



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT III/IV

September 17, 2013

To:

Hon. Sue E. Bischel
Circuit Court Judge
Brown County Courthouse
100 S. Jefferson St, PO Box 23600
Green Bay, WI 54305-3600

Jason B. Beck
Clerk of Circuit Court
Brown County Courthouse
100 S. Jefferson St, PO Box 23600
Green Bay, WI 54301-3600

David L. Lasee
District Attorney
P.O. Box 23600
Green Bay, WI 54305-3600

Steven D. Phillips
Asst. State Public Defender
P.O. Box 7862
Madison, WI 53707-7862

Gregory M. Weber
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

You are hereby notified that the Court has entered the following opinion and order:

2012AP1069-CR

State of Wisconsin v. Terrance R. McMurtry (L.C. # 2011CF614)

Before Blanchard, P.J., Higginbotham and Kloppenburg, JJ.

Terrance McMurtry appeals a judgment convicting him of a fourth offense of operating a motor vehicle while under the influence of an intoxicant. The sole issue on appeal is whether the police had sufficient grounds to execute a traffic stop of McMurtry's vehicle. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition and we summarily affirm. *See* WIS. STAT. RULE 809.21 (2011-12).¹

¹ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

According to *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be based on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot, and that action would be appropriate. “The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, 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). In the context of a traffic stop, the moment of seizure occurs when a motorist yields to authority, not when the officer’s emergency lights are activated, and so the totality of circumstances includes everything up to when the motorist yields to authority. *State v. Powers*, 2004 WI App 143, ¶8, 275 Wis. 2d 456, 685 N.W.2d 869.

Here, the arresting officer was on patrol in his squad car when he observed McMurry’s vehicle stop five to ten feet short of a stop sign at an intersection. That caught the officer’s attention because he typically observes motorists stop at or slightly beyond stop signs, although he would not have issued a citation for McMurry’s unusual stop alone. After the officer proceeded through the intersection, he slowed down and looked in his rearview mirror and observed the same vehicle making a left turn so wide that it nearly struck the opposite corner of the intersection. The officer noted that there were two pedestrians nearby, but they continued walking past the vehicle and did not appear to engage in much if any conversation with the driver. The vehicle then stopped in the middle of the road at an angle that potentially obstructed two lanes for about fifteen seconds before moving again. At that point the officer turned around to follow McMurry’s vehicle, activated his squad lights and then, when McMurry did not

immediately pull over, also activated his siren. McMurtry continued driving for a number of blocks and turned a corner before finally pulling over.

Making a wide turn and nearly striking the curb, stopping in the middle of two traffic lanes, and having a delayed response to the activated lights of a squad car each, on its own, provided some indication of impaired driving. The fact that the officer observed the entire series of actions in a very short period of time strengthened the likelihood that the driver was impaired. In sum, we are satisfied that the totality of the circumstances in the officer's possession provided reasonable suspicion for an investigatory stop.

IT IS ORDERED that the judgment of conviction is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals