COURT OF APPEALS
DECISION
DATED AND RELEASED

JULY 16, 1997

NOTICE

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, STATS.

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 97-0082-FT

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

COUNTY OF OZAUKEE,

PLAINTIFF-RESPONDENT,

v.

SCOTT T. NORTHRUP,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Ozaukee County: WALTER J. SWIETLIK, Judge. *Affirmed.*

ANDERSON, J. Scott T. Northrup appeals from an order finding his refusal unreasonable and denying his motion to suppress. Northrup specifically contends that Deputy James B. Johnson lacked reasonable suspicion to stop and detain him. At the suppression and refusal hearing, the trial court found Johnson's stop to be reasonable. We agree with the trial court; accordingly, we affirm the order.

The facts are not disputed. While on patrol, Johnson's superior officer informed him that a purple Bonneville, with two parties and Illinois plates, was being driven erratically on southbound State Highway 57 (Hwy. 57). Johnson was ordered to follow up on the tip.

En route, he saw a Bonneville going southbound on Hwy. 57. Johnson caught up to the vehicle on Highway I-43. As he approached, he noticed that the vehicle was maroon rather than purple. Johnson confirmed that the Bonneville had Illinois plates and was occupied by two parties. He then observed the Bonneville drift across the left fog line by approximately two tire widths. It maintained that position for approximately two car lengths. It then drifted to the right. After it touched the dividing line between the two southbound lanes, it drifted back into the left lane.

At this time, two cars, which separated Johnson's squad and the Bonneville, moved into the right lane. The driver of the Bonneville flashed his directional twice, then moved into the right lane as well. Johnson testified that, given the heavy traffic, two flashes were insufficient to constitute a proper signal. The Bonneville then crossed the right fog line by two tire widths before returning to the right lane. After this last infraction, Johnson stopped the Bonneville.

Johnson informed Northrup of his rights under Wisconsin's Implied Consent Law. Johnson requested that Northrup submit to a chemical test. Northrup refused and was issued an OWI citation which included a notice of a mandatory court appearance. In addition, he was issued a notice of intent to revoke his operating privileges.

Northrup requested a refusal hearing. Prior to the hearing, Northrup filed a motion to suppress all evidence subsequent to the stop. The issue of

Northrup's refusal and his motion to suppress were decided at a hearing on November 18, 1996.

At the hearing, Johnson was the only one to testify. Based on this testimony, the trial court found that the stop was reasonable. Additionally, the trial court found that Northrup's refusal to submit to testing was unreasonable. The court then ordered revocation of Northrup's driving privileges for a period of twelve months. Northrup appeals.

The issue on appeal is whether the stop was reasonable under the Fourth Amendment. Whether a stop meets statutory and constitutional standards is a question of law that we review without deference to the trial court. *See* ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The fundamental focus of the Fourth Amendment and § 968.24, STATS., is reasonableness. *See* ***State v. Waldner,*** 206 Wis.2d 51, 55, 556 N.W.2d 681, 684 (1996). Determination of reasonableness depends on the totality of the circumstances. *See* ***id.*** at 53, 556 N.W.2d at 683. For purposes of investigating possible criminal behavior, a police officer does not need probable cause to stop and detain a person. *See* ***id.*** at 55, 556 N.W.2d at 684. The test is an objective one and focuses on the reasonableness of the officer's actions. *See* ***id.*** at 56, 556 N.W.2d at 684. A police officer may stop a person if the officer "possesses specific and articulable facts which would warrant a reasonable belief that criminal activity was afoot." ***Id.***

We conclude that Johnson's stop and detention of Northrup was reasonable based on the totality of the circumstances. Johnson relied on a detailed tip. His superior officer provided him with the color, the make and the location of the vehicle. Johnson was also told that the vehicle was headed southbound on

Hwy. 57, that it had Illinois plates, and that it was occupied by two parties. Johnson spotted a vehicle heading southbound on Hwy. 57 which substantially fit the description he had been given.

Johnson possessed specific and articulable facts which warranted his suspicion that this Bonneville was the vehicle reported in the tip, despite the discrepancy in its color. Johnson had already corroborated all other significant aspects of the tip. A discrepancy in color, therefore, was insignificant. When significant aspects of an anonymous tip are independently corroborated by the police, the truthfulness of the tip is inferred. *See* ***State v. Richardson,*** 156 Wis.2d 128, 142, 456 N.W.2d 830, 836 (1990); *see also* ***Krier,*** 165 Wis.2d at 676, 478 N.W.2d at 65.

Furthermore, Johnson then independently witnessed the Bonneville being driven erratically. Therefore, he possessed specific and articulable knowledge of possible *criminal* activity by the driver. Section 968.24, STATS., explicitly allows for an investigative stop to be based on a reasonable suspicion of criminal activity. *See* ***Krier***, 165 Wis.2d at 678, 478 N.W.2d at 66. Thus, even without the tip, Johnson's independent knowledge of the Bonneville's erratic movements is sufficient to justify the investigatory stop and detention of Northrup.

By the Court.—Order affirmed.

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