COURT OF APPEALS
DECISION
DATED AND FILED

November 3, 2026

Samuel A. Christensen
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. 2024AP31 **Cir. Ct. No. 2022TR3581**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

IN THE MATTER OF THE REFUSAL OF MANDY JUNE TURPIN:

CITY OF SUPERIOR,

PLAINTIFF-RESPONDENT,

V.

MANDY JUNE TURPIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Douglas County: KELLY J. THIMM, Judge. *Affirmed*.

¶1 STARK, P.J.[1] Mandy June Turpin appeals from a judgment revoking her privilege to operate a motor vehicle based upon her unlawfully

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

refusing to submit to a chemical test of her breath pursuant to Wisconsin's implied consent law, WIS. STAT. § 343.305. On appeal, Turpin argues that she was not "operating" a motor vehicle, as that term is defined in WIS. STAT. § 346.63(3)(b); that law enforcement did not have reasonable suspicion to expand the scope of her initial seizure; and that the Wisconsin Department of Transportation (DOT) violated the separation of powers doctrine by adding language to the Informing the Accused form that is not found within § 343.305(4). For the reasons that follow, we reject Turpin's arguments and affirm the revocation judgment.

BACKGROUND

¶2 On November 6, 2022, at around 12:19 a.m., Officer Bradley Jago of the Superior Police Department was on patrol in his squad car when he encountered a vehicle that was double parked and "blocking [his] path … stopped directly in the travel lane" on Tower Avenue in the City of Superior. According to the record, this area of the City is considered part of the downtown "bar district" and contains "many restaurants [and] bars." Jago observed that there was someone in the driver's seat of the vehicle, and he waited a "short time" before "activat[ing]" his squad car's emergency lights. When the individual did not respond, he "waited a little bit" longer—10 to 15 seconds—"before shining [his] spotlight at the mirror and passenger compartment inside the car." According to Jago's testimony, the vehicle finally moved "to the right-hand side of the road."

¶3 Thereafter, Jago made contact with the individual in the driver's seat, who was later identified as Turpin by her California driver's license.[2] Jago testified that "initially [Turpin] indicated that she was there to pick up other people," that she was the "designated driver," and that, "[a]t one point, … she had left [the bar] and come back."[3] Jago further explained that, during this initial encounter with Turpin, he observed slightly slurred speech,[4] bloodshot eyes, the "faint odor of intoxicants," and a strong peppermint odor. Jago did notice that Turpin was "chewing gum" and noted that the peppermint odor "may be coming from that." According to Jago, he asked Turpin several times during their interaction whether she had been drinking alcohol, and she responded that she had not.

¶4 Based upon these observations, Jago requested that Turpin take a preliminary breath test (PBT).[5] Turpin declined to take a PBT. Jago then asked Turpin to exit the vehicle, at which time he administered standardized field sobriety tests (SFSTs). The SFSTs revealed multiple clues of impairment. After

[2] The initial portion of Jago's contact with Turpin, including when he had first pulled up behind her vehicle, was not captured on the squad car camera or his body-worn video camera. According to Jago's testimony, the police department "had been switching to different body cam systems" and the "dash cam system was also … having technical difficulties at that time, so [the officers] weren't quite used to the, the new body cam system."

[3] Jago also testified that there was one instance, before her arrest, where Turpin pointed at someone else and said, "[H]e's driving," but that Turpin did not "provide context of whether he was driving before or it was intended he was driving now."

[4] During cross-examination, Jago acknowledged that the portion of Turpin's speech he believed to be slurred was not captured by his body camera.

[5] Jago testified that he had "indicated [a] breathalyzer" test to Turpin, "but [his] intention was a PBT."

conducting the first SFST, Jago asked Turpin again if she had been drinking, and Turpin responded that she had a "Spotted Cow" beer.

