

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 19, 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. 2008AP2000-CR

Cir. Ct. No. 2008CT33

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSUE M. COBOS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
SCOTT L. HORNE, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, P.J.¹ Josue M. Cobos appeals a judgment convicting him of operating while intoxicated, second offense, upon a guilty plea

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

following the circuit court's denial of his motion to suppress evidence obtained during a traffic stop. We affirm.

BACKGROUND

¶2 On January 16, 2008, at approximately 2:15 a.m., Officer Thomas Hansen was patrolling downtown La Crosse in a fully marked squad car when he spotted a group of five males in a parking lot behind a tavern. Two were actively engaged in a fight, the others were standing approximately ten feet away.

¶3 As Hansen pulled up in his squad car, he overheard a great deal of shouting. The three men Hansen had observed standing near the fight made eye contact with Hansen and started to walk away. Hansen called out, "Hey, come over here," but the men kept walking. Hansen radioed to dispatch that a fight was in progress, and that three white males were walking away from the scene northbound on Third Street.

¶4 Officer Casey Rossman was patrolling approximately half a block away from the fight when he heard Hansen's dispatch over his radio. Moments later, Rossman spotted three men walking northbound on Third Street. The area was largely abandoned and there were no other groups of persons visible on the street. Rossman relayed to dispatch that he would try to make contact with the group. Rossman pulled over and made contact with two of the men. The third man, later identified as Cobos, kept walking down the street and entered the county parking lot despite Rossman's request to stop. Rossman radioed that a man in the county parking lot was walking away from him. He described the man as short and wearing a stocking cap. Rossman observed the man shuffling his feet as he walked and weaving across the crosswalk, but did not radio this information to

dispatch. Rossman then saw the man get into a black Explorer in the parking lot, and start to drive off, and reported these facts to dispatch.

¶5 Officer Teri Roden was also on patrol in the downtown area when she heard Hansen's and Rossman's dispatches. Roden turned into the parking lot moments after receiving Rossman's dispatch and spotted a black Explorer making a turning maneuver. Roden made a traffic stop of the Explorer. Rossman, who was standing outside of the parking lot, walked to the stopped vehicle and took over the stop. Rossman identified the driver as Cobos and, after administering field sobriety tests, placed him under arrest for operating a motor vehicle while intoxicated, second offense.

DISCUSSION

¶6 When reviewing an appeal from an order by the circuit court denying a motion to suppress evidence, this court will uphold the trial court's findings of fact unless those findings are clearly erroneous. *State v. Richardson*, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). Whether an investigatory stop meets constitutional and statutory standards is a question of law that we review de novo. *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991.)

¶7 Cobos contends that the stop was unreasonable because the officers lacked "a particularized and objective basis for suspecting him of criminal activity." Alternatively, Cobos argues that, even if the officers collectively had a sufficient basis to initiate the stop, the facts providing the basis for a stop were not communicated to the officer who made the stop. Finally, Cobos argues that the information used to identify him was inappropriately broad to justify the investigative stop. We address these contentions in turn.

¶8 To make an investigative stop of a person, the police must have a reasonable suspicion that criminal activity is afoot. *State v. Allen*, 226 Wis. 2d 66, 71, 593 N.W.2d 504 (Ct. App. 1999). Reasonable suspicion must be grounded in specific and articulable facts, and rational inferences drawn from those facts. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). The test is an objective one; “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. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

¶9 Wisconsin law holds that evasive acts may, within the totality of the circumstances, raise sufficient reasonable suspicion to justify a brief investigative stop. See *State v. Jackson*, 147 Wis. 2d 824, 829, 434 N.W.2d 386 (1989); *State v. Anderson*, 155 Wis. 2d 77, 82, 454 N.W.2d 763 (1990); *State v. Amos*, 220 Wis. 2d 793, 801, 584 N.W.2d 170 (Ct. App. 1998). Here, several facts, including Cobos’ seemingly evasive behavior, gave officers reasonable suspicion to make an investigative stop.

¶10 Officer Rossman’s observation of Cobos’ unsteady gait immediately before he operated the vehicle around bar time gave rise to a reasonable suspicion that Cobos was driving under the influence, and therefore was sufficient to justify a stop. Other facts observed by Officer Hansen, including Cobos’ proximity to the

fight in an abandoned area around bar time, and his refusal to stop for questioning, provided additional justification for the stop.²

¶11 Cobos next argues that even if the officers had reasonable suspicion to stop him, the information which led to that suspicion was not properly relayed to the stopping officer, Officer Roden.

