COURT OF APPEALS
DECISION
DATED AND FILED

February 22, 2000

Cornelia G. Clark
Acting Clerk, Court of Appeals
of Wisconsin

No. 99-2528-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TROY A. SOLOMON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: JEFFREY A. KREMERS, Judge. *Reversed.*

¶1 SCHUDSON, J.[1] Troy A. Solomon appeals from a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, following his guilty plea. Solomon argues that the trial court erred in denying his motion to suppress evidence because, he contends, the evidence failed

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

to establish that the police had reasonable suspicion to stop him. Solomon is correct and, therefore, this court reverses.

¶2 The facts relevant to resolution of this appeal are undisputed. At the hearing on Solomon's motion to suppress, Cudahy Police Officer Horace Craft, Jr., the only witness, gave very brief testimony. He testified that at about midnight on August 23, 1998, he was patrolling an area of South Packard Avenue where Noel Automotive was located. About one and one-half months earlier, police had received complaints of theft, auto theft, and criminal damage in the area. Officer Craft drove through the Noel Automotive lot two times–first with his squad lights on and, thirty to forty-five seconds later, with his squad lights off. On his second drive through the lot, Officer Craft observed Solomon exiting the lot in a car. The car Solomon was driving then made a left turn, and Officer Craft stopped it within half a block of the lot.

¶3 The prosecutor asked, "What caused you to stop the vehicle at that time?" Officer Craft answered:

> Because I believed that vehicle was in the lot when I went through the first time and when I went back the second time with my lights off, I wasn't sure if he was waiting for me to leave or what. So, I just wanted to check and find out for sure.

Under cross-examination, Officer Craft stated that he "didn't observe any traffic violation in regards to [Solomon's] driving," that the left turn was legal, and that he did not believe that driving on and off the lot or making a U-turn on the lot was against the law. He also acknowledged that he had not observed "any illegal activity emanating from [Solomon's] vehicle while it was on the property of Noel Automotive." Officer Craft also noted that he had received no complaints of criminal activity from the owner of Noel Automotive that night.

¶4 Defense counsel argued that while Officer Craft "[i]nstinctively … was correct," given the subsequent arrest for intoxicated driving, his testimony did not satisfy "the statutory requirement of reasonableness" for the stop. Rejecting the argument, the circuit court concluded that the stop was "something akin to a community caretaker function" where police "randomly stop vehicles on the highway for check points." The court considered the stop "acceptable," though "[p]robably [at] the most minimal level of reasonableness."

¶5 Police may stop a person based on specific and articulable facts that, together with rational inferences from those facts, support a reasonable belief that a person has committed, is committing, or is about to commit an offense. *See* ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968); *See also* WIS. STAT. § 968.24 (1997-98). Police also may stop a motorist based on reasonable suspicion of a traffic violation. *See* ***State v. Krier***, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991).

¶6 The facts necessary to support a stop must be judged by an objective standard: whether the facts available to the police at the time of the stop would warrant a person of reasonable caution to believe that a stop was appropriate. *See* ***Terry***, 392 U.S. at 21-22. Whether undisputed facts satisfy the constitutional requirement of reasonableness for a stop presents an issue of law for this court's *de novo* review. *See* ***State v. Griffin***, 183 Wis. 2d 327, 331, 515 N.W.2d 535 (Ct. App. 1994).

¶7 Here, Officer Craft articulated no basis for the stop. "[J]ust want[ing] to check and find out for sure" whether Solomon had been in the parking lot when he (Craft) first drove through does not constitute a reasonable suspicion that Solomon had committed, was committing, or was about to commit a

crime or traffic offense. Officer Craft never said anything connecting any of Solomon's driving or conduct to any concern about complaints received one and one-half months before. Did Officer Craft have additional suspicions? If so, he did not say; indeed, he was never asked.

¶8 The State offers no argument supporting the circuit court's surmise that some sort of "community caretaker" function was involved, *see* ***State v. Ellenbecker***, 159 Wis. 2d 91, 96, 464 N.W.2d 427 (Ct. App. 1990) ("A community caretaker action is one that is totally divorced from the detection, investigation or acquisition of evidence relating to the violation of a criminal statute."), and this court knows of no authority equating random check-point stops with stops requiring articulable, specific, reasonable suspicion. This court will neither assume nor simply speculate about what might or could have been some other suspicions of a police officer–particularly an officer who has explained the basis for a stop in terms that clearly do not establish the reasonable suspicion of an offense, which the law requires. *See* ***Terry***, 392 U.S. at 27 ("inchoate and unparticularized suspicion or 'hunch'" will not suffice).

By the Court.—Judgment reversed.

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