¶5 Jago thereafter arrested Turpin for operating a motor vehicle while intoxicated (OWI), as a first offense. Jago transported Turpin to the Douglas County Jail, where he read her the Informing the Accused form and asked her to submit to a chemical test of her breath. *See* WIS. STAT. § 343.305(3)(a), (4). Turpin refused. Jago then read Turpin another form that contained "***Miranda***[6] warning[s] and a waiver of rights" discussion, and she agreed to answer Jago's questions after being informed of those rights. The first question Jago asked was whether Turpin had been operating a motor vehicle that evening, and Turpin responded, "[Y]es." Turpin was eventually cited for refusal to submit to chemical testing and OWI, as a first offense.[7]

¶6 The circuit court held a two-day refusal hearing in August and December 2023, during which Jago, Officer Austin Lauridsen of the Superior Police Department, John Duffy, and Turpin testified.[8] *See* WIS. STAT. § 343.305(9)(a) (allowing a person cited for unlawful refusal to submit to chemical testing to defend against revocation on the ground that the person was not lawfully arrested for an OWI-related offense). Turpin testified that she and her co-workers, including Duffy, had gone to two bars in the area that evening and

[6] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

[7] The OWI case is still pending in the circuit court.

[8] Turpin had filed two pretrial motions: a motion to dismiss based upon ***Village of Cross Plains v. Haanstad***, 2006 WI 16, 288 Wis. 2d 573, 709 N.W.2d 447, and a motion to suppress based upon the extension of the stop under ***State v. Betow***, 226 Wis. 2d 90, 593 N.W.2d 499 (Ct. App. 1999). The circuit court denied both motions.

that she had consumed approximately one-half of a "Spotted Cow" beer, one vodka soda, and a "couple sips of another [vodka soda], later on," but she stated that she did not believe that she was under the influence. According to Turpin, an incident with another patron at the bar caused her to want to leave, so she called a friend to come pick her up so she could leave her car, and she and Duffy went "outside to wait." They decided "to wait inside [her] car for [the friend] in front of the … bar" due to the cold temperature. Turpin claimed that Duffy drove her rental car from its parking spot about "a block away on the street" to the front of the bar where Jago discovered it double parked.

¶7 Turpin testified that when she and Duffy drove to the front of the bar, "[t]here were two people standing in front of a car talking and they kind of gave us a hold-on thing … and that's where [Duffy] pulled up." Despite the fact that they were waiting for a parking space, Duffy—the alleged driver—left the running car and went back inside the bar. Turpin testified that is when she "climbed over to get [her bag] to plug [her] phone in … and that's how [she] ended up in … the driver's seat." Turpin denied "ever manipulat[ing] any of the controls of the vehicle." According to Turpin, she first had contact with Jago when "[h]e pulled [up] next to [her] and [she] rolled down [her] window."[9] At

[9] Turpin testified that following the August 2023 hearing, she traveled to the same location as her November 2022 arrest, double parked in front of the bar, and took a photo of a truck passing by her vehicle to demonstrate that there would have been room for Jago to get around her vehicle. That photo was received into evidence at the December hearing.

that point, the "first thing out of [her] mouth was, I'm not driving," but Jago "ordered [her] to pull into … the spot that the people had pulled out of."[10]

¶8 Turpin admitted during direct examination that she had been untruthful when she told Jago that she had not been drinking that night, but she said she did so because she "felt from the very beginning of [their] interaction that no matter what [she] said, [Jago] wasn't going to believe [her], and [she] was very scared." Turpin also acknowledged that she told Jago that she had come to pick her friends up, but she stated that she "was referring to when earlier in the day [she] picked those guys up to bring them over there. And that was just [her] talking to [her]self and regretting being there."

¶9 The circuit court then asked Turpin how much alcohol she had to drink that evening and inquired whether Turpin "fe[lt] like [she was] under the influence," to which she replied, "No, I did not…. Hundred percent." The court then said, "You're behind the wheel, and it's your rental car. You called for a ride. If you're not under the influence, why wouldn't you have just driven yourself." Turpin responded, "Because there was one car left, and [Duffy] and [another person] were staying … and I just wanted to leave."

¶10 Duffy, for his part, testified that he left the bar with Turpin essentially to ensure her safety. Duffy claimed that he and Turpin went to get the rental car because of the cold, and then he drove the car and double parked in front of the bar. According to Duffy, he went back inside the bar because he was

[10] Arguably, Turpin's act of parking the vehicle would establish that she operated the vehicle, but we do not rely on this act because she contends that she was essentially ordered to move the vehicle by Jago. Further, the circuit court did not rely upon this fact when denying her motions.

concerned about a possibly escalating situation between their other friend and the bar patrons, so he left Turpin in the passenger seat and left the vehicle running. Duffy believed he was inside the bar for "about ten minutes … might have been a little bit more," before he came back outside to find law enforcement with Turpin. Duffy explained that he tried to engage police repeatedly to tell them that Turpin was not driving by saying, "[C]an I ask you a question," but officers "told [him] to step back." Eventually, Lauridsen had a brief discussion with Duffy. On cross-examination, when asked if he "point-blank" stated to Lauridsen that Turpin was not driving, Duffy said, "I don't know if that conversation came up in that way," but Duffy said it could have come up as a question he had posed when speaking with Lauridsen.

