COURT OF APPEALS
DECISION
DATED AND FILED

May 13, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 03-2473-CR **Cir. Ct. No. 00CT000505**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER AARON DELANGE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Sauk County: PATRICK J. TAGGART and GUY D. REYNOLDS, Judges.[1] *Affirmed*.

¶1 LUNDSTEN, J.[2] Christopher DeLange appeals a judgment of the circuit court finding him guilty of operating a motor vehicle while under the

[1] Judge Patrick J. Taggart accepted DeLange's no contest plea and imposed sentence. Judge Guy D. Reynolds denied DeLange's motion for postconviction relief.

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

influence of an intoxicant as a second offense. He also appeals an order denying his motion for postconviction relief. DeLange's argument on appeal is that there was not reasonable suspicion to stop his car and, therefore, the circuit court erred in denying his motion to suppress. We conclude that, based on the totality of the circumstances, there was reasonable suspicion to stop DeLange's car, and we affirm the circuit court's judgment and order.

Background

¶2 Officer Craig Rasmussen testified that at about 12:44 a.m. on October 27, 2000, he received a call from dispatch informing him that an unidentified caller had reported hearing "screaming in the woods" near the 2100 block of North Dewey Avenue in Reedsburg, Wisconsin. The caller said that the screaming sounded as if someone were hurt. Officer Rasmussen then proceeded to the area described in the call, driving northbound on North Dewey. Dispatch then informed Rasmussen that the caller said that a vehicle just left the wooded area, proceeded south on North Dewey, and was past the hospital southbound. The caller further stated that the car was a four-door, midsize car.

¶3 Officer Rasmussen testified about the physical layout of North Dewey Avenue. He explained that, when proceeding northbound on North Dewey Avenue, you would be going up a hill and would be able to see for quite a distance. Officer Rasmussen testified that, as he continued northbound, he saw one set of headlights coming toward him in the southbound lane of North Dewey. DeLange's car was approximately five to six blocks past the woods and four to five blocks past the hospital. Officer Rasmussen observed that the car was a midsize, four-door. The officer activated his lights, made a U-turn, and pulled the car over. The stop led to evidence of intoxicated driving, and the officer issued

DeLange citations for operating a motor vehicle while under the influence and operating with a prohibited alcohol content, both as a second offense. During the time that Rasmussen approached the Dewey Avenue location, he did not see any other cars pass him going south on North Dewey Avenue from the woods. Rasmussen testified that DeLange's car was the only car on the street that was leaving that area.

¶4 DeLange moved the court to suppress all evidence obtained pursuant to the stop on the ground that the stop was not supported by reasonable suspicion. After a hearing, the motion was denied. DeLange then pled no contest.

¶5 DeLange filed for postconviction relief, requesting the court to vacate the judgment and reverse its order on the motion to suppress on the ground that his trial counsel was ineffective. A ***Machner*** hearing was held, after which DeLange's postconviction motion was denied. DeLange now appeals the judgment of conviction and the order denying his postconviction motion.

Discussion

¶6 "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. Sisk***, 2001 WI App 182, ¶7, 247 Wis. 2d 443, 634 N.W.2d 877. A law enforcement officer may lawfully conduct an investigatory stop if, based upon the officer's experience, he or she reasonably suspects "'that criminal activity may be afoot.'" ***State v. Williams***, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106 (quoting ***Terry v. Ohio***, 392 U.S. 1, 30 (1968)). "The question of what 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).

¶7 In determining whether a ***Terry*** stop was lawfully conducted pursuant to an anonymous tip, our supreme court has stated:

> The totality-of-the-circumstances approach views the quantity and the quality of the information as inversely proportional to each other. "Thus, if a tip has a relatively low degree of reliability, more information will be required to establish the requisite quantum of suspicion than would be required if the tip were more reliable." Conversely, if the tip contains a number of components indicating its reliability, then the police need not have as much additional information to establish reasonable suspicion.

Williams, 241 Wis. 2d 631, ¶22 (quoting ***Alabama v. White***, 496 U.S. 325, 330 (1990)).

¶8 DeLange argues that the anonymous tip did not supply sufficient indicia of reliability to provide reasonable suspicion for the officer to stop his car. To support this, DeLange points out that, here, the tipster never put her anonymity at risk, the tip was not recorded, the details asserted in the tip did not supply enough specifics to be confirmed by police observation, and there were no additional independent police observations. DeLange discusses four cases: ***Alabama v. White***; ***Williams***; ***Florida v. J.L.***, 529 U.S. 266 (2000); and ***State v. Rutzinski***, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516.

¶9 The State contends that the stop was justified because the call suggested that someone had been harmed, and that the possible need to render immediate aid must be considered when evaluating the totality of the circumstances.

¶10 We conclude that, based upon the totality of the circumstances, exigent circumstances justified the stop. In ***Rutzinski,*** our supreme court explained:

> [W]hen assessing whether a stop is constitutionally reasonable, a reviewing court must balance the interests of the individual being stopped against the interests of the State to effectively root out crime. In light of this balancing test, we recognize that there may be circumstances where an informant's tip does not exhibit indicia of reliability that neatly fit within the bounds of the *Adams-White* spectrum, *but where the allegations in the tip suggest an imminent threat to the public safety or other exigency that warrants immediate police investigation.* In such circumstances, the Fourth Amendment and Article I, Section 11 do not require the police to idly stand by in hopes that their observations reveal suspicious behavior before the imminent threat comes to its fruition. Rather, it may be reasonable for an officer in such a situation to conclude that the potential for danger caused by a delay in immediate action justifies stopping the suspect without any further observation. Thus, exigency can in some circumstances supplement the reliability of an informant's tip in order to form the basis for an investigative stop.

Rutzinski, 241 Wis. 2d 729, ¶26 (citations omitted; emphasis added).

¶11 The potential for a need to render aid is part of the totality of the circumstances that must be considered in this situation. The tipster here indicated that she had heard someone screaming in the woods as if hurt and that, after the screaming, she saw a midsize, four-door car leaving the area in a particular direction. Based on the timing of the call, the information contained in that call, and what he personally observed, Officer Rasmussen could reasonably have concluded that DeLange's car was likely the car seen leaving the area where a caller heard screaming, and that someone in the car was injured or in danger and in need of assistance.

By the Court.—Judgment and order affirmed.

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