COURT OF APPEALS
DECISION
DATED AND FILED

June 28, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0115-CR

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALEC C. CHRISTENSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County: JAMES L. CARLSON, Judge. *Affirmed.*

¶1 BROWN, P.J.[1] This is a review of the trial court's denial of a suppression of evidence motion. Before the trial court, Alec C. Christensen's contention was that the police illegally stopped the vehicle he was riding in and

[1] This appeal is decided by one judge pursuant to Wis. Stat. § 752.31(2)(f) (1997-98). All further references to the Wisconsin Statutes are to the 1997-98 version.

therefore his subsequent criminal conduct of obstructing an officer could not be used by the State as evidence. He repeats his contention on appeal. We hold that the police executed a valid ***Terry***[2] stop of the vehicle in which Christensen was a passenger and thus affirm the trial court's denial of the suppression motion.

¶2 Sheriff's deputies responded to a request to find a missing juvenile at a residence. The deputies determined that several of the persons at the residence were juveniles who had been drinking. While outside the residence, one of the deputies observed a small red car drive past the residence. Two females were in the front and a male was in the back. The deputy believed that all three were under twenty-one years of age. The car slowed as it drove past and the occupants were observed looking to see "what was going on at the residence." "A couple of minutes" went by and the same vehicle again drove past coming from the opposite direction. Again the car drove by slowly.

¶3 The deputy got into his squad car and began following the vehicle "to see what it was up to." The deputy said, "It seemed a little suspicious. I was thinking that either they had probably just left the party and wanted to see what was going on, seeing if anybody was getting arrested, or they were planning on stopping at that party. So I wanted to check them out." The deputy saw the vehicle go about three-quarters of a mile, turn onto an intersecting road and then pull into a driveway. The vehicle then pulled out of the driveway and began heading back in the direction of the residence once again.

¶4 The deputy stopped the vehicle. Upon making contact with the driver, he observed the male in the back seat placing "a couple of sticks of gum in

[2] ***Terry v. Ohio***, 392 U.S. 1 (1968).

his mouth, and reaching for a cigarette." Through his experience and training, the deputy deduced that the male was "trying to mask something." The deputy could see that the male's eyes were bloodshot and glassy and believed that the male "might have been drinking." He had the male step from the vehicle to "see if he had been drinking."

¶5 The deputy asked the passenger to identify himself and he identified himself as Alec Christensen. The deputy asked Christensen's age and thereby confirmed that Christensen was under twenty-one. Various other events led to his arrest for obstructing an officer, as a repeater, contrary to WIS. STATS. §§ 946.41(1) and 939.62(1)(a).

¶6 Christensen argues that the deputy did not have reasonable suspicion to make an investigatory stop of the vehicle. He contends that driving slowly back and forth past a residence where squad cars were present in response to underage drinking cannot lead to an inference that the occupants had just left the party. He claims that there is nothing inherent in this behavior that could lead to any connection between the party and the occupants of the vehicle. He posits that driving back and forth past the residence actually supports an opposite inference—that the occupants of the vehicle wanted nothing to do with the party and were simply curious as to what was going on. Christensen points out that there was no turn signal indicating that they were going to turn into the driveway of the residence and no waves or nods of recognition to any of the party-goers who were apparently on the front lawn with other deputies receiving citations. He surmises that if the occupants had a guilty state of mind, they would have left the scene altogether rather than stay around and drive back and forth past the residence. He cautions against a ruling that would give police the authority to expose "all gawkers and onlookers" to the risk of an investigatory stop. He concludes that

there is no evidence that the occupants of the vehicle had committed, were committing or were about to commit a crime related to underage consumption of alcohol. He further concludes that there was no evidence of impaired driving—the only "suspicious" behavior was curiosity. In Christensen's view, an onlooker's curiosity does not justify a stop.

¶7 In reviewing the deputy's decision to stop the vehicle, the test is one of common sense. We ask, under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience? *See* ***State v. Jackson***, 147 Wis. 2d 824, 834, 434 N.W.2d 386, (1989). The test invokes the factual and practical considerations of everyday life on which reasonable and prudent persons, not legal technicians, act. *See* ***County of Dane v. Sharpee***, 154 Wis. 2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990). A determination of reasonableness depends on the totality of circumstances. *See* ***State v. Waldner***, 206 Wis. 2d 51, 53, 556 N.W.2d 681 (1996). "[I]f any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have 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).

¶8 This is not a case where a deputy stops and investigates a curious on-looker simply because the person is curious. Rather, the totality of the circumstances shows that the deputy knew the following even before seeing the red car for the first time: Underage drinking was taking place at the residence. It was after midnight. The residence was on a county highway, suggesting that the setting was either rural or residential rather than urban. These were the circumstances when the officer first observed a vehicle containing three apparently underage people driving slowly past the house and then, a couple of minutes later,

driving slowly past the house again, coming from the opposite direction. After following the vehicle, the officer saw it turn around to head back yet a third time.

¶9 Based on these facts, it was reasonable for the deputy to infer that these three juveniles, on a county highway at 12:12 in the morning, were connected to the underage drinking party. It is simply a commonsense assessment for the deputy to believe that the juveniles were either at the party and had left or were set to arrive at the party. Thus, the deputy had articulable suspicion that the juveniles either had already committed a crime or were about to commit one. It was nothing more than good police work to decide to investigate. This court affirms the trial court's denial of the suppression motion. The judgment of conviction for obstructing justice is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports.