

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**January 11, 2018**

Diane M. Fremgen  
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 No. 2017AP1024**

**STATE OF WISCONSIN**

Cir. Ct. Nos. 2016TR28947, 2016TR28948

**IN COURT OF APPEALS  
DISTRICT IV**

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**DANE COUNTY,**

**PLAINTIFF-RESPONDENT,**

**V.**

**BRENNA N. WEBER,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County:  
WILLIAM E. HANRAHAN, Judge. *Affirmed.*

¶1 FITZPATRICK, J.<sup>1</sup> Brenna Weber appeals a decision and order finding her guilty of operating a motor vehicle while intoxicated and operating a vehicle with a prohibited alcohol concentration. Weber argues that the arresting

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

officer lacked reasonable suspicion to extend the traffic stop and conduct field sobriety tests. I reject Weber's argument and affirm.

### **BACKGROUND**

¶2 The following facts are gleaned from the record and the circuit court's relevant findings from the suppression hearing.

¶3 On November 27, 2016, just after 3:00 a.m., Dane County Sheriff's Deputy Erik Schneider stopped Brenna Weber for traveling sixty miles-per-hour in a forty-five mile-per-hour zone. When Deputy Schneider arrived at Weber's car, he detected a "medium" odor of intoxicants emanating from the vehicle. Weber explained that she had just gotten off of work at a tavern and was going to a friend's house in Madison. She also admitted to drinking one beer before leaving the tavern.

¶4 Based on the odor of intoxicants, the statement that Weber had been at a bar, her admission of consuming alcohol, her speed driving her car, and the time of night, Deputy Schneider had Weber exit her vehicle and perform field sobriety tests.<sup>2</sup> Deputy Schneider ultimately cited Weber for operating a vehicle while intoxicated and operating a vehicle with a prohibited alcohol concentration.

¶5 Weber filed a motion to suppress in the circuit court, arguing that Deputy Schneider did not have the reasonable suspicion necessary to extend the traffic stop.<sup>3</sup> The circuit court denied Weber's motion, finding that Deputy

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<sup>2</sup> Weber does not challenge the events that occurred after she exited her vehicle.

<sup>3</sup> Weber also filed a motion to suppress evidence in the circuit court regarding unlawful detention. The circuit court denied that motion, and Weber does not appeal that decision.

Schneider's investigation was not an improper extension of the traffic stop. After a stipulated trial, the circuit court found Weber guilty of operating a vehicle while intoxicated and operating a vehicle with a prohibited alcohol concentration.

¶6 Weber appeals the circuit court's denial of her motion to suppress. Weber argues that Deputy Schneider lacked reasonable suspicion to extend the traffic stop after pulling her over for speeding. I disagree.

### DISCUSSION

¶7 The Fourth Amendment to the United States Constitution and Article 1, §11 of the Wisconsin Constitution protect individuals against unreasonable searches and seizures. Whether police conduct violated this constitutional guarantee is a question of constitutional fact. *State v. Griffith*, 2000 WI 72, ¶23, 236 Wis. 2d 48, 613 N.W.2d 72. This Court reviews the circuit court's findings of historical or evidentiary facts under a clearly erroneous standard, but the circuit court's determination of constitutional fact is reviewed de novo. *State v. Sisk*, 2001 WI App 182, ¶7, 247 Wis. 2d 443, 634 N.W.2d 877; *State v. Hajicek*, 2001 WI 3, ¶15, 240 Wis. 2d 349, 620 N.W.2d 781.

¶8 A law enforcement officer may stop a vehicle when he or she reasonably believes the driver is violating, or has violated, a traffic law. *E.g. State v. Hogan*, 2015 WI 76, ¶34, 364 Wis. 2d 167, 868 N.W.2d 124; *State v. Betow*, 226 Wis. 2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999). A law enforcement officer may extend the stop if he or she becomes aware of additional factors which "give rise to an articulable suspicion that the person has committed or is committing an offense or offenses" separate from the violation that prompted the officer's initial investigation. *State v. Colstad*, 2003 WI App 25, ¶19, 260 Wis. 2d 406, 659

N.W.2d 394 (quoting *Betow*, 226 Wis. 2d at 94–95). This extended inquiry must be supported by reasonable suspicion. *Hogan*, 364 Wis. 2d 167, ¶35.

