COURT OF APPEALS
DECISION
DATED AND FILED

April 1, 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. 02-2813-CR **Cir. Ct. No. 98-CT-246**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DUNG TRAN NGUYEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for St. Croix County: ERIC J. LUNDELL, Judge. *Reversed.*

¶1 PETERSON, J.[1] Dung Tran Nguyen appeals a judgment convicting him of operating after revocation and operating with a prohibited alcohol content. Nguyen argues that the trial court erred by denying his suppression motion based

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

on the unlawfulness of the stop of the car he was driving. We agree and reverse the judgment.

BACKGROUND

¶2 In the early morning of December 26, 1998, officer Robert Oehmke was on patrol in the City of Hudson. He heard a police dispatch that there were two possibly intoxicated drivers leaving the Amoco Auto Stop. The dispatch described the cars and identified their license plate numbers. Oehmke drove toward the Amoco Station and saw two cars matching the description. After confirming the license plate numbers given by the dispatcher, Oehmke activated his overhead lights and both cars pulled over.

¶3 Nguyen, one of the drivers, was ultimately charged with operating after revocation, second offense; operating while intoxicated, third offense; operating with a prohibited alcohol concentration, third offense. Before trial, Nguyen filed a motion to suppress evidence, arguing the stop was unlawful.

¶4 At the suppression hearing, Oehmke was the only witness. He described the contents of the dispatch: there were two possible intoxicated drivers, the general description of the cars, and the license plate numbers.[2] He testified that he saw no erratic or illegal driving, and that he made the stop based on the dispatch.

[2] Oehmke also testified regarding a statement filled out by an Amoco employee. This statement noted that the employee observed the driver of the other vehicle bump into a salt pallet and almost back into a pump. The statement makes no mention of any behavior by Nguyen, nor does it contain a description of his vehicle. Furthermore, the evidence does not establish whether the employee gave any of this information to the dispatcher.

¶5 The court found the tip provided a reasonable basis to stop Nguyen's car, noting the possible danger to others if the drivers were indeed intoxicated. Nguyen moved for reconsideration, which the court also denied.

¶6 Nguyen pled no contest to operating after revocation. A jury found Nguyen guilty of operating with a prohibited alcohol content. The operating while intoxicated charge was dismissed. Nguyen was sentenced to five days in jail and fined $300 for operating after revocation, and sixty days in jail and fined $1,162 on the alcohol charge. Nguyen appeals.

STANDARD OF REVIEW

¶7 When reviewing a trial court's order denying a motion to suppress evidence, we will uphold the trial court's factual findings unless they are clearly erroneous, that is, against the great weight and clear preponderance of the evidence. *See* ***State v. Richardson***, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). Whether the facts as found by the court meet statutory and constitutional standards is a question of law that we review de novo. *See* ***id.*** at 137-38.

DISCUSSION

¶8 The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution guarantees citizens the right to be free from unreasonable searches and seizures. ***Id.*** at 137. Wisconsin courts interpret the state constitution in accordance with the United States Supreme Court's interpretations of the search and seizure provisions under the federal constitution. ***State v. Fry***, 131 Wis. 2d 153, 172, 388 N.W.2d 565 (1986).

¶9 To stop a person, a police officer must have reasonable suspicion that criminal activity is afoot. ***State v. Waldner***, 206 Wis. 2d 51, 55, 556 N.W.2d

681 (1996). Reasonable suspicion does not need to derive from personal knowledge. *See* ***State v. Mabra***, 61 Wis. 2d 613, 625, 213 N.W.2d 545 (1974). An officer "may rely on all the collective information in the police department" as long as "there is police-channel communication to the arresting officer" and the officer acts in good faith. ***Id.*** Our supreme court reiterated this principle in ***Mabra***, where an officer arrested the occupants of a vehicle because police dispatch stated the vehicle was involved in a crime. ***Id.*** at 617. The facts known to the police department were sufficient to establish probable cause for an arrest. ***Id.*** at 626. Because the "police force is considered as a unit," the facts constituting probable cause were imputed to the arresting officer acting in concert with the department. ***Id.*** at 625.

¶10 Information given by citizen informants may provide a basis for reasonable suspicion. This information "should exhibit reasonable indicia of reliability." ***State v. Rutzinski***, 2001 WI 22, ¶18, 241 Wis. 2d 729, 623 N.W.2d 516. Reliability of information depends upon the informant's veracity and basis of knowledge. ***Id.***

¶11 Nguyen argues that the evidence at the suppression hearing showed there was insufficient collective information to justify the stop. The State argues that the informant was reliable and that the informant's information was reliable. However, the State's argument is entirely dependent on testimony from later proceedings. Here, the court reached a decision based on the evidence at the suppression hearing and that is the evidence we review.

¶12 Neither the informant nor the dispatcher testified at the suppression hearing. The only testimony came from Oehmke, who stated that the dispatcher merely gave out the descriptions and license plate numbers of the cars and stated

that the drivers were possibly intoxicated. Oehmke did not himself observe any erratic or illegal activity. The dispatch did not provide any basis for the conclusion that the drivers were possibly intoxicated. Because Oehmke was the only one to testify, his testimony represents the only evidence on the collective information of the police department and the only information regarding the informant.

¶13 If this case did not involve an informant and the dispatch, but rather direct testimony from Oehmke that the driver of this vehicle was possibly intoxicated, we would insist on knowing why he reached that conclusion. If he only testified to the conclusion, and not the facts underlying the conclusion, the stop could not be upheld. An officer must rely on articulable facts, not just conclusions. When a stop involves information from an informant or collective knowledge of the police department, the State is not relieved of its burden. Somewhere along the way it must present facts, not just conclusions, to support a reasonable suspicion to stop. We agree with Nguyen that the record at the suppression hearing did not show that there was a reasonable suspicion that Nguyen was driving while intoxicated.

By the Court.—Judgment reversed.

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