COURT OF APPEALS
DECISION
DATED AND FILED

March 18, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-3044-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

HAROLD W. JOHNSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: JOHN W. ROETHE, Judge. *Affirmed.*

DYKMAN, P.J.[1] Harold W. Johnson appeals from a judgment convicting him of operating a motor vehicle while under the influence of an intoxicant (fourth offense), contrary to § 346.63(1)(a), STATS. Johnson argues that the search of his truck was illegal because the officer making the stop did not have

[1] This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

reasonable suspicion that Johnson had violated or was violating the law. Based on the totality of the circumstances, we conclude that the officer had a reasonable suspicion based on specific articulable facts that Johnson was operating his motor vehicle after his operator's license had been revoked; therefore, the stop of Johnson's truck was proper. Accordingly, we affirm.

BACKGROUND

Shortly after midnight on January 22, 1998, Bradley Kitzman, a police officer for the Village of Clinton, noticed a red 1987 Chevrolet pick-up truck, which he believed was owned by Harold Johnson, parked outside a Clinton tavern. Officer Kitzman knew that Johnson's license had been revoked because he had seen Johnson's name in a book issued by the Department of Transportation, which listed the names of all individuals in the state whose operator's licenses were suspended or revoked. Officer Kitzman ran a license check and verified that Johnson's operating privileges had been revoked, and that Johnson owned the red Chevrolet truck in question.

Shortly after 1:00 a.m., Officer Kitzman was driving northbound on Church Street when he saw a red Chevrolet pick-up truck driving southbound on Church Street, approximately two blocks away from the Clinton tavern where he earlier had seen a similar truck parked. He then observed the truck cross over the center line into his lane of traffic. As the truck passed him, Officer Kitzman recognized it from prior traffic stops as the truck belonged to Johnson. Officer Kitzman turned his squad car around, turned on his emergency lights and stopped the red truck. Johnson was the driver, and he was arrested.

Johnson filed a motion to suppress evidence obtained as a result of the stop. The trial court denied that motion. Johnson subsequently pleaded no contest pursuant to a plea agreement. Johnson now appeals.

ANALYSIS

When reviewing a trial court's determination regarding the suppression of evidence, we will uphold the trial court's findings of fact unless they are clearly erroneous. *See* ***State v. Guzy***, 139 Wis.2d 663, 671, 407 N.W.2d 548, 552 (1987), *cert. denied*, ***Guzy v. Wisconsin***, 484 U.S. 979 (1987). However, whether an investigatory stop meets statutory and constitutional standards is a question of law, which we review de novo. *See* ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

To execute a valid investigatory stop consistent with the Fourth Amendment's prohibition against unreasonable searches and seizures, a law enforcement officer must reasonably suspect, in light of the officer's experience and training, that some kind of criminal activity or conduct constituting a civil forfeiture has occurred or is taking place. *See* ***Krier***, 165 Wis.2d at 677-78, 478 N.W.2d at 65-66. "Reasonable suspicion must be based on 'specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" ***State v. Richardson***, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990) (quoting ***Terry v. Ohio***, 392 U.S. 1, 21 (1968)). Reasonableness is measured against an objective standard, taking into consideration the "totality of the circumstances." *See* ***id.*** at 139, 456 N.W.2d at 834. It is "a common sense question, which strikes a balance between the interests of society in solving crime and the members of that society to be free from unreasonable intrusions." *See* ***id.*** An officer is not required to rule out the

possibility of innocent behavior before initiating a brief investigatory stop. *See* ***State v. Anderson***, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990). Indeed, the concepts of probable cause and reasonable suspicion contemplate that wholly innocent persons will sometimes be stopped and arrested.

The United States Supreme Court has said that: "the requirement of reasonable suspicion is not a requirement of absolute certainty: 'sufficient probability, not certainty is the touchtone of reasonableness under the Fourth Amendment….'" ***New Jersey v. T.L.O.***, 469 U.S. 325, 346 (1985) (quoting ***Hill v. California***, 401 U.S. 797, 804 (1971)). An officer has the right to temporarily detain an individual for the purposes of inquiry "if any reasonable inference of wrongful conduct can be objectively discerned." *See* ***Anderson***, 155 Wis.2d at 84, 454 N.W.2d at 766.

Johnson claims that Officer Kitzman's knowledge that he owned the truck and that his license had been revoked was insufficient to constitute reasonable suspicion. He further contends that the evidence that the officer knew these facts did not show whether the truck that passed him on Church Street was his, or whether he was, in fact, driving the truck.

We need not decide whether knowledge of these facts alone is sufficient to constitute reasonable suspicion to stop the vehicle, because this is not all Officer Kitzman knew before stopping Johnson. He also knew that the vehicle was a red Chevrolet pick-up truck being operated only two blocks away from a tavern where he had seen Johnson's truck not more than an hour earlier. Officer Kitzman knew Johnson's truck, because he had stopped it previously. He knew the truck's make, color and model and that the truck had after-market chrome

rims.[2] It is irrelevant that Officer Kitzman did not see the license plate of the red truck, or that he was uncertain whether Johnson was driving the truck, because reasonable suspicion does not require this type of certainty. Common sense or common knowledge tells us that people often drive the vehicles they own. This does not mean that they always do, but that is not the test. The test is something less than "probable." The totality of the circumstances in this case would lead an officer to reasonably suspect that Johnson was operating a motor vehicle after revocation in violation of § 341.03 STATS., which is sufficient for an officer to conduct a routine traffic stop.[3] The trial court therefore correctly refused to suppress the evidence Officer Kitzman discovered after stopping Johnson.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.

[2] The fact that the truck was a Chevrolet excluded all Dodge, Ford, GMC & foreign trucks from consideration. The fact that it was red excluded all non-red Chevrolets. The fact that the red Chevrolet truck had after-market chrome rims reduced this small group of trucks to only a few. The fact that the red Chevrolet truck with after-market chrome rims was only two blocks from where Johnson's red Chevrolet truck with after-market chrome rims was seen an hour earlier significantly increased the likelihood that the truck belonged to Johnson. "Reasonable suspicion" need not reach the certainty of "likely" or "probable."

[3] This is not to say that the stop could be continued had Officer Kitzman stopped the vehicle and found that Johnson was not driving. Even a legal stop can become an unlawful seizure if an officer detains an individual after the purpose of the stop is completed if nothing occurs during the course of the stop to give the officer a reasonable suspicion to support a continued detention. *See* ***Valance v. Wisel***, 110 F.3d 1269, 1276-77 (7th Cir. 1997).