COURT OF APPEALS
DECISION
DATED AND FILED

October 1, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 02-0518-CR **Cir. Ct. No. 01 CT 2910**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DALE A. COPPOCK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: WILLIAM W. BRASH, Judge. *Affirmed*.

¶1 SCHUDSON, J.[1] Dale A. Coppock appeals from the judgment of conviction for operating a motor vehicle while under the influence of an

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f), (3) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

intoxicant, second offense, following his guilty plea. He argues that the trial court erred in denying his "Motion to Suppress Statements and Evidence due to Unlawful Seizure, Detention and Arrest."[2] This court affirms.

¶2 In the early morning of March 9, 2001, City of West Allis Police Officer Brian Saftig stopped and arrested Coppock for operating while intoxicated. At the May 30, 2001 hearing on Coppock's suppression motion, the State presented testimony from Officer Saftig, and the defense presented testimony from Randy Larson, a citizen who witnessed some of the events preceding the arrest. This appeal revolves around the different accounts Saftig and Larson provided, and ultimately centers on what Coppock asserts was the trial court's failure to make a necessary and correct credibility call between them.

¶3 Officer Saftig described how the incident began. "I was initially traveling eastbound on West Greenfield Avenue … when I noticed a large, full-size van pull out almost directly in front of me, almost causing me to strike it …." Officer Saftig followed the van onto 84th Street and observed it "traveling almost twice the speed limit" and "weaving noticeably." He then pulled-over the van and observed that Coppock, the driver, exhibited several characteristics consistent with intoxication. Following Coppock's unsuccessful performance of various field sobriety tests, Officer Saftig arrested him.

¶4 Mr. Larson testified that when he was walking home from work on March 9, he saw Coppock enter his van on Greenfield Avenue and pull away from

[2] Coppock's motion was heard by Judge Michael B. Brennan, who rendered the decision at issue in this appeal. Coppock's guilty plea was before Judge Raymond E. Gieringer and sentencing was before Judge William W. Brash, who entered the judgment.

the curb. Larson also said, however, that no police car was behind Coppock's van when it pulled away; that the police car began following the van a short time thereafter. Larson did not observe the van or police car after they turned onto 84th Street.

¶5 Presenting its findings and conclusions, and recognizing the significance of the factual dispute, the trial court commented: "If Mr. Larson's observations are correct and become the findings of the Court, the officer would not be testifying truthfully as to his initial encounter with the defendant. That would impugn the officer's testimony with regard to each of his further pieces of testimony." While noting, however, that "Mr. Larson doesn't have any motive to fabricate any story," the court concluded that his version was "just not a reasonable explanation of the events," and that Officer Saftig "testified credibly."

¶6 Detailing the accounts of each witness and trying to make sense of each possible scenario, the trial court elaborated that although it was "not necessarily impugning Mr. Larson's credibility," it was finding "the explanation offered by the officer to be more reasonable." The court concluded: "Overall, in terms of assessment of credibility, the Court does not find necessarily Officer Saftig to be more credible than Mr. Larson, but certainly Officer Saftig's recitation of the events is more reasonable in that it hangs together."

¶7 Coppock concedes that if Officer Saftig's version of the events can be believed, then Saftig had a lawful basis to stop and arrest him. He argues, however, that "the reasonableness of the stop depends entirely on the credibility of the officer's story—an issue that was simply not resolved by the circuit court." Thus, he continues, the court "erroneously exercised its discretion when it declined to make a finding as to the relative credibility of the witnesses but

credited the police officer's version of events." Finally, Coppock maintains that even if the trial court's comments can be read to resolve the credibility issue in favor of Officer Saftig, "[t]he court's ultimate conclusion that although the witnesses were equally credible, the Larson version was inherently unreasonable is unsupported by the record and is clearly erroneous." This court disagrees.

¶8 A traffic stop constitutes a seizure triggering Fourth Amendment protection. ***State v. Griffin***, 183 Wis. 2d 327, 330, 515 N.W.2d 535 (Ct. App. 1994). To satisfy Fourth Amendment standards, a stop must be based on reasonable suspicion grounded in "specific and articulable facts." *See* ***Terry v. Ohio***, 392 U.S. 1, 21 (1968); WIS. STAT. § 968.24.

¶9 The determination of the credibility of witnesses is within the province of the fact-finder. ***Wheeler v. State***, 87 Wis. 2d 626, 634, 275 N.W.2d 651 (1979). Where witnesses' accounts are inconsistent, it is the fact-finder's duty to determine their relative weight and credibility. ***State v. Daniels***, 117 Wis. 2d 9, 17, 343 N.W.2d 411 (Ct. App. 1983). Where the evidence can support different inferences, the fact-finder is free to choose among them and, "[w]hen faced with the record of historical facts which supports more than one inference, an appellate court must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law." ***State v. Poellinger***, 153 Wis. 2d 493, 506, 451 N.W.2d 752 (1990). On review, a trial court's factual findings will be upheld unless they are clearly erroneous. WIS. STAT. § 805.17(2).

¶10 Here, contrary to Coppock's contention, the trial court made a credibility call. While it did so in a somewhat tentative fashion, and with respectful consideration for what it seemed to view as the apparent honesty of Mr.

Larson, the trial court found Officer Saftig's account "more reasonable" in light of all the evidence. That is, the court did not deem *Mr. Larson* incredible; rather it found Mr. Larson's *account* less reasonable than Officer Saftig's.

¶11 That was within the trial court's province. And here, the trial court articulated a reasonable explanation, grounded in the facts, for its findings and conclusion. While other inferences and interpretations, including that proposed by Coppock, were plausible, nothing in Officer Saftig's testimony, on which the trial court based its inferences and conclusion, was "incredible as a matter of law." *See* ***Poellinger***, 153 Wis. 2d at 506.

By the Court.—Judgment affirmed.

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