COURT OF APPEALS
DECISION
DATED AND FILED

May 20, 2008

David R. Schanker
Clerk of Court of Appeals

Appeal No. 2007AP2362-CR **Cir. Ct. No. 2006CT7373**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DAVID ALLEN HANSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: KEVIN E. MARTENS, Judge. *Affirmed.*

¶1 KESSLER, J.[1] David A. Hansen appeals from a judgment of conviction resulting from Hansen's guilty plea after the trial court denied his

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

motion to suppress for failure of the police officer to have reasonable suspicion to stop his vehicle. We affirm.

BACKGROUND

¶2 On October 24, 2006, the Cudahy Police Department dispatch received a telephone call from an individual at the Back Inn tavern reporting that the former owner of the tavern, Tom Mettlach, was making a disturbance and requesting that police come to the tavern. Police Officer Horace Craft, Jr., an eighteen-year veteran of the Cudahy Police Department, was at the police station at the time of the call. Craft knew Mettlach and Mettlach's history with the tavern and its current owner. Craft responded to the dispatch, arriving at the tavern approximately three minutes after leaving the police station. Craft was the first officer to arrive at the scene; however, several officers arrived shortly thereafter. Upon arriving at the tavern, Craft was met by a woman standing in front who "was pointing and yelling" to him, saying words to the effect, "he's drunk, he's leaving." Craft took this to mean that Mettlach was in a pickup truck that was leaving the tavern parking lot and upon observing the truck, recognized Mettlach as the truck's passenger. Craft also recognized the driver as Hansen, a person with whom Craft was also familiar.

¶3 Craft immediately directed Hansen to pull the truck into the parking lot across the street from the tavern, which Hansen did. Craft approached the driver's side of the truck, and immediately noted that Hansen's eyes were glassy and bloodshot and there was a strong odor of intoxicants on Hansen's breath. Craft then ordered Hansen out of the truck and conducted field sobriety tests. Craft then arrested Hansen for operating a motor vehicle while intoxicated.

Hansen's blood alcohol level was tested later at St. Luke's Hospital and was found to be .219% weight of alcohol.

¶4 Hansen filed a motion to suppress claiming Craft had no reasonable suspicion to stop his truck. After an evidentiary hearing, the trial court found that there was no "reasonable suspicion to stop for operating while impaired." It did find, however, that the State had proven by a preponderance of the evidence that there was "reasonable suspicion to stop as it relates to the investigation of the disturbance [i.e., the subject of the dispatch]." The trial court found that given the fact that: (1) a call from the tavern regarding a disturbance involving Mettlach was received by the police; (2) when Craft arrived at the tavern, a woman yelled to him and pointed at Hansen's truck, yelling that he is drunk, he is leaving, thereby providing Craft with the reasonable belief that he should stop the vehicle to investigate once he saw that Mettlach was in the passenger seat of that truck; and (3) because the woman was present and identifying her would be easily possible, this was not an anonymous tip case (Hansen's characterization), Craft had reasonable suspicion to stop Hansen's truck. The trial court then denied the motion.

¶5 Hansen subsequently entered a guilty plea and was found guilty of OWI (second offense), in violation of WIS. STAT. § 346.63(1)(a) (2005-06).[2] Hansen now appeals the judgment of conviction and denial of his motion to suppress.

DISCUSSION

[2] The charge of operating with PAC of .08 or more, under WIS. STAT. § 346.63(1)(b) was dismissed.

¶6 On review of an order relating to the suppression of evidence, the trial court's findings of fact will be sustained unless they are against the great weight and clear preponderance of the evidence. ***Bies v. State***, 76 Wis. 2d 457, 469, 251 N.W.2d 461 (1977). Any conflicts in the testimony presented will be resolved in favor of the trial court's finding. ***State v. Verhasselt***, 83 Wis. 2d 647, 653, 266 N.W.2d 342 (1978). The credibility of police officers and others testifying at the suppression hearing outside the presence of a jury is a determination left to the trial court. ***State v. Pires***, 55 Wis. 2d 597, 602-03, 201 N.W.2d 153 (1972).

¶7 Whether reasonable suspicion existed for an investigatory stop is a question of constitutional fact, to which we apply a two-part standard of review. ***State v. Williams***, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. We will uphold a trial court's findings of historical fact unless they are clearly erroneous. ***Id.*** Whether those facts constitute reasonable suspicion such that the stop was constitutional is a question we review *de novo*. ***Id.***

¶8 For an investigatory stop to be constitutional, a law enforcement officer must reasonably suspect "that a crime has been committed, is being committed, or is about to be committed." ***State v. Young***, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729 (citing ***State v. Waldner***, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996) (footnote omitted)); ***State v. Richardson***, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). This court must consider whether all the specific and articulable facts, known to the officer at the time of the encounter, together with the rational inferences from those facts, amount to reasonable suspicion. ***State v. Dunn***, 158 Wis. 2d 138, 146, 462 N.W.2d 538 (Ct. App. 1990). "[I]f any reasonable inference of wrongful conduct can be objectively discerned … officers

have the right to temporarily detain the individual for the purpose of inquiry." ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶9 "Reasonable suspicion, like probable cause, is dependent upon both the content of information possessed by police and its degree of reliability. Both factors quantity and quality are considered in the totality of the circumstances." ***State v. Williams***, 2001 WI 21, ¶22, 241 Wis. 2d 631, 623 N.W.2d 106 (citations and internal quotation marks omitted).

> The totality-of-the-circumstances approach views the quantity and the quality of the information as inversely proportional to each other. "Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable." Conversely, if the tip contains a number of components indicating its reliability, then the police need not have as much additional information to establish reasonable suspicion.

