

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 13, 2006**

Cornelia G. Clark  
Clerk of Court of Appeals

**NOTICE**

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

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

**Appeal No. 2005AP2994-CR**

**Cir. Ct. No. 2004CT2157**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**EARL J. DE CLOUX,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Brown County: KENDALL M. KELLEY, Judge. *Affirmed.*

¶1 HOOVER, P.J.<sup>1</sup> Earl De Cloux appeals a judgment of conviction for operating a motor vehicle while intoxicated, second offense. He also appeals an order denying his motion to suppress evidence obtained from an investigatory

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

stop. He contends police did not have reasonable suspicion to stop him. This court rejects his claim and affirms the judgment and order.

¶2 At 12:45 a.m. on August 28, 2004, officer Derek Wicklund was flagged down by a woman in Green Bay. She identified herself as Carrie and asked for help with a woman who was lost. Wicklund spoke to the lost and crying woman, who identified herself as Olena Rudyka. Rudyka was nineteen years old and from the Ukraine. She explained that she had arrived downtown with a friend, Earl De Cloux, who went into a bar while she talked with people outside. At some point, Rudyka and De Cloux had an argument, after which De Cloux left her there. Rudyka told Wicklund that her visa was expiring the next day and that she needed to get to Chicago to catch her flight home. Her purse, including her personal papers and money, were in De Cloux's truck. Wicklund attempted to call De Cloux, but received no answer.

¶3 Shortly thereafter, a truck arrived and parked nearby. Rudyka told Wicklund it was De Cloux. Wicklund approached De Cloux on foot and noticed that he did not park squarely within the parking stall, but instead parked at an angle. Wicklund also noticed that, as De Cloux moved away from his truck, he was staggering from side to side and leaning forward as if into a stiff wind. Wicklund ordered De Cloux to stop, which he did. After denying that he knew Rudyka, De Cloux attempted to walk away, but was physically stopped by Wicklund. The facts regarding the remainder of the stop are not relevant here.

¶4 De Cloux only challenges whether Wicklund had reasonable suspicion to stop him. He contends Wicklund did not have specific, articulable facts to support the stop. The State argues there were sufficient facts to support a

reasonable suspicion that De Cloux had committed theft and was operating while intoxicated.

¶5 An officer may lawfully conduct an investigatory stop if, based on the officer's experience, he or she reasonably suspects that unlawful activity may be afoot. *See State v. Begicevic*, 2004 WI App 57, ¶¶3, 5, 270 Wis. 2d 675, 678 N.W.2d 293. Reasonable suspicion must be grounded in specific, articulable facts and reasonable inferences from those facts. *Id.*, ¶3. An officer may stop an individual with a reasonable inference of unlawful conduct, regardless of other innocent inferences that might be drawn. *State v. Waldner*, 206 Wis. 2d 51, 60, 556 N.W.2d 681 (1996). This court reviews de novo whether the circuit court's findings of historical fact supported a reasonable suspicion. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106.

¶6 While the parties seemingly dispute when a stop actually occurred, this court concludes that the timing is irrelevant. There was reasonable suspicion to stop De Cloux before Wicklund made his initial contact with him. There was a reasonable suspicion both that De Cloux had committed theft and that he was operating a vehicle while intoxicated.

¶7 As for theft, Wicklund was told that Rudyka's purse was in De Cloux's truck. He was also told De Cloux and Rudyka had an argument, after which De Cloux left, taking Rudyka's purse with him. Given these facts, along with Rudyka's distressed state, Wicklund could reasonably infer that De Cloux was intentionally retaining Rudyka's purse without her consent, with the intent of

depriving her of it permanently.<sup>2</sup> It is true that Wicklund could also infer that De Cloux was unaware that Rudyka's purse was in his truck or that he intended to return the purse to Rudyka. However, given that De Cloux and Rudyka had just had an argument and De Cloux presumably knew Rudyka would be distraught without her purse, Wicklund reasonably suspected theft. With reasonable suspicion, Wicklund was entitled to stop De Cloux and investigate.

¶8 Wicklund also had sufficient facts to reasonably suspect that De Cloux was operating a vehicle while intoxicated. Wicklund witnessed De Cloux park his truck at an angle outside the parameters of the parking stall. Wicklund also witnessed De Cloux stagger towards a bar, leaning forward as if into a stiff wind. All of this occurred in the very early hours of the morning. These observations were sufficient for Wicklund to reasonably suspect that De Cloux was operating his truck while intoxicated, entitling Wicklund to stop De Cloux and investigate further.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

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<sup>2</sup> WISCONSIN STAT. § 943.20(1)(a) states that someone commits theft when he or she: “Intentionally takes and carries away, uses, transfers, conceals, or retains possession of movable property of another without the other’s consent and with intent to deprive the owner permanently of possession of such property.”

