COURT OF APPEALS
DECISION
DATED AND FILED

May 28, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-2359-CR **Cir. Ct. No. 01-CT-237**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JULIE A. WILLIAMS,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Barron County: EDWARD R. BRUNNER, Judge. *Affirmed.*

¶1 CANE, C.J.[1] Julie Williams appeals from the judgment convicting her of operating a motor vehicle while under the influence of an intoxicant, second offense, contrary to WIS. STAT. § 346.63(1)(a). Specifically, she contends the

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

court erred by concluding the arresting officer had a legal basis to approach her car under either the community caretaker analysis or, alternatively, had a reasonable suspicion to make an investigatory stop. We agree with the trial court and affirm both the order denying the suppression motion and the judgment of conviction.

¶2 The underlying facts are undisputed. While on routine patrol at 2:04 a.m., officer Chad Thompson of the Rice Lake City Police Department observed a van ahead of him weaving within its own traffic lane. The van would slowly veer to the edge of the roadway and then quickly go back into its traffic lane. Thompson observed the van do this numerous times over a three- to four-block distance. As the van approached an apartment complex, it suddenly stopped in its own traffic lane for no apparent reason, as there were no stop signs, yield signs or any intersecting roads. The road in this area had two lanes with no parking lane. Thompson noted that for him to pass the van, he would have been required to go fully into any opposing traffic. There was room, however, for the van to pull off the road.

¶3 Thompson pulled up behind the stopped van in his unmarked Blazer and waited without activating any emergency lights. He then waited for about forty-five seconds while the van's driver appeared to be just sitting in the vehicle. During this time, no one approached or left the van. Because the van was creating a traffic hazard, Thompson turned on his emergency lights and approached the van to check on the driver, who was later identified as Williams.

¶4 After Thompson talked to Williams, it is undisputed that probable cause existed to arrest her for OWI. Williams argues that the evidence leading to her OWI conviction should be suppressed because it resulted from a search tainted by an unconstitutional seizure.

¶5 The issue concerns the constitutional requirements of art. I, section 11, of the Wisconsin Constitution and the Fourth Amendment to the United States Constitution. The court of appeals decides questions of constitutional law independently without deference to the trial court. *See* ***Bies v. State***, 76 Wis. 2d 457, 469, 251 N.W.2d 461 (1977).

¶6 The constitutional question in this case is whether there was a "seizure" of Williams and, if so, whether the seizure met the constitutional requirement of reasonableness. Williams argues that there was a seizure because a seizure occurs when, in view of all the circumstances surrounding an incident, a reasonable person would have believed she was not free to leave. *See* ***United States v. Mendenhall***, 446 U.S. 544, 554 (1980); ***State v. Nash***, 123 Wis. 2d 154, 162, 366 N.W.2d 146 (Ct. App. 1985). Williams contends that when Thompson activated his emergency lights and approached her van, a seizure occurred because at that point she was not free to leave.

¶7 Frankly, we doubt there was a seizure of Williams given the particular circumstances of this case. The contact between the police and Williams resulted not from an investigative stop but from a motorist assist, which is a valid police-citizen contact.

¶8 A seizure is constitutional if it passes the reasonableness requirement of the Fourth Amendment. *See* U.S. CONST. Amend. IV. A community caretaker action is not an investigative ***Terry*** stop and thus does not have to be based on a reasonable suspicion of criminal activity. *See* ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968). A community caretaker action is one that is totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute. ***Cady v. Dombrowski***, 413 U.S. 433, 441 (1973).

¶9 In a community caretaker case, reasonableness is determined by balancing the public need and interest furthered by the police conduct against the degree of and nature of the intrusion upon the privacy of the citizen. ***State v. Anderson***, 142 Wis. 2d 162, 168, 417 N.W.2d 411 (Ct. App. 1987). In Williams' case, the officer's actions were reasonable because there was a public interest.

¶10 The intrusion was minimal at best. This is especially so where the van was creating a potential traffic hazard while already stopped on the roadway when the officer activated his emergency lights and walked to the van to see what was wrong. Thus, the officer's action did not intrude on Williams' freedom to leave. Although the record is not clear as to why the officer activated the emergency lights, it is reasonable to infer it was for safety reasons under these particular circumstances. Here, the public interest in the officer checking on the driver parked on a roadway in the early morning hours outweighs the minimal intrusion involved.

¶11 However, even if we assume that a seizure occurred because there was a display of police authority, making Williams feel she was not free to leave, this court is satisfied the officer had a reasonable suspicion to investigate. In order to justify an investigatory seizure, "[t]he police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is [or was] violating the law." ***State v. Gammons***, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623. "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). Before initiating a brief stop, an officer is not required to rule out the possibility of innocent behavior. ***State v. Anderson***,

155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). "A trial court's determination of whether undisputed facts establish reasonable suspicion justifying police to perform an investigative stop presents a question of constitutional fact, subject to de novo review." ***State v. Sisk***, 2001 WI App 182, ¶7, 247 Wis. 2d 443, 634 N.W.2d 877.

¶12 The officer observed Williams' van at 2:04 a.m. weaving within its lane of travel numerous times and for several blocks. He then observed the van stop in the middle of its traffic lane for no apparent reason and remain stopped in the lane for approximately forty-five seconds with the driver sitting in the van. WISCONSIN STAT. § 346.51 prohibits any person from parking, stopping or leaving any standing vehicle, whether attended or unattended, on a roadway of any highway outside a business or residential district when it is practical to park, stop or leave such a vehicle standing off the roadway. These facts are sufficient to establish reasonable suspicion that the driver was violating the law.

¶13 Because the officer's actions pass the Fourth Amendment test of reasonableness under the community caretaker function, or, in the alternative, the officer had a reasonable suspicion to investigate under these particular circumstances, there was no basis to suppress the evidence later discovered. Therefore, we affirm the circuit court's order denying the motion to suppress and the judgment of conviction.

By the Court.—Judgment and order affirmed.

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