¶11 Lauridsen testified that he arrived on the scene around the time that Jago had placed Turpin under arrest. Lauridsen stated that he attempted to shake Duffy's hand, but Duffy refused and further declined to identify himself to Lauridsen. The City then played a video recording from Lauridsen's body-worn camera. During that recording, Lauridsen told Duffy that Jago had perhaps "pulled [Turpin] over," but Duffy responded that "she wasn't, uh, movin[g]" and that he "hundred percent [knew] that." Lauridsen then asked, "So you, you were in the car?" Duffy replied, "No, I wasn't," and told Lauridsen that he "was inside." When Lauridsen then confirmed that Duffy did not actually know if Turpin was driving, Duffy stated, "Well, if she was sittin[g] out here, probably she wasn't drivin[g]."

¶12 After hearing arguments from the parties,[11] the circuit court called this case "a total credibility issue." The court specifically found Turpin's and Duffy's testimony "unbelievable." Conversely, the court found Jago and Lauridsen to be credible. The court ultimately determined that "[t]he credible evidence supports" that Jago had sufficient reasonable suspicion to stop Turpin because "[s]he stopped in the lane of traffic," "[s]he was double-parked," and the "time of night" also suggested that she might be under the influence. Then, once Jago made contact with Turpin, he "started developing more information including the peppermint odor, slurred speech, et cetera," which justified the request that Turpin perform SFSTs. Thus, under the totality of the circumstances, the court found that Jago had probable cause to arrest Turpin, that Turpin had refused to submit to the evidentiary test, and that her refusal was unreasonable. The court subsequently entered a revocation judgment. Turpin appeals.[12]

DISCUSSION

¶13 "Wisconsin has passed an implied consent law, which is designed to facilitate the gathering of evidence to remove drunk drivers from the road." ***State v. Prado***, 2021 WI 64, ¶20, 397 Wis. 2d 719, 960 N.W.2d 869. As applicable here, WIS. STAT. § 343.305(2) provides that any person who drives or operates a

[11] During closing argument, Turpin also argued that the DOT violated the separation of powers doctrine by adding language to the Informing the Accused form, which argument the circuit court rejected.

[12] We pause to note that the City's brief does not comply with WIS. STAT. RULE 809.19(8)(bm), which requires a brief to "have page numbers centered in the bottom margin using Arabic numerals with sequential numbering starting at '1' on the cover." Our supreme court has explained that this pagination requirement "will match the page number to the page header applied by the eFiling system, avoiding the confusion of having two different page numbers." S. CT. ORDER 20-07, 2021 WI 37, 397 Wis. 2d xiii (eff. July 1, 2021). We admonish counsel that we expect parties to follow our Rules of Appellate Procedure.

motor vehicle upon Wisconsin's public highways "is deemed to have given consent to one or more tests of his or her" breath "for the purpose of determining the presence or quantity in his or her … breath" of alcohol "when requested to do so by a law enforcement officer under sub. (3)(a)." *See* ***State v. Gore***, 2025 WI App 11, ¶¶20-21, 415 Wis. 2d 279, 18 N.W.3d 198; *see also* § 343.305(3)(a) (stating that law enforcement may request a test "[u]pon arrest of a person for violation of" a host of OWI-related offenses).

¶14 If an individual refuses a postarrest request for a chemical test, the law enforcement officer must prepare a notice of intent to revoke the person's operating privilege, subject to the person's ability to request a refusal hearing on the revocation. *See* WIS. STAT. § 343.305(9), (10). At a refusal hearing, the contested issues are limited to the following: (1) whether "the officer had probable cause to believe that the driver was driving or operating a motor vehicle 'under the influence'" and "whether the person was lawfully placed under arrest" for a violation of an OWI-related statute; (2) whether "the officer complied with reading the Informing the Accused form"; and (3) whether "the driver refused to permit the … test." ***Gore***, 415 Wis. 2d 279, ¶24; ***State v. Anagnos***, 2012 WI 64, ¶32, 341 Wis. 2d 576, 815 N.W.2d 675; § 343.305(9)(a)5.

