COURT OF APPEALS
DECISION
DATED AND RELEASED

September 20, 1995

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(1), STATS.

NOTICE

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No. 95-0975-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KEVIN E. MURLEY,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Waukesha County: LEE S. DREYFUS, JR., Judge. *Affirmed.*

NETTESHEIM, J. The appellate issue is whether Kevin E. Murley's temporary detention pursuant to § 968.24, STATS., was valid. The trial court ruled that it was and therefore denied Murley's motion to suppress evidence. We uphold the trial court's ruling. We therefore affirm Murley's conviction for operating a motor vehicle while intoxicated (OWI) as a repeat offender.

The facts are not in dispute. On January 16, 1994, at approximately 2:20 a.m., City of Oconomowoc Police Officer Daniel Delker was observing a municipal parking lot from inside his parked squad car. At that time, Delker observed a person, later identified as Murley, walk to a gray Chevrolet Blazer and appear to attempt entry by trying each door of the vehicle. Murley then hurried to a second vehicle, also a gray Chevrolet Blazer, which he entered and drove away.

Delker considered Murley's actions regarding the first vehicle suspicious. He therefore pursued Murley and stopped him a few blocks from the parking lot. Delker then questioned Murley regarding the activity which he had observed in the parking lot. Murley first responded that he had intended to start the vehicle for a friend because it was cold outside. However, when Murley could not produce the keys to the vehicle, he changed his story and stated that he had returned the keys to the friend before he drove off. When Delker told Murley that he had witnessed the entire event and that he had not seen Murley speak to anyone after attempting to enter the vehicle, Murley again changed his story, stating that he had mistaken the vehicle for his own.

During this encounter, Murley gave off evidence of likely intoxication, and in due course he was arrested for OWI. Further investigation revealed that the vehicle which Murley was operating was his own.

Murley brought a motion to suppress any evidence obtained as the result of his initial detention by Delker and his eventual arrest. Murley contended that Delker did not have reasonable grounds to suspect that he was

committing a crime pursuant to § 968.24, STATS. In its ruling, the trial court acknowledged that Murley's conduct had ultimately been shown to be innocent behavior. Nonetheless, the court concluded that Delker had a reasonable basis to temporarily detain Murley to inquire about the suspicious activity which he had witnessed. Murley appeals.

In ***Terry v. Ohio***, 392 U.S. 1 (1968), the United States Supreme Court held that "a police officer 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. However, in such a setting the officer must still have "specific and articulable facts which, taken together with rational inferences … reasonably warrant [an] intrusion." ***Id***. at 21. A brief investigatory stop under ***Terry***, including an automobile stop, is a seizure and is therefore subject to the reasonableness requirement of the Fourth Amendment. ***State v. Goebel***, 103 Wis.2d 203, 208, 307 N.W.2d 915, 918 (1981). A police officer is not required to rule out the possibility of innocent behavior before initiating a ***Terry*** stop. ***State v. Anderson***, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990). Wisconsin's temporary detention statute, § 968.24, STATS., is a codification of the ***Terry*** standards. ***Goebel***, 103 Wis.2d at 209, 307 N.W.2d at 918.

Like the trial court, we do not quarrel with Murley's contention that a reasonable interpretation of his conduct is consistent with innocent behavior. Human experience and common sense teach that it is not uncommon for a person to mistakenly attempt entry to a vehicle which appears similar to

one's own and which is parked nearby. In fact, such was ultimately established to the satisfaction of Delker following Murley's arrest, despite the differing versions which Murley provided. And such was also established to the satisfaction of the trial court after hearing the evidence at the suppression hearing.

However, that result does not entirely govern the officer's right to act under ***Terry***, nor does it end the judicial inquiry. 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. ***Anderson***, 155 Wis.2d at 84, 454 N.W.2d at 766.

Although Murley's actions in attempting to gain entry into the vehicle carried a reasonable suggestion of innocent behavior, they also carried a reasonable suspicion of illegal behavior. An objective police officer witnessing Murley's conduct might also reasonably suspect that Murley was engaged in criminal activity, such as attempting to: (1) gain entry to a locked vehicle pursuant to § 943.11, STATS.; (2) take and drive a vehicle without the owner's consent pursuant to § 943.23(2), STATS.; or (3) drive or operate a motor vehicle without the owner's consent pursuant to § 943.23(3).[1]

[1] We disagree with Murley's contention that the officer must articulate in his or her testimony the particular crime or crimes suspected. Murley cites no authority for this proposition and we know of none. Here, Delker testified that he stopped Murley to investigate the suspicious activity which he had witnessed. Under the circumstances of this case, we deem that testimony sufficient.

Suspicious conduct is by its very nature ambiguous, and the principal function of the investigative stop is to quickly resolve that ambiguity. ***Anderson***, 155 Wis.2d at 84, 454 N.W.2d at 766. Faced with such ambiguity, the police officer is not required to look the other way and lose the opportunity for further investigation. *See* ***State v. King***, 175 Wis.2d 146, 154, 499 N.W.2d 190, 193 (Ct. App. 1993). Instead, the officer may temporarily detain the individual in order to maintain the status quo while obtaining more information to resolve the situation. *See* ***Goebel***, 103 Wis.2d at 211, 307 N.W.2d at 919.

Although presenting different facts, our holding in this case is largely influenced by ***State v. Griffin***, 183 Wis.2d 327, 515 N.W.2d 535 (Ct. App.), *cert. denied,* 115 S. Ct. 363 (1994). There, the police stopped a motor vehicle without license plates but bearing a sign "license applied for." The court of appeals held that the stopping of such a vehicle and the detention of the operator were allowed pursuant to § 968.24, STATS., because the operation of such a vehicle might violate the Wisconsin law which requires vehicle registration and display of registration plates. *See* ***Griffin***, 183 Wis.2d at 331-34, 515 N.W.2d at 537-38.

"License applied for" signs are commonly displayed by persons who have recently purchased a vehicle and paid the registration fee, but have not yet received the required license plates. Nonetheless, citing the ***Anderson*** proposition that "police officers are not required to rule out the possibility of innocent behavior," ***Anderson***, 155 Wis.2d at 84, 454 N.W.2d at 766, the ***Griffin*** court concluded that the police had a specific and articulable basis for stopping

the vehicle. ***Griffin***, 183 Wis.2d at 333-34, 515 N.W.2d at 538. We believe that the odds of illegal behavior associated with the operation of the vehicle in ***Griffin*** were far less than those presented by Murley's conduct in this case. As such, we are compelled to affirm the trial court's ruling.

By the Court.—Judgment affirmed.

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