COURT OF APPEALS
DECISION
DATED AND FILED

October 28, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP209-CR **Cir. Ct. No. 2013CF69**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ERIC J. BOETTCHER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Barron County: JAMES C. BABLER, Judge. *Affirmed.*

Before Hoover, P.J., Stark, J., and Thomas Cane, Reserve Judge.

¶1 PER CURIAM. Eric Boettcher appeals a judgment, entered upon his guilty pleas, convicting him of operating while intoxicated, fifth offense, and felony bail jumping. Boettcher argues the circuit court erred by denying his

suppression motion because the officer unlawfully stopped his vehicle. We reject Boettcher's argument, and affirm.

BACKGROUND

¶2 At the suppression motion hearing, Cumberland police officer Greg Chafer testified that during the early evening of March 1, 2013, he received information from dispatch that an anonymous caller reported seeing a man and a woman, both whom appeared to be intoxicated, walking in the City of Rice Lake with an open intoxicant. The caller further advised that the couple got into a silver Ford Expedition and the vehicle was last seen driving west toward Cumberland, which is approximately fifteen to twenty minutes away.

¶3 After waiting approximately ten to fifteen minutes, Chafer began driving east from Cumberland toward Rice Lake and observed a silver Ford Expedition with a male driver and female passenger traveling west toward Cumberland. During the time it took Chafer to make a U-turn, another vehicle came between his car and the Expedition. Chafer activated his emergency lights so that vehicle would pull over, allowing Chafer to follow the Expedition. After the vehicle pulled over, Chafer turned off the emergency lights and followed the Expedition which, at that time, was approximately one-quarter mile ahead.

¶4 The Expedition pulled into a parking stall in the lot of a Cumberland Kwik Trip. Chafer parked behind the Expedition, without activating his emergency lights, leaving approximately three to four feet of space between his squad car and the Expedition. It is undisputed that Chafer was parked close enough that the Expedition could not have backed out. When Chafer approached the driver's side door, the driver—eventually identified as Boettcher—indicated he needed to open the door because the window did not roll down. As soon as the

door opened, Chafer smelled the odor of intoxicants from inside the vehicle. During their conversation, Chafer also noticed Boettcher's speech was somewhat slurred.

¶5 Boettcher was ultimately charged with operating while intoxicated, fifth offense, and felony bail jumping. After the circuit court denied his motion to suppress evidence, Boettcher pleaded guilty to both charges. The court imposed and stayed concurrent five-year sentences, and placed Boettcher on three years' probation. This appeal follows.

DISCUSSION

¶6 Boetcher contends the officer's initial contact with him constituted an unreasonable seizure. The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution both protect against unreasonable searches and seizures. ***State v. Ziedonis***, 2005 WI App 249, ¶13, 287 Wis. 2d 831, 707 N.W.2d 565. However, not all personal interactions between law enforcement officers and people constitute seizures. ***United States v. Mendenhall***, 446 U.S. 544, 552 (1980); ***State v. Young***, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729. A seizure occurs "[o]nly when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen." ***Mendenhall***, 446 U.S. at 552 (1980) (quoting ***Terry v. Ohio***, 392 U.S. 1, 19 n. 16 (1968)). "[A] person has been 'seized' within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." ***Id.*** at 554.

¶7 Under our supreme court's analysis in ***County of Grant v. Vogt***, 2014 WI 76, 850 N.W.2d 253, Boettcher was not seized. In ***Vogt***, an officer's curiosity was piqued by a vehicle stopped in a lot next to a closed park and boat

landing at 11 p.m. ***Id.***, ¶5. The officer entered the lot and parked his marked squad car behind Vogt's vehicle. ***Id.***, ¶6. The squad car's headlights were on, but its red and blue emergency lights were not. ***Id.*** The officer knocked on the driver's side window, motioned for Vogt to roll down the window, and Vogt obliged. ***Id.***, ¶7. During his contact with Vogt, the officer smelled intoxicants and noticed Vogt's speech was slurred. ***Id.***

¶8 In claiming that a seizure took place, Vogt highlighted several alleged facts: (1) the officer parked right behind Vogt's vehicle; (2) the location of Vogt's vehicle in the parking lot was not conducive to simply driving away; (3) the officer commanded Vogt to roll down the window; and (4) the officer rapped loudly on the window. ***Id.***, ¶40. The ***Vogt*** court concluded that even taken together, these facts did not demonstrate that Vogt was seized. ***Id.***, ¶41. In the present case, Chafer neither rapped on Boettcher's window nor commanded he roll the window down. Because Chafer exhibited fewer signs of authority than the officer in ***Vogt***, we conclude the facts in this case do not show a level of intimidation or exercise of authority sufficient to implicate the Fourth Amendment.

¶9 Even were we to assume the encounter constituted a seizure, it was supported by reasonable suspicion. A police officer may conduct a traffic stop if the officer has reasonable suspicion, based on specific and articulable facts, that a crime or traffic violation has been or will be committed. ***State v. Popke***, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. Whether reasonable suspicion exists is a question of constitutional fact. ***Id.***, ¶10. We uphold the circuit court's factual findings unless they are clearly erroneous; however, we independently apply those facts to constitutional principles. ***Id.***

¶10 Boettcher contends the officer lacked reasonable suspicion because he acted solely on an anonymous tip that was not sufficiently corroborated. It is well-established that reasonable suspicion can be based on an informant's tip, provided the tip is sufficiently reliable. *See* ***State v. Williams***, 2001 WI 21, ¶36, 241 Wis. 2d 631, 623 N.W.2d 106. The reliability of a tip is measured by viewing the totality of the circumstances with regard to: "(1) the informant's veracity; and (2) the informant's basis of knowledge." ***State v. Rutzinski***, 2001 WI 22, ¶18, 241 Wis. 2d 729, 623 N.W.2d 516. "[A] deficiency in one [consideration] may be compensated for, in determining the overall reliability of a tip, by a strong showing as to the other, or by some other indicia of reliability." ***Id.*** Thus, for example, in the case of an anonymous tip, police corroboration of details provided by the informant further bolsters the tip's reliability. ***Williams***, 241 Wis. 2d 631, ¶39.

¶11 Here, Chafer was able to corroborate that a man and a woman were traveling in a silver Ford Expedition from Rice Lake toward Cumberland and, based on the timing of the dispatch, reached Cumberland "within the same time period that would be usual for a vehicle to travel from Rice Lake to Cumberland." As more of the caller's facts proved correct, it became increasingly more reasonable to rely on the anonymous caller's claim that the driver might be intoxicated. *See e.g.*, ***Alabama v. White***, 496 U.S. 325, 331-32 (1990). To the extent Boettcher intimates there may have been an innocent explanation for all of the corroborated facts, Chafer was "not required to rule out the possibility of innocent behavior before initiating a brief stop." ***Young***, 294 Wis. 2d 1, ¶21. Looking at the totality of the circumstances, we conclude the corroborated facts demonstrate sufficient indicia of reliability for Chafer to have reasonably

concluded that criminal activity may have been afoot. *See* ***Navarette v. California***, 134 S. Ct. 1683, 1688-90 (2014).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).