¶15 In this appeal, Turpin challenges whether she was "operating" a motor vehicle as that term is defined under WIS. STAT. § 346.63(3)(b), whether the scope of her initial detention was unconstitutionally enlarged, and whether the DOT violated the separation of powers doctrine by adding language to the Informing the Accused form. For the reasons that follow, we reject Turpin's arguments and affirm the circuit court's revocation judgment.

I. "Operating" a motor vehicle

¶16 Turpin first argues that she was not "operating" a motor vehicle as that term is defined in the statutes and the case law. *See* WIS. STAT. § 346.63(1)(a) (prohibiting a person from "driv[ing] or operat[ing]" a motor vehicle while, as relevant here, "[u]nder the influence of an intoxicant"). The term "operate" is defined in § 346.63(3)(b) as "the physical manipulation or activation of any of the controls of a motor vehicle necessary to put it in motion." Because Turpin asserts that she was merely sitting in the driver's seat to get her phone charger, she disputes that she operated the vehicle.

¶17 In support of her position, Turpin relies on ***Village of Cross Plains v. Haanstad***, 2006 WI 16, 288 Wis. 2d 573, 709 N.W.2d 447. In that case, law enforcement observed Haanstad—who was in the driver's seat—and another individual sitting in a vehicle with the engine running while it was parked in a parking lot. ***Id.***, ¶5. Haanstad informed the officer that she had not been driving the vehicle, but after failing field sobriety tests, she was arrested. ***Id.***, ¶8. The question in the case was whether Haanstad had been operating the vehicle. ***Id.***, ¶¶14-15. At trial, Haanstad testified that she "never touch[ed] or manipulat[ed] the gas pedal, steering wheel, or the keys which were in the ignition, or any of the other controls of the car." ***Id.***, ¶10.

¶18 Our supreme court determined that because no evidence was presented that Haanstad "physically activated or manipulated the controls of the car, as required by WIS. STAT. § 346.63(3)(b)," she was not operating a motor vehicle. ***Id.***, ¶2. According to the court, "physical manipulation or activation" requires that the suspect has at least "touched the driving controls" rather than "merely sitting in the driver's seat of a parked vehicle." ***Id.***, ¶¶22-23. Thus, the

absence of any evidence—direct or circumstantial—that Haanstad touched any controls of the vehicle necessary to put it in motion was fatal to the claim that she operated the motor vehicle while intoxicated. ***Id.***, ¶24.

¶19 Turpin argues that this case mirrors the circumstances in ***Haanstad***. She explains that no one observed her driving the vehicle or turning the vehicle's ignition over and that there was no testimony that she was manipulating or controlling either the steering wheel of the vehicle or the gear engagement mechanism. Instead, Turpin states that she was not the driver, which was demonstrated by the fact that Turpin at first refused to move the vehicle to an alternate parking location when Jago ordered her to do so. According to Turpin, Duffy was the driver, and "the only reason [she] was in the driver's seat was to gain access to her phone charger."

¶20 We conclude that ***Haanstad*** does not control this case. ***Haanstad*** represents a very narrow holding that defines what constitutes "operating" a vehicle *when the court accepts the premise that the defendant was not the driver*. *See* ***id.***, ¶21 ("[T]he evidence here is undisputed that Haanstad did not drive the car to the point where the officer found her behind the wheel…. The Village offered no circumstantial evidence to prove that Haanstad had operated the vehicle."). Here, in contrast, the circuit court rejected Turpin's assertion that she was not the driver, found both Turpin's and Duffy's testimony on the issue to be incredible, and relied on circumstantial evidence to conclude that Turpin had operated the vehicle to bring it to Tower Avenue where she was double parked. *See* ***State v. Mertes***, 2008 WI App 179, ¶¶10-17, 315 Wis. 2d 756, 762 N.W.2d 813 (relying on circumstantial evidence to prove "operation" of a motor vehicle and stating that "[t]he issue is not whether Mertes was operating the vehicle at the moment the

police approached him, but rather whether there was enough circumstantial evidence to prove that he drove the car to the gas station").

