

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 23, 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. 2012AP1418-CR

Cir. Ct. No. 2009CT125

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRY E. NELSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sawyer County:
GERALD L. WRIGHT, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Terry Nelson appeals a judgment of conviction for operating while intoxicated, second offense. Nelson argues the circuit court erred

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

by denying his suppression motion because the arresting officer lacked reasonable suspicion to stop Nelson's vehicle. We disagree and affirm.

BACKGROUND

¶2 At the suppression hearing, officer Dan Glaze testified he was dispatched to 7788 Lake Avenue in Northwoods Beach. Someone at the residence had called 911 but then hung up the phone. Dispatch tried to call back but no one answered the call. Approximately ninety seconds after receiving the dispatch, Glaze arrived at the residence, which is the only house on Lake Avenue. As he neared the residence, Glaze observed a vehicle pulling out of the driveway. He stopped the vehicle and made contact with the driver, subsequently identified as Nelson.

¶3 Nelson had just dropped off an acquaintance who lived at the Lake Avenue residence and was unaware of the 911 hang-up call. Nelson, however, exhibited signs of intoxication, and Glaze ultimately arrested him for operating while intoxicated.

¶4 The circuit court denied Nelson's suppression motion, reasoning Glaze had reasonable suspicion to stop Nelson's vehicle based on the 911 hang-up call, the inability of dispatch to make contact with anyone at the residence, and Glaze's observation of Nelson's vehicle leaving the residence. Nelson then pled no contest to operating while intoxicated, and the circuit court found him guilty.

DISCUSSION

¶5 An officer may conduct a traffic stop if he or she has reasonable suspicion to believe a crime or traffic violation has been or will be committed. *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. Whether

there is reasonable suspicion is a question of constitutional fact. *Id.*, ¶10. We uphold the circuit court’s factual findings unless they are clearly erroneous; however, we independently apply those facts to constitutional principles. *Id.*

¶6 Reasonable suspicion exists when, under the totality of the circumstances, “the facts of the case 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.” *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634 (citation omitted). “Such a stop must be based on more than an officer’s ‘inchoate and unparticularized suspicion or hunch.’” *Id.*, ¶10 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Instead, the officer “‘must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the intrusion of the stop.” *Id.* (quoting *Terry*, 392 U.S. at 21).

¶7 Nelson argues Glaze lacked reasonable suspicion to stop his vehicle. In support, Nelson relies on *United States v. Cohen*, 481 F.3d 896 (6th Cir. 2007). In *Cohen*, officers responded to a 911 hang-up call that came from a residence located in a cul-de-sac with five or six other houses. *Id.* at 899. The officers stopped a vehicle that was turning out of the cul-de-sac. *Id.* The Sixth Circuit determined the officers lacked reasonable suspicion to stop the vehicle. *Id.* The court observed that a 911 hang-up call, standing alone without any follow-up calls by a dispatcher or other information, was analogous to an anonymous tip. *Id.* at 899. Because the 911 hang-up call only suggested that “there might be an emergency, which might or might not include criminal activity,” the call did not amount to reasonable suspicion without some corroboration that criminal activity was afoot. *Id.* at 900. The court also determined the officers lacked reasonable

suspicion to believe that the vehicle they stopped near the 911 hang-up call residence was involved. *Id.*

¶8 The circumstances here differ from *Cohen*. First, the dispatcher in this case followed up and attempted to establish contact with the 911 hang-up call residence. Glaze responded to the scene only after the dispatcher could not re-establish contact. Further, when Glaze arrived at the residence, approximately ninety seconds after he was dispatched, he observed a vehicle pulling out of the residence's driveway. He did not stop Nelson's vehicle merely because it was near the area. Based on the 911 hang-up call, the inability of dispatch to make contact with anyone at the residence, and Glaze's near immediate arrival and observation of Nelson's vehicle's departure, Glaze had reasonable suspicion to believe criminal activity was afoot.

By the Court.—Judgment affirmed.

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

