

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 26, 2003

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. 02-1469-CR

Cir. Ct. No. 02-CM-000022

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

STEVEN J. ROYCE,

DEFENDANT-RESPONDENT.

APPEAL from an order entered in the circuit court for Racine County: CHARLES H. CONSTANTINE, Judge. *Affirmed.*

¶1 SNYDER, J.¹ The State appeals from an order granting Steven J. Royce's motion to suppress evidence obtained during a routine traffic stop. The State argues that the arresting officer had reasonable suspicion to make the traffic

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

stop and thus the suppression motion should have been denied. We disagree and affirm.

FACTS

¶2 On November 29, 2001, at 2:07 a.m., Racine County Deputy Sheriff Edward Drewitz conducted a traffic stop of Royce's car; as a result of this stop, Royce was charged with operating a motor vehicle while intoxicated (OWI), third offense, operating a motor vehicle with a prohibited blood alcohol concentration, third offense, possession of drug paraphernalia and possession of THC. On January 15, 2002, Royce filed a motion to suppress all evidence seized as a result of the stop and his arrest, arguing that the traffic stop was without legal justification.

¶3 On March 12, 2002, an evidentiary hearing was held on this motion. Two witnesses testified, Drewitz and Royce's neighbor, Georgia Graham. Drewitz testified that prior to the stop, he observed Royce make lane deviations after stopping at stop signs located on the east and west frontage roads of Highway G and I-94. At that time Drewitz decided not to stop Royce for the alleged lane deviation violations "[b]ecause it's not a major violation," but continued to follow Royce as he drove west on Highway G.

¶4 Drewitz testified that Royce signaled a right turn and then turned right (north) onto Sunny Lane. Drewitz testified that Royce was in the middle of turning onto Woodland Drive while his patrol car was turning onto Sunny Lane and that he did not observe Royce's turn signal. Drewitz testified that after he turned onto Woodland Drive, it appeared that Royce was accelerating excessively, trying to lose or evade him, and that he had to drive over fifty miles per hour to catch up to Royce. Drewitz testified that he turned on his emergency lights but

Royce did not stop immediately; when Royce finally stopped, it was in front of Royce's residence approximately 250 feet from the point the emergency lights were activated. In essence, Drewitz testified that Royce failed to properly signal his turn onto Woodland Drive, traveled at an imprudent speed while on Woodland Drive and committed lane deviations while on the frontage roads, and it was these three reasons combined that led to the traffic stop.

¶5 Graham then testified that she lives near the entrance of the Raymond Hills subdivision and that she observed Royce's Ford Explorer enter the subdivision followed by another vehicle approximately thirty seconds later. Graham testified that it was generally fair to say Royce's vehicle was traveling around the speed limit and there was nothing unusual about the speed of the second vehicle.

¶6 Drewitz arrested Royce after detecting the odor of alcohol and administering a field sobriety test. Drewitz further testified that he found a two-inch red and bronze pipe in Royce's car and THC on his person at the jail.

¶7 In its decision dated May 2, 2002, the circuit court granted Royce's motion to suppress the evidence obtained during the stop on November 29, 2001. The court said, "As there is no basis for a stop on two out of the three [reasons given for stopping Royce], the Court must hold that there was not reasonable suspicion or probable cause to stop Mr. Royce" and indicated the alleged lane deviations were not "significant enough in this case to form the basis of the stop[.]"

DISCUSSION

¶8 When we review a motion to suppress evidence, we will uphold a circuit court's findings of fact unless they are clearly erroneous. *State v. Eckert*,

203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, the application of constitutional principles to those facts is a question of law that we decide de novo. *State v. Patricia A.P.*, 195 Wis. 2d 855, 862, 537 N.W.2d 47 (Ct. App. 1995).

