COURT OF APPEALS
DECISION
DATED AND FILED

June 4, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-1894-CR **Cir. Ct. No. 01-CF-90**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BLAIR C. PENCHOFF,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Manitowoc County: FRED H. HAZLEWOOD, Judge. *Affirmed.*

Before Nettesheim, P.J., Brown and Snyder, JJ.

¶1 PER CURIAM. Blair C. Penchoff has appealed from a judgment convicting him upon a plea of no contest of operating a motor vehicle while under the influence of an intoxicant (OWI), fifth or subsequent offense. The sole issue on appeal is whether the trial court erred in denying Penchoff's motion to suppress evidence. Penchoff sought relief on the ground that the arresting officer lacked

reasonable suspicion to stop his vehicle. We conclude that the trial court properly denied the motion to suppress, and affirm the judgment of conviction.

¶2 In reviewing a trial court's ruling on a suppression motion, we will uphold its findings of fact unless they are clearly erroneous. ***State v. Roberts***, 196 Wis. 2d 445, 452, 538 N.W.2d 825 (Ct. App. 1995). However, whether a stop meets constitutional and statutory standards is a question of law which we review de novo. ***State v. Krier***, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

¶3 The law of investigative stops allows police officers to stop a person when they have less than probable cause. ***State v. Waldner***, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996). To justify an investigatory seizure, the police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is violating or has violated the law. ***State v. Colstad***, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394, *review denied,* 2003 WI 32, __ Wis. 2d __, 661 N.W.2d 100 (Wis. Apr. 22, 2003) (No. 01-2988-CR). "The question of what constitutes reasonable suspicion is a common sense 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).

¶4 In making a stop, an officer may rely on information received from another officer. ***Id.*** Police officers need not rule out the possibility of innocent behavior before initiating a brief stop. ***Waldner***, 206 Wis. 2d at 59.

¶5 Penchoff contends that the trial court's order denying his suppression motion must be reversed because the information available to the arresting officer, Jennifer Neeland, was not sufficient to support a reasonable

suspicion that he had engaged in criminal activity. He contends that the evidence, at most, supported an inference that he struck an unattended vehicle in violation of WIS. STAT. § 346.68 (2001-02).[1] Pursuant to WIS. STAT. § 346.74(3), a violation of § 346.68 is punishable by a forfeiture, and is thus not a crime. *See* WIS. STAT. § 939.12. Penchoff contends that a temporary stop is illegal if based solely on reasonable suspicion that a person has committed a noncriminal traffic offense. He contends that, absent exigent circumstances, a police officer must possess probable cause or a warrant before detaining a person for a civil forfeiture violation, and may conduct an investigatory stop based on reasonable suspicion only if the suspected offense is a crime.

¶6 After the briefs were filed in this case, ***Colstad*** was decided, clarifying that a temporary traffic stop is proper if supported by reasonable suspicion that the detainee has violated a civil traffic law. ***Colstad***, 260 Wis. 2d 406, ¶¶10-13. Based upon ***Colstad***, we reject Penchoff's argument that Neeland's stop of him was illegal because the information available to her indicated only that he had committed a civil traffic offense.

¶7 Even absent ***Colstad***, we would affirm the trial court's order denying Penchoff's suppression motion on the ground that the information available to Neeland permitted her to reasonably suspect that he had violated WIS. STAT. § 346.67, a criminal statute. Pursuant to § 346.67(1), the operator of a motor vehicle involved in an accident which results in damage to a vehicle which is driven or attended by another person is required to stop and remain at the scene of the accident until certain specified actions are taken. A violation of § 346.67 is

[1] All references to the Wisconsin Statutes are to the 2001-02 version.

punishable by a fine under WIS. STAT. § 346.74(5), and is therefore a crime. *See* WIS. STAT. § 939.12.

¶8 By agreement of the parties, evidence from the preliminary hearing served as the evidentiary basis for the suppression motion. At the preliminary hearing, Neeland testified that on March 9, 2001, at approximately 7:45 p.m. she was parked in the eastbound lane of Calumet Avenue, having stopped another vehicle for a traffic violation. Neeland testified that her sergeant's vehicle was parked to the west of her. She testified that she heard what sounded like a crash, like the sound of an accident, and thought her sergeant's car had been hit. Neeland testified that she had observed an accident before and it was that sound. She testified that her sergeant stated that there was an accident behind him, and that he called it on the radio to the dispatcher. She testified that they attempted to investigate what they believed to be an accident, but that as they were on their way back to the vehicle, her sergeant stated that "both vehicles were leaving the scene." Neeland testified that she observed only one vehicle leaving the scene, traveling eastbound on Calumet Avenue, and that she followed the vehicle with her lights activated.

¶9 Neeland testified that Penchoff was driving the fleeing vehicle, and that he did not pull over for approximately two blocks. After she stopped him, Neeland made the observations that led to the OWI arrest.

¶10 Based upon this testimony, the trial court properly determined that Neeland could reasonably suspect that Penchoff had struck and damaged her sergeant's vehicle, and was fleeing the scene. It is also clear from Neeland's testimony that her sergeant was close to or in the vicinity of his vehicle when the events described by her occurred. For purposes of WIS. STAT. § 346.67, this court

has defined "attending" a vehicle as looking after it or taking charge of it. ***State v. Mann***, 135 Wis. 2d 420, 425, 400 N.W.2d 489 (Ct. App. 1986). Because Neeland's sergeant was close enough to his vehicle to perceive what he believed to be an accident behind it, he was clearly looking after, or attending, his vehicle for purposes of § 346.67.

¶11 Although Neeland subsequently observed no damage on Penchoff's vehicle, and ultimately concluded that her sergeant's vehicle was not hit,[2] the facts remain that she heard the sound of a car crash, heard her sergeant report that an accident had occurred and that two vehicles were leaving the scene, and observed Penchoff leaving from behind her sergeant's vehicle where the officers believed the accident had occurred. Under these circumstances, Neeland could reasonably suspect that Penchoff, who was the only driver she observed leaving the scene, had struck and damaged her sergeant's vehicle, and could reasonably stop him to investigate the matter further.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

[2] Penchoff contends that Neeland's testimony establishes that the officers knew that the sergeant's vehicle was not damaged before Neeland stopped him. We disagree. Neeland indicated only that they were on their way back to the vehicle to investigate what they believed was an accident when they observed Penchoff leaving. This testimony does not establish that Neeland or her sergeant had determined that there was no damage to the sergeant's vehicle before Neeland followed Penchoff. Similarly, contrary to Penchoff's contention, Neeland's testimony that the sergeant reported that "both" vehicles were leaving cannot be construed to mean that he had determined that his vehicle had not been hit or damaged.