

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 11, 2009

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. 2008AP1369-CR

Cir. Ct. No. 2005CF160

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES J. POOS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: DALE L. ENGLISH, Judge. *Affirmed.*

Before Anderson, P.J., Snyder and Neubauer, JJ.

¶1 PER CURIAM. James J. Poos appeals from the judgment of conviction entered against him for causing great bodily harm to another human being by operating a motor vehicle with a detectable amount of a controlled substance in his blood in violation of WIS. STAT. § 940.25(1)(am) (2003-04). He

argues on appeal that the police did not have a reasonable suspicion that his blood contained evidence of a crime at the time a blood sample was taken from him, and consequently, the circuit court erred when it denied his motion to suppress. We conclude that the police did have a reasonable suspicion, and we affirm.

¶2 Poos was charged because of an accident that occurred when he ran a red light. His car was struck by a grain truck traveling through the intersection, and a woman in the passenger seat of Poos' car was severely injured. Poos, who suffered a head injury in the crash, was taken to the hospital where the police had his blood drawn. The blood test showed a detectable amount of marijuana.

¶3 Poos moved to suppress the results of the blood test, arguing that at the time of the blood draw, the police did not have a reasonable suspicion that his blood contained evidence of a crime. At the suppression hearing, one of the police officers who was at the scene of the accident testified to the facts that gave him a suspicion that Poos might have been under the influence of an intoxicant. The officer stated that from interviewing witnesses at the scene, he learned that the accident had occurred because Poos ran the red light. He further learned that Poos had been taken to the hospital, that his passenger had been severely injured, and that another officer had found a marijuana pipe among the debris from the crash.

¶4 Before he arrived at the hospital, the officer learned that there were outstanding warrants for Poos' arrest, and that his driver's license had been revoked. The officer further testified that when he spoke to Poos at the hospital, Poos seemed confused. The officer testified that the confusion was consistent with both having a head injury and being under the influence of an intoxicant. The officer stated that he read to Poos the "Informing the Accused Form" before having Poos' blood drawn. When asked why he read the form to Poos, the officer

stated he read it because, based on all of these facts, he concluded that there might be “other factors” involved in causing the accident, such as alcohol or a controlled substance. The State did not argue that Poos consented to the blood draw, but rather argued that the police had a reasonable suspicion under the totality of the circumstances that Poos’ blood would contain evidence of either alcohol or a controlled substance. The circuit court agreed with the State, and denied the motion to suppress. Poos then entered a plea of no contest.

¶5 In reviewing suppression motions, our standard of review is mixed. *State v. Martwick*, 2000 WI 5, ¶16, 231 Wis. 2d 801, 604 N.W.2d 552. We review the trial court’s findings of historical fact using the clearly erroneous standard. *Id.*, ¶18. Our review of the application of those facts to constitutional principles and whether the defendant’s constitutional rights were violated presents a question of law, which we review independently. *Id.*, ¶¶18-20.

¶6 The only issue presented by this appeal is whether the police had a reasonable suspicion that Poos’ blood contained evidence of a crime. “[B]lood may be drawn in a search incident to a lawful arrest for a non-drunk driving offense if the police reasonably suspect that the defendant’s blood contains evidence of a crime.” *State v. Repenshek*, 2004 WI App 229, ¶15, 277 Wis. 2d 780, 691 N.W.2d 369. The question is whether the totality of the circumstances creates a reasonable suspicion that the person was committing a crime. *State v. Jackson*, 147 Wis. 2d 824, 833-34, 434 N.W.2d 386 (1989). “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 suspect in light of his or her training and experience?” *Id.* at 834.

¶7 We conclude, as did the circuit court, that under the facts and circumstances present, specifically the facts that Poos ran a red light, the police found a marijuana pipe, the outstanding warrants and revoked license, and Poos' confusion, the police had a reasonable suspicion that Poos' blood would contain evidence that he had committed a crime.¹ We agree with the circuit court that, under all of these circumstances, it would have been improper for the officer not to request the blood draw. Consequently, we conclude that the circuit court properly denied Poos' motion to suppress evidence. We affirm the judgment of the circuit court.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2007-08).

¹ Poos only argues that the police did not have reasonable suspicion that his blood contained evidence of a crime, so we have decided this case on the basis that the police had a reasonable suspicion. This standard applies when a defendant has been arrested for a non-drunk driving offense. Although it appears to be likely, it is not clear from the record whether Poos had been arrested for a non-drunk driving offense at the time of the blood draw. Assuming, however, that Poos had not been arrested for a non-drunk driving offense at the time of the blood draw, the standard would be whether the police had probable cause to believe his blood contained evidence of a crime. See *State v. Erickson*, 2003 WI 25, ¶14-16, 260 Wis. 2d 279, 659 N.W.2d 407. We conclude that these same facts support the conclusion that the police had probable cause to order the blood draw.

