

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 18, 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. 2011AP2452-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 2010CF491**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-APPELLANT,**

**V.**

**DOUGLAS W. POLZIN,**

**DEFENDANT-RESPONDENT.**

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APPEAL from order of the circuit court for Eau Claire County:  
LISA K. STARK, Judge. *Reversed and cause remanded.*

Before Hoover, P.J., Mangerson, J., and Thomas Cane, Reserve  
Judge.

¶1 PER CURIAM. The State appeals an order granting Douglas Polzin's motion to suppress evidence seized after a traffic stop. The circuit court concluded the deputy lacked reasonable suspicion to believe the driver of the car

had committed or was committing any offense. Although it is a close call, we conclude the officer had sufficient reason for stopping the car.

### **BACKGROUND**

¶2 Shortly before midnight, deputy Travis Holbrook responded to a noise complaint at a rural residence. He observed a silver Cavalier in the yard with its trunk open and loud music coming from the vehicle. He saw two adult females, both intoxicated, and one child standing around a campfire in the yard. Danny Beckstead, one of the residents, came out and confronted Holbrook and became argumentative. Beckstead was also intoxicated. Holbrook issued Beckstead a citation for disorderly conduct and advised the people present that if officers had to return to the residence, someone would go to jail.

¶3 Approximately two hours later, Holbrook was again dispatched to the same residence because the same neighbor reported “*the* loud stereo was again being played.” En route to the scene, approximately one mile from the residence, Holbrook encountered the same silver Cavalier leaving the scene of the second call. When he activated his emergency lights and stopped the Cavalier, Polzin fled from the vehicle. He was eventually caught after Holbrook used a taser to subdue him. Officers found drug paraphernalia in Polzin’s pockets. He was charged with fourth offense operating a vehicle under the influence of an intoxicant and with a prohibited alcohol concentration, operating a vehicle after revocation of his license, resisting an officer, possession of THC and possession of drug paraphernalia.

¶4 Polzin moved to suppress evidence gathered after Holbrook stopped his vehicle based on the assertion that the detention was unlawful because Holbrook did not have reasonable suspicion to stop the vehicle. The circuit court

agreed. The court concluded there was no evidence upon which to base an arrest or investigate any ongoing criminal activity. The court noted that Holbrook did not know whether the driver was Beckstead or whether the second noise complaint involved the Cavalier.

## DISCUSSION

¶5 A law enforcement officer may stop a person in a public place for a reasonable period of time when the officer reasonably suspects that the person is committing, is about to commit or has committed a crime. *See* WIS. STAT. § 968.24 (2009-10).<sup>1</sup> Investigative traffic stops are subject to the constitutional reasonableness requirement. *State v. Walli*, 2011 WI App 86, ¶7, 334 Wis. 2d 402, 799 N.W.2d 898. The reasonable suspicion standard requires the officer to have a particularized and objective basis for suspecting the person stopped of criminal activity. *Id.*, ¶9. When determining whether the standards are met, we consider the totality of the circumstances, facts known to the officer at the time and rational inferences that arise from those facts. *Id.* The officer is not required to rule out the possibility of innocent behavior before initiating a brief investigatory stop. *Id.* When a vehicle is observed leaving the scene of an offense, an officer may stop the vehicle when, without the stop, the opportunity for further investigation would have been lost. *State v. King*, 175 Wis. 2d 146, 154, 499 N.W.2d 190 (Ct. App. 1993).

¶6 The Wisconsin Supreme Court has identified six factors to be assessed in determining whether an officer's conduct in stopping a vehicle is reasonable:

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2009-10 version.

1. The particularity of the description of the offender or the vehicle;
2. The size of the area in which the offender might be found, as indicated by such facts as elapsed time since the crime occurred;
3. The number of persons in the area;
4. The known or probable direction of the offender's flight;
5. Observed activity by the particular person stopped; and
6. Knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

*State v. Harris*, 206 Wis. 2d 243, 260, 557 N.W.2d 245 (1996). In *State v. Guzy*, 139 Wis. 2d 663, 678, 407 N.W.2d 548 (1987), the court utilized three additional factors in determining whether a stop was reasonable:

1. Alternative means available to the officer to investigate short of making the stop;
2. The opportunity for further investigation, if action was not taken immediately; and
3. Whether the description of the individual known to the officer would allow him to quickly identify the individual so that there would be minimal intrusion.

¶7 Whether reasonable suspicion existed to stop a vehicle is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. The circuit court's findings of historical fact are reviewed under the "clearly erroneous" standard. However, application of those facts to constitutional principles are reviewed de novo. *Id.*

¶8 Holbrook had sufficient reasonable suspicion to stop the vehicle for two reasons. First, given the rural location and the time of day, Holbrook reasonably suspected that the Cavalier was involved in the second noise

complaint. If Holbrook had not stopped the vehicle, he would have lost the opportunity to identify the operator who was likely the source of the loud music. Second, because all of the adults Holbrook encountered at the residence were intoxicated, he had reasonable grounds to stop the Cavalier to determine whether the driver was intoxicated. Polzin argues that, to uphold a stop based on the suspicion of intoxicated driving, would allow officers to wait outside a bar where they knew some, but not all, of the people inside are drinking, and stop any driver without observing any bad driving or having any information indicating crime is afoot. We reject that analogy. All of the adults Holbrook encountered at the residence were intoxicated, not just drinking. They were associated with a specific vehicle, namely the Cavalier. A brief detention to determine whether the driver of that vehicle was one of the intoxicated individuals was not so intrusive as to render the detention unreasonable.

*By the Court.*—Order reversed and cause remanded.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

