

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

November 5, 1998

Marilyn L. Graves  
Clerk, Court of Appeals  
of Wisconsin

**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 § 808.10 and RULE 809.62, STATS.

No. 98-1222

STATE OF WISCONSIN

IN COURT OF APPEALS  
DISTRICT IV

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STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

CAROLYN A. SULLIVAN,

DEFENDANT-APPELLANT.

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APPEAL from a judgment of the circuit court for Grant County:  
GEORGE S. CURRY, Judge. *Affirmed.*

DYKMAN, P.J.<sup>1</sup> Carolyn Sullivan appeals from a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, contrary to §346.63(1)(a), STATS. Sullivan argues that the trial court erroneously denied her motion to suppress evidence that was obtained as a result

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<sup>1</sup> This appeal is decided by one judge pursuant to § 752.31(c), STATS.

of her detention. She asserts that the detention was unlawful because the arresting officer's reasonable suspicion dissipated after she successfully performed a field sobriety test. We conclude that reasonable suspicion for a stop does not dissipate simply because a driver successfully performs a single field sobriety test. We therefore affirm.

In October 1997, officer Kevin Norin received a report of a female motorist in a blue Toyota weaving on the road. He later observed a blue Toyota driving in an erratic fashion. Norin activated his red and blue lights and directed the driver, Carolyn Sullivan, to pull to the side of the road. Rather than pull to the side of the road, Sullivan executed a right turn into a parking lot with her left turn signal activated. Norin approached the car. As Sullivan rolled down her window, Norin detected a strong odor of intoxicants. Even though he could smell alcohol on her breath, Sullivan denied that she had been drinking. Norin also observed that Sullivan's eyes were glassy and vacant. Norin then asked her perform a series of field sobriety tests.

The first test Norin administered was the "ABC test," which is a recitation of the alphabet in a slow monotone. Sullivan performed the test twice without a flaw. Norin then administered several other tests, which Sullivan failed. At trial, Norin testified that he would not arrest or release any suspect on the basis of one test. The reason he gave was that approximately half of all the people he has stopped from drunk driving, who later turned out to be intoxicated, successfully completed the alphabet test.

The trial court found that Norin had a reasonable suspicion to initiate the stop. The court also validated Norin's suspicion that further detention was necessary based on Sullivan's failure to follow instructions, the detection of an

odor of intoxicants, and Sullivan's denial that she was drinking alcohol. On appeal, Sullivan contends that Norin's reasonable suspicion to detain her dissipated after she successfully performed the ABC test, and that her continued detention violated her Fourth Amendment rights against unreasonable search and seizure. Although this constitutional issue was not specifically raised at trial, we will exercise our discretion and consider it. *See L.K. v. B.B.*, 113 Wis.2d 429, 448, 335 N.W.2d 846, 856 (1983).

To execute a valid investigatory stop consistent with the Fourth Amendment prohibition against unreasonable searches and seizures, a law enforcement officer must reasonably suspect, in light of the officer's experience and training, that some kind of criminal activity or conduct constituting a civil forfeiture has occurred or is taking place. *See State v. Krier*, 165 Wis.2d 673, 677-78, 478 N.W.2d 63, 65-66 (Ct. App. 1991). Upon stopping the individual, the officer may make reasonable inquiries to dispel or confirm the suspicions that justified the stop. *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

In assessing whether there is reasonable suspicion for a particular stop, we must consider all the facts and the rational inferences from those facts. *See generally State v. Dunn*, 158 Wis.2d 138, 146, 462 N.W.2d 538, 540 (Ct. App. 1990). "The question of what constitutes a reasonable suspicion is a common sense test. Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training?" *State v. Jackson*, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989). However, a stop that is lawful at its inception may develop into an unlawful seizure if the purpose of the stop is completed or if the stop continues longer than is necessary to effectuate the purpose of the stop. *Valance v. Wisel*, 110 F.3d 1269, 1276 (7th Cir. 1997).

When reviewing the denial of a suppression motion, we defer to the trial court's factual findings, and will uphold them unless they are clearly erroneous. *State v. Dull*, 211 Wis.2d 652, 655, 565 N.W.2d 575, 577 (Ct. App. 1997). However, whether an investigative stop satisfies the constitutional standards of reasonableness presents a question of law, which we review *de novo*. *Krier*, 165 Wis.2d at 676, 478 N.W.2d at 65. The relevant factual findings in this case are not in dispute, so we proceed with the constitutional inquiry.

We conclude that based on of the strength of the facts in this case and the reasonableness of not relying on a single field sobriety test, Sullivan's successful performance of the ABC test did not remove the reasonable suspicion that she operated her vehicle while intoxicated. Several facts were identified by the trial court as justifying a reasonable suspicion to detain Sullivan for the performance of field sobriety tests. These facts, although not rising to the level of probable cause, were sufficient to raise a reasonable suspicion. In addition, Officer Norin opined that the performance of one test, in his experience, would be insufficient to effectuate the purpose of the stop. Officer Norin also testified that approximately half of all intoxicated persons who he had stopped were able to successfully perform the ABC test. Thus, one could reasonably conclude that the legitimate purpose of the stop was not completed. Under the facts and circumstances of this case, a reasonable officer could continue to suspect that Sullivan had been operating her vehicle while intoxicated, despite her successful performance of the ABC test. We therefore affirm the trial court's decision.

*By the Court.*—Judgment affirmed.

Not recommended for publication in the official reports. See RULE 809.23(1)(b)4, STATS.



