COURT OF APPEALS
DECISION
DATED AND FILED

March 21, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-1275-CR **Cir. Ct. No. 00-CF-1349**

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

WOODROW K. BARTLETT,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County: MORIA KRUEGER, Judge. *Reversed and cause remanded with directions*.

Before Vergeront, P.J., Deininger and Lundsten, JJ.

¶1 LUNDSTEN, J. The State of Wisconsin appeals an order of the circuit court granting Woodrow K. Bartlett's motion to suppress evidence of his blood alcohol content based on a lack of reasonable suspicion to conduct a traffic stop. For the following reasons, we reverse and remand.

Background

¶2 In reviewing an order suppressing evidence, we will uphold a circuit court's findings of fact unless they are against the great weight and clear preponderance of the evidence. ***State v. Richardson***, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). Furthermore, this court will follow its normal practice of assuming facts, reasonably inferable from the record, in a manner that supports the circuit court's decision. *See* ***State v. Wilks***, 117 Wis. 2d 495, 503, 345 N.W.2d 498 (Ct. App.), *aff'd*, 121 Wis. 2d 93, 358 N.W.2d 273 (1984).

¶3 After a careful review of the record, we conclude that the circuit court believed, with one exception, the testimony of Officer Mark Larson, the sole testifying witness at the suppression hearing. Accordingly, we base our decision on only that testimony accepted by the circuit court as true. That testimony is as follows.

¶4 On June 23, 2000, Officer Larson received a call from dispatch indicating that an individual had called to report a man entering his vehicle with an open intoxicant and subsequently driving toward the Crowne Plaza hotel on Madison's east side. The caller identified the make of the vehicle and license plate number, and indicated that she believed the driver of the vehicle had a revoked license. Officer Larson also testified that he believed the caller indicated that the man was intoxicated. It is clear from the record that Officer Larson did not include that information in his initial report, but only later in an addendum.

¶5 Officer Larson proceeded to the area near the Crowne Plaza, where he located a vehicle matching the description and bearing the license plate number identified by the caller. Officer Larson followed the vehicle as it proceeded north on Continental Avenue and then east on the East Washington Avenue frontage

road. The vehicle then turned into the parking lot of the Crowne Plaza and proceeded to drive slowly through the parking lot, passing empty parking spaces but never stopping to park. Officer Larson stated that, based on his training and experience, he believed the vehicle's driver may have been traveling through the Crowne Plaza parking lot to sell or purchase drugs or other contraband.

¶6 Officer Larson then testified that, at that point in time, he received information from dispatch that the person believed to be driving the vehicle was Woodrow Bartlett. Sergeant Jane Stoklasa instructed Officer Larson to use caution when approaching Bartlett. Stoklasa indicated she believed Bartlett to be an IV drug user known to fight with police.

¶7 The vehicle then left the Crowne Plaza parking lot and traveled westbound on the frontage road to East Washington Avenue. The driver turned at a cross street to enter East Washington Avenue. At this point, Officer Larson stated that he looked down momentarily as he reached for his radio and, after he looked up again, he believed the vehicle did not have enough time to stop at the stop sign before proceeding on.

¶8 Officer Larson then stated that the vehicle entered East Washington Avenue, traveling westbound. Initially, the vehicle traveled at approximately twenty miles per hour in a thirty-five-mile-per-hour speed zone. Other than traveling too slowly, Officer Larson did not notice any improper driving on East Washington Avenue.

¶9 Officer Larson testified that, at this time, he tried to contact the dispatcher who had taken the call from the informant, but he was unable to reach him or her. Nevertheless, Officer Larson was given the phone number of the caller. Officer Larson placed a call to that number and learned that the informant,

who was identified as Jodie, was not at that location any more. Nevertheless, the person who answered the phone gave Officer Larson another number where Jodie could be reached. Officer Larson was, however, unable to reach Jodie at that location either.

¶10 Officer Larson then testified that he followed the vehicle to Blair Street. At this time, another officer who was providing backup to Officer Larson pointed out an obstruction hanging from the rearview mirror of the vehicle, which was later identified as a Christmas-tree-shaped air freshener. Officer Larson determined that, given the totality of the information he had at that point, he could effect a stop of the vehicle. Officer Larson activated his lights after turning on to Blair Street, but the vehicle did not initially stop. Instead, the driver entered the parking lot of the Essen Haus restaurant and was attempting to pull into a parking stall when Officer Larson activated his siren to get the driver's attention. After approaching the vehicle, Officer Larson identified the driver as Woodrow K. Bartlett.

