

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

No. 00-1975-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JERRALD D. NIEHOFF,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dodge County:
JOHN R. STORCK, Judge. *Affirmed.*

¶1 ROGGENSACK, J.¹ Jerrald D. Niehoff appeals a judgment convicting him of operating a motor vehicle while under the influence of an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). Additionally, all further references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

intoxicant (OMVWI) as a fourth offense, contrary to WIS. STAT. § 346.63(1)(a). Niehoff claims that the circuit court erred in denying his motion to suppress evidence because the police officer lacked reasonable suspicion to stop him. Because we conclude that there were sufficient facts within the officer's knowledge to permit the stop, we affirm the judgment of the circuit court.

BACKGROUND

¶2 At 12:51 a.m. on Saturday, July 26, 1998, Sergeant James Zimmerman of the Waupun Police Department saw a pick-up truck stopped in the middle of Jefferson Street for approximately fifteen seconds. Three people got out and walked away. Zimmerman pursued and stopped the truck. When he did so, he found evidence that Niehoff, the driver, was intoxicated. A blood test revealed that Niehoff's blood alcohol level was 0.301.

¶3 Niehoff moved to suppress the evidence, claiming that Zimmerman did not have reasonable suspicion to stop his vehicle. The circuit court denied the motion. Subsequently, Niehoff pled no contest to OMVWI, fourth offense. He appeals the denial of his suppression motion.

DISCUSSION

Standard of Review.

¶4 When we review a motion to suppress evidence, we will uphold a 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 that we decide without deference to a 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.

¶5 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” 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* WIS. STAT. § 968.24. The same standards that have been established for a stop challenged under the Fourth Amendment apply to a stop challenged under art. I, § 11 of the Wisconsin Constitution. *State v. Harris*, 206 Wis. 2d 243, 259, 557 N.W.2d 245, 252 (1996).

¶6 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 is 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 a 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).

¶7 Niehoff argues that Zimmerman did not have reasonable suspicion that he had committed or was about to commit a crime. We disagree. At the suppression hearing, Zimmerman testified that he saw Niehoff's truck stopped in the middle of Jefferson Street, not in the part of the street where drivers are allowed to stop or park their vehicles. This conduct created a reasonable suspicion on Zimmerman's part that Niehoff had committed a traffic crime by violating WIS. STAT. § 346.54(1), which prohibits stopping a motor vehicle in the middle of the street.² Based on this reasonable suspicion, Zimmerman was justified in detaining Niehoff for further investigation. Niehoff does not argue that Zimmerman lacked probable cause to arrest him after the stop took place.

CONCLUSION

¶8 Because we conclude that there were sufficient facts within the officer's knowledge to permit the stop, we affirm the judgment of the circuit court.

² **WIS. STAT. § 346.54 How to park and stop on streets. (1)** Upon streets where stopping or parking is authorized or permitted, a vehicle is not lawfully stopped or parked unless it complies with the following requirements:

(a) Upon a street where traffic is permitted to move in both directions simultaneously and where angle parking is not clearly designated by official traffic signs or markers, a vehicle must be parked parallel to the edge of the street, headed in the direction of traffic on the right side of the street.

....

(c) Upon streets where angle parking is clearly authorized by official traffic signs or markers, vehicles shall be parked at the angle and within the spaces indicated.

....

(2) No person shall stop or leave a vehicle standing in violation of this section.

Sergeant Zimmerman testified that Waupun had adopted this entire Wisconsin traffic code, including this section, as Chapter 6 of its city ordinances.

By the Court.—Judgment affirmed.

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

