COURT OF APPEALS DECISION DATED AND FILED

May 5, 2015

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. 2014AP2369

Cir. Ct. Nos. 2012TR641
2012TR642

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT III

LANGLADE COUNTY,

PLAINTIFF-RESPONDENT,

V.

CASEY JOSEPH STEGALL,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Langlade County: FRED W. KAWALSKI, Judge. *Affirmed*.

¶1 HOOVER, P.J.[1] Casey Stegall appeals an order denying his suppression motion. Stegall was adjudicated guilty of operating while intoxicated

[1] All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

as a first offense, and he argues the circuit court erred when it found reasonable suspicion supported his temporary detention. We affirm.

BACKGROUND

¶2 Langlade County Sheriff's Department sergeant Andrew Tainter, an officer with approximately seven years' experience, testified at Stegall's suppression hearing.[2] Tainter stated he observed a vehicle traveling westbound on Highway 64 when the vehicle "made an abrupt turn … in a manner that I considered reckless and certainly too fast and imprudent [a] speed to be turning the corner…." After observing the vehicle, later identified as Stegall's, abruptly turn off Highway 64, Tainter pursued the vehicle and "ended up making contact with the driver at his residence." Tainter testified:

> As I pulled into the driveway, the – the driver was getting out of the vehicle and started walking towards the house. I pulled down the driveway and honked my horn. The driver didn't look at me. He continued walking towards the house. I got out of the vehicle and said something to get the driver's attention, but he ignored me and continued walking towards the house.

¶3 Tainter knocked on the front door after Stegall walked into the house. Stegall answered the door and agreed to come outside. Tainter detected "a very strong odor of intoxicants" and proceeded to conduct an OWI investigation, including field sobriety tests and a preliminary breath test that resulted in a 0.15 blood alcohol content reading. The citations he ultimately issued, first offense

---

[2] Stegall filed two suppression motions, and the circuit court conducted a motion hearing. Stegall is appealing only one of his denied suppression motions, that which alleged law enforcement lacked reasonable suspicion to justify Stegall's temporary detention.

operating while intoxicated and first offense operating with a prohibited alcohol content, listed the time as 2:48 a.m.

¶4 Relevant to this appeal, Stegall challenged his temporary detention as lacking requisite reasonable suspicion. The circuit court concluded the temporary investigative detention was reasonable and denied Stegall's motion in a written decision. Stegall appeals.

DISCUSSION

¶5 "Whether evidence should be suppressed is a question of constitutional fact." ***State v. Knapp***, 2005 WI 127, ¶19, 285 Wis. 2d 86, 700 N.W.2d 899 (quotation and citation omitted). We defer to the circuit court's findings of historical fact unless clearly erroneous, but we independently apply the relevant constitutional standards to those facts. ***State v. Johnson***, 2007 WI 32, ¶13, 299 Wis. 2d 675, 729 N.W.2d 182.

¶6 The Fourth Amendment of the United States Constitution and article I, section 11 of the Wisconsin Constitution protect against unreasonable searches and seizures. Tainter testified, and the parties agree, that he conducted "a ***Terry*** stop," and Stegall was seized within the meaning of the Fourth Amendment, when Stegall left his home and submitted to police contact and questioning. *See* ***Terry v. Ohio***, 392 U.S. 1, 16 (1968) ("[W]henever a police officer accosts an individual and restrains his [or her] freedom to walk away, [the officer] has 'seized' that person.").

¶7 Police may "stop and briefly detain a person for investigative purposes if the officer has a reasonable suspicion supported by articulable facts that criminal activity 'may be afoot,' even if the officer lacks probable cause."

United States v. Sokolow, 490 U.S. 1, 7 (1989) (quoting ***Terry***, 392 U.S. at 30). *See also* ***State v. Popke***, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569 ("'A traffic stop is generally reasonable if the officers have probable cause to believe that a traffic violation has occurred,' or have grounds to reasonably suspect a violation has been or will be committed."). To determine whether a temporary investigative stop is reasonable, we examine the totality of the circumstances. ***State v. Waldner***, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996). An officer must be able to identify specific and articulable facts that warrant the intrusion of a stop; an "inchoate and unparticularized suspicion or 'hunch'" will not suffice. ***State v. Post***, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (quotation and citation omitted).

¶8 Stegall contests the reasonableness of his seizure, arguing Tainter failed to identify "any specific or articulable facts which contributed to his belief that the turn made by Mr. Stegall was too fast and reckless." He contends:

> Had Tainter testified that he believed the vehicle was driving too fast and reckless [sic] *because he observed an inability of the vehicle to maintain a proper turning radius; or because he heard tires squealing; or because [Stegall] had to slam on his brakes to make the turn; or because he got a radar reading on [Stegall] that was over the speed limit; or because another vehicle had to take evasive action; or because he saw the vehicle fishtail; or because he heard the vehicle's engine revving loudly; or any number of other factual observations*, then his conclusion that the vehicle was driving too fast and too reckless [sic] would be supported by objective facts.

¶9 We disagree. Stegall has provided excellent examples of observations that could contribute to an officer's reasonable suspicion for an investigatory stop, but the absence of the specific observations detailed in Stegall's litany does not negate reasonable suspicion. It is well established that reasonable suspicion does not require the presence of certain facts, or a certain number of

facts, but rather, "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. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997) (citing ***State v. Jackson***, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989)).

¶10 The County cites ***Waldner***, in which our supreme court held an investigatory stop can be based on observations of lawful conduct so long as reasonable inferences of unlawful activity may be drawn. ***Waldner***, 206 Wis. 2d at 60. There, the court found reasonable suspicion justified the defendant's temporary detention when the officer observed, shortly after midnight, a vehicle stopping at an intersection that did not require a stop, accelerating quickly within a short period of time, and then stopping to pour out a mixture of liquid and ice. ***Id.*** at 53. The court explained:

> Any one of these facts, standing alone, might well be insufficient. But that is not the test we apply. We look to the totality of the facts taken together. The building blocks of fact accumulate. And as they accumulate, reasonable inferences about the cumulative effect can be drawn. In essence, a point is reached where the sum of the whole is greater than the sum of its individual parts. That is what we have here. These facts gave rise to a reasonable suspicion that something unlawful might well be afoot.

Id. at 58.

¶11 In determining whether the temporary stop was reasonable, we consider the totality of circumstances: an officer with seven years of law enforcement experience observed a vehicle driving too fast and in a reckless manner, as evidenced by a turn taken too fast, i.e., at an imprudent speed. The suspicion-arousing driving was compounded by the early morning timing, close to bars' closing time. Further, Stegall behaved unusually in wholly ignoring a squad

car pulling into his driveway, the sound of the squad car's honking, as well as a law enforcement officer exiting his vehicle and verbally attempting to garner Stegall's attention. Tainter's actions were reasonable considering the cumulative effect of these facts and the reasonable inferences that may be drawn from their accumulation, as they "gave rise to a reasonable suspicion that something unlawful might well be afoot[,]" i.e., reckless driving or driving under the influence of an intoxicant. ***Id.*** Altogether, these specific and articulable facts were sufficient to "warrant a [person] of reasonable caution in the belief that the action taken was appropriate[.]" ***Terry***, 392 U.S. at 22 (quotation and citation omitted).[3]

By the Court.—Order affirmed.

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

[3] The parties dispute whether we may consider Tainter's observation of the smell of intoxicants as Stegall exited his home and submitted to questioning. We need not resolve this dispute because assuming without deciding that the smell of intoxicants could not be considered in our totality of circumstances analysis, we nevertheless conclude Tainter had reasonable suspicion to temporarily detain Stegall for investigatory purposes even without that observation, based on the accumulation of facts listed supra, ¶11.