¶11 At this point in the hearing, the prosecutor presented a videotape from Officer Larson's car. Officer Larson had activated a video camera when he entered the Crowne Plaza parking lot. The tape began recording at 6:36 p.m. After following the vehicle for ten minutes, Officer Larson is heard to say on the tape: "I'm open to suggestions for PC right now, I don't have a thing." Officer Larson explained to the court that officers on the street use the term "PC" loosely to refer to both probable cause and reasonable suspicion. The vehicle was stopped at 6:48 p.m. based on what Officer Larson termed an "obstruction" hanging from the rearview mirror: the Christmas-tree-shaped air freshener.

¶12 After arguments, the court made an oral ruling from the bench. The court first stated that it would not consider the fact that Officer Larson believed Bartlett failed to stop at the stop sign before entering East Washington Avenue because the officer did not directly observe the failure and would not have been able to prove it absent the videotape. The court also noted the discrepancy between Officer Larson's testimony that he believed the caller indicated Bartlett was intoxicated and his police report which only indicated that the caller stated Bartlett entered his vehicle with an open intoxicant. It appears from the record that the court did not believe the caller indicated Bartlett was intoxicated.

¶13 The court also put little emphasis on the information provided by the caller in light of the fact that the caller did not indicate where she saw Bartlett enter his car with an open intoxicant, why she believed he was going to the Crowne Plaza, or why she believed he did not have a valid driver's license. While the court indicated there was some meandering through the Crowne Plaza parking lot by Bartlett, it did not find this behavior to be suspicious, as Officer Larson did. The court also concluded that Bartlett's slow rate of speed for approximately fifteen seconds on East Washington Avenue was not, by itself, suspicious.

¶14 The court noted that Officer Larson indicated on the videotape that he did not believe he had reasonable suspicion to stop the vehicle until he saw the air freshener and, thus, the court concluded, the air freshener was the sole basis for the stop. Relying on ***Walker v. Baker***, 13 Wis. 2d 637, 109 N.W.2d 499 (1961), the court concluded that the air freshener alone did not constitute reasonable suspicion to stop the vehicle because there was no evidence presented as to whether the air freshener actually obstructed Bartlett's view. Accordingly, the court granted Bartlett's motion to suppress evidence based on a lack of reasonable suspicion to stop the vehicle. The State appealed.

Discussion

¶15 On appeal, the State presents several reasons why the circuit court erred in concluding that Officer Larson did not have reasonable suspicion to stop Bartlett and, thus, why the court erred in granting Bartlett's motion to suppress evidence. As will be apparent, we need not address many of the State's arguments because we agree with the State's basic proposition that the police officer acted properly in stopping Bartlett based on information of a possible crime from a caller who provided self-identifying information.

¶16 As noted above, we will uphold the circuit court's factual findings unless they are against the great weight and clear preponderance of the evidence. *See* ***Richardson***, 156 Wis. 2d at 137. Nonetheless, whether a stop meets statutory and constitutional standards is a question of law that we review *de novo*. ***Id.*** at 137-38.

¶17 A law enforcement officer may lawfully conduct an investigatory stop if, based upon the officer's experience, he or she reasonably suspects that "'criminal activity may be afoot.'" ***State v. Williams***, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106 (quoting ***Terry v. Ohio***, 392 U.S. 1, 30 (1968)). Reasonable suspicion is dependent on "the content of information possessed by police and its degree of reliability," both factors of which are considered in light of the totality of the circumstances. ***Williams***, 2001 WI 21 at ¶22 (citation omitted).

¶18 Under the "totality of the circumstances" approach, the quantity and quality of the information possessed by police is seen as inversely proportional. In other words, if a tip has a relatively low degree of reliability, more information will be required before it can be said that police possess reasonable suspicion necessary to make a lawful stop. Stated conversely, if the tip has a high degree of

reliability, the police need not have as much additional information to establish reasonable suspicion. ***Id.***

¶19 Relying on ***State v. Rutzinski***, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, the circuit court here concluded that the caller had provided too little information to allow the officer to verify how she came to know of Bartlett's activities and, thus, the court apparently believed the information by itself was too unreliable to provide reasonable suspicion. In ***Rutzinski***, however, the court determined that an allegation of illegal activity must be supported by "verifiable information indicating how the tipster came to know of the alleged illegal activity" only when that information was coming from "a totally anonymous tip." ***Id.*** at ¶28.

