

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 12, 2000

Cornelia G. Clark
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 WIS. STAT. § 808.10 and RULE 809.62.

No. 00-0928-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THEISS L. COLEMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Outagamie County: MICHAEL W. GAGE, Judge. *Affirmed.*

¶1 CANE, C.J. Theiss Coleman appeals from a judgment convicting him of obstructing an officer, contrary to WIS. STAT. § 946.41(1).¹ Coleman pled

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise noted.

no contest to the charge after the circuit court denied his motions to suppress evidence. Coleman argues that the facts do not support the reasonable suspicion that was necessary to detain him. In the alternative, Coleman argues that there was no probable cause to arrest him for obstructing an officer. This court rejects Coleman's arguments and affirms the judgment.

BACKGROUND

¶2 The relevant facts are undisputed. Gerald Polzin, an off-duty police officer, returned to his home after grocery shopping with his wife and children. After entering the driveway he shared with his neighbor, Polzin noticed a vehicle enter and park at the end of the shared driveway. Jermaine Jackson and Coleman exited the vehicle and started walking up the driveway, toward the houses. Polzin observed the two men looking around the back area of the two houses and recognized Jackson as someone he had arrested in the past. Polzin notified dispatch of the situation and asked them to run a license plate check on the vehicle in which the men arrived. Polzin discovered that the vehicle belonged to Jackson, who had a suspended license and was unable to drive.

¶3 As Polzin approached the men, his neighbor informed him that the men were there to look at a car for sale. Polzin then asked who owned the vehicle parked at the end of the driveway. Jackson eventually stated that he owned the car and had driven it that day. Polzin then attempted to ascertain Coleman's identification. Coleman said his name was Timothy Thomas and gave a date of birth; however, when Polzin checked with dispatch, the name "did not come back on file." Coleman claimed that he did not have identification with him, but that he had been issued some type of identification when he lived in Milwaukee.

¶4 Uniformed police officers then arrived, handcuffed Coleman and took him into temporary custody pending his identification. Once in custody, Coleman told a uniformed officer that his name was Timothy Thomas and that, at one time, he had a driver's license. Coleman, however, denied having any identification with him. A subsequent check with the Department of Transportation resulted in no record of a license issued to Timothy Thomas. Jackson eventually told the police that Coleman had identification in his pocket. The police retrieved Coleman's identification from his pocket.

¶5 Coleman filed various suppression motions. The court denied all but one, which dealt with statements Coleman made subsequent to a violation of his *Miranda* rights.² Coleman pled no contest and was convicted. This appeal followed.

ANALYSIS

¶6 In reviewing an order granting or denying a motion to suppress evidence, a circuit court's findings will be upheld unless clearly erroneous. *See* WIS. STAT. § 805.17(2); *State v. Secrist*, 224 Wis. 2d 201, ¶11, 589 N.W.2d 387 (1999). However, the application of constitutional principles to the facts as found is a question of law that we decide without deference to the circuit court's decision. *See State v. Amos*, 220 Wis. 2d 793, 797-98, 584 N.W.2d 170 (Ct. App. 1998).

² *See Miranda v. Arizona*, 384 U.S. 436 (1966).

A. REASONABLE SUSPICION TO STOP AND DETAIN

¶7 The validity of an investigatory stop and temporary detention is governed by *Terry v. Ohio*, 392 U.S. 1 (1968). In *Terry*, the United States Supreme Court held that police officers may, “in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.” *Id.* at 22. To execute a valid investigatory stop, a law enforcement officer must reasonably suspect, in light of his or her experience, that criminal activity has, is, or is about to take place. See *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). Such reasonable suspicion must be based on specific and articulable facts which, taken together with rational inferences from those facts, and judged against an objective standard, would warrant a person of reasonable caution in the belief that the action taken was appropriate. See *id.* In ascertaining the reasonableness of an investigatory stop, this court must consider the totality of the circumstances. See *id.* at 139-40.

¶8 Here, Polzin did not approach the men until after he had determined that the vehicle driven by one of them belonged to someone with a suspended license. An officer may make an investigative stop based on the reasonable suspicion that an individual is driving without a valid driver’s license. See *State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991). Polzin asked who was driving the vehicle and, during the course of his investigation, also sought Coleman’s identity. Our supreme court has held:

[W]hen a passenger has been seized pursuant to a lawful traffic stop, the seizure does not become unreasonable under the Fourth Amendment or art. 1, § 11 simply because an officer asks the passenger for identification during the stop. Passengers are free to decline to answer such questions, and refusal to answer will not justify prosecution

nor give rise to any reasonable suspicion of wrongdoing. However, if a passenger chooses to answer but gives the officer false information, the passenger can be charged with obstructing an officer in violation of WIS. STAT. § 946.41(1).

State v. Griffith, 2000 WI 72, 236 Wis. 2d 48, ¶¶65, 613 N.W.2d 72.

¶9 Coleman gave Polzin a false name and birthdate that did not come up on file with dispatch.³ At the suppression motion hearing, Polzin testified that Coleman was then placed in temporary custody “for basically my safety and the safety of others, because it has been my past experience when someone tells you that they have identification and they do not come back on file that something is not right.” Polzin further explained that Coleman was detained “due to the fact that I could not ... receive any information on him through the computer system when he stated that he did have identification through Milwaukee and also to the fact of ... the suspicious activity of him and the other occupant behind my residence and behind my neighbor’s residence.” This court concludes, under the totality of the circumstances, that Polzin and the other officers acted reasonably in stopping and detaining Coleman.

³ WISCONSIN STAT. § 946.41 provides in relevant part:

- (1) Whoever knowingly resists or obstructs an officer while such officer is doing any act in an official capacity and with lawful authority, is guilty of a Class A misdemeanor.
- (2) In this section:
 - a. “Obstructs” includes without limitation knowingly giving false information to the officer

The circuit court never made a factual determination as to whether Polzin identified himself as a police officer or whether Coleman otherwise knew he was a police officer when he offered the false name. Coleman’s conviction, however, is otherwise supported by the fact that he ultimately lied about not having identification and gave the false name to a uniformed police officer. Whether Coleman knew Polzin was an officer would not affect the requisite reasonable suspicion Polzin needed to stop and detain Coleman in the first instance.

B. PROBABLE CAUSE TO ARREST

¶10 Coleman argues, in the alternative, that the police officers lacked probable cause for his arrest. This court disagrees. When questioned about his identity, Coleman said he had no identification on him and gave what ultimately turned out to be a false name. The circuit court found that Coleman became an arrestee at the point when Jackson stated that Coleman did, in fact, have identification on him. Given their suspicions about the name Coleman gave, coupled with Jackson's confirmation that Coleman had identification on his person, the officers had probable cause to arrest Coleman for obstructing their investigation. They possessed facts sufficient to conclude or suspect that Coleman committed, or was in the process of committing, an offense. *See Richardson*, 156 Wis. 2d at 148.

By the Court.—Judgment affirmed.

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

