COURT OF APPEALS
DECISION
DATED AND RELEASED

June 12, 1996

No. 95-2096-CR

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

IRVIN STANLEY,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Waukesha County: JOSEPH E. WIMMER, Judge. *Reversed and cause remanded with directions.*

Before Anderson, P.J., Brown and Nettesheim, JJ.

PER CURIAM. Irvin Stanley appeals from a judgment of conviction of party to the crime of burglary. We conclude that the physical evidence was obtained as a result of an illegal stop. We reverse the conviction and remand the case.

Stanley and a friend, Eric Rivera, were observed by a police officer of the City of Waukesha Police Department hopping over a fence near a

residence and entering Stanley's car in the adjacent parking lot. It was 2:30 p.m. on September 8, 1993. The officer eventually stopped the car and upon removing the occupants searched the vehicle, including the trunk. Three stolen guns were found in the trunk.

Stanley brought a motion to suppress the physical evidence taken from his car arguing that the stop, search and arrest were illegal. The trial court denied the motion to suppress. Stanley entered an ***Alford*** plea[1] to a burglary charge.

The sole issue on appeal is whether the police officer's stop of Stanley's vehicle was constitutionally permissible.[2] Whether an investigatory stop meets constitutional and statutory standards is a question of law subject to de novo review by this court. ***State v. Krier***, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). When an appellate court reviews an order denying a motion to suppress the evidence, it will uphold the trial judge's findings of fact unless they are clearly erroneous. ***Id.***

In ***Terry v. Ohio***, 392 U.S. 1, 22 (1968), the Supreme Court held that "a police officer may in appropriate circumstances and in an appropriate manner approach a person for purposes of investigating possibly criminal behavior even though there is no probable cause to make an arrest." To make a valid investigatory stop the officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. ***State v. Richardson***, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990). The police officer "must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." ***Terry,*** 392 U.S. at 21.

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[1] An ***Alford*** plea is a guilty plea where a defendant pleads guilty to a charge but either protests his or her innocence or does not admit to having committed the crime. The plea derives its name from the United States Supreme Court's decision in ***North Carolina v. Alford***, 400 U.S. 25 (1970).

[2] Stanley does not challenge the legality of the search or arrest on appeal.

Here, the police officer's suspicions were raised by two factors. The first was the officer's observation of the two men hopping the fence. The officer knew that there had been thefts from vehicles in that area. He was concerned that the men might have been involved in a burglary. The State argues that a suspicious inference may be drawn from the fence hopping. However, the officer was not acting in response to a specific, reported crime. Further, there was no evidence that the men were holding anything when they hopped over the fence or that they acted suspiciously as they approached Stanley's vehicle. Absent are articulable facts which give rise to a reasonable inference that the men were engaged in criminal conduct.

The officer's second justification for stopping the vehicle arose after a license check was run on the vehicle. The vehicle was registered to Stanley and there were no outstanding warrants related to the vehicle or to Stanley. The officer recalled that Stanley had been reported to be a friend of Rivera's. Rivera was a suspect in a shooting and had an active probation apprehension request. While it was good police work to remember the friendship between Stanley and Rivera, it did not justify the stop. The officer had no idea what either man looked like or whether either was Stanley or Rivera. The officer's hunch that Rivera was in the car does not rise to the level of a reasonable suspicion justifying a stop.

We reverse the judgment and remand with directions that Stanley be allowed to withdraw his plea. The order denying the motion to suppress evidence is also reversed.

By the Court.—Judgment reversed and cause remanded with directions.

This opinion will not be published. *See* RULE 809.23(1)(b)5, STATS.