**COURT OF APPEALS**
**DECISION**
**DATED AND RELEASED**

May 21, 1997

**NOTICE**

**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.**

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

**No. 96-3201**

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

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**WASHINGTON COUNTY,**

**PLAINTIFF-RESPONDENT,**

**v.**

**RICHARD E. HUPFER,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Washington County: JAMES B. SCHWALBACH, Judge. *Affirmed.*

SNYDER, P.J. Richard E. Hupfer appeals from a judgment of conviction finding him guilty of operating with a prohibited blood alcohol concentration contrary to § 346.63(1)(b), STATS.[1] Hupfer now appeals, claiming that the arresting officer lacked reasonable suspicion to stop his vehicle and therefore the Intoxilyzer test results should be suppressed. Because we conclude

[1] A charge of operating while intoxicated was dismissed prior to trial.

that the circumstances surrounding the stop gave rise to reasonable suspicion to effectuate the stop, we affirm the judgment of the trial court.

At approximately 3:15 a.m. on February 1, 1995, Deputy David Huesemann of the Washington County Sheriff's Department stopped and detained Hupfer for allegedly suspicious activity at the West Bend airport. Huesemann had observed a car "driving the perimeter of the hangars" at the airport. The deputy pulled his squad car off to the side of the road to observe and temporarily lost sight of the vehicle. He then observed the car fairly close to where he had stopped, and its headlights were shining on the deputy's squad car. The vehicle then drove out of the airport property and headed toward the city of West Bend. Huesemann followed.

Huesemann testified that the behavior he had observed was "consistent with prowler activities, somebody scoping out an area for an attempted burglary." He also was aware that there had been burglaries at storage sheds and similar areas throughout the city of West Bend and in the county. Huesemann also considered suspicious the fact that the vehicle left the area immediately after he made himself, in a marked squad car, visible to the other driver. He further testified that he considered it "unusual" to see a vehicle at that location at 3:15 am.

Huesemann proceeded to follow the vehicle after it exited the airport property. While he did not observe anything erratic or illegal about the driving, he also testified that "his driving was very meticulous …. Every move appeared to be calculated as maybe he might have been nervous …. [I]t was very uncharacteristic of a normal person driving." After following the car for approximately one and a half miles, Huesemann signaled and pulled the vehicle over. Based on Huesemann's subsequent observations, Hupfer was arrested for

operating while intoxicated. Hupfer submitted to a chemical test of his breath, which yielded a result above the legal limit. A jury found him guilty of operating with a prohibited blood alcohol concentration.

Hupfer now challenges his conviction claiming that Huesemann did not possess the requisite reasonable suspicion to support the initial stop. The issue presented in this case is whether the facts presented to the trial court fulfill that constitutional standard. This is a question of constitutional fact which is decided without deference to the trial court. *See* ***State v. Turner,*** 136 Wis.2d 333, 344, 401 N.W.2d 827, 832 (1987).

The stop of a vehicle and detention of its occupants constitute a search and seizure under the Fourth Amendment. *See* ***State v. Guzy,*** 139 Wis.2d 663, 675, 407 N.W.2d 548, 554 (1987). In order to justify such a stop, the officer must be able to point to specific and articulable facts which, when taken with rational inferences, reasonably warrant the stop. *See* ***State v. Williamson,*** 113 Wis.2d 389, 401, 335 N.W.2d 814, 820 (1983). Once the officer observes a "triggering fact or facts of suspicion," reviewing courts may also consider the circumstances that were present in determining the weight to be given the facts. *See* ***Guzy,*** 139 Wis.2d at 679, 407 N.W.2d at 555. Furthermore, the requirement of reasonable suspicion does not rise to the level of probable cause and does not require that the officer be correct, only that he or she be reasonable. *See* ***Adams v. Williams,*** 407 U.S. 143, 145-46 (1972).

In the present case, the officer testified that he saw a vehicle driving around the hangar area at the West Bend airport and that because of the time—3:15 a.m.—he considered the vehicle's location to be suspicious. He further testified that he was aware that there had been some burglaries in storage sheds in

the West Bend area, and the fact that the car exited the area upon seeing his vehicle gave him reason to think that this driver was behaving in a manner consistent with a prowler or a burglar. All of these facts, taken together and combined with Huesemann's training and experience, gave rise to the officer's reasonable suspicion that the driver may have been engaged in illegal activities.

Hupfer disputes this characterization of the evidence, instead claiming that "the observation of Mr. Hupfer's vehicle at the airport hangar must implicate some aspect of the traffic code to justify the stop." We disagree. Hupfer was not stopped because the officer had a reasonable suspicion that he might be intoxicated. Instead, he was detained because his presence and driving behavior on the airport property led the officer to believe that he might be involved in "casing" the area for a burglary. Hupfer's subsequent actions, after he noticed the squad car and exited the airport property, did nothing to allay Huesemann's suspicion. The testimony of the officer presented specific, articulable facts which are required to meet the standard for reasonable suspicion. *See* ***Guzy,*** 139 Wis.2d at 675, 407 N.W.2d at 554.

We conclude that the initial stop of Hupfer's vehicle was supported by reasonable suspicion. We therefore affirm the judgment of conviction.

*By the Court.*—Judgment affirmed.

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