COURT OF APPEALS
DECISION
DATED AND FILED

April 19, 2005

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 2004AP3010-CR **Cir. Ct. No. 2002CT011510**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THADEUS W. STONE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: FREDERICK C. ROSA, Judge. *Affirmed.*

¶1 FINE, J. Thadeus W. Stone appeals from a judgment of conviction entered on his guilty plea to operating a car while under the influence of an

intoxicant, as a second offense.[1] *See* WIS. STAT. § 346.63(1)(a). He claims that the trial court improperly denied his motion to suppress.[2] We disagree and affirm.

I.

¶2 Only one person testified at the hearing held on Stone's motion to suppress, Police Officer Andrew Ahearn. Ahearn told the trial court that when he was working as a police officer for the City of Cudahy his department received an anonymous call in October of 2002 at approximately 5 a.m. that a person was in a car parked in a lot attached to an apartment complex in Cudahy, that the car's door was ajar, and had, as Ahearn testified, "been parked there for some extended length of time." The caller also had said that the person was, as Ahearn confirmed in response to a question by Stone's lawyer, "moving around inside the vehicle."

¶3 Ahearn and another officer drove to the lot in their squad cars, and saw a car matching the caller's description. Ahearn parked behind the car and walked over to the driver's side. A man he later identified as Stone was "either passed out or asleep in the driver's seat." The engine was running. Ahearn roused Stone, who then turned off the engine, and Ahearn detected evidence of Stone's intoxication. Stone lived in the apartment complex to which the lot was attached. Stone claims that the officers seized him illegally because Ahearn parked his

[1] The judgment of conviction spells Mr. Stone's first name: Thadeus; the notice of appeal spells it: Thaddeus; his briefs on appeal spells it: Thaddeus. We leave it to the parties to determine whether either of them wish to have any of the documents corrected; if so, they should bring an appropriate motion before the appropriate tribunal.

[2] A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty plea. WIS. STAT. § 971.31(10). The Honorable Frederick C. Rosa entered the judgment of conviction. The order denying Stone's motion to suppress was entered by the Honorable William W. Brash. Although Stone has appealed from the judgment only, the order comes to us as well. *See* WIS. STAT. RULE 809.10(4).

squad car behind his car, preventing it from leaving. As noted, the trial court denied Stone's motion to suppress.

II.

¶4 The facts here are not disputed, and, accordingly, our review is *de novo*. *See* ***State v. Krier***, 165 Wis. 2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). Under both the United States and Wisconsin Constitutions, police may justifiably rely on an anonymous tip in stopping a citizen "when details of the anonymous informant's predictions can be verified, [and thus] there is reason to believe that the caller is honest and well-informed about the illegal activity." ***Ibid.*** Here, the verity of the caller's complaint was immediately apparent once the officers arrived on the scene. And, although there was no apparent specifically illegal activity, the situation plainly required investigation to determine what was afoot—whether, on one hand, the person in the car needed help, or, on the other hand, the person was in the middle of doing something unlawful. Thus, initially, the officers were performing both as community-caretakers, *see* ***State v. Dull***, 211 Wis. 2d 652, 658, 565 N.W.2d 575, 578 (Ct. App. 1997), as the trial court determined, and also legitimately investigating a situation that was, to say the least, highly suspicious, *see* ***State v. Waldner***, 206 Wis. 2d 51, 58, 556 N.W.2d 681, 685 (1996). Although Stone's car *was* blocked by Ahearn's squad car, Stone did not know that until the officers' talking with him revealed a reasonable suspicion to believe that he was impaired.[3] Thus, before Stone was awakened, there was no Fourth-Amendment seizure. *See* ***Yam Sang Kwai v. Immigration &***

[3] Stone did not testify at the suppression hearing. Thus, we do not know how soon after he woke up he was aware that Ahearn's squad car was behind his car.

Naturalization Serv., 411 F.2d 683, 686 (D.C. Cir. 1969) ("There can be no seizure where the subject is unaware that he is 'seized.'"); *see also* ***State v. Jones***, 2005 WI App 26, ¶10, ___ Wis. 2d ___, ___, 693 N.W.2d 104, 108–109 (recognizing that crux of seizure is person's reasonable *belief* as to whether he or she was restrained). Stone does not dispute that the officers had a right to seize him once the officers had reason to believe that he was intoxicated. We affirm.

By the Court.—Judgment affirmed.

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