

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 30, 2018

Sheila T. Reiff
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. 2017AP1979

Cir. Ct. No. 2017TR5019

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

WINNEBAGO COUNTY,

PLAINTIFF-RESPONDENT,

V.

LESA L. MAUS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Winnebago County: JOHN A. JORGENSEN, Judge. *Affirmed.*

¶1 NEUBAUER, C.J.¹ Lesa L. Maus appeals from a judgment of conviction for operating a motor vehicle while under the influence of an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version.

intoxicant. Maus challenges the circuit court’s denial of her motion to suppress in which she contends that the police lacked reasonable suspicion to initiate a traffic stop. We disagree and affirm.

BACKGROUND

¶2 Winnebago County Sheriff Deputy Glasel testified to the following undisputed facts at the hearing on the suppression motion.

¶3 On March 30, 2017, Glasel received an alert through dispatch that a vehicle was traveling in the wrong direction (northbound) in the southbound lanes on I-41 in Winnebago County. A citizen witness had notified dispatch at 12:30 a.m. That individual provided a color for the car—beige.

¶4 Dispatch advised Glasel that the State Traffic Operation Center (STOC) was viewing the vehicle in real time through its cameras. STOC has cameras that line “all along” the roadway on I-41.

¶5 STOC communicated with Glasel through dispatch and gave him updates on the car’s location “about every minute.”

¶6 STOC advised Glasel that the vehicle exited I-41 near the Hwy. 45 interchange and continued on Algoma Blvd. toward Oshkosh. Glasel was “a short distance away” heading southbound on I-41. He took the same exit and also headed on Algoma Blvd. toward Oshkosh. There were not many vehicles on the road.

¶7 The vehicle “got turned around” by going through two roundabouts on Algoma Blvd. and turning back onto I-41, going north in the correct lanes. When Glasel was close to the location of the roundabouts he did not see any other

vehicle in the area. When STOC advised that the car was turning north onto I-41, Glasel was “at that location,” “right behind the vehicle entering the roundabout to go onto 41.” Maus’s vehicle was “the only car around me.”

¶8 STOC had been “narrating what they [were] seeing,” which was right “in front of” Glasel.

¶9 STOC did not give Glasel a description of the vehicle’s make, model or color. He followed the car for approximately one mile as it traveled northbound on I-41 before initiating the stop. It was a black Honda Civic.

¶10 Glasel subsequently arrested Maus. She was charged with operating a motor vehicle while under the influence of an intoxicant and with a prohibited alcohol concentration pursuant to WIS. STAT. § 346.63(1)(a) and (b).

¶11 Maus moved to suppress the evidence. She argued that Glasel did not have sufficient confirmation that the car reported to be driving northbound in the southbound lane was in fact her car—the car Glasel stopped. She argued that the officer did not have reasonable suspicion to make the stop. The circuit court denied Maus’s motion. After a bench trial, the court found Maus guilty of operating a motor vehicle while under the influence of an intoxicant pursuant to WIS. STAT. § 346.63(1)(a), and the other charge was dismissed. A judgment of conviction was entered.

¶12 Maus appeals and now challenges the circuit court’s order denying her motion to suppress.

STANDARD OF REVIEW

¶13 The constitutionality of a seizure is a question of constitutional fact. *State v. Floyd*, 2017 WI 78, ¶11, 377 Wis. 2d 394, 898 N.W.2d 560. We uphold a circuit court’s findings of historical fact unless clearly erroneous, but whether those facts pass constitutional muster is a question of law we review de novo. *Id.*

DISCUSSION

¶14 Maus challenges the traffic stop. She contends that the officer failed to sufficiently verify that he followed and stopped the reported car. She points to Glasel’s testimony that STOC did not explicitly confirm that he was following and had stopped the correct car. The circuit court found that the officer had articulable reasons to identify her car as the reported car, even if the color did not match the citizen report. We agree.

¶15 The United States and Wisconsin Constitutions protect the right of individuals to be free from unreasonable searches and seizures. U.S. CONST. amend. IV; WIS. CONST. art. I, § 11; *see also Floyd*, 377 Wis. 2d 394, ¶19 (“[W]e normally interpret [the Wisconsin counterpart] coextensively with the United States Supreme Court’s interpretation of the Fourth Amendment.”).

¶16 A traffic stop is a form of seizure entitled to Fourth Amendment protections from unreasonable search and seizures. *Floyd*, 377 Wis. 2d 394, ¶20; *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). A law enforcement officer may temporarily detain individuals and perform an investigatory stop of a vehicle based on a reasonable suspicion of a noncriminal traffic violation. *Floyd*, 377 Wis. 2d 394, ¶20.

¶17 A traffic stop is generally reasonable if the police have reasonable grounds to suspect that a traffic violation has been or will be committed. *State v. Iverson*, 2015 WI 101, ¶44, 365 Wis. 2d 302, 871 N.W.2d 661. The police “‘must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the intrusion of the stop.” *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (citation omitted). A stop based on an “officer’s ‘inchoate and unparticularized suspicion or ‘hunch’” is insufficient. *Id.* (citation omitted). The question is one of “common sense”: whether the totality of the facts and circumstances, including reasonable inferences drawn from those facts, “would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit” a traffic violation. *Id.*, ¶13.

¶18 Here the facts are undisputed and clearly support a finding that Glasel had reasonable suspicion to instigate the stop of Maus’s car in light of the totality of the circumstances. STOC was providing updates approximately every minute based on real-time cameras all along I-41. When STOC reported that Maus had exited the highway to then re-enter going in the correct direction, Glasel was at the same exit. The car he followed, identified by its location, was the only car around. The stop was not made based on an inchoate and unparticularized hunch; it was based on real-time monitoring of the reported car. This was clearly more reliable information than the citizen witness’s report of the car’s color. It was reasonable to infer that this reported observation was incorrect. That STOC did not expressly confirm that he was following the correct car, as it was providing him with updates and he followed the car for a mile on I-41, suggests that the conclusion was self-evident. The requisite reasonable suspicion did exist that the

car he located and followed was the same car that was reportedly traveling in the wrong direction.

CONCLUSION

¶19 Based on the totality of the observations and information gathered by the officer before the stop, we conclude that he had the requisite reasonable suspicion to stop Maus's vehicle. We therefore uphold the circuit court's order denying Maus's motion to suppress and affirm the judgment.

By the Court.—Judgment affirmed.

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

