COURT OF APPEALS
DECISION
DATED AND FILED

July 3, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-2285

Cir. Ct. Nos. 00-TR-9876
00-TR-9877

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADAM S. PAWELEK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: RICHARD T. WERNER, Judge. *Affirmed.*

¶1 LUNDSTEN, J.[1] Adam S. Pawelek appeals a judgment of the circuit court finding him guilty of operating a motor vehicle while intoxicated, as a

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

first offense. Pawelek contends the circuit court erred in denying his motion to suppress evidence. For the following reasons, we affirm.

FACTS

¶2 At about 11:00 p.m. on June 26, 2000, a police officer observed a vehicle make a u-turn in an area that had an unobstructed sign prohibiting u-turns. The officer signaled the car to pull over. The driver of the car was identified as Adam Pawelek. The officer informed Pawelek he would receive a ticket for the illegal u-turn, and returned to his squad car to write the ticket. Upon returning to Pawelek's car, the officer smelled a mild odor of intoxicants coming from the vehicle. Pawelek was traveling alone in his car. In response to the officer's questions, Pawelek admitted he had a couple of beers at lunch, which lasted from noon until 2:00 p.m. Pawelek asserted he had no alcoholic beverages between 2:00 p.m. and 11:00 p.m., and that he was tired and looking for a hotel room. The officer asked Pawelek to step out of the car to perform several field sobriety tests. Before administering the tests, the officer patted Pawelek down for weapons, finding none. Pawelek failed all three sobriety tests.

¶3 Pawelek was charged with operating a motor vehicle while intoxicated. He moved to have the evidence obtained during the traffic stop suppressed. The trial court denied his motion to suppress, and entered judgment finding Pawelek guilty of operating a motor vehicle while intoxicated, operating a motor vehicle with a prohibited alcohol content, and making an illegal u-turn. This appeal followed.

DISCUSSION

¶4 As we explained in ***State v. Fields***, 2000 WI App 218, 239 Wis. 2d 38, 619 N.W.2d 279:

> When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. However, the application of constitutional principles to the facts is a question of law we decide without deference to the circuit court's decision.

Id. at ¶9 (citations omitted).

¶5 This case involves a detention by a police officer, which is a seizure under the Fourth Amendment of the United States Constitution. ***State v. Young***, 212 Wis. 2d 417, 423, 569 N.W.2d 84 (Ct. App. 1997). The seizure must comport with the standards imposed by the Fourth Amendment, which require that the seizure be reasonable. ***Terry v. Ohio***, 392 U.S. 1, 20-22 (1968). A law enforcement officer may lawfully conduct an investigatory stop if, based upon the officer's experience, he or she reasonably suspects "'that criminal activity may be afoot.'" ***State v. Williams***, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106 (quoting ***Terry***, 392 U.S. at 30). Reasonable suspicion is dependent on whether the officer's suspicion was grounded in specific articulable facts, and reasonable inferences from those facts, that an individual was committing a crime. ***State v. Waldner***, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996). The scope of a justified traffic stop may be expanded by the discovery of new information.

> If, during a valid traffic stop, 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.

State v. Betow, 226 Wis. 2d 90, 94-95, 593 N.W.2d 499 (Ct. App. 1999).

¶6 This case contains no disputed facts. The only question presented for review is whether the officer had articulable facts that justified expanding the scope of the investigation to include detaining Pawelek for sobriety tests. A review of the pertinent facts is helpful to our discussion.[2]

¶7 The officer observed Pawelek make an illegal u-turn. The officer, during the course of a lawful traffic stop, detected a mild odor of intoxicants. Pawelek admitted to drinking a couple of beers earlier in the day, but said he had no alcoholic beverages to drink in the last nine hours. Based on this information, the officer administered several field sobriety tests to Pawelek.

¶8 We conclude there are articulable facts constituting reasonable suspicion that Pawelek was driving under the influence of an intoxicant. Pawelek asserts that the officer smelled alcohol because Pawelek had some beer for lunch. That is one reasonable inference that could be drawn from the facts. However, it is not the only reasonable inference. It is also reasonable to infer that Pawelek would not smell of intoxicants nine hours after consuming "a couple of beers" because of the long time span and the likelihood that Pawelek consumed a meal during this time span and, therefore, that Pawelek was lying about either the quantity or recency of the alcohol he consumed. If Pawelek was lying, then the reasonable inference is that he was trying to cover up the fact that he drank more

[2] Pawelek argues that the officer frisked him without justification. The State does not argue this point. We assume, without deciding, that the frisk was unlawful. However, the officer obtained no evidence as a result of the frisk and, thus, there is no evidence to suppress.

recently or more heavily. Pawelek argues that the reason he made the u-turn was because he was from out of town, he was tired, and he was looking for a hotel. Again, this is not the only inference that could be drawn from the facts. A reasonable officer could infer that Pawelek did not see the unobstructed sign prohibiting u-turns because his driving ability was affected by alcohol consumption. Taken together, the illegal u-turn, the late hour, the mild odor of alcohol, and Pawelek's questionable assertion regarding the cause of the odor were enough to support a reasonable suspicion that Pawelek was driving under the influence. We realize that the officer did not articulate all of these reasons. However, we are not concerned with the subjective mindset of the officer, but with whether the facts known to the officer constitute reasonable suspicion. *See* ***State v. Kiekhefer***, 212 Wis. 2d 460, 484, 569 N.W.2d 316 (Ct. App. 1997); *cf.* ***Waldner***, 206 Wis. 2d at 53, 57-58 (reasonable suspicion existed where defendant drove slowly, stopped at intersection, accelerated quickly, parked, dumped out liquid and ice, and walked away when police approached).

¶9 None of the cases cited by Pawelek are directly analogous to this case. Reasonable suspicion need only be one reasonable interpretation of the facts. It does not have to be more likely than not. Even probable cause does not require a more likely than not standard. *See* ***State v. Mitchell***, 167 Wis. 2d 672, 681-82, 482 N.W.2d 364 (1992). Reasonable suspicion does not require that a police officer rule out innocent explanations for a defendant's conduct. ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶10 For the foregoing reasons, we affirm.

By the Court.—Judgment affirmed.

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