

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 3, 2012**

Diane M. Fremgen  
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. 2011AP1371**

**Cir. Ct. No. 2010TR2383**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**COUNTY OF WAUKESHA,**

**PLAINTIFF-RESPONDENT,**

**V.**

**THOMAS C. GROSHEK,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Waukesha County:  
MARK D. GUNDRUM, Judge. *Affirmed.*

¶1 SHERMAN, J.<sup>1</sup> Thomas Groshek appeals a judgment convicting him of operating a motor vehicle under the influence of an intoxicant (OWI), first

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

offense. Groshek contends that the arresting officer lacked reasonable suspicion to justify the investigative stop of his vehicle. We affirm.

### **BACKGROUND**

¶2 On April 3, 2010, at approximately 1:37 a.m., Deputy Stephen Smith, a deputy with the Waukesha County Sheriff's Department, was dispatched to investigate an anonymous tip that a single motorcycle had been involved in an accident in the area of Highway 83 and Depot Road in Waukesha County. Prior to arriving at the scene, Smith was informed by dispatch that the motorcycle had been joined by a second motorcycle, and that both had left the scene of the accident, heading north on Highway 83. Shortly thereafter, Smith observed two motorcycles matching the descriptions provided to him by dispatch traveling north on Highway 83. Smith initiated a traffic stop and after making contact with the drivers of the motorcycles, cited Groshek for OWI.

¶3 Groshek moved to suppress all evidence obtained from the stop on the basis that Smith lacked reasonable suspicion to stop his vehicle. The circuit court denied Groshek's motion. At the hearing on the motion, Smith testified that he stopped Groshek "as a community caretaker function to try and figure out what circumstances were surrounding the crash." The court concluded that the stop was not based on a bona fide community caretaker function, but that there was sufficient reasonable suspicion that Groshek had committed an offense to justify the stop. Accordingly, the court denied Groshek's motion to suppress. Groshek was subsequently convicted of first offense OWI. Groshek appeals.

## DISCUSSION

¶4 Groshek contends the circuit court erred in determining that Deputy Smith had reasonable suspicion to stop his motorcycle.<sup>2</sup>

¶5 We apply a two-step analysis in reviewing a circuit court's determination that an officer had reasonable suspicion to initiate an investigative stop. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. We will uphold the circuit court's factual findings unless they are clearly erroneous; however, we review de novo the application of those facts to constitutional standards. *Id.*

¶6 In order to conduct an investigative stop consistent with the Fourth Amendment's prohibition against unreasonable search and seizure, a police officer must have at least reasonable suspicion that the person has committed, is committing, or is about to commit an offense. *Post*, 301 Wis. 2d 1, ¶¶10, 13. “[W]hat 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. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). Although acts and circumstances by themselves may be lawful behavior that falls short of reasonable suspicion, the rational inferences drawn from those facts taken together as a whole may constitute reasonable suspicion. *State v. Popke*, 2009 WI 37, ¶25, 317 Wis. 2d 118, 765 N.W.2d 569.

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<sup>2</sup> The State does not challenge the circuit court's conclusion that the stop of Groshek was not justifiable under the community caretaker exception. Accordingly, I limit my analysis to the question of whether the stop was based on reasonable suspicion.

¶7 Deputy Smith was dispatched to a semi-rural area to investigate a report that a motorcycle had been involved in an accident at approximately 1:30 a.m., around “bar time,” in the vicinity of a bar. Smith was advised that following the accident, the motorcycle in the accident had taken off with another motorcycle. Shortly thereafter, Smith encountered two motorcycles heading in the direction advised by dispatch. Based on these facts, Smith could reasonably have suspected that Groshek had been involved in a car accident, was either injured or intoxicated, and was leaving the scene of the crash. *See, e.g., State v. Lange*, 2009 WI 49, ¶32, 317 Wis. 2d 383, 766 N.W.2d 551 (time of night is a factor when considering the existence of probable cause to arrest for OWI, a standard more stringent than reasonable suspicion to make a traffic stop); *State v. Purintun*, No. 2010AP2493, unpublished slip op. ¶9 (WI App Mar. 15, 2011) (dispatch to rural location to investigate report of possible accident and observation of suspect leaving the scene factor in considering reasonable suspicion for investigatory stop).<sup>3</sup>

Accordingly, I conclude that the investigatory stop was supported by reasonable suspicion, and I therefore affirm the denial of Groshek’s motion to suppress.

## CONCLUSION

¶8 For the reasons discussed above, I affirm.

*By the Court.*—Judgment affirmed.

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<sup>3</sup> I cite *State v. Purintun*, No. 2010AP2493, unpublished slip op. ¶9 (WI App Mar. 15, 2011), as persuasive authority under WIS. STAT. RULE 809.23(3)(b) (an unpublished opinion issued on or after July 1, 2009, that is authored by a member of a three-judge panel or by a single judge under WIS. STAT. § 752.31(2) may be cited for its persuasive value).

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

