

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 4, 2014

Diane M. Fremgen
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. 2013AP2783-CR

Cir. Ct. No. 2011CT464

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ALBERTA R. ROSE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 REILLY, J.¹ Alberta R. Rose appeals from her conviction for third-offense operating a motor vehicle while under the influence of an intoxicant

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

(OWI) arguing that reasonable suspicion did not exist to support the traffic stop of her vehicle and that the evidence gathered after the stop should have been suppressed. We disagree and affirm.

BACKGROUND

¶2 Shortly after midnight on Monday, November 7, 2011, Sheboygan Police Officer Timothy Anhalt observed a vehicle that, while it stayed within its lane of travel, smoothly swerved three or four times between the parking lane and the center line as it proceeded on Eighth Street in Sheboygan, Wisconsin. Anhalt followed the vehicle for several blocks to further observe the vehicle as well as to find a safe place to conduct a traffic stop. Anhalt activated his red and blue emergency lights and stopped the vehicle after he observed it appear to strike the center line. Rose was identified as the vehicle's driver, and a subsequent investigation resulted in a citation for OWI.

¶3 Rose challenged the legality of her traffic stop at a suppression hearing. At the hearing, Anhalt testified as to his observations of Rose's operation of her vehicle. Rose presented testimony by a reconstruction expert who analyzed the video of the traffic stop. Rose's expert testified that based upon his enhancement of the squad video, the tires of Rose's vehicle never actually touched the center line, although Rose's vehicle was within inches of the center line. Rose's expert did not dispute Anhalt's testimony that Rose's vehicle had swerved several times prior to the video of the stop, which started recording thirty seconds before Anhalt activated his emergency lights. Anhalt testified that he stopped Rose's vehicle based not only upon the center line touch but also due to Rose's repeated swerving and the fact that it was just past midnight on a Monday morning

in the proximity of several bars, raising a reasonable suspicion in his experience that she might be driving while intoxicated.

¶4 The circuit court viewed the unfiltered squad video during the suppression hearing and concluded that it appeared that the vehicle's tires had touched the center line: "From [the officer's] point of view, it looks like she hits the centerline. That is what it looks like on the tape. [Rose's expert] helps us out with exactly how close it was, but it was too close to the centerline if it didn't hit it." The circuit court found Anhalt's testimony credible and denied the motion to suppress. Rose pled guilty, and this appeal followed.

STANDARD OF REVIEW

¶5 We apply the "clearly erroneous" standard of review to factual findings at a suppression hearing made from a combination of live testimony and evidence preserved on a video recording. *State v. Walli*, 2011 WI App 86, ¶1, 334 Wis. 2d 402, 799 N.W.2d 898. We review independently the application of those facts to constitutional principles. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634.

DISCUSSION

¶6 An investigatory traffic stop is justified by reasonable suspicion. *Walli*, 334 Wis. 2d 402, ¶9. To determine if reasonable suspicion exists, this court examines the totality of the circumstances surrounding the stop. *Id.*, ¶8. The fundamental focus of the reasonable suspicion requirement in traffic stops is reasonableness. See *State v. Anderson*, 155 Wis. 2d 77, 83, 454 N.W.2d 763 (1990). Driving need not be illegal to give rise to reasonable suspicion justifying an investigatory traffic stop. *Post*, 301 Wis. 2d 1, ¶24. In order to demonstrate

reasonable suspicion, an officer must have a particularized and objective basis to believe that the person stopped is involved in, or was about to partake in, violating the law. *Walli*, 334 Wis. 2d 402, ¶9. This belief must be grounded in specific and articulable facts. *Id.*

¶7 Rose argues that there was not enough evidence to support the circuit court’s finding that the officer had reasonable suspicion to perform a valid investigatory traffic stop of Rose’s vehicle and, therefore, her motion to suppress should have been granted. We disagree. The circuit court’s conclusion that it appeared from the video that the vehicle “looks like she hits the centerline” is not clearly erroneous. *See id.*, ¶14. Additional facts supported the court’s finding of reasonable suspicion: Rose had inexplicably and repeatedly swerved between the traffic and parking lanes as she drove, it was late at night, and Rose was coming from an area where there were several bars. All of these specific and articulable facts provided reasonable suspicion justifying further investigation as to whether Rose was driving while intoxicated. The circuit court properly denied Rose’s suppression motion.

By the Court.—Judgment affirmed.

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

