

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 31, 2008

David R. Schanker
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. 2007AP1102-CR

Cir. Ct. No. 2006CF108

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS A. WALLSCH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
GUY REYNOLDS, Judge. *Affirmed.*

Before Higginbotham, P.J., Vergeront and Bridge, JJ.

¶1 PER CURIAM. Thomas Wallsch appeals a judgment convicting him of felony bail jumping based upon a no contest plea. The sole issue is whether the circuit court properly denied Wallsch's suppression motion. We conclude that it did, and therefore affirm.

BACKGROUND

¶2 Sauk County Sheriff's Department Officer Dale Hackbarth went to a residence in the Township of Troy to follow up on a littering complaint for which a citation had recently been issued. The officer had previously been at the residence and had observed a vehicle parked in one of the outbuildings. He also had been informed shortly before by a person he deemed reliable that there was a man living at the residence who had a revoked driver's license.

¶3 When the officer arrived at the residence, he made contact with two men who said they were there to pick up their roofing workmate. They said they had not gotten an answer at the door, and left in their pickup truck. The officer also received no response at the door and noted that the car he had previously seen at the residence was not there.

¶4 Upon driving away from the residence and rounding a curve, the officer observed the pickup truck that had just left the residence stopped in the middle of the road, parked door-to-door with a car headed toward the residence. The officer was too far away to identify the driver, but noted that the gentleman driving the pickup truck appeared to be having a conversation with a gentleman driving the approaching vehicle. The officer recognized the approaching vehicle as the car he had previously seen parked at the residence he had just visited.

¶5 The approaching vehicle then backed up off of the dead end road onto the highway. The officer thought that the vehicle had been headed to the residence he had just left and believed that the unusual backing up maneuver was meant to avoid him. The officer followed and pulled the vehicle over both to continue his investigation of the littering complaint and to check the driver's

status. The driver was Wallsch, and he admitted that he was driving without a valid license.

¶6 Wallsch was charged with bail jumping for driving with a revoked license while he was out on bond. He sought to suppress the evidence gathered during the traffic stop. The trial court found that the officer properly stopped Wallsch to investigate the littering and properly asked him whether his license was revoked based upon the informant's information. Wallsch appeals.

STANDARD OF REVIEW

¶7 WISCONSIN STAT. § 971.31(1) (2005-06)¹ authorizes review of a suppression determination notwithstanding a subsequent plea of no contest. When reviewing the denial of a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, we will independently determine whether the facts found by the circuit court satisfy applicable statutory and constitutional provisions. *State v. Ellenbecker*, 159 Wis. 2d 91, 94, 464 N.W.2d 427 (Ct. App. 1990).

DISCUSSION

¶8 The detention of a motorist by a law enforcement officer constitutes a "seizure" of the person within the meaning of the Fourth Amendment. *See Berkemer v. McCarty*, 468 U.S. 420, 436-37 (1984). However, such detention is not "unreasonable" if the stop is brief in nature, and justified by a reasonable

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

suspicion that the motorist has committed, or is about to commit, a crime. *See* U.S. CONST., amend. IV *and Berkemer*, 468 U.S. at 439; *see also* WIS. CONST., art. I, § 11 *and* § 968.24, STATS.²

¶9 According to *Terry v. Ohio*, 392 U.S. 1 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be based on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot, and that action would be appropriate. *Id.* at 21-22. “The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?” *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). The test is designed to balance the personal intrusion into the suspect’s privacy occasioned by the stop against the societal interests in solving crime and bringing offenders to justice. *See State v. Guzy*, 139 Wis. 2d 663, 680, 407 N.W.2d 548 (1987).

¶10 The officer’s suspicions do not need to be related to a particular criminal activity. *State v. Anderson*, 155 Wis. 2d 77, 86, 454 N.W.2d 763 (1990).

[P]olice officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.... [s]uspicious conduct by its very nature is ambiguous, and the principle function of the investigative stop is to quickly resolve that ambiguity. Therefore, if any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences

² The same standards which have been established for rights arising under the United States Constitution generally apply to rights derived from the Wisconsin Constitution. *See State v. Harris*, 206 Wis. 2d 243, 259, 557 N.W.2d 245 (1996); *but see State v. Knapp*, 2005 WI 127, ¶¶59-69, 285 Wis. 2d 86, 700 N.W.2d 899; *also State v. Dubose*, 2005 WI 126, ¶¶36, 39-42, 285 Wis. 2d 143, 699 N.W.2d 582.

that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.

Id. at 84. The *Anderson* court went on to 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.”

¶11 Here, the officer had ample reason to believe that Wallsch was attempting to flee from him. The officer knew that the vehicle Wallsch was driving was associated with the residence where he had just been. The officer knew that the men in the pickup truck who he saw conversing with the approaching driver knew that the officer had just been at the approaching driver’s residence, and it was fair to infer that they could be relating that fact to the approaching driver. The maneuver of backing a vehicle onto a highway rather than proceeding in the direction of a police officer plainly suggested flight, and was suspicious enough in and of itself to justify a brief investigatory stop. We therefore need not consider whether the stop may also have been justified by the officer’s ongoing littering investigation or the information from an informant that there was a man at the residence who had a revoked license.

By the Court.—Judgment affirmed.

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

