COURT OF APPEALS
DECISION
DATED AND FILED

March 31, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal Nos. 03-2784-CR
03-2785-CR

Cir. Ct. Nos. 03CT000329
03CT000333

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOUGLAS E. HOWK, JR.,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Walworth County: JOHN R. RACE,[1] Judge. *Affirmed.*

¶1 NETTESHEIM, J.[2] Douglas E. Howk, Jr. appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OWI) as a repeat

[1] Although Judge John R. Race entered the judgment in this case, Judge Robert J. Kennedy issued the ruling which we review.

offender pursuant to WIS. STAT. §§ 346.63(1)(a) and 346.65(2) and operating after revocation pursuant to WIS. STAT. § 343.44(1)(b) and (2)(b). Howk pled guilty to the charges after the trial court denied his motion to suppress based upon a claim that Howk's arrest resulted from an invalid ***Terry***[3] stop. Upon appeal, Howk renews his ***Terry*** challenge. We affirm.

FACTS AND PROCEDURAL HISTORY

¶2 The facts are not in dispute. On April 5, 2003, Village of Genoa City Police Officer Jeffrey Kreft and another officer went to Howk's residence to conduct a "welfare check" on Howk.[4] As a result of that encounter, Kreft ran a record check of Howk's driver's license status and learned that Howk was revoked. At this time, Kreft also knew Howk had been revoked as the result of an August 2002 OWI charge that his department had referred to the Walworth county sheriff's department.

¶3 Thirteen days later, on April 18, 2003, Kreft observed Howk operating a motor vehicle. Based on his belief that Howk's driving privileges were still revoked, Kreft stopped Howk's vehicle. As a result, Kreft obtained evidence of Howk's intoxication, and the State charged Howk with OWI.

¶4 Howk responded with a motion to suppress, contending that Kreft did not have reasonable suspicion pursuant to WIS. STAT. § 968.24 and ***Terry*** to

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[2] These appeals are 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.

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

[4] The parties do not explain what a "welfare check" is. Regardless, the validity of this episode is not at issue.

stop his vehicle. Relying on ***State v. Kassube***, 2003 WI App 64, 260 Wis. 2d 876, 659 N.W.2d 499, the trial court denied Howk's motion. Howk was later convicted. He appeals.

DISCUSSION

¶5 Upon review of a motion to suppress, we will sustain the trial court's historical findings of fact unless those findings are clearly erroneous. ***State v. Amos***, 220 Wis. 2d 793, 797, 584 N.W.2d 170 (Ct. App. 1998). However, whether those facts satisfy the constitutional requirement of reasonableness presents a question of law that we review de novo. ***Id***. at 797-98. We apply these same standards of review when a motion to suppress is premised upon an alleged ***Terry*** violation. *See* ***Amos***, 220 Wis. 2d at 798.

¶6 WISCONSIN STAT. § 968.24, which codifies ***Terry***, permits a police officer to temporarily detain and question a person in a public place when the officer reasonably suspects that the person is committing or is about to commit an offense. The question of what constitutes reasonable suspicion under ***Terry*** is a commonsense test which asks, "Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?" ***Amos***, 220 Wis. 2d at 798-99. Police officers are not required to rule out the possibility of innocent behavior before initiating a ***Terry*** stop. ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). Suspicious conduct, by its very nature, is ambiguous and therefore if any reasonable inference of wrongful conduct can be objectively discerned, *notwithstanding the existence of other innocent inferences*, the police have a right to temporarily detain the suspect for purposes of inquiry. ***Id***.

¶7 In ***Kassube***, the arresting officer testified that he had known the defendant for nine to twelve years, knew that the defendant had never held a driver's license during that period of time, and knew that the defendant did not hold a license when he had last spoken to him some eleven months earlier. ***Kassube***, 260 Wis. 2d at 878. The court of appeals held that this prior knowledge was sufficient to support a ***Terry*** stop. ***Kassube***, 260 Wis. 2d at 878.

