

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 22, 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. 2012AP742-CR

Cir. Ct. No. 2011CT41

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ERIC K. FREDLUND,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Green Lake County: MARK T. SLATE, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Eric K. Fredlund appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OWI), second

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.

offense. Fredlund contends the deputy who conducted the investigatory traffic stop of his vehicle, ultimately leading to his OWI conviction, lacked reasonable suspicion to justify the stop. We disagree and affirm.

Background

¶2 A Green Lake county deputy sheriff testified to the following undisputed facts at the suppression hearing. Around “4 or 4:30 in the morning” on May 11, 2011, the deputy observed the headlights of a vehicle on County Highway AW “just appear[.]” From the way in which the headlights “just came on,” the deputy concluded that

either the vehicle was going down the road with its headlights off and then had turned them on, it was parked on the roadway with the lights off and then had turned them on, or the vehicle was on the shoulder of the roadway and turned them on, and the vehicle continued.

The vehicle subsequently turned onto another road. The deputy followed it and conducted a traffic stop. The deputy stopped the vehicle “[b]ased on the—either the equipment violation, that the headlights were not on traveling on the roadway, or it was alongside of the roadway or in the roadway, I was checking the welfare of the driver to make sure that everything was okay.” The deputy confirmed that he stopped the vehicle “[i]n part ... because [he] wanted to see if the person had [his] lights off as [he was] traveling on the road or if [he was] on the side of the road with [his] lights off.”

¶3 Fredlund was the operator of the vehicle and the stop ultimately led to his arrest for second offense OWI. Fredlund moved to suppress all evidence obtained from the stop on the basis that the deputy lacked reasonable suspicion to

stop his vehicle. The circuit court denied the motion. Fredlund was subsequently convicted of second offense OWI and now appeals.

Discussion

¶4 In reviewing a circuit court decision that a law enforcement officer had probable cause or reasonable suspicion to initiate an investigative stop, we will uphold the court's factual findings unless they are clearly erroneous, but we review de novo the application of those facts to constitutional principles. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634.

¶5 For an investigatory stop to be justified by reasonable suspicion, an officer must possess specific and articulable facts which, taken together with rational inferences from those facts, warrant a reasonable belief that the person being stopped has committed, is committing, or is about to commit an offense. *Id.*, ¶¶10, 13. While a mere hunch is insufficient, “police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.” *State v. Young*, 2006 WI 98, ¶21, 294 Wis. 2d 1, 717 N.W.2d 729 (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). 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).

¶6 From the deputy's observation of Fredlund's vehicle at around "4 or 4:30 in the morning," a reasonable officer could reasonably infer that Fredlund was violating the law by driving down the highway without the vehicle's headlights turned on. Before deciding to investigate, the deputy was not required to rule out other possible inferences, such as Fredlund being on the side of the road with the vehicle's headlights off and then turning them on once he moved the vehicle. The purpose of an investigation is to get answers to questions raised by specific and articulable facts reasonably suggesting a law may have been broken. Had the deputy known for certain that Fredlund had been driving down the highway with the vehicle's headlights off, the deputy would not have had to "investigate," but instead could have stopped Fredlund and cited him based upon probable cause of the headlight violation. Under the facts presented, a reasonable law enforcement officer would have reasonably suspected Fredlund may have been driving on the highway at that hour with the vehicle's headlights off. A brief investigatory stop to confirm or allay this suspicion was justified.

By the Court.—Judgment affirmed.

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

