

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 16, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**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.

**Appeal No. 01-3362-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 01-CT-828**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-APPELLANT,**

**V.**

**GREG A. GROESBECK,**

**DEFENDANT-RESPONDENT.**

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APPEAL from an order of the circuit court for Outagamie County:  
DENNIS C. LUEBKE, Judge. *Reversed.*

¶1 HOOVER, P.J.<sup>1</sup> The State appeals an order granting Greg Groesbeck's motion to suppress evidence. Because Appleton police officer

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

Lawrence Potter had reasonable suspicion to stop Groesbeck and conduct a further investigation, this court reverses the order.

#### BACKGROUND

¶2 Early in the morning on August 23, 2001, Potter was parked on a side street and observed a vehicle traveling northbound on the main road at a high speed. Potter had noticed the manner in which this vehicle was driven on two previous occasions. Potter testified that the car had approached him at “an attention-getting speed” while he was driving home from work in the spring of 2001. He testified that he also noticed the car during the week preceding August 23 when he saw it passing an “entire pack of cars at a high speed ....” At that time, Potter noted the license plate number of the vehicle. He did some research and learned the identity and address of the registered owner. In addition, he learned that the driving status of the registered owner was revoked.

¶3 On this occasion, Potter followed the vehicle to confirm it was the same car he had seen on the prior occasions by comparing the license plate number on the car with the license plate number he had noted previously. Potter was not immediately successful because the vehicle “was turning every couple of blocks.” Potter did not observe any traffic violation as he followed the vehicle, but he became suspicious because it appeared that the driver “didn’t want a squad car behind him ....” His suspicion was based on the number of turns the car made in a short period of time. After the fourth turn, Potter confirmed that the license plate number on the vehicle was the same as that he saw on the vehicle on the prior occasion.

¶4 The car then pulled into a driveway and stopped before Potter could pull it over. Potter followed the car into the driveway and stopped. He activated a

red and blue flashing light on his squad car's light bar as the driver of the vehicle emerged from his car. Groesbeck met Potter near the front of the squad car. He identified himself with an ID card, and Potter confirmed that Groesbeck did not have a valid driver's license.

¶5 Potter then smelled the odor of intoxicants, conducted field sobriety tests and arrested Groesbeck for operating a motor vehicle while under the influence of an intoxicant. Before trial, Groesbeck filed a motion to suppress evidence based on a lack of probable cause. The court held a hearing and ruled that the officer had conducted a "formal stop" rather than a "*Terry*<sup>2</sup> type of investigative informal stop to make a reasonable inquiry of some circumstances." It concluded that Potter did not have probable cause to formally stop Groesbeck and granted the motion to suppress. The State now appeals.

#### DISCUSSION

¶6 The State contends that the encounter between Potter and Groesbeck qualified as an investigative stop based upon reasonable suspicion.<sup>3</sup> We agree. The trial court applied the wrong legal standard when it determined Potter did not have probable cause to stop Groesbeck. Because Potter had reasonable suspicion to stop Groesbeck, his encounter with Groesbeck was a valid investigative stop. Therefore, this court reverses the order.

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<sup>2</sup> *Terry v. Ohio*, 368 U.S. 1 (1968).

<sup>3</sup> The State maintained in its brief in chief that the meeting between Potter and Groesbeck did not involve any infringement on Groesbeck's constitutional rights. Alternatively, it argued that the appropriate legal standard was reasonable suspicion because the encounter between Potter and Groesbeck qualified as a valid investigative stop. In its reply brief, the State conceded that its main argument was wrong and focused on its alternative argument. This court considers whether Potter had reasonable suspicion to stop Groesbeck.

¶7 Groesbeck maintains that this court must uphold the trial court’s finding that Potter “stopped” Groesbeck as one of fact, unless it was clearly erroneous. *See* WIS. STAT. § 805.17(2). However, the court’s conclusion that Groesbeck was subject to a more formal stop requiring probable cause was not a finding of fact. Rather, it was the application of constitutional principles to a set of undisputed facts, a conclusion of law this court reviews de novo. *State v. Keith*, 216 Wis. 2d 61, 69, 573 N.W.2d 888 (Ct. App. 1997).

¶8 A law enforcement officer may detain someone only if the officer reasonably suspects, 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 (1990). This court engages in an objective evaluation that focuses

on the reasonableness of the officer’s intrusion into the defendant’s freedom of movement: “Law enforcement officers may only infringe on the individual’s interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed [or was committing or is about to commit] a crime. An ‘inchoate and unparticularized suspicion or ‘hunch’ ... will not suffice.’”

*State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996) (citation omitted).

¶9 This court applies a two-step standard of review to constitutional search and seizure inquiries. *State v. Matejka*, 2001 WI 5, ¶16, 241 Wis. 2d 52, 621 N.W.2d 891. The trial court’s findings of evidentiary or historical fact will be upheld unless they are clearly erroneous. *Id.* However, this court independently evaluates those facts against the constitutional standard to determine whether the search was lawful. *Id.*

¶10 Potter saw a car that looked like the one that had commanded his attention on two prior occasions. He knew that the owner of the car he had seen previously had a revoked driver's license. A reasonable officer could reasonably suspect that the registered owner of the car was the person driving it. He therefore began to follow the car. Further, the car turned frequently while Potter followed it, in an apparent attempt to evade Potter's squad car. All of these factors created more than a hunch and constituted reasonable suspicion for Potter to stop Groesbeck and conduct a further investigation.

*By the Court.*—Order reversed.

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

