

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 15, 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. 2012AP680-FT

Cir. Ct. No. 2010CV1820

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

VILLAGE OF JACKSON,

PLAINTIFF-RESPONDENT,

V.

JOHN W. HESPE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: ANDREW T. GONRING, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ John Hespe appeals from a judgment finding him guilty of operating a motor vehicle while intoxicated (OWI). Hespe contends

¹ 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.

that the investigative stop of his vehicle was not supported by reasonable suspicion and, therefore, the circuit court erred in denying his motion to suppress evidence. We reject Hesper's argument. We affirm the judgment.

FACTS

¶2 The facts surrounding the stop of Hesper's vehicle were testified to at the suppression hearing by Officer Kyle Henning of the Village of Jackson Police Department. Henning testified that on June 28, 2009, at approximately 11:20 p.m., he was operating a marked squad car southbound on Ridgeway Drive in a residential area of the Village of Jackson. He observed Hesper's vehicle turn left onto Ridgeway Drive "at a high rate of speed, a speed that [he] deemed to be unsafe." Henning testified that Hesper's vehicle "drove onto and partially struck the curb before correcting itself." Because he believed the turn was unsafe, Henning turned his squad car around and initiated a traffic stop. Hesper was subsequently arrested for OWI.

¶3 Hesper filed a motion to suppress evidence, arguing that Henning did not possess the requisite reasonable suspicion to justify the investigative stop of his vehicle. Hesper specifically disputed whether he actually struck the curb and maintained that if he did not strike the curb, then there was no basis for the stop. After viewing the in-squad video played at the suppression hearing, the circuit court found that Hesper's left-hand turn into a residential area was both faster and "certainly much wider" than one would normally expect. While the court could not discern from the video whether Hesper's vehicle hit the curb, it noted Henning's testimony that he had observed the vehicle strike some portion of the curb. The court found that the very wide turn at a higher than normal speed would provide reasonable suspicion and that Henning's testimony added to the

reasonable suspicion to support the investigative stop of Hespe's vehicle. The circuit court denied Hespe's motion to suppress. Hespe appeals.

DISCUSSION

¶4 Hespe's challenge on appeal is limited to the circuit court's finding of reasonable suspicion. WISCONSIN STAT. § 968.24 permits a law enforcement officer to temporarily detain a person for the purpose of limited investigation when the officer reasonably suspects that the person may have committed, is committing, or is about to commit an offense. To execute a valid investigatory stop, the officer must reasonably suspect, in light of his or her experience, that criminal activity is afoot. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). Such reasonable suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Id.* (citation omitted). This is a "common sense" test, *id.* at 139-40, and police officers are not required to rule out the possibility of innocent behavior before initiating a temporary detention, *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). As the *Anderson* court noted:

[S]uspicious conduct by its very nature is ambiguous, and the princip[al] function of the investigatory stop is to quickly resolve that ambiguity. Therefore, if any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.

Id.

¶5 Whether there was reasonable suspicion to conduct a stop is a question of constitutional fact, which is a mixed question of law and fact to which we apply a two-step standard of review. *State v. Anagnos*, 2012 WI 64, ¶21, 341

Wis. 2d 576, 815 N.W.2d 675. First, we review the circuit court’s findings of historical fact under the clearly erroneous standard. *Id.* Second, we review de novo the application of those historical facts to the constitutional principles. *Id.*

¶6 Here, Hesper contends that while the court found that his speed was not normal, it did not find that the speed was “*illegal*.” Thus, Hesper argues that because the officer “lacked a reasonable suspicion that Hesper was committing a violation,” the initial stop of his vehicle was unreasonable. We reject Hesper’s argument. The supreme court recently explained in *Anagnos* that “[a]n investigative traffic stop may be supported by reasonable suspicion even when the officer did not observe the driver violate any law.” *Id.*, ¶47. In doing so it noted its reasoning in *State v. Post*, 2007 WI 60, ¶24, 301 Wis. 2d 1, 733 N.W.2d 634, that “driving need not be illegal in order to give rise to reasonable suspicion” because such a standard “would allow investigatory stops only when there was probable cause to make an arrest.” *See Anagnos*, 341 Wis. 2d 576, ¶47. Rather, “[t]he law allows a police officer to make an investigatory stop based on observations of lawful conduct so long as the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot.” *State v. Waldner*, 206 Wis. 2d 51, 57, 556 N.W.2d 681 (1996). One reasonable inference to be drawn from unusual and impulsive driving is that the driver is impaired. *See Anagnos*, 341 Wis. 2d 576, ¶¶56, 58 (unusual and impulsive driving choices can be suggestive of impairment and cause for reasonable suspicion).

¶7 Here, the circuit court found that the vehicle was traveling at a high rate of speed and executed the left-hand turn much wider than one would expect for a vehicle entering a residential subdivision. We agree with the circuit court that the facts of the case—the time of night, the rate of speed and the wide execution of the left-hand turn—would warrant a reasonable police officer, in light

of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime. As the court noted, the turn was so wide that Hesper either hit, or almost hit, the far curb. Such reckless driving in a residential neighborhood is unusual, unsafe, and indicates that the individual lacks control of the vehicle—and may be impaired. Henning’s stop of Hesper’s vehicle was justified.

CONCLUSION

¶8 We conclude that the officer had reasonable suspicion to justify an investigatory stop of Hesper’s vehicle. We uphold the circuit court order denying Hesper’s motion to suppress. We affirm the judgment.

By the Court.—Judgment affirmed.

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

