COURT OF APPEALS
DECISION
DATED AND FILED

May 23, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 99-3096-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL S. CZARNECKI,

DEFENDANT-APPELLANT.

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

¶1 CURLEY, J.[1] Michael Czarnecki appeals the judgment convicting him of operating a motor vehicle while under the influence of an intoxicant, second offense, contrary to WIS. STAT. §§ 346.63(1)(a) and 346.65(2),[2] entered

[1] This appeal is decided by one judge pursuant to § 752.31(3), STATS.

[2] All references to the Wisconsin Statutes are to the 1997-98 version unless otherwise indicated.

following his plea of guilty, to challenge the trial court's ruling denying his motion to suppress. Czarnecki contends that the trial court erred in denying his motion challenging the initial stop of his vehicle. This court affirms.

I. BACKGROUND.

¶2 On January 29, 1999, a West Allis police officer, on routine patrol at approximately 2:00 a.m., noticed a car parked next to a snowbank. He saw that there was someone in the driver's seat and that there was also a man standing at the rear of the car. As the officer drove past, he observed the car move forward and, at almost the same time, he noticed the person at the back of the car fall backwards, suggesting the possibility that he had been struck by the car. Thinking that the man may have been injured, the officer made a U-turn and stopped the car. During the time it took him to turn his squad car around, the officer saw the man who had fallen get up and enter the front passenger's side of the car. After the officer approached the driver's side of the car, he immediately detected a strong odor of alcohol on the driver's breath. He also saw that the driver, later identified as the appellant, Czarnecki, had bloodshot eyes, slurred speech and was "thick tongued." Czarnecki failed the field sobriety tests and he was arrested. Originally, Czarnecki was charged with both operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a prohibited breath alcohol concentration of 0.10% or more.

¶3 Czarnecki brought a pretrial motion challenging the officer's stop of the car. After hearing testimony and argument, the trial court ruled that the officer's actions were reasonable. The trial court reasoned that "[the officer] had a right to check on the welfare of that person he saw fall to the ground, and that's all he was doing in my view, and I think he was more than reasonable." Following

the trial court's ruling, Czarnecki pled guilty to the first charge, and the second charge was dismissed.

¶4 Czarnecki was sentenced to eighty days in the House of Corrections, with Huber privileges, assessed a $400 fine, and his driving privileges were revoked for eighteen months.[3] This appeal follows.

II. ANALYSIS.

¶5 Czarnecki argues that the trial court erred in its ruling for several reasons. First, Czarnecki suggests that the officer's claim that he stopped the vehicle to check on the condition of the passenger was pretextual. He contends that the real reason the officer stopped the car was "more consistent with a desire to make contact with the driver of this vehicle at 1:59 a.m. than an officer who was legitimately concerned that the passenger might need immediate assistance of some kind." Further, he argues that even if the officer was actually concerned about the welfare of the passenger, "the stop was still not a bonafide community caretaker activity." This court disagrees.

¶6 "When reviewing a trial court's denial of a motion to suppress, this court 'will uphold the trial court's findings of fact unless they are against the great weight and clear preponderance of the evidence.'" ***State v. Paterson***, 220 Wis. 2d 526, 532, 583 N.W.2d 190 (Ct. App. 1998) (citation omitted). The question of whether a search or seizure passes statutory or constitutional muster is a question of law that this court reviews *de novo*. ***Id.*** The trial court determined that the officer was justified in stopping Czarnecki's car. Although the trial court never

[3] Several of the documents filed in this case list Czarnecki as receiving sentences of different length. A review of the record reflects he was given a jail sentence of eighty days.

articulated that it was relying on the community caretaker rule, the trial court's comments clearly indicate its ruling was founded on this exception to the Fourth Amendment.

¶7 The United States Supreme Court, in justifying the actions of the police, first approved the community caretaker exception in ***Cady v. Dombrowski***, 413 U.S. 433, 441 (1973). There the Supreme Court permitted the warrantless search of a car because the police were "engage[d] in what, for want of a better term, may be described as community caretaking functions, totally divorced from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute." ***Id.*** The rule was later adopted in Wisconsin in ***Bies v. State***, 76 Wis. 2d 457, 471, 251 N.W.2d 461 (1977): "The ultimate standard under the Fourth Amendment is the reasonableness of the search or seizure in light of the facts and circumstances of the case." ***Bies***, 76 Wis.2d at 468, 251 N.W.2d at 466; ***State v. Anderson***, 142 Wis. 2d 162, 168, 417 N.W.2d 411 (Ct. App. 1987), *rev'd on other grounds*, 155 Wis. 2d 77, 454 N.W.2d 763 (1990). "In a community caretaker case, this requires a balancing of the public need and interest furthered by the police conduct against the degree of and nature of the intrusion upon the privacy of the citizen." ***Anderson***, 142 Wis. 2d at 168; ***Bies***, 76 Wis. 2d at 469.

¶8 Czarnecki submits that the officer's actual reason in stopping the car was to check on the status of the driver and that his stated reason – confirming that the passenger did not suffer an injury – was pretextual. However, the record reveals that the trial court accepted the officer's explanation that he stopped the car in order to check on the condition of the passenger. Since this finding of the trial court is not clearly erroneous, we are obligated to accept it. Moreover, this court concludes, after applying the ***Bies*** balancing test, that the officer's actions were reasonable under the community caretaker rule.

¶9 The officer, while driving a patrol car, witnessed a man take a "hard" fall onto the roadway late on a winter night in January. At almost the same time, the car in near proximity to the man, began to move forward, suggesting that the man may have fallen as a result of being struck by the car. Thinking that the man may have been injured, the officer turned his patrol car around and stopped the car that the fallen man had now entered. Czarnecki argues it was not reasonable for the officer to stop the car after seeing a man fall to the roadway. This court disagrees. Believing that a person has been "knocked down by a car" is ample justification for checking on the welfare of the person and stopping the car. Indeed, this court observes, as did the trial court, that it would have been "unreasonable" for the officer to have done otherwise.

¶10 This court observes that the police play another role in our society besides investigating and detecting crimes. *See, e.g.*, ***Anderson***, 142 Wis. 2d at 167. Citizens also expect the police to assist those who might be or are injured. Here, the officer did exactly that. The officer stated he was concerned with the condition of the man after he witnessed him take a serious fall. The officer testified that he expected to only momentarily detain the car in order to confirm that the passenger was not injured. The anticipated delay and the intrusion both would have been short. The fact that the officer discovered that the driver was intoxicated was coincidental. Thus, this court concludes that the degree and nature of the intrusion upon the privacy of Czarnecki was outweighed by the officer's desire to serve a public need; i.e., check on a possibly injured person.

¶11 Czarnecki also argues that it was unreasonable for the officer to approach the driver rather than the passenger. The fact that the officer may have first approached the driver and asked for his driver's license before inquiring about the condition of the man does not make the officer's action unreasonable. The

officer could have as easily ascertained the condition of the passenger from the driver's side as he could from the passenger's side. Consequently, the officer's decision to approach the driver's side rather than the passenger's side of the car is irrelevant. As a result, this court affirms the decision of the trial court.

By the Court.—Judgment affirmed.

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