

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 27, 2008

David R. Schanker
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. 2007AP2612

Cir. Ct. No. 2006CV486

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITY OF WHITEWATER,

PLAINTIFF-RESPONDENT,

V.

TERRY A. CRAIG,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Walworth County:
MICHAEL S. GIBBS, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ Terry Craig appeals from an order affirming the municipal court's judgment of conviction for operating while intoxicated, first

¹ This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(g) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

offense, under WIS. STAT. § 346.63(1)(a). Craig argues that the circuit court erred in denying his motion to suppress evidence because the police officer did not have reasonable suspicion to stop his vehicle. We conclude there was reasonable suspicion. We affirm the order.

¶2 On February 8, 2006, at approximately 1:52 a.m., a police officer witnessed Craig's vehicle traveling the wrong direction on a one-way driveway. The driveway was part of the Mill Race parking lot in the City of Whitewater. The vehicle exited the parking lot without stopping at the sidewalk. Two signs marked the driveway as a one-way area for vehicles. The first sign was a do-not-enter sign located along the driveway. The second sign was a one-way sign located at the driveway entrance. The police officer stopped Craig's vehicle for failing to obey the traffic signs. Craig was subsequently arrested for operating while intoxicated.

¶3 The Mill Race parking lot is owned by the City of Whitewater. There is disagreement whether the traffic signs in this case are official traffic signs. Craig contends that the traffic signs were not duly authorized by a public body or an official having jurisdiction, and the signs did not conform to the Wisconsin Manual on Uniform Traffic Control Devices. Therefore, Craig argues, the signs are not official. The City contends that the signs were placed by the City of Whitewater public works director under powers granted him by the City manager, who is the person empowered to designate regulations governing city parking lots. The City also contends that parking signs do not need to conform to the Wisconsin Manual on Uniform Traffic Control Devices.

¶4 Whether the signs were official signs does not impact the analysis in this case, so we will assume the signs were not official signs.

¶5 Craig moved to suppress evidence of his operating a motor vehicle under the influence obtained after the officer made the traffic stop. At the motion hearing, the police officer testified that she observed Craig's vehicle driving the wrong way on a one-way driveway. The police officer also testified that Craig's vehicle failed to stop at the sidewalk exiting the Mill Race parking lot on to Main Street.

¶6 Craig argues that Wisconsin law requires drivers to obey only official traffic signs. Craig believes that the traffic signs were not official traffic signs, and thus he did not violate any laws. Craig contends that the police officer was mistaken in her belief that the traffic signs were official. Craig argues that under *State v. Longcore*, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), *aff'd*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620, a lawful stop cannot be predicated on a mistake of law. Craig asserts that the basis for the stop was the officer's mistake of law, and thus there was no reasonable suspicion to stop his vehicle. The circuit court concluded that the officer had a reasonable suspicion to stop Craig and denied Craig's motion to suppress.

¶7 When we review a motion to suppress, we uphold the circuit court's findings of fact unless those findings are clearly erroneous. *State v. Horngren*, 2000 WI App 177, ¶7, 238 Wis. 2d 347, 617 N.W.2d 508. The application of constitutional principles to the facts is a question of law that we review de novo. *Id.*

¶8 Temporarily detaining individuals during a traffic stop qualifies as a seizure of persons within the meaning of the Fourth Amendment. *Whren v. United States*, 517 U.S. 806, 809-810 (1996). A traffic stop is therefore subject to the constitutional requirement that the stop is reasonable under the circumstances.

Id. at 810. Traffic stops are usually reasonable if an officer has grounds to reasonably suspect a violation has been or will be committed. See *Berkemer v. McCarty*, 468 U.S. 420, 439 (1984).

¶9 Reasonable suspicion exists when facts and circumstances known to the officer would lead a reasonable officer to conclude that the defendant committed a crime. *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. Reasonableness is measured objectively by the totality of the circumstances. *Id.* The observation of unlawful conduct by itself gives a police officer reasonable suspicion for a lawful seizure. *State v. Waldner*, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996).

¶10 Failure to adhere to official traffic signs is a violation of WIS. STAT. § 346.04(2). The officer observed Craig violating traffic signs that resembled official signs. Nothing indicated that the signs were not official signs. A reasonable officer could believe the traffic signs in the Mill Race parking lot were official traffic signs. Therefore, the officer had reasonable suspicion to believe Craig had committed a crime.

¶11 Craig argues that *Longcore*'s "mistake of law" holding is relevant to this case. See *Longcore*, 226 Wis. 2d at 9. We disagree. In *Longcore*, the officer observed an improvised plastic window covering and thought it was a traffic code violation because it was not safety glass. *Id.* at 4. At issue in *Longcore* was: What facts were required under the statute in order to be in violation of the statute? See *id.* at 9-10. Here the question is: What did the officer reasonably perceive the facts to be? Thus, the *Longcore* court was concerned with a mistake of law. Conversely, believing an unofficial sign is an official sign is a mistake of fact, not a mistake of law.

¶12 We conclude that, although the officer's belief that the traffic signs were official may be mistaken, it was reasonable under the circumstances. As such, the officer had reasonable suspicion to believe Craig violated WIS. STAT. § 346.04(2). Therefore, we affirm.

By the Court.—Order affirmed.

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

