

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 27, 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. 01-3388-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CT-146

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROLLIN B. KOVARS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County:
JAMES P. DALEY, Judge. *Affirmed.*

¶1 LUNDSTEN, J.¹ Rollin B. Kovars appeals a judgment of the circuit court finding him guilty of operating a motor vehicle while intoxicated, second

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.

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

FACTS

¶2 On January 15, 2001, at approximately 12:36 a.m., a Milton police officer received a dispatch advising him of a vehicle in a ditch. The officer went to the scene, where he observed a black Ford truck in the ditch. There was no one in or near the truck at that time. Upon learning from dispatch who the owner of the truck was, the officer went to the owner's residence, which was located about a block from the accident. At that residence, the officer found the driver of the truck, Rollin Kovars. Kovars told the officer that he was driving home that night and, because of the slippery roads, the truck slid in the ditch. Kovars appeared to be drunk, and admitted he'd been drinking. The officer advised Kovars to leave the truck in the ditch and wait until he was sober to have the truck pulled out and drive it home.

¶3 Approximately thirty-five to forty minutes later, the officer observed a tow truck headed in the direction of where the Ford truck was stuck in the ditch. The officer stopped the tow truck and learned that it had been dispatched to pull a truck out of the ditch. After following the tow truck to the site, the officer parked and watched from a distance of 100 to 200 yards. Two individuals met the tow truck driver; the officer could not identify either individual. After the tow truck pulled the Ford truck from the ditch, the two individuals entered the truck and drove away. The officer could not see well enough to identify either person, and did not observe any erratic driving. Almost as soon as the truck started moving, the officer signaled it to pull over. When the officer approached the truck, he saw

that Kovars was the driver. Kovars submitted to field sobriety tests, which he failed, and the officer arrested Kovars for driving while intoxicated.

¶4 Kovars moved to suppress all evidence obtained as a result of the traffic stop, arguing that the officer did not have a reasonable suspicion of criminal activity to justify the investigatory stop. The circuit court denied the motion to suppress.

DISCUSSION

¶5 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).

¶6 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 v. Ohio*, 392 U.S. 1, 30 (1968)). 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). An officer is not required to rule out the possibility of innocent behavior. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶7 Kovars argues that this case is similar to *Fields*, 2000 WI App 218. In *Fields*, a police officer observed a car pause at a stop sign for about twenty seconds. The officer pulled the car over without any other reason to suspect that a crime had been committed. We held that a slightly longer than normal stop at a stop sign, with nothing more, did not rise to the level of “specific and articulable facts” that *Fields* had committed an unlawful act. *Id.* at ¶23. Kovars argues that, as in *Fields*, the officer here only had a hunch that crime was afoot because all the officer knew was that two unidentified people arranged to have a truck pulled out of a ditch and then drove the truck away. Absent any poor driving, the officer had no justification for conducting an investigatory stop. We disagree.

¶8 The officer in this case knew much more than the officer in *Fields*. The officer here knew that Kovars lived at the same residence as the truck owner and had been driving the vehicle earlier. He knew this residence was only a block away from the scene of the accident. It is reasonable to infer that Kovars owned the truck. Moreover, typically the person who drives a vehicle into a ditch or the owner of the vehicle is the person who calls a tow truck to get the vehicle out. Moreover, the officer had reason to believe Kovars was under the influence of intoxicants. When the officer made contact with Kovars earlier in the night, Kovars admitted he had been drinking. In addition, Kovars emitted an odor of intoxicants, had difficulty standing and maintaining his balance, and had jerky and bloodshot eyes.

¶9 The fact that two persons entered the vehicle does not erase the officer’s reasonable suspicion. Whether Kovars might have been a passenger is not relevant to our inquiry, because reasonable suspicion does not require an officer to rule out possible innocent behavior. The officer only had to have reason to suspect that one of the individuals entering the vehicle was intoxicated.

¶10 We conclude that reasonable suspicion supported the traffic stop. Therefore, the circuit court correctly denied the motion to suppress.

By the Court.—Judgment affirmed.

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

