

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 4, 2014

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. 2014AP301-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2012CM225

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEBORAH K. SALZWEDEL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Juneau County:
PAUL S. CURRAN, Judge. *Modified, affirmed as modified, and cause remanded with directions.*

¶1 KLOPPENBURG, J.¹ Deborah Salzwedel appeals the judgment of conviction for third-offense operating a motor vehicle with a prohibited alcohol

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

concentration in violation of WIS. STAT. § 346.63(1)(b). Salzwedel argues that the circuit court erred in denying her motion to suppress evidence because: (1) the officer did not have probable cause for the stop and (2) this was not an investigatory stop supported by reasonable suspicion. I conclude that the circuit court did not err in finding that there was probable cause for the stop and, therefore, I affirm the denial of the motion to suppress evidence.

BACKGROUND

¶2 The State charged Salzwedel with third-offense operating a motor vehicle while intoxicated and third-offense operating with prohibited alcohol concentration. Salzwedel filed a suppression motion challenging the lawfulness of the traffic stop. Deputy Patrick Miltimore provided the only testimony at the motion hearing. The following is a summary of the undisputed facts leading up to Salzwedel's arrest.

¶3 At approximately 8:58 p.m. on June 23, 2012, Deputy Miltimore observed a vehicle traveling on East State Street in the City of Mauston without its headlights on. The official sunset time on that day in Mauston was 8:46 p.m. The streetlights were on, and there were other vehicles on the road, all with their headlights on. Miltimore described the area as a "kind of busy downtown." Miltimore's squad car pulled up behind the vehicle, which was stopped at a red stoplight in a left-turning lane without its turn signal on.

¶4 The vehicle turned left onto Union Street, which had a speed limit of twenty-five miles per hour. Miltimore continued behind the vehicle. Both cars traveled on Union Street through a construction area and the intersection of Highway 82 and Union Street. Miltimore observed the vehicle vary in speed, averaging twenty miles per hour.

¶5 Miltimore testified that the vehicle then made “a quick left turn in front of [him] without using its turn signal a second time.” Miltimore stated that he “had to brake because” the vehicle braked. The vehicle turned into a strip mall parking lot, and Miltimore made the traffic stop. The vehicle’s driver was identified as Salzwedel, and subsequent evidence was obtained leading to Salzwedel’s conviction.

¶6 Salzwedel filed a pretrial motion to suppress evidence obtained after the stop on the grounds that the evidence was seized in violation of her constitutional rights. In particular, Salzwedel argued that the traffic stop was supported by neither reasonable suspicion nor probable cause, because she was not in violation of any traffic law.

¶7 The circuit court held that there was “probable cause to believe a crime, specifically, a violation of Section 346.34, was committed,” because Deputy Miltimore testified that he was “affected” by Salzwedel’s failure to signal.² The circuit court also held that the totality of circumstances “would cause at least curiosity and attention” for “any experienced law enforcement officer,” and therefore, the stop was additionally supported by reasonable suspicion. Accordingly, the circuit court denied the motion to suppress evidence.

² WISCONSIN STAT. § 346.34(1)(b) provides, “In the event any other traffic may be affected by the movement, no person may turn any vehicle without giving an appropriate signal in the manner provided in s. 346.35.”

¶8 Salzwedel pled no contest to the charge of third-offense operating with prohibited alcohol concentration and brought this appeal.³

DISCUSSION

¶9 On appeal, Salzwedel renews her argument that the evidence obtained following her stop should be suppressed because the stop violated her constitutional rights. Salzwedel argues that the stop was not supported by probable cause or reasonable suspicion, and raises several issues as to both. For the reasons set forth below, I conclude that the circuit court did not err in finding that the stop was supported by probable cause when Salzwedel failed to signal before the second turn, and therefore, the stop was lawful.⁴

Standard of Review

¶10 This court analyzes the denial of a suppression motion under a two-part standard of review: we uphold the circuit court’s findings of fact unless they are clearly erroneous, but we independently review whether those facts warrant suppression. *State v. Conner*, 2012 WI App 105, ¶15, 344 Wis. 2d 233, 821 N.W.2d 267. “Whether there is probable cause or reasonable suspicion to stop a

³ The State argues that we should deny this appeal based on Salzwedel’s guilty plea. As we note at the end of this opinion, the judgment of conviction indicates a plea of guilty but the plea questionnaire and the plea hearing indicate a plea of no contest. Regardless, both a guilty plea and a no contest plea waive all nonjurisdictional defects and defenses *except* an order denying a motion to suppress evidence. WIS. STAT. § 971.31(10); *see also State v. Hampton*, 2010 WI App 169, ¶23, 330 Wis. 2d 531, 793 N.W.2d 901 (“a guilty plea waives all nonjurisdictional defects and defenses,” except that WIS. STAT. § 971.31(10) “permits appellate review of an order denying a motion to suppress evidence, notwithstanding a guilty plea”).

