

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 17, 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. 00-3295

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ST. CROIX COUNTY,

PLAINTIFF-APPELLANT,

V.

ADAM DOUGLAS CRESS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for St. Croix County:
SCOTT R. NEEDHAM, Judge. *Reversed and cause remanded with directions.*

¶1 HOOVER, P.J.¹ St. Croix County appeals an order suppressing evidence based upon the trial court's determination that the arresting officer lacked probable cause to believe Adam Cress committed criminal damage to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b). All references to the Wisconsin Statutes are to the 1999-2000 version.

property. The County essentially argues that the trial court employed improper standards in making its determination. First, the court considered whether there was probable cause to believe Cress committed a crime, when the real issue was whether there was reasonable suspicion justifying a stop and investigation. Second, the court determined that there was no probable cause because of the officer's subjective determination that Cress did not intend to damage property.

¶2 This court agrees with the County that the trial court should have employed a reasonable suspicion analysis and that under the undisputed evidence, the arresting officer had reasonable suspicion to conduct a brief investigatory stop. The evidence resulting from the lawful stop should not have been suppressed. Therefore, the suppression order is reversed and the matter is remanded for further proceedings.

BACKGROUND

¶3 Cress was charged with transporting intoxicants as a minor, contrary to ST. CROIX COUNTY, WIS. ORDINANCE § 54.82. On the trial date, Cress conceded that there was sufficient evidence to convict him if the arresting officer had “probable cause.”² Thus the trial court proceeded with a “probable cause” hearing to determine whether evidence seized from Cress should be suppressed.

¶4 Deputy Steven Drost testified that at approximately 12:20 a.m. on May 27, 2000, he was on 170th Avenue just west of 68th Street when he observed a truck turn onto a narrow private driveway and drive about 100 yards. The vehicle then made a wide turn into a farm field adjacent to the driveway. It traveled south

² Cress did not articulate the issue more precisely for the trial court.

through the field, got back onto the driveway and approached 170th Avenue. Drost testified that his attention was drawn to the vehicle because “if a vehicle is traveling on a farmer’s hay field, or any other type of field that’s used to raise crops, property is going to be damaged.” Drost knew there were crops growing in this field.

¶5 After the vehicle passed Drost, he stopped it, encountered Cress and informed him of the reason for the stop.³ Cress identified himself with a driver’s license and essentially advised Drost that he had taken a wrong turn looking for a campground.⁴ Drost had Cress step out of the truck and while in the process of questioning Cress about whether he had any contraband, Drost observed a case of beer in the back of the truck. At Drost’s request, Cress retrieved the case and other bottles of alcohol and gave them to Drost.

¶6 In response to a question by the court, Drost testified that he did not believe Cress intended to damage property, but rather was turning his truck around. However, he believed “at the time that there was a better way to go about it” and “most people understand if you drive on a farmer’s field you are going to damage the property.” Further, it was “X Fest” weekend,⁵ during which his department received a lot of property damage and trespass complaints. Indeed, Drost testified that on the farm in question, someone that weekend had driven through a fence, causing cattle to get loose.

³ Drost did not testify as to the reason he gave Cress for stopping him.

⁴ Drost testified that turning right at the stop sign at the next intersection would lead to campgrounds.

⁵ Cress’s attorney noted during his argument to the trial court that the arrest occurred on “a concert weekend.”

¶7 The trial court held that based on Drost's "statement that he reasonably didn't believe [Cress] was intentionally damaging the property I can't find probable cause" because Drost did not believe Cress intended to damage property. It elaborated that there was no probable cause to believe Cress had committed criminal damage to property because Drost did not believe Cress intended damage and such intent is an element of the offense. The court subsequently rendered an order suppressing all fruits of the stop based upon Drost's lack of "a reasonable and articulable suspicion to stop the Defendant."

STANDARD OF REVIEW

¶8 Whether a search or seizure violates one's constitutional rights is a question of law that this court reviews de novo. *State v. King*, 175 Wis. 2d 146, 150, 499 N.W.2d 190 (Ct. App. 1993).

