COURT OF APPEALS
DECISION
DATED AND FILED

November 24, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 99-1372-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARK NELSON,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

¶1 BROWN, P.J. Mark Nelson appeals from a denial of a motion to suppress all evidence obtained by the police relative to his arrest for driving while intoxicated on grounds that the police illegally stopped him. He argues that the police had no reasonable basis to conduct a ***Terry***[1] stop. We disagree and affirm.

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[1] *See* ***Terry v. Ohio***, 392 U.S.1 (1968).

¶2 The facts are straightforward. Nelson stopped his vehicle in a radio station parking lot off of Highway 50 after his girlfriend told him that she urgently needed to "use the bathroom." He turned off his headlights and his girlfriend exited the car. She returned in two minutes. The total amount of time spent in the lot did not exceed five minutes. The time was about 1:30 a.m. Nelson proceeded on the highway for about a mile until he was pulled over by a sheriff's squad car.

¶3 The sheriff's deputy who pulled Nelson over testified that, based on his knowledge, the radio station had gone out of business and had been closed for about two years. The deputy passed Nelson's vehicle while it was sitting in the parking lot. The deputy knew of ten or more complaints of prowler calls at a nursing home located directly across the street from the parking lot. In particular, the deputy himself had investigated an allegation made within the past year by a staff member that she had been attacked and cut. That incident and some of the others occurred during the deputy's shift: 11:00 p.m. to 7:00 a.m. After the car exited the parking lot, the officer followed and stopped it. The deputy eventually arrested Nelson for driving while intoxicated.

¶4 Nelson argued to the trial court and argues here that the stop was illegal because the deputy lacked the requisite reasonable suspicion necessary for a valid ***Terry*** stop. Nelson asserts that the rural location cannot be considered a "high crime area" justifying a stop. He notes the deputy's belief that this had become a "high crime area" because of the prowler attacks, but claims that the deputy's belief is unjustified because the location is in a rural area and the prowler attacks were "several months" before this incident. He also argues that the prowler was on foot, suggesting a measure of secrecy, but this incident had to do with a car that was positioned in a nonsecretive manner.

¶5 Nelson then contends that even if the deputy might have been reasonably suspicious of the car when it was parked in a lot whose business was closed, and even if the deputy reasonably concluded that the car was suspiciously close to the location where numerous prowler attacks had taken place, a stop was still not justified. Nelson asserts that the deputy's suspicions should have been allayed when the car did not exit in a fast manner, did not attempt to flee, and the operator of the vehicle did not drive erratically or break any traffic law. Nelson also notes that the deputy testified how there was no unusual activity. Finally, Nelson argues that once the deputy stopped the car and determined the reason for the stop, the officer's work was finished and he had no authority to continue the stop.

¶6 We reject all of Nelson's contentions. First, we underscore that the question is not what, in hindsight, really was occurring in the parking lot that night. Instead, we must look at the events as would a reasonable police officer at the time the event is unfolding. The State contends that what constitutes reasonable suspicion is a commonsense test and we agree. Under all the facts and circumstances present, we must ask what would a reasonable police officer reasonably suspect in light of his or her training and experience. *See* ***State v. Jackson***, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989).

¶7 The deputy's information was that the radio station had been out of business for some time. Yet, a car was parked there. The deputy voiced a legitimate concern for the building in which the radio station had been located. Moreover, the deputy also believed that the parking lot "would be a good location for somebody to park a car and walk across the road to [the nursing home] and be engaged in criminal activity." He knew of past allegations of prowler attacks near the nursing home and had personally investigated one such complaint. The

prowler attacks were not stale as apparently contended by Nelson. The deputy recalled that the one he had investigated was within the "last few months." We conclude that the deputy had a reasonable basis to briefly stop Nelson and make reasonable inquiries aimed at confirming or dispelling his suspicions.

¶8 We agree with the State's admission that whether an area is to be considered extraordinarily suspicious is not, standing by itself, enough to legitimatize a police stop. However, as the State points out, there were other various facts, viewed in conjunction with one another, that amounted to reasonable suspicion.

¶9 In this vein, we specifically reject Nelson's reliance on ***State v. Young***, 212 Wis.2d 417, 569 N.W.2d 84 (Ct. App. 1997), as being supportive of his argument. In ***Young***, the defendant was stopped in the middle of the afternoon simply because he stopped to briefly talk to someone and it occurred in what police considered to be an area infested by drug activity. The teaching of ***Young*** is that if the particular conduct of the defendant is consistent with that of a large number of law-abiding citizens and there is otherwise no reasonable, articulable suspicion of criminal activity, the stop cannot stand.

¶10 This is a different set of facts than ***Young***. It was 1:30 a.m., not the middle of the afternoon. A car was parked in a vacant lot that is part of a building which had not had a business operating within it for two years. The car was parked there for no apparent reason. It was directly across the street from a place where several prowler incidents had allegedly taken place, at least one of them resulting in violent conduct. After a couple of minutes, the car left, again apparently for no particular reason. We will not quarrel with the idea that Nelson's conduct, up to a point, was consistent with that of a large number of law-

abiding citizens. While it is not a usual occurrence for law-abiding citizens to pull into a vacant lot for up to five minutes with the car facing the highway, it is not inconsistent with law-abiding conduct. However, the deputy had other facts at his command which gave him a reasonable, articulable suspicion that criminal activity was afoot. That was what was missing in ***Young***. It is not missing here.

¶11 Finally, we reject the contention that once the deputy had ascertained the reason for Nelson's having stopped in the parking lot, the officer had no basis to continue the stop. Because the deputy had a right to stop Nelson in the first place, he was not duty bound to shrug his shoulders and walk away when discovering evidence that Nelson might be intoxicated. We affirm the denial of the suppression motion.

By the Court.—Order affirmed.

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