutory and constitutional standards is a question of law which we review de novo. *State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

Under *Terry v. Ohio*, 392 U.S. 1, 27 (1968), the police must possess sufficient information to form a reasonable suspicion of illegal activity to justify an investigative stop. Reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion." *Richardson*, 156 Wis.2d at 139, 456 N.W.2d at 834 (quoting *Terry*, 392 U.S. at 21). Reasonableness is measured against an objective standard, taking into consideration the "totality of the circumstances." *Id.* at 139- 140, 456 N.W.2d at 834-835. It is "a common sense question, [one] which strikes a balance between the interests of society in solving crime and the members of that society to be free from unreasonable intrusions." *State v. Jackson*, 147 Wis.2d 824, 831, 434 N.W.2d 386, 389 (1989).

Ordinarily, an anonymous tip is not enough, by itself, to constitute reasonable suspicion of criminal activity. *Alabama v. White*, 496 U.S. 325, 329 (1990). However, the corroboration by police of the innocent details of an anonymous tip may, under the totality of the circumstances, give rise to reasonable suspicion. *Richardson*, 156 Wis.2d at 142, 456 N.W.2d at 835. The corroborated actions of a suspect "need not be inherently suspicious or criminal in and of themselves." *Id.* Rather, the cumulative facts, "along with reasonable inferences and deductions which a reasonable officer could glean therefrom, is sufficient to supply the reasonable suspicion that crime is afoot ... and to justify the stop." *Id.* Further, the circumstances of the tip itself may provide "indicia of reliability" sufficient to justify the stop. See *White*, 496 U.S. at 328.

Crook argues that the tip lacked both corroboration by the police and indicia of reliability. We disagree. Miller, proceeding to the location described by the anonymous caller, came across a vehicle matching the description and registration identified by the caller. Further, the vehicle left the interstate at the exit reported by the caller. The anonymous caller's accurate description of Crook's location and point of exit indicates that the caller had an

opportunity to observe Crook's driving, giving rise to some indicia of reliability. Further, Miller also followed Crook and observed his uneven driving, consisting of two instances in which he crossed over the white shoulder line by approximately two feet. Miller's observations corroborated the caller's report of Crook's erratic driving. We conclude that the anonymous tip describing Crook's vehicle as being "all over the road," combined with Miller's observations, constituted sufficient information to form a reasonable suspicion of OMVWI.

Crook also argues that because crossing the shoulder line "is not an offense in Wisconsin," Miller could not possess a reasonable suspicion that he was driving while intoxicated. The fact that Miller did not observe an actual traffic violation by Crook is irrelevant on these facts. Miller did not base his stop on a violation of a traffic law; rather, he suspected Crook was OMVWI, based on the tip and Miller's own observation of Crook's driving. As we noted in *Krier*, 165 Wis.2d at 678, 478 N.W.2d at 65, "[s]uspicious activity justifying an investigative stop is, by its very nature, ambiguous." An officer has the right to temporarily detain an individual for the purposes of inquiry "if any reasonable inference of wrongful conduct can be objectively discerned." *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990) (emphasis added).

Further, we note that we have previously held that where the potential crime involves a dangerous ongoing activity, the alternative means available to the officer to investigate short of making the stop is a consideration in determining reasonableness. See *State v. King*, 175 Wis.2d 146, 154, 499 N.W.2d 190, 193 (Ct. App. 1993). Requiring Miller to further investigate the situation, for instance by allowing a potential drunk driver to continue driving, could seriously endanger public safety. We conclude that under the totality of the circumstances, the stop was justified. Accordingly, we affirm the judgment.

By the Court. – Judgment affirmed.

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