¶12 Cobos' argument relies on *State v. Friday*, 140 Wis. 2d 701, 412 N.W.2d 540 (Ct. App. 1987), *reversed on other grounds*, 147 Wis. 2d 359, 434 N.W.2d 85 (1989). In *Friday*, we noted that it is well established that an officer making an arrest (or here, an investigative stop) may rely upon the collective information within the police department relayed through police channels. *Friday*, 140 Wis. 2d at 713. However, we concluded that the arrest of Friday was invalid where an arrest would have been justified by the collective information of the department, but the arresting officers lacked this information. Instead, the officers made the arrest based on an unverified police informant's tip, which the officers could not be sure was based on more than "casual rumor" and Friday's "general reputation." *Id.* at 711-12, 714-15.

¶13 Cobos argues that the stop was invalid under *Friday* because Officer Rossman's observation that Cobos appeared intoxicated as he got behind the wheel of the vehicle was not communicated to Officer Roden, the officer who

² Cobos contends that he had a right to walk away when asked to stop by police, citing *Florida v. Royer*, 460 U.S. 491 (1983), and *Illinois v. Wardlow*, 528 U.S. 119 (2000), and argues that his refusal to stop did not give officers reasonable suspicion for the stop. However, as explained above, his refusal to stop when asked was but one building block in the totality of the circumstances test. More relevant to the basis for the stop was the fact that he was seen operating a motor vehicle after walking unsteadily, and his proximity to the fight in an abandoned area around bar time.

made the stop. However, Cobos misinterprets *Friday* to require that all of the information constituting reasonable suspicion must be imputed to the detaining officer for the collective knowledge rule to apply. The court imposed no such requirement in *Friday*. Rather, the *Friday* court cited with approval *Salter v. State*, 163 Ind. App. 35, 321 N.E.2d 760 (1975), wherein the Indiana Supreme Court invalidated a search in which there was “no evidence” that the arresting officers had “any communication” with department officers who were in possession of the facts constituting probable cause. *Friday*, 140 Wis. 2d at 714.

¶14 In discussing the collective knowledge rule in *State v. Mabra*, 61 Wis. 2d 613, 625-26, 213 N.W.2d 545 (1974), the supreme court explained that an arrest is valid where facts constituting probable cause exist within the police department and “there is police-channel communication to the arresting officer and he acts in good faith” upon that information. Where officers are in communication with each other and are in close time-space proximity to a questioned detention or search, courts are reluctant to invalidate a search for failure to communicate all of the particular facts providing the basis for the detention. See 2 LaFare, SEARCH AND SEIZURE, § 3.5(c), pp. 288-89 n. 81 (4th ed. 2004) (citing, e.g. *United States v. Sawyer*, 224 F.3d 675 (7th Cir. 2000) (knowledge of officer who chased defendant could be imputed to apprehending officer under collective knowledge doctrine because officers were “in communication”); *United States v. Ledford*, 218 F.3d 684 (7th Cir. 2000) (several officers were acting together in stopping fleeing bank robbers; permissible that officer possessing facts establishing probable cause was not the officer who made search of the robbers’ car, but the officer who held the gun pointed at the car).

¶15 Here, Officer Roden was patrolling in the area and had her radio on when information from Officers Rossman and Hansen was relayed to the

dispatcher. While Rossman did not relay all information supporting an investigative stop of Cobos to dispatch, Roden was in police-channel communication with the other officers and the dispatcher, and this made her aware of much of the information justifying the stop, and she acted in good faith upon that information in making the stop. This situation is distinguishable from *Friday*, where officers, who were not in communication with those in the department having information justifying Friday's detention, acted upon unreliable information that was separate from the facts known to others in the department.

¶16 Finally, Cobos argues that even if there was reasonable suspicion to stop Cobos, the stop was illegal because it was based on a description of Cobos that was insufficiently broad. Cobos asserts that Hansen's initial description of Cobos as one of a group of three "male whites" and later as "short with a stocking cap" was insufficient to provide Roden with enough information to stop Cobos. This argument leaves out crucial elements of the circumstances surrounding Roden's stop of Cobos.

¶17 As noted by the trial court, key to Roden's identification of Cobos was the proximity of time and space between the initial observation of the fight and the stop. Cobos was not just a short, white male in a stocking cap; he was a person more or less fitting that description³ in that time and place. Moreover, only he and his two companions were observed in the area at the time of the fight. Rossman's communication that Cobos got into a black Explorer in the parking lot, and the near immediate observation by Roden of a black Explorer moving in the

³ The traffic citation issued to Cobos lists his race as Hispanic.

parking lot with a driver that fit earlier descriptions of Cobos, provided more than adequate identifying information to support the stop.

By the Court.—Judgment affirmed.

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

