COURT OF APPEALS
DECISION
DATED AND FILED

March 24, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2326-CR **Cir. Ct. No. 2009CT130**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOSEPH R. JONES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County: ROBERT P. VANDEHEY, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] Joseph Jones appeals a judgment of conviction for operating a motor vehicle under the influence of an intoxicant, contrary to WIS. STAT. § 346.63(1)(a), third offense. Jones contends that the arresting officer

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

lacked reasonable suspicion to stop his vehicle and, therefore, his motion to suppress evidence should have been granted by the court. I disagree and affirm.

BACKGROUND

¶2 On July 25, 2009, at approximately 4:56 a.m., Grant County Deputy Sheriff Todd Miller responded to a 911 call made by Dawn Curley. Curley reported that she had been kicked out of a vehicle by a male individual somewhere along County Highway P in the Town of Patch Grove in Grant County.

¶3 According to Deputy Miller, when he responded to Curley's location, which he described as "[v]ery rural" and near the intersection of County Highway P and Harville Road, he observed a female standing alongside the road who was underdressed for the weather conditions and who appeared to be "very cold." Deputy Miller testified that Curley was very upset, cold, nervous, and intoxicated, and he stated that she was crying and shaking. Deputy Miller testified that when he asked Curley what had happened, Curley stated that she had gotten "into an argument with some people in a truck and had gotten kicked out or got out of the truck." However, she did not know who those people were. He further testified that Curley wanted to call her mother and that she wanted him "to tell her mother that she was all right, that she was safe."

¶4 Deputy Miller testified that on his way to Curley's location, he had observed only one vehicle in the vicinity—a truck located on Harville Road less than one-quarter of a mile off County Highway P. After he picked Curley up, he attempted to locate that vehicle based on his belief that "it could have been related to [the] incident." He testified that when he pulled his vehicle onto Harville Road, "Curley became even more upset," "[c]rouched way down into the seat where she was [sitting,] almost on the floor of the passenger side of [his] squad car," and

stated "That's him. That's him. Don't let him see me." According to Deputy Miller, Jones's vehicle was just approaching a stop sign at that point and he initiated a traffic stop.

¶5 Deputy Miller testified that based on Curley's demeanor, his belief that it was "odd" that Curley was in that particular location at that time of day, and Curley's call to her mother, he believed that some sort of domestic dispute had just taken place.

¶6 Following the traffic stop, Jones was charged with third offense OWI and operating a motor vehicle with a prohibited alcohol concentration, third offense, contrary to WIS. STAT. § 346.63(1)(b). Jones moved to suppress all evidence obtained as a result of the traffic stop on the basis that Deputy Miller lacked reasonable suspicion for the stop. The circuit court denied Jones's motion. Jones subsequently plead guilty to OWI, third offense. Jones appeals.

DISCUSSION

¶7 In order to conduct an investigative stop consistent with the Fourth Amendment prohibition against unreasonable search and seizures, a law enforcement officer needs at least reasonable suspicion, in light of his or her experience and training, to believe that some kind of criminal activity has taken, is taking, or is about to take place. ***State v. Post***, 2007 WI 60, ¶¶10, 13, 301 Wis. 2d 1, 733 N.W.2d 634. An officer's reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop." ***Terry v. Ohio***, 392 U.S. 1, 21 (1968). An "inchoate and unparticularized suspicion or 'hunch'" will not suffice. ***Id.*** at 27. "[W]hat 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).

¶8 When reviewing a circuit court's order denying or granting a motion to suppress evidence, an appellate court will uphold the court's factual findings unless they are clearly erroneous, but will independently review the application of those facts to constitutional principals. ***Post***, 301 Wis. 2d 1, ¶8. To determine whether an officer had reasonable suspicion, a court looks at the totality of the circumstances. ***State v. Williams***, 2002 WI App 306, ¶12, 258 Wis. 2d 395, 655 N.W.2d 462.

¶9 Jones first contends that the facts in this case gave Deputy Miller no reason to believe that Curley had been involved in any type of criminal activity. I disagree.

¶10 Deputy Miller, who was dispatched to aid Curley, observed a woman standing alone on a deserted county road before the sun had risen. He was aware that she had informed the 911 dispatcher that she had been kicked out of a vehicle and he observed that she was scared and crying. Deputy Miller was informed by Curley that she had had an argument with people in the vehicle and didn't know who they were. He also observed that Curley wanted to call her mother to let her mother know that she was all right and when Deputy Miller stopped Jones's vehicle, she crouched low in Deputy Miller's vehicle to prevent Jones from seeing her. I conclude that these facts taken together could lead an

officer to reasonably believe that Curley had been the victim of behavior that, at the very least, constituted a form of disorderly conduct. *See* WIS. STAT. § 947.01.[2]

¶11 Jones next contends that Deputy Miller lacked reasonable suspicion to believe that he had committed or was committing a crime prior to the stop. Jones states that not only did "Deputy Miller … not witness suspicious activity by Mr. Jones," he also did not "have sufficient facts to believe [that] Mr. Jones was involved in Ms. Curley's situation when he … stopped Mr. Jones'[s] vehicle." Again, I disagree.

¶12 When Deputy Miller's vehicle came upon Jones's vehicle, Deputy Miller observed that Curley became more upset, attempted to conceal herself in Deputy Miller's vehicle, and identified Jones as the individual with whom she had previously been driving. These facts are more than sufficient to provide a reasonable suspicion that Jones had been involved in the incident involving Curley.

¶13 Finally, Jones contends that the following factual findings of the circuit court were clearly erroneous: (1) that both Deputy Miller and an officer with the Prairie du Chien Police Department observed a Ford Ranger in the vicinity of County Road P and Harville Road; and (2) that the event took place "in the middle of the night." Assuming without deciding that the court's findings

[2] WISCONSIN STAT. § 947.01 provides:

> Whoever, in a public or private place, engages in violent, abusive, indecent, profane, boisterous, unreasonably loud or otherwise disorderly conduct under circumstances in which the conduct tends to cause or provoke a disturbance is guilty of a Class B misdemeanor.

were clearly erroneous, they were harmless. Excluding these facts, the remaining facts within Deputy Miller's knowledge were sufficient to provide reasonable suspicion justifying the stop.

¶14 For the foregoing reasons, I affirm the denial of Jones's motion to suppress and judgment of conviction.

By the Court.—Judgment affirmed.

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