¶21 The bulk of Turpin's arguments merely take issue with the circuit court's credibility findings.[13] Turpin faults the court's reasoning when it explained that after "coaching mock trial for over twenty-five years," it found Turpin's testimony to be "what I call rehearsed" because she "repeats herself basically verbatim" on direct and cross-examination. Turpin disputes this claim because, according to the transcript, she began many of her statements with the word "uhm," and she "interpos[ed] an 'uh' in her answers, ask[ed] counsel to clarify questions, [and] stutter[ed] or hesitat[ed] with her responses on no less than twenty-eight (28) [and 36] occasions" during the two-day hearing. As a result, Turpin calls herself a "**terrible** actress" if her testimony was actually "rehearsed" and questions "[h]ow … the *truth* [is] supposed to be told" except the "same way when it is repeated" because "[t]he truth is what the truth is."

[13] We admonish Turpin's counsel for the sarcastic and disparaging tenor of his briefing toward the circuit court. For example, during the discussion of the court's credibility findings, he calls the court's conclusions "a shocking assertion"; "frankly, ludicrous"; and "especially disturbing." Further he makes the following observation:

> Ms. Turpin was literally being hoisted on the horns of a dilemma because if she had *not* told her story the same way on direct and cross[-]examination, the circuit court would surely have complained that she was not credible because her story was not *consistently* told. The circuit court's complaint placed Ms. Turpin between the devil and the deep blue sea in this sense, and therefore, strains credulity.

We remind counsel that SCR 62.02 requires judges and lawyers to maintain a cordial and respectful demeanor; to be civil in their dealings with one another; to abstain from making disparaging, demeaning, or sarcastic remarks or comments about one another; and to abstain from any conduct that may be characterized as uncivil, abrasive, abusive, hostile or obstructive. *See* SCR 62.02(1)(a)-(d). We caution counsel that appellate briefing that disparages the circuit court does not constitute effective advocacy.

¶22 Turpin further questions the circuit court's findings with regard to the officers' credibility. She asserts that "Jago had every incentive to 'stretch the truth' because no law enforcement officer wants to be told, in hindsight, his actions were unconstitutional or in derogation of the law." Turpin also questions why Jago's vehicle and body cameras failed to work during the early part of their encounter, arguing that the issue with the cameras supports her credibility. Turpin goes on to accuse the court of "playing favorites" because it "expressly acknowledged that 'there were times where there were some evasive answers' from the officers." (Formatting altered.) Finally, she questions the court's findings with regard to whether Turpin had slurred speech that evening, based on the lack of video evidence, and whether Turpin's rental car was blocking traffic on Tower Avenue, based on the picture Turpin submitted into evidence.

¶23 It is not the function of this court to weigh the credibility of witnesses. We defer to the circuit court's findings on witness credibility, as it had "the opportunity to observe the witness'[s] demeanor and gauge the testimony's persuasiveness." ***Jacobson v. American Tool Cos.***, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1998). We must uphold a circuit court's credibility findings unless they are clearly erroneous. *See* WIS. STAT. § 805.17(2) (factual findings are upheld unless clearly erroneous); ***Lessor v. Wangelin***, 221 Wis. 2d 659, 665-66, 586 N.W.2d 1 (Ct. App. 1998) (witness credibility is a finding of fact). A finding of fact is clearly erroneous when it is against the great weight and clear preponderance of the evidence. ***Phelps v. Physicians Ins. of Wis.***, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615. As a reviewing court, we "must accept and follow the inference drawn by the trier of fact unless the evidence on which that inference is based is incredible as a matter of law." ***State v. Poellinger***, 153 Wis. 2d 493, 506-07, 451 N.W.2d 752 (1990).

¶24 As discussed above, the circuit court did not find Turpin's or Duffy's testimony to be credible, noting that "[t]his whole idea of what happened … [was] unbelievable" and that their testimony felt "rehearsed." In support of its finding, the court reiterated that Turpin admittedly lied to Jago about drinking alcohol and that "if she didn't have too much to drink and she was actually fine to drive, [then] why would she lie about it?" Because the court found Jago credible, it accepted Jago's testimony that Turpin's car was blocking traffic and that initially Turpin's speech was slurred, regardless of whether either event was caught on video. Further, the court could certainly consider that Turpin stated that "she was there to pick up other people" and was the "designated driver" and that Duffy did not explicitly tell law enforcement that Turpin was not driving as circumstantial evidence that she had driven the vehicle to its location. As the City explains, "The evidence showed that Turpin made reference to, in one fashion or another, that she was trying to get 'these guys or [her] friends home,' no less than '14' times during Jago's contact with her." Further, while not dispositive, Jago noted that the key fob to the vehicle was found in Turpin's purse when she was booked into the jail.

