

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 1, 2005

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 Nos. 04-1903-CR
04-1904-CR
04-1905-CR
STATE OF WISCONSIN**

**Cir. Ct. Nos. 02-CF-100
03-CF-31
03-CF-53**

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEAN T. SCHAEFER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Oneida County:
MARK A. MANGERSON, Judge. *Affirmed.*

Before Cane, C.J., Hoover, P.J., and Peterson, J.

¶1 PER CURIAM. Dean Schaefer appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, fifth offense. He argues the arresting officer did not have reasonable suspicion to support the stop of his vehicle. We conclude the officer reasonably believed

Schaefer was driving with a revoked license and that the stop was a minimal intrusion. We therefore affirm the judgment.

BACKGROUND

¶2 On May 22, 2002, officer James Adams of the Oneida County Sheriff's Department, who was on patrol with another officer, received a dispatch regarding a possible health and welfare check at a residence. Adams had been to the residence on previous occasions and knew that Schaefer lived there with his girlfriend. Approximately a month earlier and possibly as recently as ten days earlier, Adams had been at the residence. He had checked Schaefer's license status at that time and learned it was revoked.

¶3 Adams drove to the residence and decided to park just down the street to wait for medical personnel to arrive. While he was waiting and watching the residence, he observed Schaefer get into a vehicle and drive away. Adams stopped Schaefer, believing he was driving with a revoked license. He informed dispatch of the stop and learned Schaefer's license was still revoked. Adams arrested Schaefer for operating a motor vehicle after revocation. He later determined that Schaefer was intoxicated.

¶4 Schaefer was charged with operating a motor vehicle while intoxicated, fifth offense. Schaefer filed a motion to suppress evidence resulting from the stop, alleging the stop was not supported by reasonable suspicion. The trial court denied the motion. It determined the stop was a minimal intrusion, that there was concern due to the 911 call and that, contemporaneous to the stop, Adams confirmed Schaefer's license was revoked. Schaefer was subsequently convicted on the OWI charge.

DISCUSSION

¶5 In reviewing a circuit court’s order denying a motion to suppress evidence, the court’s findings of evidentiary or historical fact will be upheld unless they are clearly erroneous. *State v. Matejka*, 2001 WI 5, ¶16, 241 Wis. 2d 52, 621 N.W.2d 891. However, whether the court’s findings of fact pass statutory or constitutional muster is a question of law this court reviews independently. *Id.*

¶6 The Fourth Amendment to the United States Constitution protects “[t]he right of the people ... against unreasonable searches and seizures.” While an investigative stop is technically a “seizure” under the Fourth Amendment, a police officer may, under appropriate circumstances, detain a person for purposes of investigating possible criminal behavior even though there is no probable cause for arrest. See *Terry v. Ohio*, 392 U.S. 1, 22 (1968). Wisconsin has adopted the *Terry* rule, see *State v. Chambers*, 55 Wis. 2d 289, 294 n.2, 198 N.W.2d 377 (1972), and WIS. STAT. § 968.24.¹

¶7 An officer must be able to point to specific and articulable facts, that, taken together with rational inferences from those facts, reasonably warrant the intrusion. *Terry*, 392 U.S. at 21. The question of what constitutes reasonable suspicion is a common sense test: given the facts and circumstances, “what would a reasonable police officer reasonably suspect in light of his or her training and experience?” *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989).

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

¶8 Schaefer argues that, while Adams knew a month earlier that Schaefer's license was revoked, the information was stale at the time of the stop. Schaefer points to our decision in *State v. Kassube*, 2003 WI App 64, 260 Wis. 2d 876, 659 N.W.2d 499. There, the officer had known the defendant for between nine and twelve years and had never known him to have a driver's license. Therefore, it was reasonable for the officer to believe the defendant was driving without a license. *Id.*, ¶3.

¶9 Schaefer argues his situation is distinguishable because Adams's information was based on information obtained only a month earlier, as opposed to the years of information the officer had in *Kassube*. Further, while the defendant in *Kassube* never had a license, Schaefer had a license before it was revoked. Schaefer maintains that, because license revocations are temporary, he could have had his license reinstated in the time since he last had contact with Adams. Therefore, Schaefer contends it was unreasonable for Adams to assume Schaefer's license was still revoked.

¶10 We look to the circumstances of each case when determining whether information is stale. *State v. Ehnert*, 160 Wis. 2d 464, 469, 466 N.W.2d 237 (Ct. App. 1991). Here, Adams knew that Schaefer's license was revoked as much as a month and as few as ten days before the stop. This information was not so stale as to render unreasonable the suspicion that his license was still revoked. Furthermore, we agree with the circuit court that the stop was a minimal intrusion. *See State v. Swanson*, 164 Wis. 2d 437, 446-47, 475 N.W.2d 148, 152 (1991) (a traffic stop, like a *Terry* stop, is typically brief and public in nature) (citing *Berkemer v. McCarty*, 468 U.S. 420 (1984)). The fact that Schaefer's license

could possibly have been reinstated since Adams's last contact with him does not make this minimal intrusion unreasonable.² Adams was not required to rule out the possibility of innocent behavior before stopping Schaefer's vehicle. *See State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

² The State also argues the stop was reasonable because Adams was investigating a possible domestic disturbance. Because we conclude the stop was reasonable due to Adams's belief Schaefer was driving after revocation, we need not address the domestic disturbance issue.

