COURT OF APPEALS DECISION DATED AND FILED

February 28, 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. 2007AP2162-CR

Cir. Ct. No. 2005CT1727

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOUGLAS W. MARTIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: R. A. BATES, Judge. *Affirmed*.

¶1 DYKMAN, J.[1] Douglas Martin appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OWI), second offense,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

contrary to WIS. STAT. § 346.63(1)(a). Martin contends that the circuit court erred by denying his motion to suppress because the officer did not have reasonable suspicion that Martin was driving while intoxicated or had violated any traffic regulations justifying the stop of his vehicle. We conclude that the officer had sufficient grounds for an investigative stop based on reasonable suspicion that Martin committed a traffic violation. Accordingly, we affirm.

Background

¶2 The following facts are undisputed. On November 3, 2005, at 2:25 a.m., Janesville Police Officer Shawn Welte, an officer with six years of experience, was on patrol in the City of Janesville. Welte observed a vehicle that appeared to be traveling in excess of the posted limit on Milton Avenue. He visually estimated the vehicle's speed to be 40 to 45 miles per hour in a 30 miles per hour zone. Welte testified that he was trained and proficient in estimating speeds of vehicles as part of his certification to be a radar and laser instructor.

¶3 Welte was following the vehicle when it braked and slowed to 30 miles per hour though the speed limit had increased to 40 miles per hour. He continued to follow at a safe distance without losing sight of the vehicle and with no other vehicles in the area. He saw the vehicle changing lanes without using a turn signal.

¶4 When approaching the intersection of Milton Avenue and Highway 14, the vehicle made a right turn without its driver signaling a turn. The vehicle made a right turn onto Pontiac Drive, again without its driver signaling a turn. The vehicle did not turn into the lane closest to the curb.

¶5 Welte pulled the vehicle over and spoke with the driver, whom he identified as the defendant, Douglas Martin. While Welte was informing Martin that he had stopped Martin for speeding and for failing to use a turn signal, he noticed that Martin slurred his speech, had poor motor skills, and smelled like alcohol. Martin admitted he had been drinking, and he subsequently failed field sobriety tests. Based on these factors and Martin's 0.15 preliminary breath test result, Welte arrested Martin for OWI.

¶6 Martin moved to suppress the evidence of his intoxication, asserting that the officer stopped him without reasonable suspicion to believe that he had committed a traffic violation or probable cause that he had committed a crime. The trial court denied the motion. The trial court stated that the stop was legal because the officer had reasonable suspicion that Martin was driving while intoxicated based on the totality of the circumstances, which included the time of day (shortly after bar time) and "enough indications to the officer that there was something wrong with the driver." These indications were: "first, speeding; second, driving significantly below the limit; third, turning a couple times without using turn signals; fourth, a technical violation but a violation nonetheless of not turning from the closest lane to the closest lane." Martin then pled no contest to OWI and was found guilty. He appeals from the trial court's denial of his suppression motion.

Standard of Review

¶7 The temporary detention of individuals during a traffic stop constitutes a seizure of persons within the meaning of the Fourth Amendment. ***See Whren v. United States***, 517 U.S. 806, 809-10 (1996). An officer may perform an investigative stop if the officer reasonably suspects a person is violating a non-

criminal traffic law. ***County of Jefferson v. Renz***, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999) (citing ***State v. Griffin***, 183 Wis. 2d 327, 333-34, 515 N.W.2d 535 (Ct. App. 1994)); *see also* ***State v. Colstad,*** 2003 WI App 25, ¶13, 260 Wis. 2d 406, 659 N.W.2d 394 (investigatory stop was proper if there was reasonable suspicion to believe defendant had violated a traffic ordinance). "Reasonable suspicion is based upon specific and articulable facts that together with reasonable inferences therefrom, reasonably warrant a *suspicion* that an offense has occurred or will occur." ***State v. Longcore***, 226 Wis. 2d 1, 8, 594 N.W.2d 412 (Ct. App. 1999) (citing ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968)). While reasonable suspicion is insufficient to support an arrest or search, it permits investigation. ***Id***.

