

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 1, 2012

Diane M. Fremgen
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. 2011AP237-CR

Cir. Ct. No. 2010CT47

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JOHN E. MEDDAUGH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JONATHAN D. WATTS, Judge. *Affirmed.*

¶1 KESSLER, J.¹ John E. Meddaugh appeals his judgment of conviction after he pled guilty to operating a motor vehicle while under the influence of an intoxicant as a third offense. Meddaugh contends that the circuit court erred in denying his motion to suppress evidence of his intoxication because

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2009-10).

the arresting officer lacked reasonable suspicion to stop his vehicle. Because we conclude that there was reasonable suspicion to stop Meddaugh's vehicle, we affirm.

BACKGROUND

¶2 According to the complaint, City of West Allis Police Officer Eric Sturino stopped Meddaugh's vehicle for suspicion of operating a vehicle while intoxicated. The complaint states that after Meddaugh was stopped, Sturino noted that Meddaugh's eyes were glassy and that Meddaugh had an odor of alcohol on his breath. Meddaugh admitted to drinking beer. After failing Standard Field Sobriety Tests, Meddaugh was arrested and subsequently charged with one count of operating a motor vehicle while under the influence of an intoxicant, as a third offense.

¶3 Meddaugh filed a motion to suppress evidence of his intoxication on the grounds that Sturino lacked reasonable suspicion and probable cause to stop his vehicle.² At the hearing on the motion, Sturino testified that he was on patrol at the intersection of South 92nd Street and West Greenfield Avenue on the evening of January 30, 2010. Sturino testified that at approximately 8:00 p.m. he heard tires screeching, but could not locate a vehicle in motion at the time. Shortly after, he observed a bluish green pickup truck enter the intersection and turn southbound onto Greenfield Avenue. Sturino stated that he observed the car "fishtail" while attempting to make the turn. Sturino testified that approximately

² Meddaugh argues both probable cause and reasonable suspicion on appeal; however, an officer may conduct a traffic stop even if no probable cause exists when "under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed." See *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. Because the arresting officer had reasonable suspicion to stop Meddaugh's vehicle, we do not address his probable cause argument.

ten to fifteen seconds after observing the fishtail, he activated his lights. At the same time, Meddaugh had pulled over across the street from a tavern and was exiting the vehicle with a passenger. Sturino stated that he instructed both Meddaugh and the passenger to return to the vehicle. Meddaugh was eventually arrested.

¶4 At the hearing, the circuit court observed footage of Meddaugh's stop taken from Sturino's squad camera. The circuit court noted that it observed a "wobble." The circuit court denied Meddaugh's motion, finding that based on Sturino's experience, training and testimony, reasonable suspicion existed to stop Meddaugh's vehicle. Meddaugh pled guilty to the charge. This appeal follows.

DISCUSSION

¶5 In reviewing a circuit court's ruling on a motion to suppress, we will uphold the circuit court's factual findings unless they are clearly erroneous. *State v. Richardson*, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). "[W]hether undisputed facts establish reasonable suspicion justifying police to perform an investigative stop presents a question of constitutional fact," that we review independently. *State v. Sisk*, 2001 WI App 182, ¶7, 247 Wis. 2d 443, 634 N.W.2d 877.

¶6 On appeal, Meddaugh argues that "fishtailing" is insufficient to support a finding of reasonable suspicion. We conclude that based on the totality of the circumstances, Sturino had reasonable suspicion to stop Meddaugh's vehicle.

¶7 To make an investigatory stop of a person, officers must have a reasonable suspicion that criminal activity is afoot. See *State v. Allen*, 226 Wis.

2d 66, 75-76, 593 N.W.2d 504 (Ct. App. 1999). In evaluating whether a stop is supported by reasonable suspicion, we consider whether “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant” the stop. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). We determine the reasonableness of the stop based on the totality of the circumstances. *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. “The determination of reasonableness is a common sense test. The crucial question is whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.” *Id.* An officer may stop an individual with a reasonable inference of unlawful conduct, even if other innocent inferences can be drawn. *State v. Waldner*, 206 Wis. 2d 51, 60, 556 N.W.2d 681 (1996).

¶8 Sturino testified that he observed the pickup truck “fishtail,” specifically stating that he saw the vehicle go “to the right, and then ... abruptly [jerk] back to the left.” He testified that based on his training and experience it would be reasonable to stop a vehicle after hearing tires screech and viewing a car fishtail, as it indicates that the person was “driving recklessly.” His belief was based on the notion that the “roads were not wet” and that “[s]ometimes when people have been consuming intoxicants, they take unnecessary risks or they drive poorly.” He further noted that there were several tickets he could have issued based on his observations of Meddaugh’s driving, including disorderly conduct with the motor vehicle and failure to have control. During the hearing, the circuit court viewed the footage from Sturino’s squad camera, which recorded the area in front of the squad at the time the stop was made. After viewing the video, the circuit court concluded that there was “no pedestrian that the defendant was trying to avoid, no stray animals, no other reason for the fishtail other than the reasonable

inference that the officer made[,] that the defendant was under the influence, and that that constituted sufficient reasonable suspicion.”

¶9 Based on the totality of the circumstances, we agree with the circuit court that Sturino put forth specific, articulable facts which warranted the stop when considered with the inferences from those facts. Sturino testified that shortly after hearing tires screech, he observed Meddaugh’s vehicle “fishtail.” Fishtailing, Sturino testified, is consistent with a driver losing control of a vehicle. Sturino further testified that the roads were not wet, the area was well-lit, nothing obstructed his view of Meddaugh’s vehicle, and that the “fishtail” particularly caught his attention because it was a Saturday night. The circuit court found Sturino to be credible based on his substantial training and experience and found his testimony to be consistent with the circuit court’s observations of the squad camera video. See *Lellman v. Mott*, 204 Wis. 2d 166, 172, 554 N.W.2d 525 (Ct. App. 1996) (The credibility of witnesses and the weight to be attached to that evidence are matters uniquely within the province of the finder of fact.). In addition, the officer’s observations were sufficient to suggest that he believed there would be a violation of a traffic law. See *Waldner*, 206 Wis. 2d at 55-56. As our supreme court noted, “[t]he building blocks of fact accumulate. And as they accumulate, reasonable inferences about the cumulative effect can be drawn.” *Post*, 301 Wis. 2d 1, ¶13 (citation omitted).

CONCLUSION

¶10 For all the forgoing reasons, based on the totality of the circumstances, we conclude that the officer had reasonable suspicion to stop Meddaugh's vehicle. Accordingly, we affirm.

By the Court.—Judgment affirmed.

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

