COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP1280-CR **Cir. Ct. No. 2007CF699**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL R. SEEHAFER,

DEFENDANT-APPELLANT.

APPEAL from judgment of the circuit court for Marathon County: VINCENT K. HOWARD, Judge. A*ffirmed.*

Before Hoover, P.J., Peterson and Brunner, JJ.

¶1 PER CURIAM. Michael Seehafer appeals a judgment of conviction for operating a motor vehicle while intoxicated, sixth offense, entered upon a no-contest plea. The sole issue on appeal is whether the circuit court erred when it

denied Seehafer's suppression motion.[1] Because the police officer's actions did not violate the Fourth Amendment, we affirm.

BACKGROUND

¶2 The following facts are taken from the suppression hearing testimony. At approximately 8:16 a.m. Everest Metro Police Officer Mark Hull saw a car he believed to be owned by a person who did not have a valid driver's license. Hull caught up to the car and ran a computer check on the license plate. Hull learned the car was not registered to the person he initially believed, but rather it was registered to a woman who did not hold a valid driver's license.

¶3 To investigate whether the car was being operated by an unlicensed person, Hull activated his emergency lights and the car pulled into a vacant lot. Hull could see two people in the car as he approached the car from the rear. When Hull got to the driver's window, he saw that the driver was a male. Hull asked the driver for identification, and the driver produced an expired instructional permit, identifying himself as Michael Seehafer. Hull then ran a computer check on Seehafer, and learned that Seehafer's license was revoked due to an operating while intoxicated conviction. That check showed that Seehafer had several prior OWI convictions.

¶4 Hull arrested Seehafer for operating a motor vehicle after revocation. While frisking Seehafer after arrest, Hull noticed a strong odor of intoxicants. Seehafer initially denied drinking but eventually admitted he had been drinking

[1] The order denying the suppression motion may be reviewed on appeal notwithstanding the defendant's no-contest plea. *See* WIS. STAT. § 971.31(10) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

the previous evening, but did not have any drinks after midnight. Hull administered a preliminary breath test that registered 0.078. Because Seehafer's prior OWI convictions lowered the legal limit to 0.02, *see* WIS. STAT. § 340.01(46m), Hull then arrested Seehafer for OWI.

¶5 Seehafer filed a motion to suppress evidence resulting from the stop. At the suppression hearing, Seehafer argued any reasonable suspicion that Hull may have had "dissipated" once Hull saw that the driver was not a woman. Seehafer argued that once Hull knew the driver could not have been the female, unlicensed, registered owner of the car, he "no longer ha[d] suspicion to interrogate [Seehafer], to ask for his license, [or] to proceed with his investigation" because Hull's "entire purpose" was "investigating [the female, unlicensed registered owner for] driving without a license." From Seehafer's perspective, once Hull discovered that the driver was not a woman, "the stop had to be deemed unlawful and all evidence … after that … point … should be suppressed."

¶6 The circuit court rejected Seehafer's argument, concluding that once Hull saw that the driver was not a woman, Hull knew that the car was not being operated by the registered owner and, at that point, there was "an articulable suspicion" that the car may be stolen. The circuit court concluded that a reasonable officer in Hull's position would have had a reasonable articulable suspicion to stop the vehicle and that Hull's observations of Seehafer's glassy eyes, unsteadiness, and the result of the preliminary breath test constituted probable cause for the arrest.

DISCUSSION

¶7 Seehafer now concedes that Hull's "initial decision to stop the car that Mr. Seehafer was driving was supported by reasonable suspicion" because

Hull had information that the registered owner of the car did not have a valid driver's license. Therefore, we focus our discussion on whether Hull's conduct after the initial stop violated Seehafer's Fourth Amendment rights. Whether the facts meet the constitutional standard 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).[2]

¶8 Seehafer contends that once Hull learned that the driver was not a woman, "reasonable suspicion of an OAR [operating after revocation] dissipated" and Hull then had no legal basis to continue to detain Seehafer in order to check his identification. We disagree, concluding that Hull's conduct was approved by this court in ***State v. Williams***, 2002 WI App 306, 258 Wis. 2d 395, 655 N.W.2d 462.

¶9 The situation in ***Williams*** is similar to these facts. In ***Williams***, after concluding that the arresting officer had reasonable suspicion to stop a vehicle, this court considered "whether the conduct of the officer[] subsequent to the initial stop made the stop unlawful" because reasonable suspicion was negated when the officer saw that the driver was not the person whom she believed to be driving the car. ***Id.***, ¶18. This court held that after the officer ascertained the driver was not the person she was looking for, "it was reasonable … to make a report of the incident, … and for that purpose it was reasonable for her to ask for Williams's name and identification." ***Id.***, ¶22.

[2] As the term "de novo review" implies, we are not bound by the circuit court's determination that Hull's actions were proper based upon an articulable suspicion that the car may be stolen. *See* ***State v. Holt***, 128 Wis. 2d 110, 124, 382 N.W.2d 679 (Ct. App. 1985) (this court may affirm a circuit court upon a reason not relied on by the circuit court).

¶10 That is precisely the situation that faced Hull and, therefore, he reasonably asked Seehafer for identification. Once Seehafer presented an expired instructional permit, in violation of WIS. STAT. § 343.18(1), which requires drivers to have their licenses "in his or her immediate possession at all times when operating a motor vehicle and … display [the license] upon demand from any … traffic officer," Hull had grounds to reasonably suspect that Seehafer was not authorized to drive. *See* ***id.*** That reasonable suspicion was borne out when Hull learned that Seehafer did not have a valid license, giving Hull probable cause to arrest Seehafer for operating after revocation, after which Hull made additional observations that led ultimately to Seehafer's arrest for OWI. At no point did Hull violate Seehafer's Fourth Amendment rights.[3]

[3] Seehafer's reliance on ***State v. Newer***, 2007 WI App 236, 306 Wis. 2d 193, 742 N.W.2d 923, is misplaced. In ***Newer***, this court considered the propriety of a vehicle stop after the officer ascertained that the registered owner of the vehicle did not have a driver's license. ***Id.***, ¶3. Adopting the rationale of the Minnesota Supreme Court, this court held that "the knowledge that the owner of a vehicle has a revoked license is enough to form the basis of a 'reasonable suspicion of criminal activity.'" ***Id.***, ¶5 (quoting ***State v. Pike***, 551 N.W.2d 919, 922 (Minn. 1996)). That holding sanctions Hull's decision to stop the car that Seehafer was driving, a stop that Seehafer concedes on appeal was valid.

Seehafer relies on additional language in ***Newer***, this court again quoting the Minnesota Supreme Court, that the officer would have reasonable suspicion

> only while the officer remains unaware of any facts which would render unreasonable the assumption that the owner is driving the vehicle. Thus, for example, if the officer knows that the owner of a vehicle has a revoked license and further, that the owner is a 22-year-old male, and the officer observes that the person driving the vehicle is a 50- or 60-year-old woman, any reasonable suspicion of criminal activity evaporates.

Id. (quoting ***Pike***, 551 N.W.2d at 922). Seehafer contends that once Hull saw Seehafer was a man, Seehafer could not be the unlicensed female to whom the car was registered, and "at th[at] moment, reasonable suspicion of an OAR dissipated." As we note in the text, however, ***Williams*** authorizes Hull's request to Seehafer for identification, plainly a minimal intrusion.

By the Court.—Judgment affirmed.

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