

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 15, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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 § 808.10 and RULE 809.62, STATS.

No. 99-0539-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RUSSELL L. STREAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County:
JOHN R. STORCK, Judge. *Affirmed.*

VERGERONT, J.¹ Russell Strean appeals his conviction for operating a motor vehicle while intoxicated. The sole issue on appeal is whether the arresting officer had the requisite reasonable suspicion to initiate the investigatory stop that led to Strean's arrest. We conclude that the arresting officer was justified in stopping Strean because he had reasonable suspicion that

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

Strean's motor vehicle was entering a highway without its headlights on, in violation of § 347.06, STATS., and we therefore affirm.

BACKGROUND

Officer Robert Trevarthen of the City of Mayville Police Department testified at the hearing on Strean's motion to dismiss that he was on patrol at approximately 2:10 a.m. when he received an anonymous phone complaint of an occupied vehicle parked without its headlights on in an alley behind a drug store. Officer Trevarthen described the alley as the rear access parking for the drug store and possibly also parking for tenants of two apartment buildings. As Officer Trevarthen parked his vehicle on the street and walked toward the alley, he saw a vehicle "exiting the alleyway without its headlights on." As the vehicle was "continuing out onto the curb area," Officer Trevarthen directed the driver to stop. The vehicle stopped as its doors "were directly on the sidewalk portion of the alleyway where the sidewalk crosses the alleyway." Officer Trevarthen testified that he stopped the vehicle because he suspected a possible burglary, and also because the vehicle was operating without headlights as it was "coming out onto the street."

The trial court held that Officer Trevarthen had a reasonable articulable suspicion to stop Strean for two independent reasons. First, the trial court stated that the officer had a right to stop the vehicle based on his concern of burglaries; and second, based on the fact that the vehicle was entering into a highway without its headlights on. Section 347.06(1), STATS., states that "no person may operate a vehicle upon a highway during hours of darkness unless all

headlamps ... are lighted.” A “highway” is defined in § 340.01(22), STATS.² The trial court concluded that “the boundaries of the street go from one side of the street right-of-way to the other, [and] that the street right-of-way includes the sidewalk.” The court decided that the headlight requirement applied since the vehicle was driving on the portion of the alley that crossed the sidewalk next to the public road.

DISCUSSION

On appeal Strean again argues that Officer Trevarthen did not have the requisite reasonable suspicion to initiate an investigatory stop. Strean contends the anonymous tip was not supported by enough corroborating evidence to establish reasonable suspicion of a burglary or other illegal activity, and the alley Strean was driving on without headlights was not a highway, but rather a private road or driveway³ or a public parking lot.⁴

² Section 340.01(22), STATS., provides:

“Highway” means all public ways and thoroughfares and bridges on the same. It includes the entire width between the boundary lines of every way open to the use of the public as a matter of right for the purposes of vehicular travel. It includes those roads or driveways in the state, county or municipal parks and in state forests which have been opened to the use of the public for the purpose of vehicular travel and roads or driveways upon the grounds of public schools, as defined in s. 115.01 (1), and institutions under the jurisdiction of the county board of supervisors, but does not include private roads or driveways as defined in sub. (46).

³ Section 340.01(46), STATS., defines private roads or driveways, which are excluded from the definition of a highway in § 340.01(22).

⁴ Strean cites an attorney general opinion for the proposition that public parking lots are not highways under § 340.01(22), STATS. *See* 65 Op. Att’y. Gen. 45 (1976).

Investigatory stops are considered “seizures” of persons and are governed by the Fourth Amendment. *See Terry v. Ohio*, 392 U.S. 1, 16 (1968). When the pertinent facts are undisputed, as they are in this case, we review the constitutionality of searches and seizures de novo. *See State v. Guzman*, 166 Wis.2d 577, 586, 480 N.W.2d 446, 448 (1992).

To execute a valid investigatory stop consistent with the Fourth Amendment prohibition against unreasonable searches and seizures, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place, *see State v. Richardson*, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990), or that the person’s conduct is unlawful and constitutes a civil forfeiture. *See State v. Krier*, 165 Wis.2d 673, 678, 478 N.W.2d 63, 66 (Ct. App. 1991). If any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, police officers have the right to temporarily detain the individual for purposes of inquiry. *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990). 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. *See State v. Jackson*, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989).

In assessing whether reasonable suspicion existed for this particular stop, we must consider all the specific and articulable facts, taken together with the rational inferences from those facts. *See State v. Dunn*, 158 Wis.2d 138, 146, 462 N.W.2d 538, 541 (Ct. App. 1990). Officer Trevarthen observed Streaan’s vehicle driving “out onto the curb area” and described Streaan as “coming out onto the street” without his headlights on. We conclude that a rational inference based on this observation was that Streaan was entering the street without his headlights

on. It is undisputed that the street Strean was heading towards is a highway as defined in § 340.01(22), STATS., and that it is unlawful to drive on a highway after dark without headlights. *See* § 347.06, STATS. It was therefore reasonable for Officer Trevarthen to initiate an investigatory stop of Strean's vehicle based on the rational inference that Strean was entering a highway without headlights, regardless of whether or not the sidewalk portion of the alley where Strean's vehicle actually stopped is legally part of the highway.⁵

Since we conclude that the investigatory stop was justified based on a reasonable suspicion of a violation of § 347.06, STATS., we need not consider the trial court's alternative reason for ruling that the stop was constitutional—that the totality of the circumstances led Officer Trevarthen to reasonably suspect Strean may have been involved in a burglary.

By the Court.—Judgment affirmed.

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

⁵ In light of our decision, it is not necessary to decide whether the part of the alley that crosses the sidewalk (where Strean's vehicle was actually stopped) is part of the right-of-way of the public road and therefore a highway as defined in § 340.01(22), STATS.

