

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 23, 2011**

A. John Voelker  
Acting 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. 2010AP2142**

**Cir. Ct. No. 2010TR120**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**CITY OF MEQUON,**

**PLAINTIFF-RESPONDENT,**

**V.**

**MONICA MAUREEN COOLEY,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Ozaukee County:  
PAUL V. MALLOY, Judge. *Affirmed.*

¶1 REILLY, J.<sup>1</sup> Monica Cooley appeals from a judgment of conviction for operating a motor vehicle while intoxicated. Cooley argues that the officer

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

who stopped her SUV did not have reasonable suspicion to make a *Terry* stop.<sup>2</sup> Following an evidentiary hearing, the circuit court concluded that reasonable suspicion existed. We agree and affirm Cooley's conviction.

## FACTS

¶2 Cooley drove her SUV out of a gas station at roughly 2:20 a.m. on January 1, 2010. Officer Michael Brandemuehl of the City of Mequon Police Department was on routine patrol at the time and was traveling behind Cooley. Brandemuehl did not notice anything unusual about the speed or the operation of Cooley's vehicle. Cooley eventually turned into a movie theatre parking lot. When Brandemuehl drove past the entrance to the theatre, he noticed that there were no other vehicles in the parking lot and that the theatre was closed. As Brandemuehl found it "suspicious" that a car would pull into a closed movie theatre, he made a U-turn and entered the parking lot. He observed that Cooley's SUV was in a parking stall with its running lights on.

¶3 Brandemuehl positioned his squad car behind Cooley's SUV, activated his overhead lights, and approached Cooley's vehicle to find out why she pulled into the parking lot. Brandemuehl acknowledged that at this point he had not observed Cooley break any law.

¶4 Cooley was subsequently arrested by Brandemuehl and cited for operating while intoxicated. Cooley challenged the legality of her stop and seizure. The circuit court concluded that the officer made a lawful *Terry* stop.

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<sup>2</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

## STANDARD OF REVIEW

¶5 The standard of review for a *Terry* stop has been oft-stated. To execute a lawful investigatory stop that conforms with the Fourth Amendment’s prohibition against unreasonable seizures, *Terry* requires that a law enforcement officer must reasonably conclude, in light of his experience, that criminal activity has taken place or is taking place. *Terry*, 392 U.S. 1, 30 (1968); *State v. Richardson*, 156 Wis. 2d 128, 139; 456 N.W.2d 830 (1990). The officer must be able to point to specific and articulable facts that, taken together with rational inference from those facts, objectively warrant a reasonable person with the knowledge and experience of the officer to believe that criminal activity is afoot at the time of the stop. *Terry*, 392 U.S. at 21-22. Wisconsin law also recognizes that a law enforcement officer may make an investigatory stop based solely on observations of lawful conduct, although such a seizure must be premised on reasonable inferences drawn from the lawful conduct that establish criminal activity is afoot. *State v. Waldner*, 206 Wis. 2d 51, 57, 556 N.W.2d 681 (1996). The determination of reasonableness is a commonsense test based on the totality of the facts and circumstances known to the officer at the time of the stop. *Richardson*, 156 Wis. 2d at 139-40.

## DISCUSSION

¶6 The circuit court ruled that this was a valid *Terry* stop because Cooley pulled into the parking lot of a closed movie theatre late at night. The court concluded that it was permissible for Brandemuehl to “freeze” the situation for short period of time to determine what was going on.

¶7 We agree with the circuit court that Brandemuehl conducted a lawful *Terry* stop. Brandemuehl could point to specific and articulable facts<sup>3</sup> (Cooley turning into the parking lot of a closed movie theatre early on New Year’s morning), combined with his rational inference that it is illogical for someone to park in the lot of a closed business at 2:20 a.m., to warrant a belief that criminal activity was afoot. It was reasonable for a law enforcement officer presented with these facts to conduct a *Terry* stop. Cooley may have had a valid reason for pulling into the movie theatre parking lot, but Brandemuehl was justified in “freezing” the situation for a short period of time to determine if criminal activity was occurring. As the circuit court properly denied Cooley’s motion challenging the legality of her stop and seizure, we affirm Cooley’s conviction.<sup>4</sup>

*By the Court.*—Judgment affirmed.

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

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<sup>3</sup> Cooley and the City of Mequon agreed to a set of stipulated facts in lieu of testimony. Included in the stipulated facts was that Brandemuehl would testify that there were previous burglaries in the area where he stopped Cooley and that these burglaries contributed to Brandemuehl’s decision to follow Cooley into the movie theatre parking lot. At the motion to suppress hearing, Brandemuehl never mentioned the burglaries. The parties disagree as to whether this court may consider stipulated facts that are not mentioned at a motion hearing. As we hold that reasonable suspicion existed even without Brandemuehl’s testimony about the burglaries, we do not address this issue.

<sup>4</sup> As we hold that Brandemuehl conducted a lawful *Terry* stop, we do not reach the issue of whether his conduct fell within the “community caretaker” exception to the warrant requirement.