DISCUSSION

¶9 The County argues that Drost's observations provided a sufficient basis to perform an investigatory stop and that Drost's subjective belief as to Cress's intent to commit a crime is not relevant to the reasonable suspicion analysis. Cress concedes that driving into a hayfield might give rise to a reasonable suspicion that a person was committing criminal damage to property, but that here Drost had already determined that Cress did not enter the field to intentionally damage property. Moreover, according to Cress, once he provided the innocent explanation that he took a wrong turn looking for a campground,

Drost had no basis for detaining Cress further.⁶ This court holds that the proper analysis was whether Cress's conduct gave rise to a reasonable suspicion that he had or was committing a violation, and that neither Drost's subjective belief nor Cress's innocent explanation are relevant to that analysis.

¶10 The temporary detention of individuals during an automobile stop by law enforcement constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). An automobile stop is thus subject to the constitutional imperative that it not be "unreasonable" under the circumstances. *Id.* at 810. A traffic stop is generally reasonable if the officers have grounds to reasonably suspect a violation has been or will be committed. *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984). Upon stopping the individual, the officer may make reasonable inquiries to dispel or confirm the suspicions that justified the stop. *Terry v. Ohio*, 392 U.S. 1, 30-31 (1968).

¶11 The question what constitutes reasonableness is a common sense test that concerns what a reasonable police officer would reasonably suspect in light of his or her training and experience. *State v. Anderson*, 155 Wis. 2d 77, 83, 454 N.W.2d 763 (1990). This common sense approach strikes a balance between an individual's privacy and society's interest in permitting the police a reasonable

⁶ Cress argued to the trial court that Drost's stop was pretextual. He does not specifically articulate this contention on appeal, but to the extent it is implied, it has been rejected as a basis for suppression by both the United States Supreme Court and our supreme court. In *Whren v. United States*, 517 U.S. 806, 813 (1996), the Supreme Court held that the constitutional reasonableness of a traffic stop does not depend on the officer's actual motivation. The Supreme Court thus foreclosed any claims that a traffic stop was unreasonable because it was conducted merely as a pretext to search for evidence of a criminal violation. *See State v. Mendoza*, 220 Wis. 2d 803, 819, 584 N.W.2d 174 (Ct. App. 1998), *rev'd on other grounds*, 227 Wis. 2d 838, 596 N.W.2d 736 (1999).

latitude in discharging their responsibilities. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996).

The societal interest involved is, of course, that of effective crime prevention and detection consistent with constitutional means. It is this interest which underlies the recognition that a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest.

Id.

¶12 A reasonable suspicion must be based on "specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant that intrusion." *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). These facts must be judged against an "objective standard." *Id.* The police officer's subjective motivation in making the stop does not render a stop illegal as long as there are objective facts to support a correct legal theory applicable to the articulable facts in question. *State v. Baudhuin*, 141 Wis. 2d 642, 651, 416 N.W.2d 60 (1987). Moreover, conduct that has innocent explanations may also give rise to a reasonable suspicion of criminal activity. *Waldner*, 206 Wis. 2d at 58-59. If a reasonable inference of unlawful conduct can be objectively discerned, the officers may temporarily detain the individual to investigate, notwithstanding the existence of an innocent inference that could be drawn. *Id.*

¶13 Because this court applies an objective standard in reviewing actions of law enforcement officers, it is the circumstances, not Drost's subjective belief, that govern whether he had a reasonable suspicion to stop Cress. Applying these principles to the facts of this case, this court is satisfied that the circumstances

support an objectively reasonable suspicion that Cress had or was committing a violation. It is a reasonable, common sense inference that a farmer would not want a truck to drive through his or her field of crops. Indeed, such conduct constitutes a form of trespass.⁷ Further, a reasonable officer could fairly characterize Drost's vehicle operation as erratic, justifying an investigative stop.⁸ While Cress offered an innocent explanation for turning down the private driveway, Drost was not required to accept that explanation. *See State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). Moreover, the reason Cress offered for being on the driveway did not explain the manner in which he turned his car around.

¶14 The record establishes that Drost had an objectively reasonable suspicion that Cress had or was committing a violation. He was therefore constitutionally justified in stopping Cress and in making reasonable inquiries to dispel or confirm objective suspicions. Accordingly the trial erred by suppressing the evidence that was seized shortly after Drost undertook his investigation.

⁷ WISCONSIN STAT. § 943.13(1m)(a) is violated by one who "[e]nters any enclosed, cultivated or undeveloped land of another, [inapplicable exceptions omitted] without the express or implied consent of the owner or occupant."

⁸ Again, Drost testified that it appeared "there was a better way to go about" turning the truck around, because "most people understand if you drive on a farmer's field you are going to damage the property."

By the Court.—Order reversed and cause remanded with directions.

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

