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DISTRICT IV

March 22, 2017

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You are hereby notified that the Court has entered the following opinion and order:

2016AP1194-CR

State of Wisconsin v. Samnang Ya (L.C. # 2015CF1799)

Before Kloppenburg, P.J., Lundsten and Blanchard, JJ.

After his motion to suppress was denied, Samnang Ya pled guilty to operating a motor vehicle while intoxicated, fifth or sixth offense. *See* WIS. STAT. § 346.63(1)(a) (2015-16).¹ The only issue on appeal is whether the arresting officer had reasonable suspicion to stop Ya. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm.

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

“[A] police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest.” *Terry v. Ohio*, 392 U.S. 1, 22 (1968). The police officer “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.* at 21. The standard is objective: “[W]ould the facts available to the officer at the moment of the seizure or the search ‘warrant a man of reasonable caution in the belief’ that the action taken was appropriate?” *Id.* at 21-22.

The *Terry* standard for a temporary investigatory stop is codified in WIS. STAT. § 968.24. The issue is reasonableness. The essential question which must be addressed by the reviewing court is “whether the action of the law enforcement officer was reasonable under all the facts and circumstances present.” *State v. Jackson*, 147 Wis. 2d 824, 831, 434 N.W.2d 386 (1989) (citing *State v. Guzy*, 139 Wis. 2d 663, 679, 407 N.W.2d 548, *cert. denied*, 484 U.S. 979 (1987)).

Whether an investigative stop meets the constitutional standard of reasonableness is a question of law subject to de novo review by this court. *See State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). A police officer may only stop an individual if he or she possesses a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed, was committing, or is about to commit a crime; a “hunch” will not suffice. *See id.* at 56.

We employ an objective and common sense test in order to strike a balance between individual privacy and the societal interest in effective crime prevention and detection. *See id.* “The law allows a police officer to make an investigatory stop based on observations of lawful

conduct so long as the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot.” *Id.* at 57. We look at the totality of the facts and the reasonable inferences that can be drawn about the cumulative effect of the accumulated “building blocks of fact.” *Id.* at 58. “[W]hen a police officer observes lawful but suspicious conduct, if a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, police officers have the right to temporarily detain the individual for the purpose of inquiry.” *Id.* at 60.

The parties stipulated to the following facts. State Trooper Tim Larson was on patrol at 12:55 a.m. on a Saturday morning when he observed a car drive from behind a closed convenience store/gas station. The parking lot was illuminated by the gas island lights. Larson watched the car drive over a sidewalk and down a curb in the parking area. Larson suspected that the driver may be impaired and initiated an investigatory stop. Ya was the driver and he was intoxicated.

Ya argues that Larson was acting merely on a “hunch” and that the single act of driving over a curb is insufficient to confer reasonable suspicion. *See State v. Johnson*, 2007 WI 32, ¶¶34-36. 299 Wis.2d 675, 729 N.W.2d 182 (driver’s “head and shoulders” movement not enough to support officer’s reasonable suspicion).

Ya neglects the other facts present in this case. The business was closed and it was nearly 1:00 a.m. on a Saturday morning. Larson saw a car emerge from behind a closed business and then drive over a curb. As the circuit court recognized, Larson was faced with multiple inferences, one “totally innocent” inference and other equally plausible inferences that the driver was impaired or was “investigating” the closed business. Police officers are not required to rule

out the possibility of innocent behavior before initiating a brief stop. *State v. Fields*, 2000 WI App 218, ¶10, 239 Wis. 2d 38, 619 N.W.2d 279. Suspicious conduct by its very nature is ambiguous, and the principle function of an investigative stop is to quickly resolve that ambiguity. Therefore, if any reasonable inference of wrongful conduct can be objectively discerned, an officer has the right to temporarily detain the individual for the purpose of inquiry. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). The existence of other innocent inferences does not render the stop unconstitutional. *Id.* Under the totality of the circumstances, Larson's investigatory stop was constitutionally reasonable.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals