

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 5, 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. 2006AP375-CR

Cir. Ct. No. 2004CM2736

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK E. HANSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Mark Hanson appeals a judgment of conviction for operating a motor vehicle while intoxicated, second offense. He also appeals an

¹ 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.

order denying his motion to suppress evidence obtained from a traffic stop. He contends police did not have reasonable suspicion to stop him. We affirm the judgment and order.

¶2 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.

¶3 Shortly after 9 p.m. on November 4, 2004, Deputy James Armstrong of the Marathon County Sheriff's Department was notified that someone had called and reported a possible poacher. The caller described a dark-colored SUV, which was reportedly driving in a field off Evergreen Road.

¶4 As Armstrong approached the area, he noticed a dark-colored SUV parked along the shoulder of County Highway A, with its lights on, and within two miles of where the possible poacher was reported. After driving past the SUV, Armstrong slowed his squad car and prepared to turn around. As he did so, the SUV "sped off" in the other direction. Armstrong caught up with the SUV and stopped it.

¶5 Armstrong made contact with the driver, Hanson, and immediately noticed an odor of intoxicants. Hanson was ultimately arrested for operating a

motor vehicle while intoxicated, second offense. Hanson moved to suppress evidence obtained from the stop, contending that Armstrong did not have reasonable suspicion to stop him. The court denied the motion.

¶6 Hanson's argument attempts to isolate specific facts and argues that those facts, by themselves, are insufficient to support a reasonable suspicion. For example, he argues that driving in a field at night is not inherently criminal. He further argues that someone parked along a roadway with his lights on may just be consulting a map. Hanson, however, fails to consider the totality of the circumstances.

¶7 The circuit court, by contrast, did consider the totality of the circumstances, summarizing as follows:

There's a report of a possible poacher, possibly poaching in fields using a dark SUV in that area. [Armstrong] encounters that vehicle, that dark SUV by a field, stopped, lights on, which is a common tactic of poachers, to pull over and use their lights by fields, especially during the rut season, and then the defendant takes off when the deputy happens by.

The fact that innocent inferences could also be drawn from these facts is not relevant. See *Waldner*, 206 Wis.2d at 60. We agree with the circuit court's conclusion that the facts available to Armstrong, along with reasonable inferences from those facts, were sufficient to support a reasonable suspicion of unlawful activity, thereby justifying an investigative stop. See *State v. Jackson*, 147 Wis.2d 824, 833, 434 N.W.2d 386 (1989) (holding that "flight from the police can, dependent on the totality of the circumstances present, justify a warrantless investigative stop").

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE
809.23(1)(b)5.

