COURT OF APPEALS
DECISION
DATED AND FILED

December 10, 2003

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-1944-FT **Cir. Ct. No. 02CT000155**

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

IN THE MATTER OF THE REFUSAL OF MARK A. STURM:

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK A. STURM,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Green Lake County: WILLIAM M. MCMONIGAL, Judge. *Affirmed.*

¶1 SNYDER, J.[1] Mark A. Sturm appeals from an order revoking his driver's license for three years on grounds that his refusal to submit to a chemical

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[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.

test under WIS. STAT. § 343.305 was unreasonable. Sturm argues that the arresting officer lacked reasonable suspicion to detain him and the officer therefore violated Sturm's right to be free from unreasonable search and seizure under the Fourth Amendment of the United States Constitution. We disagree and affirm the order of the circuit court.

¶2 The facts are undisputed. On October 9, 2002, Officer Joshua Heer of the City of Berlin Police Department received a dispatch from the Green Lake County Sheriff's Department that a vehicle was possibly traveling into the city with a suspected drunk driver at the wheel. The dispatcher provided a description of the vehicle and a license plate number. Several minutes later, Heer observed a car that matched the description and license plate number given to him by dispatch. Heer followed the vehicle for approximately eight blocks and noticed it weaving in its lane. Heer also observed the vehicle make four turns, one of which was executed without a turn signal. The vehicle eventually stopped and Heer approached the driver, later identified as Sturm.

¶3 Heer noted an odor of intoxicants on Sturm, and observed that Sturm was having trouble with his balance. Sturm also swayed back and forth and slurred his speech. Heer administered field sobriety tests, which Sturm failed. Heer asked Sturm to submit to a preliminary breath test and Sturm refused. Heer determined that Sturm was impaired and placed him under arrest for operating while intoxicated.

¶4 Sturm was taken to Berlin Memorial Hospital where Heer read him the Informing the Accused form. Heer asked Sturm several times whether he would submit to a chemical test of his blood. Sturm requested to speak to his lawyer and was allowed to use the phone, although no contact with the lawyer was

made because Sturm did not know the number. Heer eventually marked the chemical test consent form to indicate that Sturm did not give permission for the test.

¶5 Sturm was charged with refusing to submit to a chemical test under WIS. STAT. § 343.305 and requested a hearing on the matter. At the hearing, the circuit court found that Sturm's refusal to submit to the chemical test was unreasonable and revoked his operating privileges for three years.

¶6 Sturm appeals the revocation, arguing that Heer lacked reasonable suspicion to detain Sturm's vehicle and therefore violated Sturm's right to be free from unreasonable search and seizure under the Fourth Amendment of the United States Constitution. We disagree.

¶7 The issue is whether Sturm's initial detention was supported by reasonable suspicion. "A trial court's determination of whether undisputed facts establish reasonable suspicion justifying police to perform an investigative stop presents a question of constitutional fact, subject to *de novo* review." ***State v. Colstad***, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (citation omitted), *review denied*, 2003 WI 32, 260 Wis. 2d 752, 661 N.W.2d 100 (Wis. Apr. 22, 2003) (No. 01-2988-CR), *cert. denied*, 124 S. Ct. 281 (U.S. Oct. 6, 2003) (No. 03-1110).

¶8 The question of what constitutes reasonable suspicion is a commonsense 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). The commonsense test strikes a balance between individual privacy and the societal interest in allowing the police a reasonable scope of action in

performing their duties. ***State v. Waldner***, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996).

¶9 Here, undisputed testimony demonstrates the following: (1) Heer received a dispatch about a possible drunk driver approaching; (2) the information provided was detailed and specific enough to match the description of the vehicle and license plate to Sturm's car; (3) Heer observed Sturm weaving in his traffic lane; and (4) Heer observed Sturm make a turn without using a turn signal. Any one of these facts, standing alone, might be insufficient to support an investigative stop; however, that is not the test to apply. We look at how the building blocks of fact accumulate. *See* ***id***. at 58. As they accumulate, we look at what reasonable inferences can be drawn. *See* ***id***.

¶10 In ***Waldner***, the police officer observed Waldner drive slowly toward an intersection, stop (although no sign or signal required a stop), turn and accelerate down the cross-street, park legally, and open the car door and pour liquid out of a plastic cup. ***Id***. at 53. The officer admitted that Waldner did not break any laws. ***Id***. The trial court found, and our supreme court agreed, that reasonable inferences from the facts supported the officer's suspicion that Waldner had committed a crime and, therefore, the investigative stop was lawful. ***Id***. at 54. Likewise, we hold that the totality of the circumstances supports Heer's reasonable suspicion that Sturm was driving while impaired.

¶11 Sturm argues that his behavior violated no laws, implying that lawful acts cannot form the basis for reasonable suspicion justifying a stop. He emphasizes that his weaving did not take him out of his lane of traffic (and Heer's testimony supports this). In addition, Sturm relies on the language of WIS. STAT. § 346.34(1)(b), which requires use of a turn signal when "other traffic may be

affected by such movement," for the proposition that his failure to signal was legal due to the absence of other traffic on the road.

¶12 Sturm's argument fails. Our supreme court explained that if lawful acts could not form the basis for reasonable suspicion,

> there could never be investigative stops unless there was simultaneously sufficient grounds to make an arrest. That is not the law. The Fourth Amendment does not require a police officer who lacks the precise level of information necessary for probable cause to arrest to simply shrug his or her shoulders and thus possibly allow a crime to occur or a criminal to escape. The law of investigative stops allow police officers to stop a person when they have less than probable cause.
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> ….
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> Thus, when 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 59-60.

¶13 Based upon the record, the totality of the undisputed facts, and the law of investigative stops, we hold that it was reasonable for Heer to detain Sturm for purposes of further inquiry. Sturm's request that this court reverse the order for revocation is denied.

By the Court.—Order affirmed.

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