COURT OF APPEALS
DECISION
DATED AND FILED

January 21, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 98-2727-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DANIEL C. KRAUSE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Jefferson County: JACQUELINE R. ERWIN, Judge. *Affirmed.*

ROGGENSACK, J.[1] Daniel Krause appeals from his conviction for operating a motor vehicle while intoxicated, as a second offense, pursuant to § 346.63(1)(a), STATS., and from an order denying his motion to suppress statements and evidence obtained as a result of an allegedly illegal stop. The

[1] This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

circuit court concluded that the arresting officer had reasonable suspicion to stop Krause because another officer observed Krause driving erratically and relayed this information to the arresting officer. We conclude that the officer who observed Krause back out of a tavern parking lot onto a road very quickly, stop abruptly and rapidly accelerate toward a stop sign, not stopping until he was ahead of the stop sign, had reasonable suspicion that Krause was violating the law and that this suspicion was properly relayed to the arresting officer, giving him reasonable suspicion to stop Krause. Therefore, we affirm.

BACKGROUND

On November 7, 1997, at approximately 11:40 p.m., Deputy David Drayna, a deputy sheriff for Jefferson County, observed a gray Buick back out of a tavern parking lot onto the road very fast, stop abruptly, and accelerate quickly toward a stop sign at the intersection of the road and a highway. The Buick completed the stop but stopped forward of where Drayna considered appropriate. Drayna drove south bound on the highway in his squad car past the Buick and observed the Buick pull out southbound behind his squad car and another vehicle. Drayna watched the Buick in his rear view mirror, and notified Officer Vaughn Johnson of the Jefferson Police Department that there was a possible drunk driver traveling two cars behind him. Drayna told Johnson of his observations.

Johnson drove northbound on the highway, made a U-turn, and pulled in behind the Buick. Drayna notified Johnson that he was behind the correct vehicle. Although Johnson did not observe any erratic driving, he decided to stop the vehicle. Johnson activated his emergency lights and Krause, who was driving the Buick, stopped. As Johnson spoke with Krause, he noted that Krause smelled of intoxicants and had slurred speech. Krause also admitted that he had

consumed alcohol prior to driving. Krause performed field sobriety tests at Johnson's direction, which indicated Krause was impaired. Krause also submitted to a preliminary breath test which yielded a result of .15%. Johnson then placed Krause under arrest for operating a motor vehicle while intoxicated.

On May 8, 1998, a hearing was held on Krause's motion to suppress statements and evidence due to an allegedly unlawful seizure, detention, and arrest. The circuit court concluded that based on the communal information rule, Drayna's observations as relayed to Johnson gave Johnson reasonable suspicion that Krause was violating the law. Therefore, the court denied Krause's motion to suppress. This appeal followed.

DISCUSSION

Standard of Review.

When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. ***State v. Eckert***, 203 Wis.2d 497, 518, 553 N.W.2d 539, 547 (Ct. App. 1996). However, the application of constitutional principles to the facts as found is a question of law which we decide without deference to the circuit court's decision. ***State v. Patricia A.P.***, 195 Wis.2d 855, 862, 537 N.W.2d 47, 49-50 (Ct. App. 1995).

Reasonable Suspicion.

The Fourth Amendment prohibits unreasonable searches and seizures. U.S. CONST. amend. IV. The detention of a motorist by a law enforcement officer constitutes a "seizure" of the person within the meaning of the Fourth Amendment. ***Berkemer v. McCarty***, 468 U.S. 420, 436-37 (1984). Statements given and items seized during a period of illegal detention are

inadmissible. ***Florida v. Royer***, 460 U.S. 491, 501 (1983). However, an investigative detention is not "unreasonable" if it is brief in nature, and justified by a reasonable suspicion that the motorist has committed, or is about to commit, a crime. ***Berkemer***, 468 U.S. at 439; *see also* § 968.24, STATS. The same standards for determining reasonable suspicion which have been established for rights arising in the United States Constitution apply to rights derived from the Wisconsin Constitution. *See* ***State v. Harris***, 206 Wis.2d 243, 259, 557 N.W.2d 245, 252 (1996) (affirming the adoption of the federal standards for reasonable suspicion).

According to ***Terry v. Ohio***, 392 U.S. 1 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be bottomed on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot, and that action would be appropriate. ***Id.*** at 21-22. "The question of what constitutes reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience?" ***State v. Jackson***, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989). The test is designed to balance the personal intrusion into the suspect's privacy occasioned by the stop against the societal interests in solving crime and bringing offenders to justice. ***State v. Guzy***, 139 Wis.2d 663, 680, 407 N.W.2d 548, 556 (1987).

Drayna observed Krause back out of a tavern parking lot very fast, stop abruptly, rapidly accelerate toward a stop sign, and nearly miss the stop. Based on the fact that Krause was leaving a tavern, driving erratically, and stopping at a stop sign too far forward, a reasonable police officer could believe, in light of his training and experience, that Krause was driving under the influence of

intoxicants. Therefore, Drayna had reasonable suspicion that Krause was violating the law. Drayna articulated the facts which supported his belief to Johnson.

Communal Information.

Krause argues that even if Drayna had reasonable suspicion that Krause was violating the law, the information which led to that suspicion was not properly relayed to Johnson under the "communal information rule." Therefore, Johnson did not have reasonable suspicion to stop Krause.

Under the "communal information rule" or "collective knowledge doctrine," an officer's reasonable suspicion may be predicated on hearsay information, and the officer may rely on the collective knowledge of the officer's entire department. ***Rinehart v. State***, 63 Wis.2d 760, 764-65, 218 N.W.2d 323, 325 (1974); ***State v. Wille***, 185 Wis.2d 673, 683, 518 N.W.2d 325, 329 (Ct. App. 1994). Information relayed through police channels such as communications between officers may be imputed to those officers to whom the information was conveyed. ***State v. Friday***, 140 Wis.2d 701, 711-15, 412 N.W.2d 540, 544-45 (Ct. App. 1987) (reversed on other grounds, ***State v. Friday***, 147 Wis.2d 359, 434 N.W.2d 85 (1989)).

Krause correctly notes that the communal information rule applies only where the information is actually imparted to the arresting officer. However, Krause is mistaken about the extent of the information that must be conveyed. In ***Friday***, we concluded that an officer's statements to other officers that he wanted a car towed and that there were drugs in the car could not be used to support a search of the car because the officer relaying the information did not indicate any factual basis for his assertion that there were drugs in the car. ***Id.***

Like the officer in ***Friday***, Drayna told Johnson that he believed the driver of the Buick was drunk; however, Drayna also told Johnson the factual basis for his opinion. By articulating specific facts to support his suspicion that the driver was impaired, Drayna effectively imputed his reasonable suspicion to Johnson. Therefore, Johnson had reasonable suspicion to stop Krause.

CONCLUSION

Johnson had reasonable suspicion to stop Krause because Drayna, who observed Krause back out of a tavern parking lot very quickly, stop abruptly, rapidly accelerate to a stop sign, and nearly miss the stop, sufficiently articulated his observations to Johnson such that Drayna's reasonable suspicion that Krause was violating the law was imputed to Johnson under the communal information rule. Therefore, we conclude that the circuit court correctly denied Krause's motion to suppress.

By the Court.—Judgment and order affirmed.

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