¶9 A determination of whether an officer had reasonable suspicion depends on the totality of the circumstances. *Id.*, ¶36. It is a “common sense test: under all the facts and circumstances present[ed], what would a reasonable police officer reasonably suspect in light of his or her training and experience.” *Colstad*, 260 Wis. 2d 406, ¶8 (quoting *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997)). “Although 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.” *Hogan*, 364 Wis. 2d 167, ¶36.

¶10 Accordingly, the legality of the extension of the traffic stop in this case depends on the presence of factors which collectively amount to reasonable suspicion that Weber was driving while intoxicated. *See id.*, ¶37.

¶11 Weber argues that the factors present at the stop were insufficient for Deputy Schneider to extend the traffic stop and, as a result, the prolonged stop became an unlawful seizure. However I conclude that, when considered in the aggregate, the factors present at the scene all amount to reasonable suspicion that Weber was driving while intoxicated.

¶12 The first indicia that Weber was operating while intoxicated was the “medium” odor of intoxicants emanating from her vehicle. *See, e.g. State v. Krause*, 168 Wis. 2d 578, 587-88, 484 N.W.2d 347 (Ct. App. 1992). Additionally, Weber was driving her car far in excess of the speed limit at bar time and admitted to consuming alcohol. *See State v. Valenti*, 2016 WI App 80, unpublished slip op. ¶10 (WI App. Sept. 7, 2016). When considered together, these factors give rise to

a reasonable suspicion to extend the traffic stop to have Weber perform field sobriety tests.

¶13 Weber relies on an unpublished case, *County of Sauk v. Leon*, 2011 WI App 1, unpublished slip op. (WI App. Nov. 24, 2010), for the proposition that the admission of drinking one beer does not amount to a reasonable suspicion that an individual is operating a vehicle while intoxicated. Weber argues that her behavior was analogous to the defendant in *Leon* and did not raise an inference that she was driving while intoxicated. However, the court's holding in *Leon* supports my conclusion. In *Leon*, the court noted that “[w]hen an officer is not aware of bad driving, then other factors suggesting impairment must be more substantial. For example, a speeding or significant lane violation at bar time provides a far different context than is presented here.” *Id.*, ¶20 (emphasis added). Weber's situation was the scenario the court hypothesized in *Leon* that could lead an officer to have an articulable, reasonable suspicion. Deputy Schneider pulled Weber over at 3:00 a.m., commonly known as “bar time”, and Weber was speeding. Both of these factors, when combined with her admission of alcohol consumption and the odor of intoxicants, distinguish Weber from the defendant in *Leon* and contributed to Deputy Schneider's reasonable suspicion.<sup>4</sup>

¶14 Weber also asserts that Deputy Schneider had no reason to doubt Weber's explanation regarding the odor of the intoxicants and that her explanation did not raise an inference of impairment. In making this argument, Weber

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<sup>4</sup> In *County of Sauk v. Leon*, 2011 WI App 1, unpublished slip op. (WI App. Nov. 24, 2010), the law enforcement officer did not characterize the odor of intoxicants even though the level of intensity of the odor of alcohol can be a factor in determining reasonable suspicion. *Id.*, n.4. Deputy Schneider's description of the odor of intoxicants in Weber's car as “medium” is another fact which distinguishes this case from the analysis in *Leon*.

mischaracterizes the reasonable suspicion analysis. Reasonable suspicion exists even if there could be an alternative, innocent explanation for a factor. *Hogan*, 364 Wis. 2d 167, ¶36. Moreover, Deputy Schneider was not obligated to accept Weber’s explanation. *See Colstad*, 260 Wis. 2d 406, ¶21. Rather, Deputy Schneider was required to consider independent factors in the aggregate. *Hogan*, 364 Wis. 2d 167, ¶37.

¶15 Therefore, I conclude that Deputy Schneider had the reasonable suspicion necessary to extend the traffic stop.

### CONCLUSION

¶16 For those reasons, the circuit court’s denial of Weber’s motion to suppress is affirmed.

*By the Court.*—Order affirmed.

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

