

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 5, 2002**

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.

**Appeal No. 01-1428-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 00-CT-412**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**LARRY A. CLAIRMORE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Marathon County: VINCENT K. HOWARD, Judge. *Affirmed.*

¶1 CANE, C.J.<sup>1</sup> Larry Clairmore appeals from a judgment convicting him of operating a motor vehicle while under the influence of an intoxicant, (OWI), second offense, in violation of WIS. STAT. § 346.63(1)(a), and an order

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<sup>1</sup> This opinion is decided by one judge pursuant to WIS. STAT. § 752.31(2). All statutory references are to the 1999-2000 version.

denying his motion to suppress. Clairmore contends that the arresting officer lacked both reasonable suspicion to initially stop him and probable cause to arrest him for OWI. The judgment and order are affirmed.

### ***BACKGROUND***

¶2 While on routine patrol and parked in a church parking lot, deputy James Armstrong observed two motorcycles pass him. Because the motorcycles appeared to be traveling faster than the posted speed limit, Armstrong began to follow and pace the motorcycles. However, before Armstrong was able to establish a steady pace to determine the speed of the motorcycles, he observed the lead motorcycle driven by Clairmore weaving excessively in its own traffic lane. Armstrong observed the lead motorcycle cross the fog line numerous times and when it nearly struck the guardrail of a bridge, he immediately activated the squad car's emergency lights and siren while positioning his squad car directly behind Clairmore. Nevertheless, Clairmore continued to drive for approximately one to one and a half miles before stopping. Armstrong indicated that the initial reason for the stop was his concern for Clairmore's safety after he had observed him nearly strike the guardrail.

¶3 After the stop, Clairmore initially refused to answer any of Armstrong's questions. Instead, when asked questions, he merely shrugged his shoulders, used facial expressions and nodded. Eventually, Clairmore answered that he was coming from "Stratford Fun Days." At that time Armstrong detected an odor of intoxicants coming from Clairmore's breath. Clairmore then submitted to three field sobriety tests, failing each test. Additionally, his preliminary breath test showed a breath alcohol content of .11%. At this point, Armstrong placed Clairmore under arrest for OWI.

¶4 At the circuit court, Clairmore moved to suppress the evidence gathered after Armstrong stopped him. He argued, as he does now, that the arresting officer lacked a reasonable suspicion for the initial stop and later lacked probable cause to make an arrest for OWI. Clairmore's premise is that Armstrong made the stop under the community caretaker function and the facts do not support a stop under this basis. Alternatively, he argues that even if the stop was not made under the community caretaker function, there were no articulable facts to establish a reasonable suspicion for the initial stop or probable cause for the arrest. The trial court rejected Clairmore's arguments and denied his motion to suppress. Subsequently, Clairmore entered a no contest plea to OWI, second offense. He now appeals the judgment and order.

### ***STANDARD OF REVIEW***

¶5 When reviewing a trial court's ruling on a motion to suppress, this court will uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis.2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, the application of constitutional and statutory principles to these facts is a question of law this court reviews de novo. *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

#### ***A. Initial Stop***

¶6 Clairmore suggests that because Armstrong's initial reason for making the stop was under his community caretaker function, that ceased when he made no inquiries about Clairmore's safety, but rather focused on whether he had been operating a motor vehicle while under the influence of an intoxicant. Clairmore reasons that there was no basis to continue the stop because Armstrong

had no reasonable suspicion that he had been operating a motor vehicle while under the influence of an intoxicant. This court disagrees.

¶7 For an investigatory stop to be valid, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). This court must consider whether all the specific and articulable facts, taken together with the rational inferences from those facts, amount to reasonable suspicion. *State v. Dunn*, 158 Wis. 2d 138, 146, 462 N.W.2d 538 (Ct. App. 1990). If any reasonable inference of wrongful conduct can objectively be discerned, officers have the right to temporarily detain the individual for purposes of inquiry. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶8 Reasonableness is measured against an objective standard taking into consideration the totality of the circumstances. *Richardson*, 156 Wis. 2d at 139. 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, 831, 434 N.W.2d 386 (1989). Thus, courts view the circumstances for the temporary stop from an objective viewpoint, not from the officer's subjective beliefs.

¶9 Here, there are ample facts supporting the initial stop. Armstrong first observed Clairmore operating a motorcycle at what appeared to be an excessive rate of speed. While attempting to obtain pace speed measurements, Armstrong observed Clairmore's motorcycle weaving excessively and crossing the fog line numerous times. Importantly, he then observed Clairmore's motorcycle

nearly strike a bridge guardrail. Even if Armstrong was concerned for Clairmore's safety, it was not his sole purpose for stopping Clairmore. As the circuit court found, it was Clairmore's erratic driving behavior that constituted a sufficient legal basis for the stop. Although it was not conclusive evidence that Clairmore was driving while under the influence of an intoxicant, it was sufficient to allow a reasonable police officer to reasonably suspect, in light of his experience and training, that some kind of criminal activity was taking place.

***B. Probable Cause for Arrest***

¶10 Because there was a sufficient basis to make the initial stop, the next issue becomes whether Armstrong had probable cause to arrest Clairmore for OWI. Every warrantless arrest must be supported by probable cause. ***Molina v. State***, 53 Wis. 2d 662, 670, 193 N.W.2d 874 (1972); U.S. CONST. AMEND. IV; WIS. CONST. art. I, § 11. A police officer has probable cause to arrest when the totality of the circumstances within that officer's knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant probably committed a crime. ***State v. Koch***, 175 Wis. 2d 684, 701, 499 N.W.2d 152 (1993). This is a practical test based on "considerations of everyday life on which reasonable and prudent [people], not legal technicians, act." ***State v. Drogsvold***, 104 Wis. 2d 247, 254, 311 N.W.2d 243 (Ct. App. 1981) (citation omitted). The objective facts before the police officer need only lead to the conclusion that guilt is more than a possibility. ***Richardson***, 156 Wis. 2d at 148.

¶11 Under the circumstances, Armstrong had sufficient facts to lead a reasonable police officer to believe that Clairmore had been operating a motor vehicle while under the influence of an intoxicant. He observed Clairmore weaving excessively in his own traffic lane, crossing the fog line numerous times,

and almost driving into a bridge's guardrail. Additionally, Clairmore took somewhere between one mile and one and a half miles before stopping while Armstrong was directly behind him with his emergency lights and siren operating. Those facts, coupled with Clairmore's breath emanating an odor of intoxicants, his failing three field sobriety tests and a preliminary breath test showing his blood alcohol content at .11%, were sufficient to constitute specific and articulable facts for a reasonable police officer to believe Clairmore was operating a motor vehicle while under the influence of an intoxicant.

¶12 Thus, the circuit court correctly concluded that Armstrong not only had a reasonable suspicion to make the initial stop, but also after the stop gathered additional facts sufficient to support probable cause to arrest Clairmore for OWI. Therefore, this court affirms the order denying Clairmore's motion to suppress and the judgment convicting Clairmore of OWI, second offense.

*By the Court.*—Judgment and order affirmed.

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