¶8 In so holding, the ***Kassube*** court rejected the defendant's reliance on the Mississippi case of ***Boyd v. State***, 758 So.2d 1032 (Miss. App. 2000), where the court held that an officer's knowledge that the defendant's driving privileges were suspended eight years earlier was insufficient to support a ***Terry*** stop. ***Kassube***, 260 Wis. 2d at 879. The ***Kassube*** court distinguished ***Boyd*** saying, "This [case] is different from ***Boyd*** … because those cases all dealt with temporary suspensions of drivers' licenses. In such a situation, a driver may have regained his or her license at any time without the officer's knowledge." ***Kassube***, 260 Wis. 2d at 880.

¶9 Howk seizes on this statement from ***Kassube***, noting that here also he might have regained his license without Kreft's knowledge. We do not read this isolated statement from ***Kassube*** as announcing a bright-line rule that a ***Terry*** stop can never be premised upon a police officer's knowledge that a defendant

was previously revoked.[5] Therefore, we disagree with Howk that this statement from ***Kassube*** represents the holding of the court. Rather, we deem the following to constitute the court's ruling: "It was reasonable for [the officer] to believe that if Kassube had not obtained a license in nine to twelve years, he did not do so in the last eleven months and was likely to be driving without a license." ***Id***. In making this statement, the ***Kassube*** court was performing a classic ***Terry*** analysis: In light of all the facts and circumstances, what would a reasonable police officer deduce? ***Amos***, 220 Wis. 2d at 798-99.

¶10 We apply this same inquiry to this case. Here, when Kreft stopped Howk's vehicle on April 18, 2003, he knew that Howk had been revoked for an August 2002 OWI offense. More importantly, Kreft had checked Howk's license status a mere thirteen days earlier and learned that Howk was then under revocation.[6] We, of course, must allow that Howk could have obtained a driver's license during this short interval of time. But a more compelling reasonable inference is that Howk had not taken such steps and that he was still under revocation at the time Kreft observed him driving a vehicle on April 18, 2003. As

[5] Other jurisdictions have held that a police officer's knowledge of a driver's suspension or revocation status is sufficient to warrant a ***Terry*** stop. ***State v. Leyva***, 599 So.2d 691, 693 (Fla. Dist. Ct. App. 1992) (reasonable for officer to suspect that defendant's license still suspended where officer had checked status of license four to five weeks prior to stop); ***State v. Harris***, 513 S.E.2d 1, 4 (Ga. App. 1999) (information that license was suspended obtained within "few weeks" of stop); ***State v. Duesterhoeft***, 311 N.W.2d 866, 867-68 (Minn. 1981) (officer's knowledge of license suspension from check performed one month earlier provided reasonable suspicion for stop); ***State v. Yeargan***, 958 S.W.2d 626, 633 (Tenn. 1997) (officer who had been present when defendant's license was suspended for one year had reasonable suspicion to stop defendant when he saw defendant driving six months later).

[6] Given this short interval, we agree with the trial court that this is a stronger case in support of reasonable suspicion than ***State v. Kassube***, 2003 WI App 64, 260 Wis. 2d 876, 659 N.W.2d 499, where the officer's last information regarding the defendant's license status was acquired up to eleven months earlier. ***Id.*** at ¶6.

noted earlier, where the facts present reasonable competing inferences, the police officer is entitled to opt for that inference that supports a belief that illegal conduct is afoot. ***Anderson***, 155 Wis. 2d at 84.

CONCLUSION

¶11 We hold that Kreft's suspicion that Howk's driving privileges were revoked was reasonable. That belief, coupled with Kreft's observation of Howk's operation of a motor vehicle, constitute reasonable suspicion to allow Kreft to conduct a ***Terry*** stop pursuant to WIS. STAT. § 968.24. We uphold the trial court's denial of Howk's motion to suppress, and we affirm the judgments of conviction.

By the Court.—Judgments affirmed.

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