

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 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. 2011AP2858-CR

Cir. Ct. No. 2011CF141

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JASON T. MOYNIHAN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Sheboygan County:
TERENCE T. BOURKE, Judge. *Reversed and cause remanded.*

¶1 GUNDRUM, J.¹ The State appeals from the circuit court’s grant of Jason Moynihan’s motion to suppress evidence related to a charge of operating a motor vehicle while under the influence of alcohol (OWI).

BACKGROUND

¶2 A Sheboygan county deputy sheriff testified to the following undisputed facts at the suppression hearing.² On March 30, 2011, the deputy observed a vehicle operating on State Highway 23 in Sheboygan county around 1:08 a.m. at approximately forty-seven miles per hour in a fifty-five mile-per-hour zone. Thinking this speed “rather peculiar,” the deputy followed the vehicle. He subsequently observed the vehicle drift from the center line toward the curb line before making a turn. Believing there was only “minor reasonable suspicion” at this point, the deputy “decided to continue on” and stopped following the vehicle. As the vehicle turned, the deputy observed the driver to be a man “in his 30s, 40s.”

¶3 At the time the deputy was following the vehicle, he ran its plates to check the status of the vehicle’s registration. From this “status check” he learned that the vehicle was registered to a woman. After he stopped following the vehicle, the deputy received information from the status check indicating numerous arrests had been made related to the vehicle. The deputy then turned around to try to catch up to the vehicle “in the event that it would be something further.” Shortly thereafter, the deputy learned from the status check that one

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² The deputy was the only witness to testify and the circuit court found him to be “very honest.”

week earlier a man, named Scott Saeger, had been arrested for OWI and operating with a revoked driver's license in connection with this same vehicle. The status check showed that Saeger was around forty years old and that his license was still revoked. "[A]ssuming that the driver was Mr. Saeger," the deputy pulled over the vehicle to investigate "[t]he possible revocation issue," though he acknowledged to the court that the possibility of OWI "crossed [his] mind [] based on the reasonable suspicion [he] noted earlier." Upon making contact with the driver, the deputy learned that Moynihan was the operator of the vehicle, not Saeger. The stop ultimately led to Moynihan's arrest for OWI.

¶4 Moynihan moved to suppress the evidence, arguing that the deputy did not have reasonable suspicion to believe the driver of the vehicle, Moynihan, was engaged in illegal activity and therefore to lawfully stop the vehicle. The circuit court agreed and the State now appeals.

STANDARD OF REVIEW

¶5 Reviewing a circuit court's ruling on a motion to suppress evidence, we apply the clearly erroneous standard to the court's factual findings. *State v. Smiter*, 2011 WI App 15, ¶9, 331 Wis. 2d 431, 793 N.W.2d 920 (WI App 2010). Our review of whether the facts constitute reasonable suspicion, however, is de novo. *State v. Powers*, 2004 WI App 143, ¶6, 275 Wis. 2d 456, 462, 685 N.W.2d 869.

¶6 In order for an investigatory stop to be justified by reasonable suspicion, the officer must possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot. *State v. Young*, 2006 WI 98, ¶21, 294 Wis. 2d 1, 717 N.W.2d 729. While a mere hunch is insufficient, "police officers are not required to rule out the possibility of innocent behavior before

initiating a brief stop.” *Id.* (quoting *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990)). As our supreme court has explained:

[S]uspicious conduct by its very nature is ambiguous, and the [principal] function of the investigative stop is to quickly resolve that ambiguity. Therefore, if any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.

Young, 294 Wis. 2d 1, ¶21 (quoting *Anderson*, 155 Wis. 2d at 84). Indeed, “[i]t has been termed ‘the essence of good police work’ to briefly stop a suspicious individual ‘in order to determine his [or her] identity or to maintain the status quo momentarily while obtaining more information.’” *State v. Williamson*, 58 Wis. 2d 514, 518, 206 N.W.2d 613 (1973), (citing *State v. Chambers*, 55 Wis. 2d 289, 294, 198 N.W.2d 377 (1972)).

¶7 In determining whether reasonable suspicion exists, we must consider what a reasonable police officer would have reasonably suspected given his or her training and experience. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). We must look at the totality of the facts taken together. *Id.* at 58. As facts accumulate, reasonable inferences about their cumulative effect can be drawn. *Id.*

DISCUSSION

¶8 In this case, the deputy pulled over the vehicle driven by Moynihan because he believed it was being driven by Saeger and believed that Saeger’s driver’s license was revoked. The question is whether the deputy’s belief, or suspicion, was reasonable. We believe it was.

¶9 Moynihan argues that the deputy “knew only that a man named Scott Saeger had driven the vehicle the week before, and that the subject presently operating the vehicle was a male of an age **consistent** with that of Saeger.”³ If that were all the information the deputy had available to him at the time of the stop, we likely would agree with Moynihan and affirm the circuit court. The deputy, however, was aware of additional specific and articulable facts: it was near bar time, the vehicle was traveling eight miles per hour under the speed limit, the vehicle drifted from the center line toward the curb line.

¶10 While the time of day and the manner in which Moynihan operated the vehicle, without more, may have been insufficient to stop the vehicle for drunk driving, these indicia of possible impaired driving *together with* the information the deputy had gathered from the status check—i.e., one week earlier, a man of a similar age as the man currently driving had been arrested for operating this same vehicle while intoxicated, and with a revoked driver’s license which was still revoked—supplied the requisite reasonable suspicion for an investigatory stop to inquire if the driver was, in fact, Saeger operating again with a revoked license.

¶11 We conclude that under the totality of the circumstances, the deputy’s suspicion that the operator of the vehicle was Saeger driving with a revoked license was based on more than just a “hunch”; it was based on specific and articulable facts and reasonable inferences from those facts.

By the Court.—Order reversed and cause remanded.

³ Moynihan raises other issues that he does not sufficiently develop; thus, we will not address them. See *League of Women Voters v. Madison Cmty. Found.*, 2005 WI App 239, ¶19, 288 Wis. 2d 128, 707 N.W.2d 285 (we need not decide undeveloped arguments).

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

