

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 28, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2007AP1931-CR

Cir. Ct. No. 2006CT269

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOEL H. HELMEKE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County:
DANIEL W. KLOSSNER, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Joel Helmeke appeals from a judgment convicting him of operating a motor vehicle while intoxicated, second offense, contrary to

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.

WIS. STAT. § 346.63(1)(a). Helmeke argues that police did not have reasonable suspicion to stop him based on a complaint by an individual that she had gotten into a fight with her stepfather and that her stepfather and another male were “very intoxicated” and were driving away in a truck. We conclude that the totality of the circumstances provided police with reasonable suspicion to conduct an investigative stop and therefore affirm.

Background

¶2 The following facts are uncontested. Fox Lake Police Officer James Perkins was on duty on May 17, 2006, when he received a call from an individual identifying herself as “Mindy.” Mindy reported that she had gotten into a verbal dispute with her stepfather over a cell phone, that she was very upset and afraid of her stepfather, and that she wanted Perkins to drive by their house to scare him. Mindy declined Perkins’s suggestions to come to the police station or to meet him somewhere away from the residence.

¶3 Mindy told Perkins that her stepfather and another male were in the house and that they had both been drinking. Perkins testified that Mindy said “they had been drinking for a while” and that “they were very intoxicated.” Mindy told Perkins that the two men were leaving in a green truck and provided its license plate number.

¶4 Perkins then drove his squad car towards the address given to him by Mindy. About a quarter to a half block from the address, Perkins saw a car in an intersection with a person waving her arms as he approached. Perkins spoke to the person, who identified herself as Mindy, the person who had called about the argument. Mindy then pointed down the street and said “something to the effect of, there they go, they’re in that truck.” Perkins looked in his rearview mirror and

saw the green truck that she was pointing to. He did not see the truck drive improperly. Perkins then activated his siren and lights and stopped the truck.

¶5 Perkins identified the driver as Joel Helmeke and obtained evidence of his intoxication. He then arrested Helmeke for driving while intoxicated. Helmeke moved to suppress the evidence obtained during the stop, arguing that his constitutional rights had been violated. The trial court denied the motion, and Helmeke appeals.²

Standard of Review

¶6 Whether an officer had reasonable suspicion to conduct an investigative stop is a question of constitutional fact. *State v. Powers*, 2004 WI App 143, ¶6, 275 Wis. 2d 456, 685 N.W.2d 869. We therefore review findings of historical fact for whether they are clearly erroneous and review whether reasonable suspicion is met de novo. *Id.* Neither party argues that the findings of the trial court are clearly erroneous, and we therefore are presented only with a question of law. *See id.*

Discussion

¶7 Helmeke argues that police lacked reasonable suspicion to perform an investigative stop of his truck based on the information provided by Mindy, whether the reason for the stop is disorderly conduct or driving while intoxicated. We conclude that the police stop of Helmeke's truck was supported by reasonable

² Although Helmeke asserted various constitutional rights violations in his motion to suppress, the only issue he raises on appeal is whether the investigative stop was supported by reasonable suspicion.

suspicion of driving while intoxicated and was therefore constitutionally reasonable.³

¶8 Traffic stops are seizures under the Fourth Amendment. *Id.*, ¶7. Traffic stops must therefore meet the reasonableness requirement under the Fourth Amendment to the United States Constitution and article 1, section 11 of the Wisconsin Constitution. *State v. Rutzinski*, 2001 WI 22, ¶¶12-14, 241 Wis. 2d 729, 623 N.W.2d 516. An officer must base an investigative traffic stop on “something more than the officer’s inchoate and unparticularized suspicion or hunch.” *Id.*, ¶14 (citation omitted). Thus, “[a]t the time of the stop, the officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, objectively warrant a reasonable person with the knowledge and experience of the officer to believe that criminal activity is afoot.” *Id.*

¶9 In *Powers*, we addressed whether a tip provided to police that the defendant was intoxicated and leaving a store supported reasonable suspicion to stop him. There, the clerk of an Osco Drug Store called police reporting that ““an intoxicated man had come in to make purchases at the store buying beer, a little outfit, and something else.”” *Powers*, 275 Wis. 2d 456, ¶2. The caller identified him- or herself as “Corona,” and said that after the man’s credit card was declined, he stated he would return with money. *Id.* Corona described the man’s truck and gave its license plate number. *Id.*

³ Because we conclude that reasonable suspicion of driving while intoxicated supported the stop, we need not address Helmeke’s argument that the stop was not supported by reasonable suspicion of disorderly conduct.

