

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 2, 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. 01-1176-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

HERMAN LUNDGREN,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Dunn County: WILLIAM STEWART, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Herman Lundgren appeals his judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, third offense, contrary to WIS. STAT. § 346.63(1)(a). Lundgren argues

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f).

that the officer did not have reasonable suspicion to stop him. Because there was reasonable suspicion, we affirm.

BACKGROUND

¶2 At approximately 12:25 a.m. on Friday, May 5, 2000, Menominee police officer David Pellett observed a vehicle parked on a city street in downtown Menominee. The vehicle was parked a short distance from the Den tavern. Pellett recognized the car as belonging to Lundgren. Pellett knew Lundgren because he had arrested him for OWI before.

¶3 Pellet and another officer requested dispatch to run a registration check on the vehicle. Dispatch advised the officers that the vehicle did belong to Lundgren and that he held an occupational license. Pellett was informed that restrictions on the license permitted Lundgren to operate a vehicle on Fridays from midnight to 2 a.m. However, Lundgren was only permitted to drive for his job as a forklift operator with Wal-Mart Distribution Center, for farm work, to attend Driver's Safety Plan, for homemaker duties, and to attend church. Absolute sobriety was also required.

¶4 Shortly after receiving the information, Pellett observed Lundgren walking toward his car from the general area of the Den tavern. Pellett observed Lundgren get in his car and drive away. Pellett then stopped the vehicle because he suspected Lundgren was violating the restrictions on his occupational license.

¶5 Lundgren challenged the traffic stop and moved to suppress the evidence on the grounds that Pellett did not have reasonable suspicion to stop him. The circuit court denied the motion. Lundgren subsequently pled no contest. This appeal followed.

STANDARD OF REVIEW

¶6 When reviewing a circuit court's order denying the suppression of evidence, we will not reverse the circuit court's factual findings unless they are clearly erroneous. *State v. Roberts*, 196 Wis. 2d 445, 452, 538 N.W.2d 825 (Ct. App. 1995). However, whether the trial court's findings of fact pass statutory or constitutional muster is a question of law that this court reviews independently. *Id.*

DISCUSSION

¶7 Lundgren argues that Pellett singled him out on a hunch. He contends that Pellett did not have reasonable suspicion for a traffic stop.

¶8 The fundamental focus of the Fourth Amendment is reasonableness. *State v. Waldner*, 206 Wis. 2d 51, 55, 556 N.W.2d 681 (1996). Determination of reasonableness depends on the totality of the circumstances. *Id.* at 53. For purposes of investigating possible criminal behavior, a police officer does not need probable cause to stop and detain a person. *Id.* at 55. The test is an objective one and focuses on the reasonableness of the officer's actions. *Id.* at 56. A police officer may stop a person if the officer "possesses specific and articulable facts which would warrant a reasonable belief that criminal activity was afoot." *Id.* at 55.

¶9 We conclude that under the totality of the circumstances at the time of the stop, specific and articulable facts permitted Pellett to reasonably suspect that Lundgren was violating the restrictions of his occupational license. Pellett knew that Lundgren held an occupational license that permitted him to drive between midnight and 2 a.m. Lundgren was restricted to operating a vehicle for

his job at Wal-Mart, for farm work, homemaker duties, to attend Driver's Safety Plan, to attend church. Absolute sobriety was required.

¶10 Pellett saw Lundgren walking from the general area of the Den tavern. Pellett knew of no other businesses, other than taverns, open in the area at that hour. Specifically, he knew the location was not near Wal-Mart, any farms, churches or places where driver safety plan meetings would be held. Based on this information, when Lundgren drove away in his vehicle, Pellett reasonably suspected Lundgren was violating the restrictions on his occupational license.

¶11 Lundgren argues that the facts here are similar to those in *State v. Fields*, 2000 WI App 218, 239 Wis. 2d 38, 619 N.W.2d 279. In *Fields*, a police officer observed a vehicle wait at a stop sign for five to ten seconds, apparently waiting for the squad car to leave first. The officer inferred that the driver was intoxicated and did not want to be observed by the police. We reversed the trial court, which had found that reasonable suspicion existed. We held that the investigatory stop was based on a hunch. *Id.* at ¶23.

¶12 Here, the evidence shows that Pellet relied on more than a hunch. Pellett observed Lundgren coming from an area that was not logically related to any of the purposes permitted for the occupational license at that time of night. In addition, Lundgren appeared to be walking from the general direction of a bar. While there was no evidence that Lundgren had consumed alcohol, there was no other type of business open in the vicinity.

¶13 Lundgren was not stopped at random or on a hunch. He was stopped because a reasonable officer in Pellett's position would have suspected that Lundgren was violating the restrictions on his occupational license. Lundgren had no right to drive his vehicle except for the purposes enumerated on his

occupational license. What Pellett observed created much more than a hunch. Pellett had specific and articulable facts to justify reasonable suspicion that Lundgren was violating one or more of the restrictions. Therefore, based on the totality of the circumstances, we conclude that Pellett validly stopped Lundgren's car.

By the Court.—Judgment and order affirmed.

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

