

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 21, 2001

Cornelia G. Clark
Clerk of Court of Appeals

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. 01-0474

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

COUNTY OF DUNN,

PLAINTIFF-RESPONDENT,

V.

GERALD J. TRAINOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Gerald Trainor appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OWI), contrary to WIS. STAT. § 346.63(1)(a). The circuit court found Trainor guilty of these charges after it denied his motion to suppress evidence gathered by police after his arrest. The

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

sole issue on appeal is whether the arresting officer had probable cause to arrest Trainor for OWI. Because the evidence is sufficient to support the necessary probable cause to arrest Trainor for OWI, the judgment is affirmed.

¶2 The facts are not in dispute. Deputy Scott McRoberts of the Dunn County Sheriff's Department was on a routine patrol in a fully marked squad car equipped with red and blue emergency lights on top of the vehicle. As McRoberts was driving eastbound on a state highway, he used radar to clock Trainor's vehicle traveling toward McRoberts from the opposite direction at eighty miles per hour. McRoberts turned on his emergency lights before Trainor's car passed him. McRoberts then turned his squad car around and pursued Trainor. Instead of stopping or slowing down, Trainor, the undisputed driver of the vehicle, accelerated his speed. At one point, Trainor drove so fast that McRoberts, traveling at 110 miles per hour, could not gain on Trainor. After pursuing Trainor, McRoberts observed Trainor's car suddenly slow down, make an abrupt left turn and drive down into a ditch. There was no driveway or other road near the ditch.

¶3 Suspicious and concerned that Trainor might be hiding something or might present a danger, McRoberts yelled numerous times for Trainor to get out of the vehicle. Because McRoberts was concerned for his own safety, he drew his gun. However, Trainor continued to sit in the vehicle without making an effort to get out. Finally, McRoberts went to the door of Trainor's car, opened it and ordered him to get out. McRoberts observed Trainor use the door to pull himself slowly from the car. After refusing McRoberts' request that he lie down on the ground, Trainor took a few steps toward the officer, staggered and then nearly fell down.

¶4 When Trainor continued to refuse McRoberts' order to lay face down on the ground, McRoberts forced him to the ground and placed him in handcuffs. At this point, McRoberts identified Trainor, then had him roll over, get up and lean on his car. During this time, McRoberts observed that Trainor had bloodshot eyes, slurred speech and a strong odor of alcohol on his breath. Trainor also refused to hold his head still when the officer attempted to administer a horizontal gaze nystagmus test and refused to do any field sobriety tests while commenting, "I did your test." At this point, McRoberts arrested Trainor for OWI. Ultimately, a chemical test showed that Trainor's blood alcohol content was .209 grams per 100 milliliters.

¶5 Trainor moved the trial court to suppress the evidence on the grounds that McRoberts did not have probable cause to arrest him for OWI. The trial court denied the motion, finding that McRoberts had probable cause to place Trainor under arrest for OWI. After a stipulated trial, the court convicted Trainor.

¶6 Trainor's sole challenge on appeal is his contention that McRoberts did not have probable cause to arrest him for OWI. Trainor contends that the time of the arrest occurred when the officer placed him in handcuffs while lying on the ground and that at that time, the evidence was insufficient to establish probable cause for OWI.

¶7 In reviewing a denial of a motion to suppress evidence, this court will uphold the circuit court's findings of fact unless they are clearly erroneous. *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). Whether a stop or detention meets statutory and constitutional standards, however, is a question of law subject to de novo review. *Id.*

¶8 There is no question that a police officer may stop a vehicle when he or she reasonably believes the driver is violating a traffic law; and, once stopped, the driver may be asked questions reasonably related to the nature of the stop—including his or her destination and purpose. *United States v. Johnson*, 58 F.3d 356, 357 (8th Cir. 1995).

¶9 Such a stop and detention is constitutionally permissible if the officer has an "articulable suspicion that the person has committed or is about to commit [an offense]." *State v. Goyer*, 157 Wis. 2d 532, 536, 460 N.W.2d 424 (Ct. App. 1990). The key is the "reasonable relationship" between the detention and the reasons for which the stop was made. If an "articulable suspicion" exists, the person may be temporarily stopped and detained to allow the officer to "investigate the circumstances that provoke suspicion," as long as "[t]he stop and inquiry [are] reasonably related in scope to the justification for their initiation." *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (internal quotation marks omitted).

¶10 If, during a valid traffic stop, as is the case here, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun. The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop.

¶11 The test for probable cause has been repeated numerous times in appellate opinions and, suffice it to say, we examine the totality of facts and circumstances faced by the officer at the time of arrest to determine whether a

reasonable police officer would reasonably believe that the suspect had committed an offense. *See Dane County v. Sharpee*, 154 Wis. 2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990).

¶12 Here, as the State's brief observes, McRoberts had a reasonable basis to arrest Trainor for speeding and eluding or fleeing an officer. Trainor does not dispute that McRoberts had probable cause to arrest him for the aggravated traffic violations. This court agrees with Trainor that he was arrested when placed on the ground and handcuffed. However, any observations made by McRoberts following this arrest may also be used in determining whether the officer had cause to later arrest Trainor for OWI. McRoberts observed Trainor driving his car at a high rate of speed; failing to comply with the squad car's emergency police lights; continuing high speed driving; abruptly turning into a ditch; failing to comply with McRoberts' demands to exit the vehicle; slowly pulling himself out of the car while using the door to pull himself up; staggering and nearly falling down as he approached the officer; exhibiting bloodshot eyes, slurred speech, strong odor of alcohol on his breath; and displaying an uncooperative attitude for the field sobriety tests. These observations are more than ample to give any reasonable police officer cause to conclude that Trainor had been operating his motor vehicle while under the influence of an intoxicant. Therefore, the judgment is affirmed.

By the Court.—Judgment affirmed.

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

