

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 23, 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. 02-3360
STATE OF WISCONSIN**

Cir. Ct. No. 02-TR-5558

**IN COURT OF APPEALS
DISTRICT II**

VILLAGE OF PLEASANT PRAIRIE,

PLAINTIFF-RESPONDENT,

v.

MAUREEN M. McCARRAGHER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
BARBARA A. KLUKA, Judge. *Affirmed.*

¶1 NETTESHEIM, P.J.¹ Maureen M. McCarragher appeals from a forfeiture judgment of conviction for operating a motor vehicle with a prohibited

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(3)(c) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version.

blood alcohol content (PAC), first offense.² McCarragher argues that the trial court erred in denying her motion to suppress evidence because the arresting officer lacked reasonable suspicion to conduct a *Terry*³ stop. Because we conclude that the officer had reasonable suspicion to stop McCarragher's vehicle, we affirm the judgment.

FACTS

¶2 On July 6, 2002, McCarragher was arrested and charged with PAC as a first offense. McCarragher filed a motion to suppress evidence based on her contention that the arresting officer, Officer Daniel Bandi of the Village of Pleasant Prairie Police Department, did not have a reasonable basis to believe she had committed an offense and had thus violated her Fourth Amendment rights against unreasonable searches and seizures.

¶3 Bandi testified at the motion hearing that on July 6, 2002, at approximately 12:15 a.m., while on duty, he initiated a traffic stop of McCarragher. Bandi was driving eastbound on 104th Street when he was dispatched to a house at 10501 50th Avenue. The dispatcher informed Bandi about a complaint that a female had "torn up" the house and that she was driving a blue-colored van with wood-grain siding. The dispatcher also informed Bandi that the

² McCarragher's appellate brief-in-chief represents that she was charged with both OWI and PAC. However, the appellate record reveals only a uniform traffic citation for PAC, not OWI. Similarly, the record includes only the jury verdict finding McCarragher guilty of PAC. In addition, the "Court Order For Intoxicated Driver Assessment and Driver Safety Plan" indicates that McCarragher was found guilty of a violation of WIS. STAT. § 346.63(1), without specifying whether the conviction was for PAC or OWI. Because the citation and verdict in the record refer only to a PAC charge, we assume the resulting conviction was for that offense.

³ *Terry v. Ohio*, 392 U.S. 1 (1968).

female suspect was heading westbound on Highway 165. At this time, the house was east and about one block south of Bandi's location.

¶4 As Bandi was proceeding towards the house, he soon thereafter passed a blue-colored van with wood-grain siding driven by a female heading in the opposite direction, westbound on Highway 165. Bandi turned around and pursued the vehicle. Bandi testified that McCarragher pulled her vehicle to the shoulder before he activated his emergency lights or siren.

¶5 Bandi pulled up behind McCarragher's vehicle, turned on his red and blue emergency lights, and went to the passenger side of McCarragher's vehicle. He then had a conversation with McCarragher and as a result of McCarragher's slurred speech he had McCarragher perform field sobriety tests and submit to a preliminary breath alcohol test. McCarragher failed these tests, and Bandi placed her under arrest.

¶6 The trial court disagreed with McCarragher's argument that the information received by Bandi from the dispatcher and Bandi's ensuing observations before he detained McCarragher did not constitute reasonable suspicion pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), as codified in WIS. STAT. § 968.24. The court therefore denied McCarragher's motion to suppress. A jury later found McCarragher guilty of operating a motor vehicle with a prohibited blood alcohol content, first offense.

¶7 McCarragher appeals, challenging the trial court's ruling that Bandi had reasonable suspicion to conduct a *Terry* investigation.

DISCUSSION

¶8 Since the facts of this case are undisputed, and since the only disputed question (reasonable suspicion) presents a question of constitutional law, our review is de novo. See *State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996).

¶9 The constitutional standard for reasonable suspicion as set out in *Terry* is codified in WIS. STAT. § 968.24:

After having identified himself or herself as a law enforcement officer, a law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that such person is committing, is about to commit or has committed a crime, and may demand the name and address of the person and an explanation of the person's conduct. Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped.

