**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**September 1, 2010**

**A. John Voelker**
**Acting Clerk of Court of Appeals**



**Appeal No. 2010AP862** **Cir. Ct. No. 2009TR8185**

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

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**CITY OF OSHKOSH,**

**PLAINTIFF-RESPONDENT,**

**V.**

**RICHARD A. SELQUIST,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Winnebago County: KAREN L. SEIFERT, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.[1] Richard A. Selquist appeals from a judgment of conviction for operating a motor vehicle with a prohibited alcohol concentration

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

(PAC) of .10 or greater, a violation of WIS. STAT. § 346.63(1)(b). Selquist raises only one issue on appeal, that the circuit court erred in denying his motion to suppress evidence on grounds that the officer lacked the requisite level of suspicion to continue the detention of Selquist by requesting that he perform field sobriety tests. Selquist's initial contact with the arresting officer occurred in the context of an accident investigation in which Selquist was involved, but not at fault. We conclude that Selquist's admission to drinking and the odor of alcohol on his breath and slurred speech observed by the responding officer during the accident investigation gave rise to reasonable suspicion warranting further investigation through the administration of field sobriety tests. Because the totality of the circumstances supports a finding that the officer had reasonable suspicion to administer field sobriety tests, we uphold the circuit court's order denying Selquist's motion to suppress and affirm the judgment.

## BACKGROUND

¶2 The relevant facts are undisputed. On July 30, 2009, at approximately 6:17 p.m., City of Oshkosh Police Officer Grant Wilson responded to a call that there had been a three-car accident at the intersection of West 20th Avenue and South Koeller Street in the City of Oshkosh. Wilson approached the drivers involved, including Selquist, who was out of his car and standing on the curb. Wilson proceeded to ask Selquist and the other drivers if they were injured and if their cars were drivable to clear the street. He talked to Selquist for a matter of seconds, just long enough to get his answers. When Selquist and the other drivers replied they were not injured and their cars were drivable, Wilson instructed them to get back into their cars and drive around the corner to the Target store parking lot for further investigative procedures. Wilson directed them to this parking lot in order to regain traffic flow in the accident area. During this

initial exchange, Wilson did not notice anything unusual, nor did he notice anything unusual or indicative of impaired driving when Selquist drove his car from the scene of the accident to the Target parking lot.

¶3 Wilson then individually spoke to each driver. When Selquist's turn came to speak, Wilson smelled an odor of alcohol coming from him, prompting Wilson to ask questions. Wilson testified at the suppression hearing:

> I could sense an odor of intoxicating beverages coming from him…. I asked him how much he had to drink. He said one beer. I asked him how big that was. He held his hands approximately 12 inches apart…. I asked him when he had started drinking. He said earlier that afternoon. I asked him when he had stopped. He couldn't remember.

Wilson also noted that Selquist's "speech was a little slurred." Because of Selquist's admission that he had been drinking, along with signs of intoxication, Wilson asked Selquist if he could conduct field sobriety tests on him. Selquist acquiesced.

¶4 The circuit court determined that there were sufficient facts for Wilson to continue his detention of Selquist and subject Selquist to field sobriety tests:

> The officer was able to articulate No. 1, that he smelled the alcohol. He questioned. The defendant acknowledged having consumed alcohol, indicated a size of a beer by his hand gesture, indicated when he began drinking. The officer was able to articulate all of those facts. The officer did articulate that he sensed some level of slurred speech ….
>
> [T]aking into consideration the experience of the officer, what he observed that day, I think he was able to articulate reasons why he proceeded with field sobriety tests. And for that reason I deny the motion ….

¶5 Selquist now challenges the circuit court's order denying his motion to suppress.

## DISCUSSION

¶6 When reviewing the denial of a motion to suppress evidence, we will uphold the 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); WIS. STAT. § 805.17(2). Based on the circuit court's findings of fact, we review de novo whether reasonable suspicion exists. ***State v. Martwick***, 2000 WI 5, ¶19, 231 Wis. 2d 801, 604 N.W.2d 552.

¶7 Here, Selquist does not challenge the officer's initial "stop" of his vehicle which resulted from the traffic accident. Therefore, the sole issue on appeal is whether the officer's observations of Selquist's behavior provided him with reasonable suspicion to subject Selquist to field sobriety tests. In reviewing whether the officer's further investigation and request for field sobriety tests were warranted, we apply the same standard as for an initial stop. ***State v. Betow***, 226 Wis. 2d 90, 94-95, 593 N.W.2d 499 (Ct. App. 1999).

> Once a justifiable stop is made ... the scope of the officer's inquiry, or the line of questioning, may be broadened beyond the purpose for which the person was stopped only if additional suspicious factors come to the officer's attention—keeping in mind that these factors, like the factors justifying the stop in the first place, must be "particularized" and "objective." ***United States v. Perez***, 37 F.3d 510, 513 (9th Cir. 1994). If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun. The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop.

***Betow***, 226 Wis. 2d at 94-95.

¶8 "The question of what constitutes reasonable suspicion is a commonsense test: 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). To meet this commonsense test, an officer must show specific and articulable facts which, taken together with rationale inferences from those facts, reasonably warrant the officer's intrusion. ***Terry v. Ohio***, 392 U.S. 1, 21 (1968).

¶9 Selquist asserts that the officer lacked reasonable suspicion that he was impaired based on Wilson's acknowledgment that upon initial contact he did not find Selquist's behavior suspicious. Selquist further contends that, even with individual contact, Wilson's suspicions of intoxication did not rise to the level required under the Fourth Amendment. However, Selquist's argument ignores the circumstances under which Wilson was conducting his investigation. Initially, Wilson was trying to clear the mounting traffic at the scene. Thus, he had only momentary contact with all parties to the accident for the limited purpose of determining whether they were injured and whether their cars were drivable before instructing them to relocate to a less trafficked area for further investigation. Given the circumstances, it was not unreasonable for the officer to have failed to notice that Selquist was intoxicated. However, upon talking to him individually in a less distracted environment, Wilson noticed that Selquist had the odor of intoxicants on his breath and was slurring his speech, not to mention Selquist admitted to consuming alcoholic beverages and could not recall when he had stopped.

¶10 Officers need an objectively reasonable inference of wrongful conduct to support a finding of reasonable suspicion. ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (Ct. App. 1990). We agree with the circuit court that the officer's decision to administer field sobriety tests was reasonable under the totality of the circumstances. *See* ***State v. Williams***, 2001 WI 21, ¶23, 241 Wis. 2d 631, 623 N.W.2d 106. The main goal of an investigative stop is to quickly resolve ambiguity associated with suspicious conduct. ***Anderson***, 155 Wis. 2d at 84. That is exactly what Wilson did here. As the court observed in ***Terry***, "[i]t would have been poor police work ... to have failed to investigate [the defendant's] behavior further." *See* ***Terry***, 392 U.S. at 23.

## CONCLUSION

¶11 Based on the totality of circumstances, we conclude that the officer had the requisite reasonable suspicion to subject Selquist to field sobriety tests based on observations made and information gathered during a lawful stop conducted as a result of a traffic accident investigation. We therefore uphold the circuit court's order denying Selquist's motion to suppress and affirm the judgment.

*By the Court.*—Judgment affirmed.

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