

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 12, 2004**

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. 03-1760-CR**

**Cir. Ct. No. 02CF000286**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GREGORY A. ZIMDARS,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Washington County: ANDREW T. GONRING, Judge. *Affirmed.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

¶1 ANDERSON, P.J. Gregory A. Zimdars appeals from a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant contrary to WIS. STAT. § 346.63(1)(a) (2001-02).<sup>1</sup> Zimdars argues that a police

---

<sup>1</sup> All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

officer violated his Fourth Amendment rights against unreasonable searches and seizures when he followed Zimdars into his garage to complete an investigatory stop. We conclude that an officer, in furtherance of a valid investigatory stop, is authorized to pursue a citizen into a home to complete the stop. Therefore, we affirm.

## FACTS

¶2 Community Service Officer Lynette Weber observed Zimdars driving northbound on Main Street at approximately ten miles under the speed limit. Weber followed Zimdars and observed him deviate six to eight times out of his lane into the other lane of traffic. This observation was relayed to City of West Bend Police Officer Tracy Hetebrueg via police radio.

¶3 Hetebrueg responded to Weber's call and began following Zimdars along northbound Barton Avenue. Hetebrueg observed Zimdars swerve to the left, touching the center line, before turning left onto Parkfield Drive. After Zimdars pulled onto Parkfield Drive, Hetebrueg activated his emergency lights to signal Zimdars to stop. Zimdars then turned right onto another street before stopping in a driveway.

¶4 Hetebrueg and Zimdars exited their respective vehicles simultaneously. Hetebrueg observed Zimdars approach a garage, walking slowly and staggering. Hetebrueg asked Zimdars to stop. Zimdars complied with this request. Hetebrueg explained the reason for the stop and asked for Zimdars' driver's license. Zimdars told Hetebrueg he did not have a driver's license and began to continue his approach to the garage. Hetebrueg repeated his request for Zimdars to stop as Zimdars entered the garage. Zimdars reached for the door leading from the garage to the interior of the home. Hetebrueg followed Zimdars

into the garage and grabbed him by the arm. He instructed Zimdars to stop, exit the garage and produce his driver's license. Hetebrueg then observed that Zimdars' eyes were bloodshot and his breath bore a strong odor of intoxicants.

¶5 After exiting the garage with Zimdars, Hetebrueg again asked Zimdars to produce his driver's license. Zimdars complied with this second request. Hetebrueg asked if Zimdars had been drinking that day, to which Zimdars responded in the affirmative. Zimdars then participated in a series of sobriety tests and took a preliminary breath test. Hetebrueg then arrested Zimdars for operating a motor vehicle while intoxicated (OWI).

¶6 The State charged Zimdars with (1) operating while intoxicated, (2) operating a motor vehicle after revocation, (3) felony bail jumping, and (4) operating with a prohibited alcohol concentration. Zimdars moved to suppress all evidence resulting from the stop and search executed by Hetebrueg. Following an evidentiary hearing on the matter, the trial court denied the motion to suppress. The trial court found that (1) a reasonable officer would reasonably suspect that Zimdars was intoxicated, (2) Zimdars could not lawfully walk away from the stop, and (3) the officer had sufficient probable cause to arrest. Subsequent to this order denying suppression, Zimdars pled guilty to OWI. Zimdars appeals, challenging the trial court's denial of his suppression motion.

## LAW AND DISCUSSION

¶7 In reviewing a trial court's denial of a motion to suppress evidence, we uphold the trial court's findings of fact unless they are found to be clearly erroneous. WIS. STAT. § 805.17(2); *State v. Roberts*, 196 Wis. 2d 445, 452, 538 N.W.2d 825 (Ct. App. 1995). However, whether a search complies with Fourth

Amendment requirements is a question of law we review de novo. *Roberts*, 196 Wis. 2d at 452.

