COURT OF APPEALS
DECISION
DATED AND FILED

July 28, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-0166-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

RANDALL T. RILEY,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed.*

CURLEY, J. Randall T. Riley appeals from a judgment of conviction entered after he pleaded guilty to operating a motor vehicle while under the influence of an intoxicant, contrary to §§ 346.63(1)(a) and 346.65(2), STATS. Randall claims that the trial court erred by denying his motion to suppress because the arresting officers did not have reasonable grounds to stop his vehicle. We affirm.

I. BACKGROUND.

At Riley's suppression motion hearing, Officer David Droster testified that, on October 3, 1996, he was on patrol with Officer Roberto Hill, whom he was training. At about 1:30 a.m., Officer Droster observed Riley make a left turn onto 17th Street at a speed that caused his tires to squeal, in violation of an excessive noise ordinance. Officer Droster then observed Riley make a right turn, without signaling, from 17th Street onto West Kilbourn Avenue. Next, Officer Droster saw Riley driving in the center of West Kilbourn Avenue and deviating into oncoming traffic such that Officer Droster feared Riley might strike parked cars on the opposite side of the road. Officer Droster also noted that, while Riley was deviating into oncoming traffic, he was traveling at erratic speeds by slowing down dramatically, then increasing his speed, and stepping on and off the brakes.

After observing Riley's driving, Officer Droster decided to stop Riley's vehicle because he suspected that Riley was driving drunk. Before Officer Droster had the opportunity to stop Riley, however, Riley turned right onto 26th Street, parked, and began to exit his vehicle. Because Officer Hill was a new recruit seated in the passenger seat closest to Riley, Officer Droster decided it would be safer for Officer Hill if he drove around the block before executing the stop. After driving around the block, Officer Droster observed Riley walking outside of his vehicle, and when his back was towards the officers, they stopped him. After some initial questioning, Officer Hill asked Riley to perform some sobriety tests, and then arrested Riley for operating under the influence.

Riley was charged with operating under the influence of an intoxicant, and operating a motor vehicle with a prohibited blood alcohol

concentration of .10% or more, as his second offense within five years. Riley made a motion to suppress the evidence resulting from the stop, which the trial court denied. Riley then pleaded guilty to operating under the influence of an intoxicant, was convicted and sentenced, and now appeals.

II. ANALYSIS.

When reviewing the trial court's denial of a motion to suppress, the trial court's findings of fact are upheld unless clearly erroneous. However, whether those facts meet the constitutional test of reasonableness if a question of law which this court reviews *de novo*. *See* ***State v. King***, 175 Wis.2d 146, 150, 499 N.W.2d 190, 191 (Ct. App. 1993).

> The temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of the Fourth Amendment. An automobile stop is thus subject to the constitutional imperative that it not be unreasonable under the circumstances. A traffic stop is generally reasonable if the officers have probable cause to believe that a traffic violation has occurred, or have grounds to reasonably suspect a violation has been or will be committed.

State v. Gaulrapp, 207 Wis.2d 600, 603, 558 N.W.2d 696, 698-99 (Ct. App. 1996) (citations, quotation marks and footnote omitted).

Riley claims that the officers who stopped his vehicle lacked reasonable grounds to do so because "the reasons adduced by the officers were just a pretext for stopping [Riley] to look for something to charge him with …." Even if, as Riley suggests, the officers' detention was pretextual, the subjective motives of the police are not relevant if the police had probable cause to believe a detained motorist violated the traffic laws. *See* ***Gaulrapp***, 207 Wis.2d at 607, 558

N.W.2d at 700. In the landmark case, ***Whren v. United States***, 517 U.S. 806 (1996), the Court held that: "The temporary detention of a motorist upon probable cause to believe that he violated the traffic laws does not violate the Fourth Amendment's prohibition against unreasonable seizures even if a reasonable officer would not have stopped the motorist absent some additional law enforcement objective." ***Whren***, 517 U.S. at ___, 116 S. Ct. at 1771. Thus, whether the officers' stop of Riley was a "pretext" is completely irrelevant.

The trial court believed Officer Droster's testimony that he observed Riley commit numerous traffic violations and behave in a manner which made Officer Droster reasonably suspicious that Riley was driving under the influence of alcohol. The trial court's findings are not clearly erroneous. Therefore, we conclude that Officer Droster and Officer Hill had a reasonable basis for stopping Riley, and we affirm.

By the Court.—Judgment affirmed.

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