

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 2, 2011

A. John Voelker
Acting 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 Nos. 2011AP1088
2011AP1089
2011AP1090**

**Cir. Ct. Nos. 2010TR5132
2010TR5133
2011TR118**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

**Nos. 2011AP1088
2011AP1090
CITY OF SHEBOYGAN,**

PLAINTIFF-RESPONDENT,

V.

KATHY L. REINDL-KNAAK,

DEFENDANT-APPELLANT.

**No. 2011AP1089
IN THE MATTER OF THE REFUSAL OF KATHY L. REINDL-KNAAK:**

CITY OF SHEBOYGAN,

PLAINTIFF-RESPONDENT,

V.

KATHY L. REINDL-KNAAK,

DEFENDANT-APPELLANT.

APPEALS from a judgment and an order of the circuit court for Sheboygan County: L. EDWARD STENGEL, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Kathy L. Reindl-Knaak appeals from a judgment finding her guilty of operating a motor vehicle while under the influence of an intoxicant (OWI), contrary to WIS. STAT. § 346.63(1)(a) and with a prohibited alcohol concentration (PAC) contrary to § 346.63(1)(b). She additionally appeals from an order deeming unreasonable her refusal to take a test for intoxication pursuant to WIS. STAT. § 343.305(10).² Reindl-Knaak challenges the judgment and order on grounds that the arresting officer did not have the requisite reasonable suspicion to conduct an investigatory stop of her vehicle and, therefore, she is entitled to the suppression of the resulting evidence and her refusal to submit to testing was reasonable. Based on the totality of the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

² This case involves the consolidation of three circuit court cases involving Reindl-Knaak's citations for OWI and PAC and the order for revocation following her refusal. Reindl-Knaak's attorney moved for the consolidation of these appeals, noting that "all trial court cases (10TR5132/10TR5133/11TR118) involve the same facts and circumstances. The appeal in each case involves the same issue, i.e. whether there was reasonable suspicion to detain Ms. Reindl-Knaak." This court granted Reindl-Knaak's motion and consolidated these appeals, Nos. 2011AP1088 (OWI), 2011AP1089 (Refusal), and 2011AP1090 (PAC), for purposes of briefing and disposition.

circumstances, we conclude that the investigatory stop was lawful. Reindl-Knaak's motion to suppress was properly denied and her refusal to submit to a test for intoxication was properly deemed unreasonable. We affirm the judgment and order.

FACTS

¶2 The facts underlying Reindl-Knaak's citations for OWI and PAC were testified to at a refusal hearing by the arresting officer. Officer Alex Jaeger, of the City of Sheboygan Police Department, testified that on November 14, 2010, at 2:39 a.m. in the morning, he observed a vehicle approaching him driving westbound on Geele Avenue in the city and county of Sheboygan. Jaeger was parked facing eastbound. Jaeger conducted a registration check of the license plate from the front of the car and found that the registration was expired. The vehicle registration expired on September 30, 2010.

¶3 After discovering the expired license plate from the front of the vehicle, Jaeger turned his patrol car around and stopped Reindl-Knaak's car. Jaeger initiated the stop by activating his lights. After Jaeger initiated the stop, he observed that the car had a rear temporary license plate. After noting the temporary license plate, Jaeger informed dispatch of the traffic stop and then approached the operator of the vehicle. At this time, Jaeger did not know whether the temporary plate was valid. Other than the expired front plate, Jaeger did not observe any traffic violations or unusual driving behavior.

¶4 Jaeger approached the car to make contact with the operator who was later identified as Reindl-Knaak. Jaeger noted that the window was partially open and he detected the odor of intoxicants coming from the vehicle. In speaking

with Reindl-Knaak, Jaeger noted that she was “somewhat thick-tongued or slow in speech.” Jaeger went back to his car to conduct a driver’s license check on both Reindl-Knaack and her passenger. Jaeger then called for back-up and requested that Reindl-Knaak perform standardized field sobriety testing.

¶5 Jaeger testified that Reindl-Knaak’s performance on field sobriety testing indicated that she most likely had an alcohol concentration that exceeded the legal limit. Reindl-Knaak was then given a breath test and was arrested for OWI. Reindl-Knaak was transported to the police station. Reindl-Knaak subsequently refused to submit to an evidentiary chemical test of her breath and was taken to the hospital where a blood test was administered.

¶6 Following the refusal hearing, the circuit court entered an order finding that Reindl-Knaak unreasonably refused a lawful request of a law enforcement officer to submit to a chemical test pursuant to WIS. STAT. § 343.305. Reindl-Knaak filed two motions for reconsideration based upon lack of reasonable suspicion to detain. The circuit court denied Reindl-Knaak’s motions for reconsideration. The parties thereafter entered into a stipulation whereby Reindl-Knaak waived her right to a jury trial on the OWI and PAC charges, instead agreeing that the circuit court could use the transcript of the refusal hearing in making the legal and factual determinations relevant to the OWI and PAC citations. The circuit court did so and, based on the all of the evidence, including Jaeger’s testimony at the refusal hearing, subsequently found Reindl-Knaak guilty of OWI and PAC. Reindl-Knaak appeals.

DISCUSSION

¶7 The parties do not dispute that Reindl-Knaak’s vehicle had an expired front license plate, that the temporary plate affixed to the rear of the vehicle was later determined to be valid, and that Jaeger had probable cause to continue Reindl-Knaak’s detention based on the odor of alcohol and her “slow” speech. The narrow issue on appeal is whether Jaeger had reasonable suspicion to initiate a lawful traffic stop of Reindl-Knaak’s vehicle. Based on our review of the record, we conclude that he did.

¶8 Reindl-Knaak’s motions and arguments on appeal assert Fourth Amendment violations resulting from an unreasonable seizure. Both the Fourth Amendment of the United States Constitution and article I, § 11, of the Wisconsin Constitution guarantee to all citizens the right to be free from unreasonable searches and seizures. Because an investigatory stop is a “seizure” within the meaning of the Constitution, a law enforcement officer, before stopping an individual, must reasonably suspect, in light of his or her training and experience that the individual is violating the law. *Terry v. Ohio*, 392 U.S. 1, 20-22 (1968); *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623; Wis. STAT. § 968.24. The reasonableness of a *Terry*-type stop depends “on whether the officer’s action was justified at its inception, and whether it was reasonably related in scope to the circumstances which justified the interference in the first place.” *Terry*, 392 U.S. at 19-20.

¶9 Whether there is reasonable suspicion to conduct a traffic stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. We apply a two-step standard of review to questions of

constitutional fact. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W. 2d 106. First, we review the circuit court’s findings of historical fact and uphold them unless they are clearly erroneous. *State v. Martwick*, 2000 WI 5, ¶19, 231 Wis. 2d 801, 604 N.W.2d 552. Second, we review the determination of reasonable suspicion de novo. *See id.*

¶10 Here, the circuit court found that Jaeger’s initial stop was “based upon the information that he observe[d] in seeing the plate on the front of the vehicle, and making the determination that that registration has expired.” The court noted that “subsequent determinations ... led [Jaeger] to conclude that the temporary registration was still valid.” However, the court determined that “the fact that he’s got an expired plate is sufficient reason for him to stop the vehicle and then speak to the driver of the vehicle about what’s happening.” We agree.

¶11 The law is well established that “an officer may make an investigative stop if the officer ... reasonably suspects that a person is violating the non-criminal traffic laws.” *County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999). Jaeger testified that when he observed Reindl-Knaak’s front license plate, he “conducted a registration check and found that [the] registration was expired.” Jaeger turned his vehicle around and initiated the traffic stop of Reindl-Knaak’s vehicle. Jaeger testified that [t]he original reason for the stop was for [the] registration being expired.” Thus, when initiating the stop, Jaeger had reason to believe that Reindl-Knaak was violating a non-criminal traffic law.

¶12 Jaeger further testified that he “was aware of the temporary registration *after* initiating the stop.” (Emphasis added.) Contrary to Reindl-

Knaak's suggestion, the subsequent discovery of a temporary tag on the rear of the vehicle did not negate the justification for the stop at its inception nor did it hamper Jaeger's ability to make contact with the driver to, at a minimum, provide an explanation for the stop.

¶13 Given Jaeger's testimony and the circuit court's findings, we reject Reindl-Knaak's attempt to liken this case to *State v. Longcore*, 2001 WI App 15, 240 Wis. 2d 429, 623 N.W.2d 201, and *State v. Lord*, 2006 WI 122, 297 Wis. 2d 592, 723 N.W.2d 425. Unlike the investigatory stop in *Longcore*, Jaeger's initial stop of Reindl-Knaak's vehicle was not based on a mistake of law. See *Longcore*, 240 Wis. 2d 429, ¶3 ("an officer who erroneously applies the law to the facts does not have probable cause to believe the law was violated"). And, consistent with the holding in *Lord*, Jaeger did not initiate an investigatory stop of Reindl-Knaak's vehicle for the purpose of verifying registration based solely on the display of temporary license plates. See *Lord*, 297 Wis. 2d 592, ¶7. Rather, Jaeger initiated the stop based on his confirmation that Reindl-Knaak's vehicle had an expired registration contrary to WIS. STAT. § 341.04(1). Jaeger did not know at that point that the vehicle was subject to a valid temporary operation plate.

¶14 Finally, we acknowledge Reindl-Knaak's arguments regarding the validity of her temporary plate under WIS. STAT. § 341.09³ and her compliance

³ WISCONSIN STAT. § 341.09(1)(a) governs temporary operation permits and plates. It provides: "The department shall issue temporary operation plates as provided ... the permits or plates shall contain the date of expiration and sufficient information to identify the vehicle for which and the person to whom it is issued ... a temporary operation plate issued under this section is valid for a period of 90 days or until the applicant receives the regular registration plates, whichever occurs first." *Id.*

with WIS. STAT. § 341.15 in displaying it on the rear of her vehicle.⁴ However, as noted above, the stop was based on Jaeger’s confirmation that, based on the front license plate, the vehicle registration was expired. Moreover, Reindl-Knaak’s argument ignores one of the basic purposes of a *Terry* stop; it provides law enforcement officers an opportunity to temporarily freeze a situation in order to investigate further. See *State v. Jackson*, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989). Jaeger did so here and, as the circuit court observed, a valid temporary plate could have provided an explanation for the expired registration plate. However, Jaeger’s observation of possible intoxication then provided reasonable suspicion to further investigate.

CONCLUSION

¶15 We conclude, under the totality of circumstances, that Jaeger had reasonable suspicion that Reindl-Knaak was committing a traffic law violation by operating her vehicle with an expired registration. As such, the circuit court properly denied her motion to suppress evidence resulting from the investigatory stop of her vehicle. Further, because Reindl-Knaak was lawfully detained, her refusal to submit to a test for intoxication was unreasonable. We therefore affirm the judgment and order.

⁴ WISCONSIN STAT. § 341.15 governs the display of registration plates. It provides that “[w]hen 2 registration plates are issued for a vehicle, one plate shall be attached to the front and one to the rear of the vehicle.” Sec. 341.15(1). However, when only one registration plate is used for a vehicle, the plate shall be attached to the rear. Sec. 341.15(1)(b).

By the Court.—Judgment and order affirmed.

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