¶25 Essentially, Turpin asks us to reweigh the evidence and reassess witness credibility, but our standard of review prohibits us from doing so. The circuit court was entitled to infer, based on the above evidence, that Turpin had in fact driven the vehicle to the location on Tower Avenue in front of the bar, and this inference is not incredible as a matter of law. Therefore, the circuit court's findings with regard to whether Turpin was "operating" the vehicle are based on evidence in the record and are not clearly erroneous.

II. Reasonable suspicion to expand the scope of the stop

¶26 Turpin next argues that law enforcement did not have reasonable suspicion to expand the scope of her detention under the totality of the circumstances. Whether law enforcement's conduct violated the constitutional guarantee against unreasonable searches and seizures is a question of constitutional fact. ***State v. Griffith***, 2000 WI 72, ¶23, 236 Wis. 2d 48, 613 N.W.2d 72. We give deference to the circuit court's findings of fact unless they are clearly erroneous, but we independently determine whether those facts constitute a violation of the Fourth Amendment. ***City of Sheboygan v. Cesar***, 2010 WI App 170, ¶10, 330 Wis. 2d 760, 796 N.W.2d 429.

¶27 Turpin does not challenge her initial seizure by law enforcement for the parking violation. *See* ***State v. Gaulrapp***, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996) ("The temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a 'seizure' of 'persons' within the meaning of the Fourth Amendment." (citation omitted)). Instead, Turpin argues that Jago impermissibly extended the scope of the traffic stop by conducting an OWI investigation.

¶28 "A traffic stop can become unlawful if it is prolonged beyond the time reasonably required to effectuate its purpose." ***State v. Crone***, 2021 WI App 29, ¶10, 398 Wis. 2d 244, 961 N.W.2d 97. "After a stop is made, an officer may expand the scope of inquiry only to investigate 'additional suspicious factors' that come to the officer's attention." ***Id.*** (citation omitted). "The legal determination of reasonable suspicion is an objective test: 'What would a reasonable police officer reasonably suspect in light of his or her training and experience.'" ***Anagnos***, 341 Wis. 2d 576, ¶60 (citation omitted).

¶29 We conclude that Jago had sufficient reasonable suspicion to expand the scope of Turpin's initial seizure for being double parked on the street to conduct an OWI investigation. According to Jago's testimony, and based on his training and experience, once he began speaking with Turpin, he noted "the faint odor of intoxicants"; "[b]loodshot and glassy eyes"; "initial slurring" of Turpin's speech "that [he] heard very distinctly … in the beginning"; "the overwhelming smell of peppermint"; "the time of the contact," i.e., close to bar closing time;[14] and "the location of the contact," given that Turpin "was parked in the middle of the roadway on … a busy road" in an area considered to be "Superior's bar district." Further, the fact that Turpin did not "mov[e] in response to [Jago's] red and blue lights" and was "slow to respond to [his] spotlight" also contributes to the finding of reasonable suspicion. Under these circumstances, Jago had sufficient reasonable suspicion to request that Turpin perform a PBT and SFSTs.

¶30 Turpin challenges Jago's observations on several bases, none of which persuade us that Turpin's seizure was impermissibly extended. First, Turpin argues that "the alleged 'odor' of intoxicants emanating from [her] is less than damning" because "[n]ot every person who has consumed alcoholic beverages is 'under the influence.'" *See* WIS JI—CRIMINAL 2663. She relies on ***County of Sauk v. Leon***, No. 2010AP1593, unpublished slip op., ¶15 (WI App Nov. 24, 2010), and ***State v. Meye***, No. 2010AP336-CR, unpublished slip op., ¶6

[14] Turpin argues that "[w]hile the time of day a violation allegedly occurs is a relevant consideration when assessing whether a reasonable suspicion exists to detain someone, … there was still a period of approximately *two and one-half hours before* 'bar time.'" Regardless, although the fact that the stop occurred just after midnight "is not as significant" as if the stop had occurred closer to bar time, it still "lend[s] some further credence" to Jago's suspicion that Turpin was operating while intoxicated. *See* ***State v. Post***, 2007 WI 60, ¶36, 301 Wis. 2d 1, 733 N.W.2d 634.

