COURT OF APPEALS
DECISION
DATED AND FILED

October 21, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-1875-FT

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRI L. BOORTZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Eau Claire County: ERIC J. WAHL, Judge. *Affirmed.*

HOOVER, J. Terri Boortz appeals a judgment of conviction arising from her guilty plea to operating while intoxicated, first offense, contrary to § 346.63(1)(a), STATS.[1] On appeal, Boortz contends that the trial court erred by finding that reasonable grounds existed to stop her and therefore her conviction

[1] This is an expedited appeal under RULE 809.17, STATS.

should be reversed. This court concludes that Boortz waived her opportunity to challenge the stop by pleading guilty and therefore affirms.

Boortz entered a guilty plea to operating while intoxicated, first offense. The plea was precipitated by events occurring on November 3, 1996. That evening, officer Gregory Gregerson and state trooper Marvin Kittleson received separate reports of an armed robbery occurring in Foster, Wisconsin. The officers received a description of the suspect as a short female with sandy blond or brown hair pulled back in a ponytail. Both were aware that several area robberies were purportedly committed by a lone female.

Each officer headed toward Foster, communicating with one another by radio. After deciding not to stop a van because the passengers did not meet the suspect's description, Gregerson met a small vehicle with a lone occupant. He stopped the vehicle, which was being driven by Boortz. She was cited for operating while intoxicated. On appeal, Boortz contends that the stop was unreasonable because Gregerson lacked specific articulable facts to stop her vehicle. Boortz contends that Gregerson had no way of knowing whether she matched the suspect's description and that he initiated the stop without obtaining a description of the driver from Kittleson, who was in a better position to make an identification.

It is well established that a knowing and voluntary plea of guilty or no contest constitutes a waiver of nonjurisdictional defects and defenses, including claimed violations of constitutional rights. ***State v. Riekkoff***, 112 Wis.2d 119, 122-23, 332 N.W.2d 744, 746 (1983); ***State v. Princess Cinema of Milwaukee, Inc.***, 96 Wis.2d 646, 651, 292 N.W.2d 807, 810 (1980). Section 971.31(10), STATS., creates an exception to such waiver; however, it applies only in criminal

cases. ***County of Ozaukee v. Quelle***, 198 Wis.2d 269, 275, 542 N.W.2d 196, 198 (Ct. App. 1995). Operating while intoxicated, first offense, is a civil offense punishable by forfeiture. *See* §§ 346.63(1)(a) and 346.65(2)(a), STATS. Therefore, the statutory exception to waiver does not apply. Nevertheless, this court retains the discretionary power to review a claimed error in an OWI civil case. ***Quelle***, 198 Wis.2d at 275, 542 N.W.2d at 198.

Consistent with well-established principles, this court concludes that by pleading guilty to the offense, Boortz failed to preserve for appeal the opportunity to challenge the claimed constitutional violation of her Fourth Amendment right against unreasonable seizures. Although this court retains discretionary power to review claimed error, it sees no reason to do so here. Review after a guilty plea is generally only granted if the issue is of state-wide importance or resolution will serve the interest of justice and there are no disputed facts. *See* ***State v. Grayson***, 165 Wis.2d 557, 561, 478 N.W.2d 390, 392 (Ct. App. 1991). For example, in ***Quelle***, the court of appeals granted review despite a guilty plea to address the "subjective confusion" test which the supreme court discussed but did not specifically embrace in ***Village of Oregon v. Bryant***, 188 Wis.2d 680, 524 N.W.2d 635 (1994). ***Quelle***, 198 Wis.2d at 273, 542 N.W.2d at 197. Further, the court reconciled earlier decisions addressing alleged deficiencies in the officer's delivery of implied consent warnings. ***Id.*** at 278, 542 N.W2d at 199. This case presents no such compelling legal or policy matters. Further, nothing in the facts of this case compels a review in the interest of justice.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.17, STATS.