¶10 A police officer went to Osco Drug, located Powers' truck, and parked in order to keep it under surveillance. *Id.*, ¶¶2-3. The officer observed Powers exit the store and walk unsteadily to the truck. *Id.*, ¶3. When Powers began driving the truck, the officer pulled him over. *Id.* Powers appealed from the trial court's denial of his motion to suppress evidence of his intoxication based on lack of reasonable suspicion to stop him. *Id.*, ¶4. We affirmed, concluding "under the totality of the circumstances involved in this case, that the information given by the citizen informant and the police officer's corroboration of the information before the investigatory stop were sufficiently reliable" to establish reasonable suspicion. *Id.*, ¶15.

¶11 In reaching that conclusion, we assessed the reliability of the tip based on several factors: (1) "the tip was based on first-hand observations," (2) "the informant's failure to see the driver actually drive the vehicle is not fatal," (3) "the officer can rely upon the clerk's assessment that Powers was drunk," and (4) the officer "independently verified the clerk's tip." *Id.*, ¶¶10-14. We specifically assessed the tip under a totality of the circumstances analysis and did not categorize any factor as dispositive or as a required element of reasonable suspicion for every allegation of intoxicated driving.

¶12 Helmeke argues that *Powers* is distinguishable on two grounds: (1) Mindy did not provide any particularized information about the other male in her house or provide any details as to why she believed he was intoxicated, and (2) Perkins did not corroborate any of the information in the tip before performing the stop. However, we stated in *Powers* that the allegation of intoxication after personal observation was enough to support the reasonable inference that Corona had observed indicia of intoxication. *See id.*, ¶11. We did not say that Corona reported observing any specific evidence of intoxication. *Id.* Here, Mindy

reported the men were in her house and “very intoxicated.” Thus, as in *Powers*, it is reasonable to infer that Mindy had face-to-face contact with the men and observed indicia of intoxication. Further, we stated that “independent verification of an informant’s tip is a relevant factor in assessing whether there was reasonable suspicion to conduct an investigative stop.” *Id.*, ¶14. We did not require corroboration of a tip in every case.

¶13 We turn, then, to whether the totality of the circumstances would provide a reasonable officer with reasonable suspicion that Helmeke was driving while intoxicated.⁴ Perkins received a phone call from a person identifying herself as Mindy. Mindy stated that her stepfather and another man were in her home and were very intoxicated. Mindy then stated that the men were leaving the house in a green truck and provided the license plate number. When Perkins arrived on the scene, he met Mindy in person and she pointed the truck out to him. He then immediately stopped the truck Mindy had identified.

¶14 Several principles support our conclusion that the facts of this case establish reasonable suspicion. First, because Mindy identified herself by name, and identified herself to Perkins in person, Perkins was entitled to give weight to the information she provided on the basis that she exposed herself to potential arrest for providing false information. See *Rutzinski*, 241 Wis. 2d 729, ¶32; *State*

⁴ Helmeke states that it is important for us to note that the reason Mindy called police was the argument with her stepfather rather than any information about Helmeke. However, Helmeke does not explain why it is important for us to note that, and we can discern no reason to do so. To the extent that Helmeke is arguing that the police focus on the disorderly conduct complaint rather than on the allegation of intoxication is relevant, we reject that argument as contrary to *State v. Baudhin*, 141 Wis. 2d 642, 650-52, 416 N.W.2d 60 (1987) (“As long as there was a proper legal basis to justify the intrusion, the officer’s subjective motivation does not require suppression of the evidence or dismissal.”).

v. Sisk, 2001 WI App 182, ¶9, 247 Wis. 2d 443, 634 N.W.2d 877. Second, we have recognized that “in Wisconsin, a layperson can give an opinion that he or she believes another person is intoxicated,” and police may rely on that assessment. *Powers*, 275 Wis. 2d 456, ¶13. Moreover, Mindy’s report that the men were in her house and “very intoxicated” supports the reasonable inference that she observed indicia of intoxication.⁵ See *id.*, ¶11. Finally, Mindy reported seeing the men drive away in a green truck and then pointed the truck out to Perkins, thus providing him with the specific, articulable facts necessary to support reasonable suspicion that the driver of the truck was intoxicated. 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.

⁵ Helmeke argues that Mindy stated only that the men were drinking, which did not support reasonable suspicion of intoxication. However, Perkins testified that Mindy stated that the men were “very intoxicated,” and the trial court adopted that testimony as a finding of fact. Helmeke does not argue that the court’s finding was clearly erroneous or explain why he disregards that testimony. Thus, we reject Helmeke’s argument that a finding of reasonable suspicion in this case would support investigative stops of every individual leaving a tavern in Wisconsin on the assumption that he or she had been drinking. It is a long way from “drinking” to “very intoxicated.”