(WI App July 14, 2010),[15] in support of the proposition that the mere odor of alcohol alone, even when it is attributable to the driver, is insufficient to establish reasonable suspicion. However, as the record above makes clear, reasonable suspicion to investigate Turpin for an OWI was not based on the odor of alcohol *alone*. Therefore, those cases are distinguishable.

¶31 Second and third, Turpin again questions Jago's credibility, especially his statements "that there was no room to pass [her] vehicle" and "that [she] had slurred her speech." For the reasons we discussed above, we will not second-guess the circuit court's credibility determinations. Jago provided testimony in support of these assertions, and it was the circuit court's responsibility to weigh the credibility of the witnesses. A photo taken a year later under different circumstances does not definitively prove that Jago's testimony was incredible.

¶32 Fourth and fifth, Turpin presents arguments concerning factors that Jago *did not observe* during the stop, including that she had "no difficulty with her fine motor skills when she retrieved her driver's license" and that there was "no allegation that [her] mentation was impaired." According to Turpin, "[t]he absence of any diminution of [her] mental acuity is exceptionally revelatory, in a manner *favorable* to her." We reiterate, however, that reasonable suspicion is based on the totality of the circumstances. *See* ***State v. Anderson***, 2019 WI 97, ¶33, 389 Wis. 2d 106, 935 N.W.2d 285. Therefore, "the absence of one or more factors will not necessarily lead to a conclusion that a stop was unconstitutional."

[15] Unpublished opinions authored by a single judge and issued on or after July 1, 2009, may be cited for their persuasive value. *See* WIS. STAT. RULE 809.23(3)(b).

Village of Hales Corners v. Adams, No. 2013AP1128, unpublished slip op., ¶20 n.7 (WI App Jan. 14, 2014). Further, reasonable suspicion is "a fairly low standard to meet." *See* ***Anderson***, 389 Wis. 2d 106, ¶33.

¶33 Finally, Turpin argues that Jago's observation of her bloodshot eyes does not support reasonable suspicion because she "pulled eyedrops from within her vehicle and showed them to the officer, explaining that 'she struggles with bloodshot eyes,'" and Jago conceded "that was maybe the explanation for her eyes." According to Turpin, "it must be true because, realistically, how many people carry eyedrops in their rental vehicle unless they truly have such a problem?" However, while "officers sometimes will be confronted with behavior that has a possible innocent explanation, a combination of behaviors—all of which may provide the possibility of innocent explanation—can give rise to reasonable suspicion." ***State v. Hogan***, 2015 WI 76, ¶36, 364 Wis. 2d 167, 868 N.W.2d 124; ***State v. Conaway***, 2010 WI App 7, ¶5, 323 Wis. 2d 250, 779 N.W.2d 182 (2009) ("Reasonable suspicion does not require ruling out innocent explanations.").

¶34 We reiterate that the question presented in this case is whether there was *reasonable suspicion* to expand the scope of the stop; therefore, the existence of both exculpatory and inculpatory circumstances does not destroy Jago's ability to continue his investigation. It merely demonstrates a situation where further investigation, including a PBT or SFSTs, proves useful to determine whether there is *probable cause* to arrest for OWI. *See* ***County of Jefferson v. Renz***, 231 Wis. 2d 293, 317, 603 N.W.2d 541 (1999).

III. Separation of powers violation

¶35 Finally, Turpin asserts that the DOT violated the separation of powers doctrine when it included information in the Informing the Accused form

that is not found within WIS. STAT. § 343.305(4). "The separation of powers doctrine is violated when one branch interferes with a constitutionally guaranteed 'exclusive zone' of authority vested in another branch." ***Martinez v. DILHR***, 165 Wis. 2d 687, 697, 478 N.W.2d 582 (1992) (citation omitted), *overruled on other grounds by*, ***Evers v. Marklein***, 2025 WI 36, 417 Wis. 2d 453, 22 N.W.3d 789. "[A]dministrative agencies … can exercise only those powers granted by the legislature." ***Martinez***, 165 Wis. 2d at 697. Whether the DOT violated the separation of powers doctrine by adding language to the Informing the Accused form is a question of law that we review de novo. *See* ***Barland v. Eau Claire County***, 216 Wis. 2d 560, 572, 575 N.W.2d 691 (1998).

