COURT OF APPEALS
DECISION
DATED AND FILED

September 3, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1273-FT **Cir. Ct. No. 01TR011682**

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

COUNTY OF FOND DU LAC,

PLAINTIFF-RESPONDENT,

V.

CONOR D. REILLY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: ROBERT J. WIRTZ, Judge. *Affirmed and cause remanded with directions*.

¶1 ANDERSON, P.J.[1] Conor D. Reilly appeals from his conviction for drunk driving. He argues that the trial court erred in dismissing his motion to

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

suppress evidence because of a lack of reasonable suspicion to stop his vehicle. We hold that the officer had sufficient grounds for an investigative stop and so affirm.

¶2 In the early morning hours of September 15, 2001, after bar-closing time, Lieutenant Kevin Galske of the Fond du Lac County Sheriff's Department was driving an unmarked Chevy Tahoe when he saw the car Reilly was driving make a right turn without signaling and then accelerate rapidly. Galske followed. Reilly's car came to a stop at an intersection and a passenger began to get out of the car. Galske turned on his emergency lights. The passenger got back into the car, which continued past the stop sign and stopped. Further investigation led to Reilly's arrest for operating a motor vehicle while intoxicated.

¶3 The sole issue on appeal is whether Galske had reasonable suspicion to justify an investigative or ***Terry***[2] stop. In reviewing an order denying a motion to suppress, this court will uphold the trial court's findings of fact unless they are clearly erroneous. ***State v. Harris***, 206 Wis. 2d 243, 249-50, 557 N.W.2d 245 (1996). Whether the facts meet the constitutional standard of reasonableness is a question of law which we review de novo. ***State v. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

¶4 Reilly points out that his failure to signal a right turn was not a violation of WIS. STAT. § 346.34(1)(b) because no other traffic on the road was affected by it. He also notes, equally correctly, that his passenger violated no law by alighting from the vehicle at the intersection. Galske had no radar in his car and testified that he did not hear tires squealing when Reilly's car accelerated at

[2] ***Terry v. Ohio***, 392 U.S. 1 (1968).

what appeared to Galske to be a high speed. However, conduct need not be unlawful to give rise to a reasonable inference that criminal activity is afoot. As our supreme court pointed out in ***State v. Waldner***, 206 Wis. 2d 51, 556 N.W.2d 681 (1996):

> When an officer observes unlawful conduct there is no need for an investigative stop: the observation of unlawful conduct gives the officer probable cause for a lawful seizure .... The law of investigative stops allows police officers to stop a person when they have less than probable cause.

Id. at 59.

¶5 A mere hunch will not suffice. ***Id.*** at 57. Police may infringe on an individual's right to be free of stop and detention only if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts that the individual has committed, is committing, or is about to commit a crime. ***Harris***, 206 Wis. 2d at 259.

¶6 The reasonable suspicion required to justify an investigative stop is a less demanding standard than probable cause

> not only in the sense that reasonable suspicion can be established with information that is different in quantity or content than that required to establish probable cause, but also in the sense that reasonable suspicion can arise from information that is less reliable than that required to show probable cause.

Alabama v. White, 496 U.S. 325, 330 (1990). Suspicious conduct is by its nature ambiguous, and the principal function of the investigative stop is to resolve that ambiguity quickly. ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). Consequently, police are not required to rule out the possibility of innocent behavior before initiating a brief stop. ***Id.*** The focus of the Fourth

Amendment and WIS. STAT. § 968.24 is reasonableness, a commonsense balancing of the individual's right to privacy with the interest of society in allowing the police a reasonable scope of action in discharging their responsibilities. ***Anderson***, 155 Wis. 2d at 87.

¶7 In this case, the trial court found that the specific facts of an imprudent, though not illegal, turn, the unusual acceleration, the lateness of the hour, and the unusual, though not illegal, exit of the passenger at the intersection were, considered in their totality, sufficient to support a reasonable inference that the driver might be impaired. It is only necessary that the inference be reasonable, not that it be the only possible inference or that it be more likely than not. As the ***Waldner*** court noted, "[W]hen a police officer observes lawful but suspicious conduct, if a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, police officers have the right to temporarily detain the individual for the purpose of inquiry." ***Waldner***, 206 Wis. 2d at 60. The judgment is affirmed and the cause remanded with directions.[3]

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[3] We remand with directions that the judgment of conviction be amended to reflect the trial court's selection of a single conviction either under WIS. STAT. § 346.63(1)(a) or (1)(b). *See* § 346.63(1)(c) which provides:

> A person may be charged with and a prosecutor may proceed upon a complaint based upon a violation of par. (a) or (b) or both for acts arising out of the same incident or occurrence. If the person is charged with violating both pars. (a) and (b), the offenses shall be joined. *If the person is found guilty of both pars. (a) and (b) for acts arising out of the same incident or occurrence, there shall be a single conviction for purposes of sentencing and for purposes of counting convictions* under ss. 343.30(1q) and 343.305. Paragraphs (a) and (b) each require proof of a fact for conviction which the other does not require. (Emphasis added.)

By the Court.—Judgment affirmed and cause remanded with directions.

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