¶8 "[W]hether a traffic stop is reasonable is a question of constitutional fact." ***State v. Post***, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. We review such a decision using a two-step standard of review. ***Id***. We defer to the trial court's factual determinations unless they are clearly erroneous, and we review de novo whether those facts are sufficient to create reasonable suspicion. ***Id***. Reasonableness is determined based on the totality of the facts and circumstances. ***Id***., ¶13.

Discussion

¶9 Martin argues that the trial court erred by denying his motion to suppress because the officer did not have specific and articulable facts amounting to reasonable suspicion that he was driving while intoxicated. He argues that the behaviors described by Welte are so commonplace as to be universal and not unusual. Martin also argues, in the alternative, that there were no other legal grounds to stop him because he did not violate any traffic laws. The State asserts

that the behavior described by Welte provided two alternative grounds to stop Martin. First, the officer had reasonable suspicion Martin was violating non-criminal traffic laws, namely speeding and failing to signal turns and a lane-change. Second, the officer had reasonable suspicion Martin was driving while intoxicated. We conclude that, based on the totality of the circumstances, there were specific and articulable facts to provide an officer in Welte's position reasonable suspicion that Martin was speeding.[2]

¶10 Welte visually estimated Martin's vehicle travelling at 40 to 45 miles per hour in a 30 miles-per-hour zone, contrary to WIS. STAT. § 346.57(4). While Martin concedes that proof of speeding would justify a stop, he argues that Welte had no proof of speeding and that his visual estimate was insufficient to warrant a legal stop. Martin supports his argument by suggesting Welte did not believe he had proof of speeding because Welte testified that he would need to pace Martin or get a radar reading on him to have legal verification for an arrest for speeding.

¶11 Martin is wrong because Welte's belief that he did not have legal verification of speeding is irrelevant for determining reasonable suspicion. Reasonable suspicion is a question of what, under the circumstances, a reasonable

[2] Because this ground alone can uphold the stop, we need not discuss Martin's other arguments. We note, however, that the officer could reasonably suspect Martin was violating two other traffic laws, namely failure to signal a turn and failure to turn into the correct lane, contrary to WIS. STAT. §§ 346.34(1)(b) and 346.31(2), respectively. The officer witnessed Martin make two right turns without signaling, with affected traffic present, and a right turn into the left turn lane instead of the closest lane. Because the stop was legally sufficient based on a reasonable suspicion of any one of the traffic violations, we need not discuss whether the facts here amount to the standard of reasonable suspicion of driving while intoxicated. The test is not whether an officer could reasonably suspect Martin of driving under the influence but whether an officer could reasonably suspect Martin of committing a crime or violating an ordinance. *See* ***County of Jefferson v. Renz***, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999).

officer would reasonably suspect in light of his or her training and experience. ***State v. Anderson***, 155 Wis. 2d 77, 83-84, 454 N.W.2d 763 (1990). The inquiry is whether specific and articulable facts are present that would give *an* officer, not the particular officer in question, reasonable suspicion. *See* ***State v. Waldner***, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996) (emphasis added). Evaluation of reasonable suspicion is based on an objective, not subjective, test. ***Id.*** As long as an officer has objective facts showing that a defendant was violating a traffic law, the stop is justified, regardless of the officer's subjective motivation for stopping the defendant. ***State v. Baudhuin***, 141 Wis. 2d 642, 651, 416 N.W.2d 60 (1987).

¶12 In this case, Welte had over six years of experience as an officer. He was trained and proficient at visually estimating speed and certified to be a radar and laser instructor. He observed Martin travelling in front of him and visually estimated Martin's speed to be 40 to 45 miles per hour in a 30 miles-per-hour zone. He did not pace Martin at this speed. However, as Welte attempted to catch up to Martin, Martin's brake lights came on and his speed decreased to 30 miles per hour. Based on the totality of circumstances at the time of the stop, these specific and articulable facts would provide a reasonable police officer in Welte's position reasonable suspicion that Martin was speeding.

¶13 We conclude that the stop of Martin's vehicle was legal because there was reasonable suspicion that Martin had violated a traffic law. Accordingly, we affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.