Id. We focus "upon the reasonableness of the officers' actions in the situation facing them," ***id.***, ¶23, measured against an objective standard taking into consideration the totality of the circumstances known to the officer at the time, ***Richardson***, 156 Wis. 2d at 139-40. In other words, under all the facts and circumstances known to the officer, "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). Additionally, "if any reasonable suspicion of past, present, or future criminal conduct can be drawn from the circumstances, notwithstanding the existence of other inferences that can be drawn, officers have the right to temporarily freeze the situation in order to investigate further." ***Id.*** at 835.

¶10 Hansen argues that Craft did not have reasonable suspicion to stop his vehicle in that Craft recognized both Mettlach and Hansen and knew how to

contact them, if necessary, after Craft had investigated the police call at the tavern. Hansen argues that because this was an option for Craft, Craft lacked the necessary reasonable suspicion to stop Hansen. We disagree.

¶11 A telephone call had come in to police dispatch that Mettlach was causing a disturbance at the tavern. Craft arrived at the tavern approximately three minutes after receiving the dispatch. When Craft arrived, a woman standing outside the tavern yelled to him words to the effect "he's leaving, he's drunk." Craft looked in the direction the woman was pointing and recognized Mettlach and Hansen in the truck. Craft decided at that time, within his discretion, to stop Mettlach from leaving so that he could question him in the investigation regarding the dispatch call. It was only after Craft had stopped the vehicle to question Mettlach that Craft observed Hansen, someone with whom he was familiar, smelling of alcohol and appearing too intoxicated to drive. Determining that stopping Hansen from driving impaired outweighed the need to immediately question Mettlach and people at the tavern, as well as the fact that a number of other police officers had subsequently arrived on scene in response to the disturbance dispatch, Craft decided to begin an investigation of Hansen and whether he was operating a motor vehicle while intoxicated. Based on the totality of the circumstances, Craft had reasonable suspicion to stop the vehicle (Mettlach's presence therein as the subject of the dispatch disturbance call) which was not diluted by Craft's subsequent decision that preventing Hansen from driving intoxicated outweighed the immediate need to question Mettlach on the tavern disturbance.

¶12 Hansen argues that the woman in front of the tavern yelling to Craft and pointing at Hansen's truck should be considered an anonymous tipster and analysis of the reliability of her tip should be evaluated under ***Florida v. J.L.***, 529

U.S. 266 (2000). In ***J.L.***, an anonymous caller contacted police and told them that "a young black male standing at a particular bus stop and wearing a plaid shirt was carrying a gun." ***Id.*** at 268. Based on this information alone, officers proceeded to the bus stop where they located a black male wearing a plaid shirt, and initiated an investigative stop. ***Id.*** In a search following the stop, police found the suspect carrying a concealed weapon without a license, in violation of Florida law. ***Id.*** at 268-69. The ***J.L.*** Court concluded that the stop was illegal, explaining: "The anonymous call concerning J.L. provided no predictive information and therefore left the police without means to test the informant's knowledge or credibility." ***Id.*** at 271. In other words, the informant's reliability. *See* ***State v. Rutzinski***, 2001 WI 22, ¶17, 241 Wis. 2d 729, 623 N.W.2d 516 ("[B]efore an informant's tip can give rise to grounds for an investigative stop, the police must consider its reliability and content.").

¶13 Here, however, the woman was present in person, and with other officers coming on the scene. She had jeopardized her anonymity by approaching the officer in person and risked arrest if her actions were later construed as obstructive. *See* ***id.***, ¶32 & n.8 (citing cases); ***State v. Williams***, 2001 WI 21 ¶35, 241 Wis. 2d 631, 623 N.W.2d 106 ("Risking one's identification intimates that, more likely than not, the informant is a genuinely concerned citizen as opposed to a fallacious prankster."); *see also* ***United States v. Heard***, 367 F.3d 1275, 1279 (11th Cir. 2004) (face-to-face anonymous tip inherently more reliable because it allows officers to "observe demeanor and perceive the credibility of the informant"). We agree with the State's characterization of the woman as a citizen informant. *See* ***State v. Sisk***, 2001 WI App 182, ¶8, 247 Wis. 2d 443, 634 N.W.2d 877. In ***Sisk***, we explained the significance of a tip from a citizen informant:

> [I]f "an informant places his [or her] anonymity at risk, a court can consider this factor in weighing the reliability of the tip." ***Williams***, 2001 WI 21 at ¶35 (quoting ***J.L.***, 529 U.S. at 276, Kennedy, J., concurring). Further, when a caller gives his or her name, police need not verify the caller's identity before acting on the tip. ***State v. Kerr***, 181 Wis. 2d 372, 381, 511 N.W.2d 586 (1994) ("[W]hen an average citizen tenders information to the police, the police should be permitted to assume that they are dealing with a credible person in the absence of special circumstances suggesting that such might not be the case.") (citation omitted).

Sisk, 247 Wis. 2d 443, ¶9 (footnotes omitted); *see also* ***State v. Powers***, 2004 WI App 143, ¶9, 275 Wis. 2d 456, 685 N.W.2d 869. Craft took the woman's information to mean that Mettlach was in the truck that was leaving. Craft then personally observed that Mettlach was in the truck. Since Mettlach was the subject of the disturbance dispatch that Craft was responding to, his stopping the truck, "freezing the scene," based first on the then-anonymous woman's tip and then based on his own personal observation, provided Craft the necessary reasonable suspicion to stop Hansen's truck. *See* ***Jackson***, 147 Wis. 2d at 835.

¶14 Because Craft had a reasonable suspicion to stop Hansen's vehicle, the trial court properly denied Hansen's motion to suppress.

By the Court.—Judgment and order affirmed.

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