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DISTRICT IV

July 31, 2019

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

2018AP1089-CR State of Wisconsin v. Wayne A. Haefner (L.C. # 2017CF71)

Before Blanchard, Kloppenburg, and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. Rule 809.23(3).

Wayne A. Haefner appeals a judgment of conviction for operating while intoxicated (OWI) as a seventh, eighth, or ninth offense. Haefner contends that the evidence should have been suppressed because police lacked reasonable suspicion to seize him. Based upon our

review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2017-18).[1] We summarily affirm.

On May 26, 2016, Deputy Eric Marten conducted an investigatory stop of Haefner. Based on evidence obtained from the stop, Haefner was charged with possession of methamphetamine, possession of THC, and possession of drug paraphernalia. Haefner moved to suppress the evidence, arguing that the police stop that led to the evidence was unsupported by reasonable suspicion. The circuit court denied the motion following a suppression hearing. The State then filed another criminal complaint against Haefner based on the evidence obtained from the May 26, 2016 investigative stop, charging Haefner with OWI as a seventh offense; operating with a restricted controlled substance in his blood as a seventh offense; failure to install an ignition interlock device; and operating after a revocation that was due to an alcohol or controlled substance related driving offense. The matters were joined. Haefner then pled no-contest to OWI as a seventh, eighth, or ninth offense, and the remaining charges were dismissed and read-in for sentencing purposes. The court sentenced Haefner to three years of initial confinement and four years of extended supervision.

Marten testified to the following at Haefner's suppression hearing. On May 26, 2016, at approximately 8:55 p.m., Marten drove his police squad car onto Highway 54 in Wood County. Marten pulled onto the highway directly behind Haefner's vehicle, and Haefner almost instantly turned off the road into a driveway. Marten believed, based on his past experience as a patrol

[1] All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

officer, that the vehicle pulling immediately off the road when Marten pulled behind it was an evasive maneuver to avoid further observation by police.

Marten parked his squad car about a half mile further down the road to observe any further action by the vehicle. Less than five minutes later, Marten observed the vehicle "creep," that is, move very slowly, "back out to Highway 54 out of the driveway." The vehicle was now facing out toward the road after having turned around in the driveway. When the vehicle made it "almost to the point of being back on Highway 54 again," to the point that Marten believed that the vehicle could observe Marten's squad car, the vehicle reversed back into the driveway. Marten drove into the driveway and parked behind Haefner's vehicle, and observed Haefner knocking on the front door of the house. Marten then conducted the investigatory stop.[2]

"The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution protect people from unreasonable searches and seizures." ***State v. Charles E. Young***, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729. An investigatory stop is a "seizure" that, to be constitutionally reasonable, must be supported by "reasonable suspicion that a crime has been committed, is being committed, or is about to be committed." ***Id.***, ¶20. "Reasonable suspicion requires that a police officer possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot." ***Id.***, ¶21. However, "'police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.'" ***Id.*** (quoted source omitted). Thus, "'if any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be

[2] The parties agree that Marten's contact with Haefner constituted a seizure, requiring it to be supported by reasonable suspicion.

drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.'" ***Id.*** (quoted source omitted). "'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. Colstad***, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (quoted source omitted). We independently review whether the facts establish reasonable suspicion for a stop. ***Id.***

Haefner argues that Marten lacked reasonable suspicion to seize him. He argues that Marten knew only that Haefner pulled into a driveway, turned around and pulled slowly back toward the highway, and then reversed back into the driveway. He argues that repositioning one's car to be better positioned to pull back onto the highway facing forward is an ordinary, everyday occurrence that does not support a reasonable inference of criminal activity. Haefner points out that Marten did not observe any erratic driving or traffic violations, and argues that Marten's inference of criminal conduct based on the few facts before him was speculative and unreasonable.

Haefner likens this case to other cases in which this court has found that police observation of innocent behavior did not give rise to reasonable suspicion. *See* ***State v. Charles D. Young***, 212 Wis. 2d 417, 429-30, 569 N.W.2d 84 (no reasonable suspicion where only facts known by police were that defendant was present "in a high drug-trafficking area" and had "a 'shortterm contact' with another individual"). Haefner argues that this case is directly akin to ***State v. Lind***, No. 2014AP749-CR, unpublished slip op. (WI App Sept. 30, 2014), in which we found that a police officer lacked reasonable suspicion for an investigative stop after observing a vehicle pull into a driveway. In ***Lind***, during early morning hours, the officer observed an unfamiliar car pull into the driveway of a home that the officer knew belonged to

another officer. ***Id.***, ¶¶2-4. The officer waited a minute or two and then initiated the stop. ***Id.*** We concluded that those facts were insufficient to establish reasonable suspicion. ***Id.***, ¶¶13-14. Haefner argues that here, as in ***Lind***, the facts available to police did not support a reasonable suspicion of criminal activity based on pulling into a driveway.

The State responds that the stop was supported by reasonable suspicion. It argues that reasonable suspicion was established when Marten observed Haefner pull into a driveway immediately after Marten pulled on the highway behind him and then move slowly out from the driveway to the highway and reverse back into the driveway again. It contends that Marten knew from his training and experience that the initial pulling into the driveway was an evasive maneuver, and that it was reasonable for Marten to infer that the vehicle pulled slowly out of the driveway to the point the driver could observe Marten's squad and then reversed to avoid detection by police. It points out that Marten was not required to infer innocent explanations for the behavior. It also cites cases in which investigative stops have been upheld based on the defendant's police-avoidance behavior. *See* ***State v. Williamson***, 58 Wis. 2d 514, 518, 206 N.W.2d 613 (1973) (facts that included the driver of a vehicle "turning and stopping, starting and pulling back to the curb when the squad car approached" established reasonable suspicion "for the police officers to stop defendant's car for the purpose of interrogating the driver as to who he was and why he had driven the car as he had"). It argues that ***Lind*** is inapposite, pointing to the additional facts present here not present in ***Lind***.

We agree with the State that the stop was supported by reasonable suspicion. Marten observed Haefner pull off the highway into a driveway immediately after Marten pulled onto the highway behind him. Marten knew from training and experience that such action may be an evasive maneuver. Marten then observed Haefner "creep" slowly back out of the driveway to

the highway. At the point that Marten believed that Haefner could see his squad car, the vehicle backed into the driveway again. These facts, taken together, would cause a reasonable police office to reasonably suspect that Haefner was attempting to avoid detection by police. Accordingly, the investigative stop was supported by reasonable suspicion.

We disagree with Haefner's contention that the officer lacked reasonable suspicion because the officer did not observe any erratic driving and because there were reasonable innocent explanations for Haefner's actions. When the facts support reasonable inferences of both lawful and unlawful conduct, an officer is entitled to draw the inference of unlawful conduct and "temporarily detain the individual for the purpose of inquiry." *See* ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). The totality of the facts, set forth above, supported the reasonable belief that Haefner was attempting to avoid police detection because he was engaged in or had engaged in criminal activity. *See* ***Williamson***, 58 Wis. 2d at 518. Accordingly, we reject Haefner's challenge to the investigatory stop.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals