COURT OF APPEALS DECISION DATED AND RELEASED

FEBRUARY 11, 1997

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(1), 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. 96-2004-FT

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

CITY OF MARINETTE,

Plaintiff-Respondent,

v.

PAUL H. GERONDALE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Marinette County: TIM A. DUKET, Judge. *Affirmed.*

LaROCQUE, J. Paul Gerondale appeals a judgment of conviction for OWI (first offense civil).[1] He challenges the trial court's denial of his motion to suppress evidence on grounds of an illegal search and seizure. This court affirms.

Gerondale was initially stopped by a Marinette police officer, Dennis Gladwell, at approximately 1:15 a.m., for driving without a registration plate. According to Gladwell, when he approached the vehicle he observed an

[1] This is an expedited appeal under RULE 809.17, STATS.

odor of intoxicants on Gerondale's breath, detected "slightly slurred speech" and noticed his "red, watery eyes." Gladwell took possession of Gerondale's driver's license and registration and returned to his squad for an unspecified time to verify their validity with radio dispatch. In response to Gladwell's inquiry whether he had been drinking, Gerondale advised that he had had four beers.

Gerondale does not challenge the initial stop to check the vehicle registration. *See* ***State v. Griffin***, 183 Wis.2d 327, 515 N.W.2d 535 (Ct. App. 1994). Rather, he contends that the officer unlawfully expanded the scope of the temporary stop when he approached Gerondale for the second time. It is his contention that no further conversation was necessary in light of his discovery that the license and registration were in proper order.

"The temporary detention of individuals during the stop of an auto by the police, even if only for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment." ***State v. Gaulrapp***, No. 96-1094-CR, slip op. at 2 (Wis. Ct. App. Dec. 27, 1996, ordered published Jan. 28, 1997). "An auto stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances." ***Id.***

This court concludes that the officer had grounds to pursue the question of Gerondale's intoxication as a result of the factual inferences drawn from observations made at the time of the initial stop: the odor of intoxicants, the red, watery eyes and the slightly slurred speech. Gerondale contends that because these symptoms are also consistent with causes other than intoxication, they constitute insufficient grounds to render the officer's further inquiry, including field tests, reasonable. This court disagrees.

The officer is not required to rule out the possibility of innocent behavior when conducting a ***Terry***[2]-type stop. *See* ***State v. Anderson***, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990). The fundamental focus of the Fourth Amendment is on reasonableness; it is a common sense test; it inquires what a

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[2] ***Terry v. Ohio***, 392 U.S. 1 (1968).

reasonable police officer would suspect in light of his training and experience. ***Id.*** at 83, 454 N.W.2d at 766. This court concludes that the officer's observations justified the temporary stop relating to OWI to conduct further tests.

Gerondale argues that because the evidence suggests that the officer's inquiry regarding Gerondale's consumption of intoxicants occurred only after the registration and license check indicated no violation, the questioning exceeded the scope of the initial stop. This timing of the conversation is not important. This court concludes that the officer had sufficient grounds to conduct field tests without Gerondale's admission. The odor of intoxicants on Gerondale's breath, coupled with the other physical evidence consistent with intoxication, were sufficient. The trial court did not err by denying the motion to suppress the evidence.

By the Court.—Judgment affirmed.

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