¶20 We conclude that the caller in this case was not anonymous. Indeed, she provided enough information to the dispatcher to destroy any such anonymity. The caller left her phone number with the dispatcher, a number that Officer Larson called while he followed Bartlett. It is not clear from the record whether the caller also left her name with the dispatcher. However, when Officer Larson called the phone number left by the caller, a different person answered who was obviously aware of Jodie's earlier call to police. This person told Officer Larson Jodie's name and gave Larson a telephone number where Jodie could be reached.[1] In ***State v. Sisk***, 2001 WI App 182, ¶¶8-11, 247 Wis. 2d 443, 634 N.W.2d 877, we concluded that when a caller provides self-identifying information that places his

[1] When an informant provides self-identifying information, it is unnecessary for police to verify the informant's identity prior to acting on his or her tip. To hold otherwise would require police to take critically important time to verify the accuracy of the caller's identity rather than respond to a crime in progress. ***State v. Sisk***, 2001 WI App 182, ¶9, 247 Wis. 2d 443, 634 N.W.2d 877.

or her anonymity at risk, the caller is no longer anonymous. Because a non-anonymous tipster subjects himself or herself to the threat of potential arrest should he or she provide false information, such non-anonymity weighs in favor of the tipster's reliability. *See* ***Adams v. Williams***, 407 U.S. 143, 146-47 (1972).

¶21 Thus, in ***Sisk*** we held that an officer had reasonable suspicion to stop the defendant based on the informant's tip that he saw the defendant enter a particular building carrying a gun. We concluded that because the caller gave information about the suspect and his location, which the police verified before stopping the defendant, and the caller provided sufficient information about himself to destroy his anonymity, the totality of the circumstances established reasonable suspicion. ***Sisk***, 2001 WI App 182 at ¶¶10-11.

¶22 Like the caller in ***Sisk***, the informant in this case not only provided sufficient information to destroy her anonymity, she also provided information that was independently verified by the police. She indicated the make of the vehicle and the license plate, and she accurately predicted the vehicle was heading to the Crowne Plaza. Officer Larson verified both the make and license plate of the vehicle, and he found Bartlett heading to the parking lot of the Crowne Plaza. *See* ***Richardson***, 156 Wis. 2d at 142 (when police independently corroborate significant aspects of an informant's tip, the inference arises that the tipster is truthful); ***Alabama v. White***, 496 U.S. 325, 332 (1990) (when a caller accurately predicts future behavior, this indicates that the tip is reliable). Finally, the caller indicated that she believed Bartlett was driving on a revoked license, information that the general public would have no way of knowing. *See* ***White***, 496 U.S. at 332 (when the tip provided by the informant indicates that the informant possesses "inside information," i.e., a special familiarity with the suspect's affairs, this suggests that the tip is reliable).

¶23 Thus, in this case, the police officer had sufficient information, from an identified informant, to believe that Bartlett was driving with an open intoxicant and without a valid license. Accordingly, we conclude that Officer Larson possessed reasonable suspicion to lawfully stop Bartlett when he encountered Bartlett at the Crowne Plaza.

¶24 The circuit court noted the videotape revealed that Officer Larson did not believe he had reasonable suspicion to stop the vehicle until he saw the air freshener obstructing Bartlett's view. The court believed the air freshener was the sole reason the officer stopped Bartlett, and such reason was insufficient. We stress that the test for reasonable suspicion and probable cause is objective. The subjective beliefs of police officers are not relevant. *See* ***State v. Kiekhefer***, 212 Wis. 2d 460, 484, 569 N.W.2d 316 (Ct. App. 1997). Wrongly motivated police officers conduct legal stops, just as well motivated police officers conduct illegal stops.

¶25 On appeal, Bartlett suggests that driving with open intoxicants "is a pure civil violation which is punishable only by a monetary forfeiture." *See* WIS. STAT. §§ 346.935 and 346.95(2m) (1997-98).[2] Bartlett argues that before police may conduct a warrantless seizure for a civil violation, they must possess probable cause rather than the lesser standard of reasonable suspicion. We need not comment on Bartlett's suggestion that an officer may not lawfully stop a suspect based on a civil violation without probable cause because, in this case, Officer Larson had information that Bartlett was driving with a revoked license.

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

¶26 In ***State v. Krier***, 165 Wis. 2d 673, 478 N.W.2d 63 (Ct. App. 1991), a case remarkably similar in its facts to the one now before us, we concluded that "when a person's activity can constitute either a civil forfeiture or a crime, a police officer may validly perform an investigative stop" based on reasonable suspicion. ***Id.*** at 678. While the action of driving without a license is a civil violation punishable only by a monetary forfeiture if it is a first offense, driving without a valid license constitutes criminal conduct when the license has been revoked and when it is a repeat offense. *See* WIS. STAT. § 343.44(2)(am), (b) and (c) (1999-2000).

¶27 Because we conclude that Officer Larson had reasonable suspicion to stop Bartlett when he encountered Bartlett at the Crowne Plaza, we reverse the circuit court's order granting Bartlett's motion to suppress evidence of his blood alcohol content and remand this matter for further proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded with directions.

Not recommended for publication in the official reports.