COURT OF APPEALS
DECISION
DATED AND FILED

October 30, 1997

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

No. 97-1924-FT

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARGO S. LAWINGER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County: PATRICK TAGGART, Judge. *Affirmed.*

VERGERONT, J.[1] Margo Lawinger appeals from a judgment convicting her of operating a motor vehicle with a prohibited blood alcohol concentration, contrary to § 346.63 (1)(b), STATS. She contends that the officer

[1] This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

did not have a reasonable basis to stop her because the traffic control sign was illegal and contrary to the State's statute. We disagree and therefore affirm.

Sometime after 1:30 a.m. on April 22, 1995, while traveling west on East Jefferson Street in the Village of Spring Green, Officer Priebe saw a vehicle traveling east on East Jefferson. The car appeared to be traveling at a high rate of speed in a posted fifteen-mile-per-hour zone. Officer Priebe activated his custom hawk radar and it showed that the car was traveling at a speed of twenty-seven miles per hour. He then initiated a traffic stop. Once the vehicle stopped, Officer Priebe approached it on the driver's side and identified himself to the driver. He asked for a driver's license and the driver of the car, Lawinger, had some difficulty retrieving her license from her wallet, so Officer Priebe pointed out her license to her.

While talking to Lawinger, Priebe noticed that her eyes were bloodshot and that they appeared to be "glassy looking." He also smelled an odor of intoxicants from Lawinger and observed that she slurred her speech when she spoke to him. Officer Priebe then asked Lawinger if she had anything to drink and she said that she had been drinking beer. Officer Priebe explained to Lawinger that he would like to conduct some field sobriety tests and she agreed to perform the tests.

Based on her performance of the field sobriety tests, Officer Priebe took her to the Spring Green Police Station where she submitted to an intoxilyzer test, which showed a reading of 0.18%. Eventually, Lawinger was charged with operating a motor vehicle with a prohibited alcohol concentration (PAC) and operating a motor vehicle while under the influence of an intoxicant (OWI), contrary to § 346.63(1)(a) and (b), STATS.

Lawinger filed a motion to dismiss and a motion to suppress evidence on the ground that there was no probable cause to stop or to arrest her. She argued that the lawful speed limit was twenty-five miles per hour not fifteen miles per hour because the Village of Spring Green had illegally posted the fifteen-miles-per-hour sign. Had the proper speed been posted, Lawinger contended she would not have been stopped since the only basis the officer had for the stop was her speed. At the evidentiary hearing on the suppression motion, the State conceded that the Village of Spring Green illegally posted the fifteen-miles-per-hour speed limit because the Village did not follow the proper procedure according to state statute. Officer Priebe testified that the "sole reason for stopping Lawinger was that she was traveling at a high rate of speed (twenty-seven miles per hour) in a fifteen miles per hour zone."

The trial court denied the motion stating:

> As I understood the testimony and the officer's statements, that at the time he believed the appropriate speed limit was 15 miles per hour, and it was so posted, even though he now recognizes that the state statute, appropriate, was 25 miles an hour.
>
> I believe that the officer was operating in good faith and at this point I will deny the motion.

After the trial court denied the motion, the parties stipulated to the facts for purposes of trial, and the trial court found Lawinger guilty of the PAC charge.[2]

[2] The court dismissed the OWI charge because § 346.63(1)(c), STATS., permits only a single conviction for sentencing purposes when there is both an OWI and a PAC charge arising out of the same incident.

On appeal, Lawinger argues, as she did before the trial court, that the initial stop was unlawful because the posted speed limit was based on an invalid ordinance. In reviewing a trial court's denial of a motion to suppress evidence, we must uphold the court's findings of fact unless they are against the great weight and clear preponderance of the evidence. *See* ***State v. Whitrock***, 161 Wis.2d 960, 973, 468 N.W.2d 696, 701 (1991). Whether a search or seizure meets constitutional standards, however, is a question of law, which we review de novo. *See* ***State v. Richardson***, 156 Wis.2d 128, 137-38, 456 N.W.2d 830, 833 (1990).

