COURT OF APPEALS
DECISION
DATED AND FILED

February 20, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2718-CR **Cir. Ct. No. 00-CT-427**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RICHARD A. SEFTON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Marathon County: GREGORY E. GRAU, Judge. *Affirmed.*

¶1 HOOVER, P.J.[1] Richard A. Sefton pled no contest to operating a motor vehicle with a prohibited blood alcohol concentration, contrary to WIS. STAT. § 346.63(1)(b). He appeals his conviction, contending that the trial court

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.1(2)(f). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

erred when it denied his motion to suppress. Sefton claims that deputy James Armstrong lacked reasonable suspicion to justify his request to another officer to stop Sefton. This court concludes that Armstrong had sufficient cause to request the stop and therefore affirms the trial court's order denying Sefton's motion to suppress and the judgment of conviction.

BACKGROUND

¶2 The following evidence was adduced at a hearing on Sefton's suppression motion. On June 10, 2000, Armstrong, a patrol officer with the Marathon County Sheriff's Department, was parked in a parking lot on the side of Highway 153. Two motorcycles that appeared to be traveling together passed him at a high rate of speed. Armstrong initially estimated their speed at seventy to seventy-five miles per hour. The speed limit on the road was fifty-five miles per hour.

¶3 Because the motorcycles appeared to be traveling faster than the posted speed limit, Armstrong followed the motorcycles in an "attempt to pace" them. However, before Armstrong was able to establish a steady pace to determine the speed of the motorcycles, he observed the lead motorcycle weaving excessively in its own traffic lane and became concerned that "if the first motorcycle wasn't stopped, that it could lead to a traffic crash."

¶4 Armstrong broke the pace and activated his emergency lights and sirens behind both motorcycles. He then passed the second motorcycle. As the lead motorcycle pulled to the shoulder and stopped, the second motorcycle accelerated past Armstrong at what he estimated was an excessive rate of speed. Based upon his experience with cyclists riding together, Armstrong thought it was

unusual that the second motorcycle did not stop when the first motorcycle pulled over.

¶5 The driver of the lead motorcycle initially refused to answer any of Armstrong's questions. Eventually, the driver confirmed that he and the other cyclist, later identified as Sefton, had been drinking at Stratford Heritage Days.

¶6 Armstrong radioed dispatch that there were no charges against the second cyclist at the time, but advised that the second motorcycle should "be stopped based on a reasonable suspicion that they should check his sobriety." Armstrong wanted the second cyclist stopped based on his initial speed estimate and the speed at which the motorcycle left the scene of the traffic stop. Armstrong believed that the statement of the lead cyclist that they had been drinking added to his "reasonable suspicion." Finally, Armstrong found it odd based on his experience that the second cyclist continued driving rather than stopping and staying with his companion.

¶7 Mosinee police officer Kevin Sorenson stopped Sefton based upon the information he received from Armstrong. In the course of the stop, Sorenson smelled the odor of intoxicants, conducted field sobriety tests and arrested Sefton for operating a motor vehicle while under the influence of an intoxicant, third offense, and operating a motor vehicle with a prohibited blood alcohol concentration.

¶8 At the close of the hearing, the trial court found Armstrong more credible than Sefton and denied Sefton's motion to suppress. Sefton then pled no contest to operating a motor vehicle with a prohibited blood alcohol concentration, third offense. The trial court entered judgment and Sefton now appeals.

STANDARD OF REVIEW

¶9 When reviewing an order denying a motion to suppress evidence, this court will sustain the trial court's findings of fact unless they are clearly erroneous.[2] ***State v. Eckert***, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, whether an investigatory stop was legally justified and satisfied the constitutional requirements of reasonableness is a question of law this court reviews de novo. ***State v. Fields***, 2000 WI App 218, ¶9, 239 Wis. 2d 38, 619 N.W.2d 279.

DISCUSSION

¶10 Sefton argues that Armstrong lacked specific, articulable facts and reasonable inferences from those facts that Sefton had committed, was committing or was about to commit a crime so as to justify the subsequent stop. Therefore, he argues the trial court erred when it denied Sefton's motion to suppress. This court concludes that Armstrong articulated facts sufficient to create reasonable suspicion and to justify the subsequent stop of Sefton. Because Armstrong had reasonable suspicion to stop Sefton, the trial court did not err when it denied Sefton's motion to suppress evidence.

¶11 An officer may stop a vehicle for questioning consistent with the Fourth Amendment protection against unreasonable searches and seizures when the officer has a reasonable suspicion that the occupants have engaged in or are

[2] In ***Noll v. Dimiceli's, Inc.***, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983), this court stated that in Wisconsin the "clearly erroneous" test and the "against the great weight and clear preponderance of the evidence" test are essentially the same standard for review of trial court findings of fact.

engaging in criminal activity. ***Terry v. Ohio***, 392 U.S. 1, 20-22 (1968). Reasonable suspicion must be based on specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant the intrusion. ***State v. Richardson***, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). Reasonableness is measured against an objective standard taking into consideration the totality of the circumstances. ***Id.*** If any reasonable inference of wrongful conduct can be objectively discerned, officers have the right to temporarily detain the individuals for purposes of inquiry. ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶12 Armstrong described over the radio specific, articulable facts that led him to suspect Sefton was operating his motorcycle while intoxicated. First, Armstrong estimated that Sefton's speed was in excess of seventy miles per hour in a fifty-five-mile-per-hour zone. Second, Sefton did not stop when Armstrong turned on his emergency lights, and he sped away from the scene of the traffic stop. Third, Armstrong considered it peculiar that Sefton did not remain with the lead cyclist, with whom Sefton was riding, when Armstrong stopped him because normally motorcycle riders remain with their traveling companions when one is pulled over. Finally, Armstrong learned from the lead cyclist that both had been drinking at Stratford Heritage Days.

¶13 These facts created a reasonable suspicion that Sefton was operating while intoxicated. Because Armstrong's suspicion was reasonable, the officer who learned the facts from Armstrong over the radio and pulled Sefton over also had reasonable suspicion.

¶14 Sefton argues that the tape of the radio transmission on June 10 proves that Armstrong lacked reasonable suspicion to have Sefton pulled over.

Sefton maintains that because Armstrong responded "Negative" when asked if there were any immediate charges against Sefton and because Armstrong told the dispatcher that he was just curious, the stop was invalid. We reject these contentions.

¶15 Taken as a whole, the tape merely demonstrates that Armstrong did not believe the facts justified any charges at that time.[3] Further, when Sefton asserts that Armstrong stated he wanted Sefton stopped because he was "just curious," Sefton takes these words out of context. Taking Armstrong's words as a whole,[4] it is apparent that Armstrong did not use the term "curious" in the sense that he wished to pursue an idle inquisitiveness. Rather, he used the term to connote suspicion, that is, to express his belief that the circumstances known to him at that point invited further investigation. Most importantly, however, the tape captured the specific, articulable facts that constitute reasonable suspicion and sparked Armstrong's "curiosity."

By the Court.—Judgment and order affirmed.

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

[3] Armstrong testified that he was only able to estimate Sefton's speed and that an estimation is less reliable than a pace. He further testified that he was not behind Sefton long enough after he activated his emergency lights and sirens to justify a charge of failure to yield to an emergency vehicle.

[4] Sorenson asked the dispatcher, "What is the deputy interested in?" The dispatcher asked Armstrong to "Advise if there's any charge." Armstrong responded, "Negative. I'm just curious to know why he took off instead of stopping with his buddy here. He might want to check for sobriety. They were both coming back from the Stratford Fun Days, or Heritage Days, rather."