¶36 According to Turpin, the DOT erred by adding the following statement to the Informing the Accused form: "In addition, your operating privileges will also be suspended if a detectable amount of a restricted controlled substance is in your blood." Turpin claims that by doing so, the DOT was "usurping legislative authority in violation of the Separation of Powers Doctrine." Citing articles IV, V, and VI of the Wisconsin Constitution, Turpin essentially argues that the constitution says nothing about the DOT having authority to legislate, and she asserts that "the legislative power is vested as a 'core' power only in the [s]tate senate and assembly, and is not shared with the DOT." Turpin contends that "[w]hen the DOT adds language to the [Informing the Accused form], it is effectively *amending* the language of [WIS. STAT.] § 343.305(4)—a power which it does not possess as described above." Further, she argues that § 343.305(4) was created by the legislature to "send[] a manifest and inescapable message that the information [that is to be provided to the accused] should *not* be altered" because the relevant statutory language was placed in quotation marks, "the legislature made the effort to distinguish the information set forth in

§ 343.305(4) from the manner in which it set forth related information in similar statutes," and the legislature used "the word 'shall' in the prefatory paragraph preceding the [Informing the Accused] information."

¶37 Ultimately, Turpin's argument is an attempt to manufacture a constitutional controversy by mislabeling a messenger as a lawmaker. By adding the additional sentence into the Informing the Accused form, the DOT did not amend the language in WIS. STAT. § 343.305(4) or otherwise enact any new law. This language is merely a statement of existing legislative mandates, and we are persuaded by this court's discussion in ***Columbia County v. Devos***, No. 2010AP2349, unpublished slip op., ¶¶7-10 (WI App May 19, 2011), that the added language regarding suspension of operating privileges is statutorily accurate and is required to be provided to an accused pursuant to § 343.305(8).[16] Turpin's argument that the way § 343.305(4) was drafted demonstrates the legislature's intent that it "should *not* be altered" has no bearing here because the language of the statute was not amended or altered by the DOT, as nothing in § 343.305(4) specifically precludes providing additional information on the form outside the

[16] In ***Devos***, this court denied a challenge to additional language in the Informing the Accused form that was similar to, but not exactly the same as, the language added here. ***Columbia County v. Devos***, No. 2010AP2349, unpublished slip op., ¶7 (WI App May 19, 2011).

Turpin challenges the use of ***Devos*** as persuasive authority because she claims that the court's analysis in the case "is … of no value in addressing the novel issue she raises due to its lack of attention to detail." *See* ***id.***, ¶¶7-10. However, we rely on the case only for its discussion of whether the language regarding suspension of operating privileges in that case complied with WIS. STAT. § 343.305(8), in order to support our position that the same is true here.

statutory language.[17] Therefore, the additional statement included in the Informing the Accused form by the DOT does not create any new legal obligations, rights, or prohibitions, but it instead ensures that the accused is fully informed of the actual statutory consequences of chemical testing that the legislature has already mandated by statute. *See* § 343.305.

By the Court.—Judgment affirmed.

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

[17] The City argues that "on a plain reading of WIS. STAT. § 343.305(4), there is absolutely nothing that prohibits a law enforcement officer from providing additional information to the arrestee," but Turpin asserts in her reply brief that there is a "long litany of common law decisions which hold that a law enforcement officer should *not* deviate from the information set forth in … § 343.305(4)." Regardless, she argues that "[t]his is a question cut from a completely different fabric than that which the City weaves" because her "challenge is not to what Officer Jago did, but instead, is a challenge to whether the [DOT] had the *authority* to act as it did."

We suggest, however, that Turpin's claim commits the same alleged misstep as the City because the cases she cites involve situations where law enforcement officers deviated from the information in WIS. STAT. § 343.305(4), which has no application to her challenge to the DOT's authority. *See, e.g.*, ***County of Ozaukee v. Quelle***, 198 Wis. 2d 269, 274-75, 280, 542 N.W.2d 196 (Ct. App. 1995), *abrogated on other grounds by*, ***Washburn County v. Smith***, 2008 WI 23, ¶56, 308 Wis. 2d 65, 746 N.W.2d 243. Our point in noting above that the statute does not prohibit providing additional information is to demonstrate that *the DOT's* act of adding information to the Informing the Accused form, which form is itself not required to be used by § 343.305(4), did not create new law, amend the law, or change the law by, for example, violating a specific prohibition in the statute.