An officer has authority to stop a vehicle when the officer has reasonable grounds to believe that a violation of a traffic regulation has occurred. ***State v. Baudhuin***, 141 Wis.2d 642, 648, 416 N.W.2d 60, 62 (1987). The reasonableness of an investigate stop depends on the facts and circumstances that are present at the time of the stop. ***State v. Guzy***, 139 Wis.2d 663, 679, 407 N.W.2d 548, 555 (1987). In assessing whether there exists reasonable suspicion for a particular stop, we must consider all the specific and articulable facts, taken together with the rational inferences from those facts. ***State v. Dunn***, 158 Wis.2d 138, 146, 462 N.W.2d 538, 541 (Ct. App.1990). What constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present—what a reasonable officer would reasonably suspect in light of his or her training and experience. ***State v. Jackson***, 188 Wis.2d 349, 356, 525 N.W.2d 102, 104 (Ct. App.1994).

In support of her contention that the invalidity of the posted speed limit makes the stop unlawful, Lawinger attempts to distinguish ***Michigan v. DeFillippo***, 443 U.S. 31 (1979), from this case. In ***DeFillippo,*** the police officer found the defendant and a woman who was in the process of undressing in an alley. ***DeFillippo***, 443 U.S. at 32. The officer asked the defendant for

identification but he failed to identify himself. ***Id.*** at 33. Consequently, the defendant was taken into custody for violating a city ordinance by refusing to identify himself and not producing evidence of his identity. A subsequent search of the defendant led to discovery of marijuana and phencyclidine and he was then charged with possession of a controlled substance. ***Id.*** The defendant moved to suppress the evidence. The Michigan Court of Appeals held that the ordinance was unconstitutionally vague and that, since the defendant had been arrested pursuant to that ordinance, both the arrest and the search were invalid. ***Id.*** at 34. The Supreme Court reversed. It concluded that the subsequent determination that an ordinance forming the basis for an arrest was unconstitutional, did not render the initial arrest and the search incident to that arrest unlawful under the Fourth Amendment. ***Id.*** at 31. The Court rejected the argument that the arresting officer lacked probable cause because he should have known the ordinance was invalid and would be judicially declared unconstitutional. ***Id***.

Lawinger argues that this case is significantly different from ***DeFillippo*** because the ordinance in ***DeFillippo*** was declared unconstitutional subsequent to the defendant's arrest, whereas here the State readily conceded that the ordinance was illegal. We find this distinction insignificant because the critical question in the ***DeFillippo*** analysis is what the officer knew at the time of the stop or arrest, not when the officer learned the ordinance was invalid.

When making the stop, Officer Priebe, like the officer in ***DeFillippo,*** did not know that the traffic sign, or the ordinance, were invalid. Officer Priebe observed the following when he stopped Lawinger: the car was traveling at twenty-seven miles per hour in a fifteen-mile-per-hour zone. These observations provided Priebe with a reasonable basis to conclude that Lawinger was driving in excess of the posted speed limit. Similar to the officer in ***DeFillippo***, who, the

court determined, had probable cause at the time of arrest to believe that the defendant violated that ordinance, ***DeFillippo***, 443 U.S. at 34, Officer Priebe had reasonable suspicion to believe that [Lawinger's] conduct violated the posted speed limit. We conclude that ***DeFillippo*** is controlling and that the invalidity of the posted speed limit did not make the initial stop unlawful.

Lawinger also argues that Officer Priebe should have known that the traffic sign was invalid. This argument was rejected in ***DeFillippo***. It would require that the police check the validity of all traffic signs before they make a stop for speeding. Society has charged police officers to enforce laws until and unless the laws are declared invalid. ***DeFillippo***, 443 U.S. at 37. That exception certainly does not apply here. At the time Officer Priebe stopped Lawinger, a court had not found the traffic sign, or the ordinance on which it was based, invalid. Nor, is there any evidence that Officer Priebe had any way of knowing that the traffic sign was invalid before the stop. Since Officer Priebe had reasonable suspicion to stop Lawinger for a traffic violation, and since he acquired the evidence for the OWI and PAC charges after the initial lawful stop, she is not entitled to suppression of that evidence.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.