COURT OF APPEALS
DECISION
DATED AND FILED

August 21, 2001

Cornelia G. Clark
Clerk of Court of Appeals

No. 01-0470-FT

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

CITY OF EAU CLAIRE,

PLAINTIFF-RESPONDENT,

V.

KIMBERLY M. LANGENFELD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

¶1 CANE, C.J.[1] Kimberly Langenfeld appeals her conviction for operating a motor vehicle while under the influence of an intoxicant (OWI). The sole issue on appeal is whether the arresting officer had reasonable suspicion to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2), and is an expedited appeal under WIS. STAT. RULE 809.17. All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

detain Langenfeld in order to perform field sobriety tests and other further investigation prior to arresting her for OWI. This court concludes that because the arresting officer had a reasonable basis to suspect that Langenfeld had been operating a motor vehicle while intoxicated, the trial court correctly denied her motion to suppress. The conviction is affirmed.

¶2 The underlying facts are undisputed. The Eau Claire Police Department dispatched officer John Birtzer at 1:52 a.m. to investigate a complaint of an intoxicated person acting disorderly behind a resident's home. Birtzer arrived at the home within minutes of the resident's call and observed an unattended car wedged on top of a concrete barrier with its motor still running. The car doors were locked. The complaining resident informed Birtzer that Langenfeld had abandoned the car and indicated that Langenfeld was walking toward a nearby gas station.

¶3 Upon arriving at the gas station, Birtzer observed Langenfeld, who requested his assistance because she was locked out of her car. In response to her request, Birtzer gave her a ride back to her car. During this initial contact with Langenfeld, Birtzer noted that her eyes were red and bloodshot, her speech was slurred and that she staggered slightly when she walked. Based on these observations, Birtzer suspected that Langenfeld had been driving her car while intoxicated and requested that she perform field sobriety tests. Subsequently, Birtzer arrested Langenfeld for operating a vehicle while intoxicated and with a prohibited alcohol concentration.

¶4 Before trial, the court denied Langenfeld's motion to suppress the evidence derived from the field sobriety tests. After a stipulated trial, the court found Langenfeld guilty of OWI. Langenfeld appeals, contending that Birtzer did

not have a reasonable suspicion to detain her for the field sobriety tests and, therefore, the trial court erred by denying her motion to suppress.

¶5 When this court reviews a motion to suppress evidence, it will uphold the trial court's findings of fact unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2). However, the application of constitutional principles to the facts is a question of law that this court decides without deference to the trial court's decision. *See* ***State v. Fields***, 2000 WI App 218, ¶ 9, 239 Wis. 2d 38, 619 N.W.2d 279.

¶6 The Fourth Amendment protects "[t]he right of the people ... against unreasonable searches and seizures." UNITED STATES CONST. AMEND. IV. In ***Terry v. Ohio***, 392 U.S. 1, 22 (1968), the United States Supreme Court recognized that although an investigative stop is technically a "seizure" under the Fourth Amendment, a police officer may, under the appropriate circumstances, detain a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest.

¶7 In ***State v. Chambers***, 55 Wis. 2d 289, 294, 198 N.W.2d 377 (1972), our Wisconsin Supreme Court adopted the United States Supreme Court holding that a police officer may "in appropriate circumstances" temporarily stop an individual when, at the time of the stop, he or she possesses specific and articulable facts which would warrant a reasonable belief that criminal activity was afoot. Our legislature codified the constitutional standard established in ***Terry*** in WIS. STAT. § 968.24 (1993-94). *See* ***State v. Jackson***, 147 Wis. 2d 824, 830-31, 434 N.W.2d 386 (1989) (Section 968.24 is the "statutory expression" of the ***Terry*** requirements, and in interpreting the scope of the statute, resort must be made to ***Terry*** and the cases following it.).

¶8 The fundamental focus of the Fourth Amendment, and WIS. STAT. § 968.24, is reasonableness. ***State v. Anderson***, 155 Wis. 2d 77, 83, 454 N.W.2d 763 (1990). The test to be used for determining whether an investigatory stop and detention was reasonable is an objective one, focusing on the reasonableness of the officer's intrusion into the defendant's freedom of movement:

> Law enforcement officers may only infringe on the individual's interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed [or was committing or is about to commit] a crime. An "inchoate and unparticularized suspicion or 'hunch' ... will not suffice."

State v. Waldner, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996).

¶9 The question of what constitutes reasonableness is a common sense test: What would a reasonable police officer reasonably suspect in light of his or her training and experience? *See* ***Anderson***, 155 Wis. 2d at 83-84. This common sense approach strikes a balance between individual privacy and the societal interest in allowing the police a reasonable scope of action in discharging their responsibility.

¶10 The societal interest involved is, of course, that of effective crime prevention and detection consistent with constitutional means. It is this interest that 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. *See* ***Waldner***, 206 Wis. 2d at 56.

¶11 Here, Birtzer testified that Langenfeld exhibited red eyes, slurred speech and unsteady balance. Langenfeld notes that this information was not in

the officer's written report. Although this fact may have impacted Birtzer's credibility as a witness, the trial court as the fact finder and arbiter of witness credibility was free to accept Birtzer's testimony. Based on the record, this court cannot conclude the trial court's acceptance of Birtzer's testimony was clearly erroneous and, therefore, must accept the court's factual findings. *See* WIS. STAT. § 805.17(2).

¶12 Applying the appropriate constitutional standards, this court concludes that Birtzer's observation of Langenfeld during the consensual encounter raised an articulable and reasonable suspicion that Langenfeld had violated the law. Her abandoned car had obviously been driven recently and in an erratic manner, causing it to become lodged on the concrete barrier. Langenfeld identified herself as the owner of the car. Further, there was evidence that she had driven under the influence of an intoxicant because she had bloodshot eyes, slurred speech and an unstable gait. Based on these facts as accepted by the trial court, Birtzer had the requisite reasonable suspicion to detain Langenfeld in order to perform field sobriety tests and other further investigation prior to arresting her for OWI. The trial court correctly denied Langenfeld's motion to suppress.

By the Court.—Judgment affirmed.

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