

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 18, 2002

Cornelia G. Clark
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. 02-1113-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CT-1016

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

TROY A. BRULEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: BARBARA H. KEY, Judge. *Affirmed.*

¶1 NETTESHEIM, P.J.¹ Troy A. Bruley appeals from a judgment of conviction for operating a motor vehicle while intoxicated pursuant to WIS. STAT. § 346.63(1)(a) (third offense) and operating a motor vehicle after revocation

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1999-2000). All statutory references are to the 1999-2000 version.

pursuant to WIS. STAT. § 343.44(1)(b) (second offense). Bruley challenges the trial court's denial of his motion to suppress based on his claim that the arresting officer's initial detention of him was an invalid *Terry*² stop. We uphold the trial court's ruling and affirm the judgment of conviction.

¶2 The facts are undisputed. City of Oshkosh Police Officer Timothy Skelton was on vehicular patrol during the late evening hours of October 25, 2001, when he observed a vehicle operated by Bruley turn onto West Parkway Avenue. As the vehicle made the turn, Skelton noted that it did not have a front license plate. As Bruley passed Skelton traveling in the opposite direction, Bruley looked directly at Skelton. Skelton turned his vehicle around and followed Bruley with another vehicle between them. Bruley then made an unsignaled left turn into the parking lot of a closed Burger King restaurant. Skelton followed Bruley into the parking lot. However, when he found Bruley's parked vehicle, Bruley was no longer in the vehicle. Skelton continued to drive around the parking lot area looking for Bruley.

¶3 About thirty seconds later, Skelton saw Bruley reenter his vehicle. In response, Skelton began backing up his vehicle to the area of Bruley's vehicle, intending to speak with Bruley. However, Bruley then exited the vehicle and quickly walked past Skelton's vehicle. Skelton got out of his vehicle and told Bruley to stop so Skelton could speak with him. However, Bruley failed to heed Skelton's request and instead "made a quick movement or a quick jogging-type motion to get across North Main Street where [Skelton] finally was able to stop and have contact with him." Skelton pursued Bruley across North Main Street

² *Terry v. Ohio*, 392 U.S. 1 (1968).

where he detained him. The ensuing encounter and further investigation revealed that Bruley was intoxicated and he was arrested. The investigation also revealed that Bruley's vehicle had a temporary operation plate mounted on the rear of the vehicle.

¶4 Following the filing of the charges, Bruley brought a motion to suppress the evidence claiming a *Terry* violation. The trial court denied the motion, ruling that Bruley was properly detained under *Terry* as codified in WIS. STAT. § 968.24. The court reasoned that the cumulative effect of Bruley's actions provided reasonable suspicion for Skelton to temporarily detain Bruley. Following the court's ruling, Bruley pled no contest to the charges and he was convicted. He now appeals the trial court's ruling denying his motion to suppress.

¶5 In reviewing the denial of a motion to suppress, we will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). However, whether those facts satisfy the constitutional requirement of reasonableness is a question of law and therefore we are not bound by the trial court's decision on that issue. *Id.* Nonetheless, we value the trial court's ruling despite our de novo standard of review. *Scheunemann v. City of West Bend*, 179 Wis. 2d 469, 475, 507 N.W.2d 163 (Ct. App. 1993).

¶6 Although the trial court decided Bruley's motion on the basis of the totality of the conduct observed by Skelton, the court also observed that there were discrete portions of Bruley's conduct that arguably also provided a basis for Bruley's detention. We agree. First, subject to certain exceptions, WIS. STAT. § 341.15 requires the display of registration plates on both the front and rear of a motor vehicle. While Bruley contends that his vehicle was not required to display

registration plates on both the front and rear of his vehicle because it was equipped with a temporary operation plate pursuant to WIS. STAT. § 341.09, this fact was unknown to Skelton when he made the initial observation of Bruley's vehicle. Nor was Skelton able to view the back of Bruley's vehicle as he was following it because of the intervening vehicle.

¶7 Suspicious conduct by its very nature is ambiguous, and the principal function of the investigative stop is to quickly resolve that ambiguity. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). Here, assuming for the sake of argument that Bruley was exempt from the requirements of WIS. STAT. § 341.15, Skelton nonetheless was entitled to perform a temporary investigative stop to resolve any ambiguity created by the absence of a front registration plate on Bruley's vehicle.³

¶8 Second, Skelton not only had reasonable suspicion, but also probable cause, to stop Bruley for failing to properly signal his turn into the Burger King parking lot. WISCONSIN STAT. § 346.34(b) requires a signal when "other traffic may be affected by such movement." The evidence indicates that other traffic (Skelton and the intervening vehicle) was in the area when Bruley made his turn.

¶9 In any event, we agree with the trial court's assessment that the totality of the circumstances witnessed by Skelton provided a reasonable basis to temporarily detain Bruley. Skelton observed that Bruley's vehicle did not have a front registration plate. When the two vehicles passed in opposite directions, Bruley looked directly at Skelton. After Skelton turned around and followed

³ WISCONSIN STAT. § 968.24 also covers civil forfeiture violations. *State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991).

Bruley, he observed Bruley make an unsignaled turn into the Burger King parking lot. The restaurant was closed at the time, creating a suspicion that Bruley was seeking to avoid contact with Skelton. This suspicion was heightened when Skelton located Bruley's vehicle a few seconds later, but Bruley was nowhere in sight. Further contributing to the suspicion was Bruley's sudden reappearance and reentry into the vehicle, his ensuing flight on foot when Skelton backed his vehicle towards him, and his disregard of Skelton's command for him to stop. "Flight at the sight of police is undeniably suspicious behavior." *Anderson*, 155 Wis. 2d at 84.

¶10 Bruley likens this case to *State v. Fields*, 2000 WI App 218, 239 Wis. 2d 38, 619 N.W.2d 279. There, the police detained the defendant's vehicle after observing that it remained stopped at a stop sign for five to ten seconds. *Id.* at ¶4. The court of appeals held that this isolated fact did not constitute reasonable suspicion of a guilty mind or an attempt to evade police detection. *Id.* at ¶¶13-16. The court distinguished the case from a series of "guilty mind" cases in which reasonable suspicion was established, noting that each of the cases reflected *an accumulation of facts* contributing to reasonable suspicion. *Id.* at ¶¶14-20. This case has such an accumulation of facts. As our analysis of the facts has revealed and as the trial court determined, Skelton observed a continuum of conduct by Bruley sufficient to raise reasonable suspicion pursuant to WIS. STAT. § 968.24. Thus, *Fields* actually supports the State's—not Bruley's—argument.

¶11 In conclusion, we hold that the trial court correctly determined that Skelton had reasonable suspicion to temporarily detain Bruley. Therefore, the court properly denied Bruley's motion to suppress. Consequently, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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