When reviewing a determination of reasonable suspicion, we must consider the totality of the circumstances. *State v. Williams*, 2001 WI 21, ¶¶21-22, 241 Wis. 2d 631, 623 N.W.2d 106. The determinative issue in considering the totality of the circumstances is whether the officer's actions were reasonable under the circumstances. *Id.*, ¶22. Section 968.24 applies to conduct that can constitute either a civil forfeiture or a crime. *State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991).

¶10 In *State v. Harris*, 206 Wis. 2d 243, 557 N.W.2d 245 (1996), our supreme court set forth six factors to be considered in determining whether a stop is reasonable:

(1) the particularity of the description of the offender or the vehicle in which he fled; (2) the size of the area in which the offender might be found ...; (3) the number of persons

about in that area; (4) the known or probable direction of the offender's flight; (5) observed activity by the particular person stopped; and (6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Id. at 260 (citing 3 WAYNE R. LAFAVE, SEARCH AND SEIZURE, § 9.3(d), at 461 (2d ed. 1987); *State v. Guzy*, 139 Wis. 2d 663, 667, 407 N.W.2d 548 (1987)). McCarragher argues that the trial court misapplied the factors set forth in *Harris*. She also argues that the trial court failed to see similarities between her case and those of *Harris*.

¶11 In *Harris*, the supreme court held that stopping three black males in a vehicle near a possible crime scene was unjustified because the officers did not have information that there was a vehicle involved, they could not see the passengers when they pulled the vehicle over, and they did not have enough information about the suspect to justify stopping the vehicle. *Harris*, 206 Wis. 2d at 261-63.

¶12 Relying on *Harris*, McCarragher argues that the description of the vehicle with a female driver did not provide Bandi with enough information to create a reasonable suspicion that McCarragher was involved in the incident relayed by the dispatcher. However, unlike *Harris*, Bandi had specific descriptive information from the dispatcher regarding the vehicle involved, the gender of the driver, and the direction in which the vehicle was headed. The vehicle, the driver, and the direction of travel observed by Bandi prior to the stop matched this dispatched information. In addition, Bandi also observed the vehicle near the reported incident involving the house.

¶13 The question of reasonable suspicion is a commonsense test. *Waldner*, 206 Wis. 2d at 56. Police officers are not required to rule out the

possibility of innocent behavior before initiating a *Terry* stop. *Waldner*, 206 Wis. 2d at 59. Suspicious activity is by its very nature ambiguous and the principal function of the investigative stop is to quickly resolve that ambiguity. *Id.* at 60. The law of *Terry* permits the officer to temporarily freeze the situation in order to resolve such ambiguity. *Waldner*, 206 Wis. 2d at 51.

¶14 Bearing these principles in mind, we hold that the information made known to Bandi via the dispatcher, coupled with Bandi's ensuing observations following receipt of that information, constituted reasonable suspicion to stop McCarragher's vehicle. As the *Waldner* court observed, it would be poor police work if an officer failed to briefly stop a suspect in order to resolve the ambiguity presented in a *Terry* situation. *See Waldner*, 206 Wis. 2d at 61. That thinking applies here. Bandi employed good police work by temporarily freezing the situation in order to determine if McCarragher was the person involved in the incident reported in the dispatch. Conversely, Bandi would not have performed good police work if he had ignored McCarragher's vehicle.

¶15 We conclude that Bandi had reasonable suspicion to detain McCarragher's vehicle.⁴

CONCLUSION

⁴ We note that in further support of Bandi's stop of McCarragher's vehicle, the State points to Bandi's testimony that McCarragher pulled over to the side of the road prior to his activation of his emergency lights. The State argues that McCarragher's voluntary stop of her vehicle, without more, justified a further inquiry by Bandi. McCarragher requests that we reject this argument on grounds that it is inadequately briefed. *See State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992). In light of our conclusion that there was reasonable suspicion to justify Bandi's stop of McCarragher's vehicle regardless of whether she pulled over prior to his activation of his emergency lights, we need not address this additional argument made by the State. *See Sweet v. Berge*, 113 Wis. 2d 61, 67, 334 N.W.2d 559 (Ct. App. 1983) (if decision on one point disposes of an appeal, we need not decide other issues raised).

¶16 We conclude that Bandi had reasonable suspicion to conduct a *Terry* investigation. We uphold the trial court's order denying McCarragher's motion to suppress. We affirm the judgment.

By the Court.—Judgment affirmed.

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

