

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

May 1, 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, 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. 96-2915-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

MICHAEL E. WILSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Columbia County:
DANIEL GEORGE, Judge. *Affirmed.*

DYKMAN, P.J.¹ Michael E. Wilson appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OMVWI), contrary to § 346.63(1)(a), STATS. He contends that the Department of Natural Resources (DNR) warden who stopped him did not have authority to conduct the

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

investigatory stop, and even if such authority did exist, he argues that the warden did not have the reasonable suspicion necessary to justify the stop. We conclude that the DNR warden had reasonable suspicion to stop Wilson and the legal authority to do so. Accordingly, we affirm the judgment of the trial court.

BACKGROUND

Wilson was charged with OMVWI, third offense. He filed a motion to suppress the evidence of intoxication obtained at the scene for two reasons. First, he argued that the DNR officer who stopped him did not have the legal authority to do so. Second, he argued that even if the officer did have the legal authority, he did not have a reasonable suspicion to stop Wilson.

Officer Stephen Schlimgen testified at the motion hearing. Schlimgen is a DNR warden who is also certified as a law enforcement officer. Schlimgen regularly patrolled Kent Road in the township of Dekorra, an area abundant with game animals, to enforce the conservation laws. On September 16, 1995 at approximately 11:50 a.m., Schlimgen was traveling eastbound on Kent Road in an unmarked pickup truck when he observed Wilson sitting in a vehicle parked at the side of the road, facing west. As Schlimgen drove past, he observed a “startled look” on Wilson’s face. Schlimgen was dressed in full uniform at the time.

Schlimgen turned around about a quarter mile down the road to return to the site of Wilson's vehicle. When he returned, Wilson's vehicle was gone. Schlimgen looked for litter or animal blood in the area, but found none. He continued down the road and caught sight of Wilson's vehicle about one-half to three-quarters of a mile down the road. While driving behind Wilson's vehicle, Schlimgen noticed movement in the passenger side of the vehicle. Schlimgen

thought Wilson or a passenger might be attempting to hide something. Schlimgen stopped Wilson's vehicle.

The trial court concluded that Schlimgen had reasonable suspicion to stop Wilson and denied his motion to suppress. Wilson pleaded no contest, preserving his right to challenge the order denying suppression under § 971.31(10), STATS. He now appeals the suppression ruling and subsequent conviction.

STANDARD OF REVIEW

In reviewing a trial court's ruling on a motion to suppress, we will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). However, the application of constitutional and statutory principles to these facts is a question of law that we review *de novo*. *State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

REASONABLE SUSPICION

Wilson argues that Schlimgen did not have reasonable suspicion to stop him. The temporary detention of a person during a traffic stop constitutes a seizure under the Fourth Amendment. *Whren v. United States*, 116 S. Ct. 1769, 1772 (1996). Therefore, an automobile stop is subject to the constitutional requirement that it not be unreasonable under the circumstances. *Id.*

For an investigatory stop to be valid, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. *State v. Richardson*, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990). We must consider whether all the specific and

articulable facts, taken together with the rational inferences from those facts, amount to reasonable suspicion. *State v. Dunn*, 158 Wis.2d 138, 146, 462 N.W.2d 538, 541 (Ct. App. 1990). If any reasonable inference of wrongful conduct can be objectively discerned, officers have the right to temporarily detain the individual for purposes of inquiry. *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990).

Schlimgen stopped Wilson to see if had been hunting or trapping. Under § 29.09(1), STATS., a person may not hunt any wild animal or trap any game unless appropriate licenses have been obtained. Schlimgen suspected that Wilson may have been involved in illegal activity because Wilson was parked in an area frequented by deer and other animals, because Wilson gave him a startled look as he drove past, because Wilson left the area in a short period of time and because Schlimgen observed movement in Wilson's vehicle and thought that Wilson or a passenger might be trying to hide something.

In *State v. Anderson*, 155 Wis.2d 77, 88, 454 N.W.2d 763, 768 (1990), the Wisconsin Supreme Court concluded that an officer can reasonably suspect illegal activity when the officer has reason to believe that the suspect is demonstrating an intent to flee. The court stated:

[W]e hold that behavior which evinces in the mind of a reasonable police officer an intent to flee from the police is sufficiently suspicious in and of itself to justify a temporary investigative stop by the police. Such flight, although not illegal, gives rise to a reasonable suspicion that some sort of wrongful activity might be afoot.

Id. (citation omitted).

The trial court found that it was reasonable for Schlimgen to believe that Wilson had identified him as a law enforcement officer and was attempting to

flee. The court thought that Schlimgen's conclusion was reasonable for two reasons. First, Wilson had a startled look on his face when Schlimgen drove past, and second, Wilson immediately departed from his location on a remote country road. The trial court's findings of fact are not clearly erroneous. Under *Anderson*, Wilson's flight, in and of itself, gave Schlimgen the reasonable suspicion necessary to make the stop.

Wilson argues that he was out of Schlimgen's sight when he left the scene, and therefore he cannot be held to have fled from the warden. We disagree. "Flight" is "an act or instance of running away." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 870 (1993). This definition does not imply that a suspect must be within an officer's sight for flight to exist. It is only necessary that the suspect be running away from the officer, regardless of whether the officer can see the suspect at the time. Moreover, it would be illogical for an officer to reasonably suspect criminal activity when a suspect attempts to escape from the officer's sight, but not when a suspect waits until the officer has turned his or her back to quickly depart from the scene. Wilson gave Schlimgen a startled look when he saw him and quickly departed in the opposite direction after Schlimgen had driven past. This provided a sufficient basis for Schlimgen to believe that Wilson was attempting to flee.

LEGAL AUTHORITY TO MAKE STOP

Wilson argues that Schlimgen did not have legal authority to stop him. Under § 23.58, STATS., Schlimgen had the authority to "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 violation of those statutes enumerated in s. 23.50(1)" The statutes contained in Chapter 29,

STATS., are among those enumerated in § 23.50(1). We have already determined that it would be reasonable for Schlimgen to suspect that Wilson had violated § 29.09(1), STATS. Accordingly, Schlimgen had the legal authority to stop Wilson. The trial court did not err in denying Wilson's motion to suppress.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.