⁴ I do not decide the other issues raised by Salzwedel, because the decision on this issue disposes of the appeal. *See Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (declining to consider alternative arguments where resolution of one issue disposes of the appeal).

vehicle is a question of constitutional fact.” *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. The ultimate question of “whether the facts as found by the [circuit] court meet the constitutional standard” is reviewed de novo. *State v. Hindsley*, 2000 WI App 130, ¶22, 237 Wis. 2d 358, 614 N.W.2d 48.

Probable Cause Based on Turning Without Using a Turn Signal

¶11 The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution offer protection against unreasonable searches and seizures.⁵ “The temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of the Fourth Amendment.” *Popke*, 317 Wis. 2d 118, ¶11 (quoted source omitted). Therefore, the “stop must not be unreasonable under the circumstances.” *Id.* A traffic stop is reasonable if supported by probable cause that a traffic violation has occurred or reasonable suspicion that a violation has been or will be committed. *Id.* Probable cause exists when there is a “‘quantum of evidence which would lead a reasonable police officer to believe’ that a traffic violation has occurred.” *Id.*, ¶14 (quoted source omitted).

¶12 The dispositive issue here is whether Deputy Miltimore’s stop of Salzwedel’s vehicle was supported by probable cause to believe that Salzwedel violated WIS. STAT. § 346.34(1)(b). That statute provides:

⁵ The Fourth Amendment of the United States Constitution states, “The right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause” Article I, Section 11 of the Wisconsin Constitution provides, “The right of the people to be secure in their persons ... against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause”

In the event any other traffic may be affected by the movement, no person may turn any vehicle without giving an appropriate signal in the manner provided in s. 346.35.

The circuit court found that the stop was supported by probable cause that Salzwedel violated § 346.34(1)(b), because Salzwedel turned without using her signal and Miltimore was affected by her turning without using her signal. Salzwedel does not dispute that she turned without using her signal, but argues that the circuit court was clearly erroneous in finding that Miltimore was affected by Salzwedel's turning without using her signal. Therefore, Salzwedel asserts, she did not violate § 346.34(1)(b) and the stop was not supported by probable cause to believe that she did.

¶13 I uphold the circuit court's finding of fact as to the second turn—that Miltimore was affected by Salzwedel's turning without using her signal—because it is not clearly erroneous.⁶ Miltimore testified, and Salzwedel does not refute, that Miltimore was in the lane “right behind” Salzwedel's vehicle during the second turn. Miltimore testified that Salzwedel's second turn was “a quick left turn in front of [him] without using [her] turn signal,” and that he “had to brake because she [braked].” Based on this testimony, the circuit court's finding that Miltimore was affected by Salzwedel's second turn without using her signal was not clearly erroneous. Based on that finding, I conclude that a reasonable police officer could have believed that a violation of Wis. Stat. § 346.34(1)(b) occurred, such that Deputy Miltimore had probable cause to stop Salzwedel's vehicle.

⁶ I do not address the first turn without signaling, because as stated above, the decision as to whether there was probable cause to believe that the second turn constituted a traffic violation disposes of this appeal.

¶14 We note that the judgment of conviction is wrong, because it indicates that the plea was guilty rather than no contest. Because the circuit court clearly and unambiguously accepted a plea of no contest, as reflected in the transcript of the plea hearing and in the plea questionnaire, its oral pronouncement controls the written judgment. See *State v. Perry*, 136 Wis. 2d 92, 114, 401 N.W.2d 748 (1987); *State v. Schordie*, 214 Wis. 2d 229, 231 n.1, 570 N.W.2d 881 (Ct. App. 1997). This is a mere defect in the form of the judgment of conviction, which may be corrected in accordance with the actual determination by the circuit court. See *Roberts v. State*, 41 Wis. 2d 537, 547, 164 N.W.2d 525 (1969). The circuit court may either correct the clerical error in the plea portion of the written judgment of conviction or may direct the clerk's office to make such a correction. *State v. Prihoda*, 2000 WI 123, ¶5, 239 Wis. 2d 244, 618 N.W.2d 857. This court therefore orders that the written judgment be corrected on remand to indicate that the plea was no contest.

CONCLUSION

¶15 For the reasons set forth above, I reject Salzwedel's argument that the stop in this case was unsupported by probable cause and therefore unlawful, and I affirm the modified judgment.

By the Court.—Judgment modified, affirmed as modified, and cause remanded with directions.

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