¶8 The United States Constitution and the Wisconsin Constitution protect an individual's right to be free from unreasonable searches and seizures. *See* U.S. CONST. amend. IV; WIS. CONST. art. I, § 11. A seizure occurs when, by means of physical force or show of authority, a person's freedom of movement is restrained. *See United States v. Mendenhall*, 446 U.S. 544, 554 (1980). Such a seizure is subject to the reasonableness standard of the Fourth Amendment. *See State v. Goebel*, 103 Wis. 2d 203, 209, 307 N.W.2d 915 (1981). Reasonableness is found where the officer has an articulable suspicion that the person has committed or is about to commit a crime. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). In Wisconsin, the *Terry* standard is codified by WIS. STAT. § 968.24, which permits a law enforcement officer to stop a person whom the officer reasonably suspects is committing, is about to commit, or has committed a crime.

¶9 In *State v. Goyer*, 157 Wis. 2d 532, 537, 460 N.W.2d 424 (Ct. App. 1990), we held that a suspect does not control the duration of a *Terry* stop. In *Goyer*, an initially consensual conversation with Goyer evolved into a *Terry* stop after the officer gained reasonable suspicion that Goyer had committed a crime and the officer asserted his authority over Goyer. *Goyer*, 157 Wis. 2d at 534-35, 537. At some point after the officer asserted his authority over Goyer, Goyer indicated he would not stay to answer any more questions for the officer. *Id.* at 535. He turned away and started to run toward the house across the street. *Id.* The officer told Goyer to stop at least two times, but Goyer continued to run away. *Id.* The officer chased Goyer and caught him in the driveway of the house across the street. *Id.* Eventually, with the assistance of other officers, the officer was able to handcuff Goyer. *Id.* Goyer argued that because the stop was initially

consensual, he was permitted to terminate the stop. *Id.* at 537. However, we held otherwise, finding that once a valid *Terry* stop commences, a suspect does not control its duration. *Goyer*, 157 Wis. 2d at 537.

¶10 Hetebrueg's observation of Zimdars' driving raised an articulable and reasonable suspicion that Zimdars violated the law. Zimdars swerved toward the center line and drove well below the speed limit. Hetebrueg also observed Zimdars stagger after exiting his car. Hetebrueg asserted authority over Zimdars when he activated his emergency lights and told Zimdars to stop and produce identification. The assertion of authority coupled with reasonable suspicion constituted commencement of a valid *Terry* stop. Like the officer in *Goyer*, Hetebrueg's questions were left unanswered when Zimdars attempted to walk away from the stop. Like *Goyer*, Zimdars did not have the right to terminate this investigation before it was completed.

¶11 Zimdars compares the entry into his garage with the facts in *Welsh v. Wisconsin*, 466 U.S. 740 (1984). In *Welsh*, police entered a suspect's home after a report that his car swerved into the roadside. *Id.* at 742-43. The officers were allowed into the home by the suspect's stepdaughter before proceeding to the suspect's bedroom and arresting him for drunken driving. *Id.* at 743. The Supreme Court held that this warrantless, nighttime entry into Welsh's home to arrest him for a civil, nonjailable traffic offense violated Welsh's Fourth Amendment right against unreasonable searches and seizures. *Id.* at 754.

¶12 The facts of *Welsh* are distinguishable from the investigatory stop and subsequent arrest of Zimdars. Hetebrueg commenced a valid *Terry* stop. Zimdars attempted to terminate this stop before its completion by entering his home and walking away from Hetebrueg. Unlike the circumstances in *Welsh*,

Hetebrueg did not enter the garage for the purpose of arresting Zimdars. Instead, he was attempting to continue and complete a valid investigatory stop that began outside the home. An investigatory stop serves no purpose if a suspect may terminate the stop at will. Therefore, a police officer is authorized to pursue a citizen into a home if necessary to complete a validly commenced *Terry* stop.

### CONCLUSION

¶13 We hold that Hetebrueg, upon reasonable suspicion, asserted authority over Zimdars in furtherance of a valid investigatory stop. Hetebrueg legally entered the garage to prevent Zimdars from terminating this valid investigatory stop. We uphold the trial court's denial of Zimdars' motion to suppress, and we affirm the judgment of conviction.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports.