

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 13, 2010

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2009AP1796-CR

Cir. Ct. No. 2008CT309

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARY B. SCHAEZTER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: TERRENCE T. BOURKE, Judge. *Affirmed.*

¶1 BROWN, C.J.¹ In this appeal from a conviction of operating a vehicle while intoxicated (2nd offense), the issue is whether there was reasonable

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

suspicion to make an investigatory stop of a motor vehicle driven by Mary B. Schaetzer. The trial court found reasonable suspicion that Schaetzer violated a traffic statute, WIS. STAT. § 346.31(2), requiring right hand turns to be made as close as practicable to the right-hand edge or curb of the roadway. We reject Schaetzer's argument that, since the deputy stopped the vehicle for a different reason than the reason seized upon by the trial court, the trial court was not authorized to use an alternative basis to uphold the stop. And we also reject her argument that she did not violate the traffic statute because the statute makes exception for extra-wide vehicles such as hers. We affirm.

¶2 On March 23, 2008, at or about 8:30 p.m., a Sheboygan county sheriff's deputy observed Schaetzer execute "a very wide and dangerous turn onto a residential street that could have had the possibility of oncoming traffic." The deputy thought that the turn was "wider than it needed to be ... enough to draw my attention." The deputy remembered the "reason for the stop ... thinking ... if there was a car at the stop sign getting ready to turn onto Main, I was like, holy cow, this vehicle would have hit it."

¶3 After the turn, the deputy observed that Schaetzer needed to correct because she had made a turn onto the southbound side of the street when she was going northbound. After correcting, she went down the middle of the unmarked street. The deputy decided at that time to execute a stop of the vehicle "specifically ... for the wide turn ... and driving down the center of the road." He pulled out to follow the vehicle but had to accelerate "pretty good" to catch up to it, leading to the deputy's conclusion that it was "going above the 25-mile-an-hour limit." The stop led to Schaetzer's arrest for operating while intoxicated. She brought a motion to suppress, lost, and now appeals.

¶4 Schaetzer’s first argument is that the ground used by the trial court, an improper right turn, “never came up between the officer and her on the night of her arrest.” She claims that the trial court “should not have found an alternative reason for stopping her based [on an] improper right turn.” We have several problems with this claim. First, she cites absolutely no authority for the proposition that trial courts are prohibited from finding alternative reasons to justify a stop apart from the reasons identified by the law enforcement officer. Arguments unsupported by references to legal authority will not be considered. *See State v. Lindell*, 2000 WI App 180, ¶23 n.8, 238 Wis. 2d 422, 617 N.W.2d 500. Second, the deputy *did* base his stop, in part, upon what he considered to be an illegal right turn. So, the whole premise for this argument is wrong. Third, the subjective reasons for making a stop notwithstanding, the law is that a court makes its determination upon objective facts which taken in light of the totality of the circumstances would lead a reasonable police officer in the position of the arresting officer to believe that a crime might have been committed. *See State v. Jackson*, 147 Wis. 2d 824, 833-34, 434 N.W.2d 386 (1989). And here, Schaetzer’s extra wide turn, followed by driving down the middle of the street in excess of the speed limit, would lead a reasonable police officer to believe that a crime was being committed, justifying a stop. We reject Schaetzer’s first argument.

¶5 Schaetzer’s remaining argument is that “she was driving a large, extended cab pickup truck and had to go slowly into the intersection so that she could see if she could safely make her turn.” And this, she claims, is why she made an extra-wide turn. It also explains, in her mind, why she had to drive in the middle of the street, it being the only safe place to drive because of the size of her truck. She cites that part of WIS. STAT. § 346.31(2), which states:

If, because of the size of the vehicle or the nature of the intersecting roadway, the turn cannot be made from the traffic lane next to the right-hand edge of the roadway, the turn shall be made with due regard for all other traffic.

Schaetzer claims that this portion of the statute is speaking to her situation that night. She cites out-of-state cases which she claims stand for the proposition that where no traffic is approaching, then the wide turn is acceptable because regard for traffic is irrelevant. But again, there are various reasons to reject her argument.

¶6 First, the deputy did not believe that the size of her vehicle required her to make an extra wide turn. He testified that it is not like she had to make a 90-degree turn since the intersection was curved out at an angle. And the trial court found, as fact, that the roadway was “certainly wide enough to allow [her] to turn ... and maintain a position close to the right as required by statute in a position that would not have interfered with any southbound travel.” So, the reason for making a wide turn in this instance is simply lacking.

¶7 Second, none of the out-of-state cases hold that, when oncoming vehicles are nowhere nearby, the need to have due regard for other traffic is lessened when making a turn at an intersection. We do not feel the need to cite these cases and discuss them at length. Suffice it to say, one case dealt with a statute requiring a lane deviation to be made “safely.” Another case dealt with a stop based on a very brief straddling of the center line of an undivided highway when there was no oncoming or passing traffic. These cases do not involve the same statutory elements as the case at bar.

¶8 Third, in Wisconsin, it is a crime to operate a vehicle under the influence of an intoxicant. WIS. STAT. § 346.63(1)(a). The phrase “[u]nder the influence of an intoxicant” speaks to that driver who exhibits an inability to safely

control his or her vehicle. WIS JI—CRIMINAL 2600, VIII A. This means that, apart from whether a traffic statute was violated, the law enforcement officer's observation is focused on whether the driver is demonstrating poor management and control of the vehicle while making the illegal maneuver. That is what raises suspicion. Here, the deputy's attention was immediately drawn to Schaezter's vehicle precisely because she executed her turn in such a manner that the deputy believed it to be dangerous. She then over-corrected so that she would not be traveling in the southbound portion of the unmarked roadway and then went over the speed limit. All of these facts, taken together, would lead a reasonable police officer to believe that the driver was exhibiting poor management and control of the vehicle. As such, the stop was justified.

By the Court.—Judgment affirmed.

This opinion will not be published in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

