

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 15, 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. 2006AP996-CR

Cir. Ct. No. 2005CT122

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEROME M. BUKIEWICZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
RALPH M. RAMIREZ, Judge. *Affirmed.*

¶1 SNYDER, P.J.¹ Jerome M. Bukiewicz appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OWI). Bukiewicz

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

argues that the circuit court erred when it denied his motion to suppress evidence because the arresting officer did not have reasonable suspicion to make a traffic stop. We disagree and affirm.

FACTS

¶2 On January 13, 2005, at 6:22 p.m., New Berlin Police Officer Richard A. Helm initiated a traffic stop on the vehicle that Bukiewicz was driving. Bukiewicz and a passenger had pulled out of the 19th Hole Tavern parking lot onto Meadow Lane and stopped at a stop sign at 124th Street at an angle. At this point Helm, approaching from behind, noticed that Bukiewicz did not signal before turning north onto 124th Street. Furthermore, Helm noted that the license plate of the vehicle Bukiewicz was driving was at least partially covered in snow. The officer pursued Bukiewicz until he turned onto Greenfield Avenue. Once on Greenfield Avenue in the City of West Allis, the officer observed Bukiewicz's car deviate from its lane and initiated the traffic stop.

¶3 As a result of the stop, Bukiewicz was charged with OWI, third offense. On June 6, 2005, Bukiewicz filed a motion to suppress all evidence seized during the stop and arrest because it was illegally obtained. On June 30, a motion hearing was conducted and the circuit court denied the motion to suppress. The court stated that "the report of the failure to signal is in and of itself a traffic violation that authorized this officer to make the stop, and given the other factors, I'll find that [Helm's] actions were reasonable and not contrary to the Fourth Amendment or the appropriate and applicable provisions of the Wisconsin Constitution as well."

DISCUSSION

¶4 Bukiewicz argues that pulling up to a stop at an odd angle, having a partially obstructed license plate, and failing to signal before turning at an intersection were insufficient to amount to reasonable suspicion. Also, Bukiewicz argues that drifting over the shoulder line should not be considered as a basis for reasonable suspicion because it occurred outside Officer Helm's jurisdiction.

¶5 On review of a motion to suppress, we will uphold the findings of fact of the circuit court unless they are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, whether the findings of fact satisfy constitutional requirements is a question of law that we review de novo. *See State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996).

¶6 The Fourth Amendment prohibits unreasonable searches and seizures. U.S. CONST. amend. IV. In *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the United States Supreme Court determined that the detention of a suspect must be based upon a reasonable suspicion of criminal activity. What constitutes a reasonable suspicion is a commonsense test. *See Waldner*, 206 Wis. 2d at 56. We look to whether a reasonable officer could have a suspicion of illegal activity grounded in specific facts and reasonable inferences in light of the totality of the circumstances. *See id.* at 56, 58. Furthermore, even where there is no unlawful conduct, a stop may be justified "based on observations of lawful conduct so long as the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot." *Id.* at 57.

¶7 First, Bukiewicz argues that the angle at which his vehicle came to a stop was reasonable because the distance between the parking lot drive and the

intersection was too short to straighten out the vehicle before stopping. While the circuit judge acknowledged that the explanation was reasonable, such legal activity is not exempt from the totality of the circumstances test and can still be a factor in determining overall reasonable suspicion. *See id.*, at 57-58.

¶8 Second, Bukiewicz argues that the snow buildup on his license plate did not totally obstruct the plate or prevent the officer from checking the registration. The circuit court, as finder of fact, relied on corroborative testimony by both the arresting officer and Bukiewicz's passenger to make a reasonable inference there was more than one and one-eighth inch of snow over the license plate. This again may not be determinative, but can be a factor in whether there was reasonable suspicion for the traffic stop. *See id.*

¶9 Third, Bukiewicz argues that he was not required to use a turn signal because no other vehicle was affected by his maneuver onto 124th Street; thus, he argues that the failure to use a turn signal should not be considered a basis for reasonable suspicion. WISCONSIN STAT. § 346.34, addressing signaled turns, states, "In the event any other traffic may be affected by such movement, no person may so turn any vehicle without giving an appropriate signal in the manner provided in [WIS. STAT. §] 346.35." Sec. 346.34(1)(b). The circuit court relied primarily on Bukiewicz's unsignaled turn as the basis for finding reasonable suspicion because the court found that "there may indeed be traffic affected by one's turn" and because "there is an obligation in [this] instance ... to provide an appropriate signal under the circumstances."

¶10 Bukiewicz contends that a vehicle approaching from two car lengths behind is not affected by failing to use a turn signal. The officer testified that he was only "a couple car lengths back" when Bukiewicz made the unsignaled turn,

and the circuit court found the officer to be credible. We accept the circuit court's conclusion that traffic may be affected by another vehicle's turn when it is approximately two car lengths behind. This violation supports Helm's reasonable suspicion to stop Bukiewicz.

¶11 Finally, Bukiewicz argues that any lane deviation that may have occurred was after he turned onto Greenfield Avenue, out of Helm's jurisdiction. He asserts, therefore, that such deviation should not be considered a basis for reasonable suspicion. Under WIS. STAT. § 175.40(2), an officer may pursue and arrest any person anywhere in the state for the violation of any law or ordinance the officer is authorized to enforce when in fresh pursuit. Because the failure to signal a turn in light of the totality of the circumstances is sufficient to constitute reasonable suspicion, we agree with the State that WIS. STAT. § 175.40 allowed Helm to initiate the traffic stop in West Allis. *See State v. Haynes*, 2001 WI App. 266, ¶14, 248 Wis. 2d 724, 638 N.W.2d 82 (holding that an officer was in fresh pursuit when he stopped individual for traffic violation after following to neighboring county).

CONCLUSION

¶12 The circuit court held that there was reasonable suspicion under the totality of the circumstances to stop and detain Bukiewicz. Our review of the record reveals no reason to upset the the circuit court's findings because they were not clearly erroneous. Accordingly, there was no violation of Bukiewicz's right to be free from unreasonable search and seizure. The circuit court properly denied the motion to suppress and we affirm the subsequent judgment.

By the Court.—Judgment affirmed.

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