¶9 The Fourth Amendment prohibits unreasonable searches and seizures. U.S. CONST. amend. IV. The detention of a motorist by a law enforcement officer constitutes a “seizure” within the context of the Fourth Amendment. *Berkemer v. McCarty*, 468 U.S. 420, 436 (1984). If a detention is illegal and violative of the Fourth Amendment, all statements given and items seized during this detention are inadmissible. *Florida v. Royer*, 460 U.S. 491, 501 (1983). An investigative detention is not unreasonable if it is brief in nature and justified by a reasonable suspicion that the motorist has committed or is about to commit a crime. *Berkemer*, 468 U.S. at 439; *see also* WIS. STAT. § 968.24.

¶10 According to *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be premised on specific facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be in the works and that action is appropriate. *Id.* “The question of what constitutes reasonable suspicion is a common sense test. Under all facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?” *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). This test is designed to balance the personal intrusion into a suspect’s privacy generated by the stop against the societal interests in solving crime and bringing offenders to justice. *State v. Guzy*, 139 Wis. 2d 663, 680, 407 N.W.2d 548 (1987).

¶11 The State argues that the circuit court erred in ruling there was no reasonable suspicion to make the traffic stop; the State claims that reasonable suspicion existed because of Drewitz's testimony regarding Royce's alleged lane deviations.

¶12 Again, Drewitz testified that Royce failed to properly signal his turn onto Woodland Drive, traveled at an imprudent speed while on Woodland Drive and committed lane deviations while on the frontage roads, and it was these three reasons *combined* that led to the traffic stop. The circuit court concluded that Drewitz was mistaken about the law regarding the requirement to signal a turn, and that his mistake cannot rise to the level of reasonable suspicion. See *State v. Longcore*, 226 Wis. 2d 1, 9, 594 N.W.2d 412 (Ct. App. 1999) (“[W]hen an officer relates the facts to a specific offense, it must indeed *be* an offense; a lawful stop cannot be predicated upon a mistake of law.”).

¶13 WISCONSIN STAT. § 346.34 addresses turning movements and required signals; para. (1)(b) states, “In the event any other traffic may be affected by such movement, no person may so turn any vehicle without giving an appropriate signal in the manner provided in § 346.35.” The circuit court concluded that the law only requires a motorist to signal if there is other traffic on the road that can be affected by the turn, and there was no other traffic on the road when Royce turned onto Woodland Drive. Therefore, the court held that failure to signal a turn did not satisfy the reasonable suspicion needed to stop Royce.

¶14 The circuit court also concluded that Drewitz's imprudent speed testimony was not credible, based upon Graham's testimony and applying the fundamental scientific principle of distance equals rate times time. The court used the distances indicated on the map of the subdivision, along with the speed and

time testimony from Drewitz, to conclude that Royce did not violate WIS. STAT. § 346.57(2), which states, “No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing.”

¶15 The only remaining violations that justify the stop are the alleged lane deviations which the State argues are sufficient to justify the traffic stop. However, the circuit court found Drewitz’s testimony on some issues to be incredible and under the totality of the circumstances, this must affect credibility on all issues, including the lane deviations. The circuit court is the arbiter of the credibility of witnesses. *See Chapman v. State*, 69 Wis. 2d 581, 583-84, 230 N.W.2d 824 (1975). The credibility of witnesses and the weight to be attached to that evidence are matters uniquely within the province of the finder of fact. *Lellman v. Mott*, 204 Wis. 2d 166, 172, 554 N.W.2d 525 (Ct. App. 1996).

¶16 The circuit court found an aggregate of three perceived violations formed the alleged reasonable suspicion that the “accumulation of unsafe lane deviation, failure to signal a turn and the improper speed ... gave rise for the basis for stopping Mr. Royce.” The court determined that two of three alleged violations were either erroneous or incredible and the remaining ground insufficient to justify the stop. These findings of fact are not clearly erroneous.

CONCLUSION

¶17 The circuit court found there was no reasonable suspicion to stop and detain Royce. The evidence in the record is insufficient to support a reversal on the premise the court erroneously failed to find lane deviations. The circuit court’s findings were not clearly erroneous. We affirm the court’s order granting Royce’s motion to suppress the results of the illegal stop.

By the Court.—Order affirmed.

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

