

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 10, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-3151-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

MARY E. WINTERS,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Dane County:
STEVEN D. EBERT, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ The State of Wisconsin appeals an order of the trial court granting Mary Winters' motion to suppress all evidence obtained as the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f)(1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

result of a stop of her vehicle. The State contends the trial court erroneously concluded the police officer did not have the requisite reasonable suspicion for the stop. We conclude the trial court did not err and we therefore affirm.²

¶2 Winters was charged with operating a motor vehicle while intoxicated, second offense, and operating a motor vehicle while having a prohibited alcohol concentration, second offense, in violation of WIS. STAT. § 346.63(1)(a) and (b), respectively. Winters moved to suppress all evidence obtained as a result of the stop on the ground that the stop was unlawful under the Fourth Amendment.

BACKGROUND

¶3 Officer Pitt testified at the evidentiary hearing as follows. He was on patrol in a marked squad vehicle on April 29, 2000, at about 1:53 a.m. He was driving on East Verona Avenue, heading for the Verona Police Department, when he observed Winters' vehicle going the other direction. Officer Pitt did not observe anything illegal or unusual about Winters' vehicle or her driving. Winters turned onto Lincoln Street, driving toward the police department. Officer Pitt also turned onto Lincoln Street because it was his normal route to the police department. Officer Pitt then observed the vehicle drive into the Verona City Hall/Police Department parking lot. In the parking lot there was a circular paved loop with a grassy knoll in the center. The vehicle, without slowing, rounded the circular loop and partially drove off the pavement and onto the grass for a distance

² Winters argues we have jurisdiction to review this order because it is not a final order and the State has not petitioned for leave to appeal. However, this is a second offense OWI charge and therefore this is a criminal action. *See* WIS. STAT. § 346.65(2)(b)-(e); *see generally*, *State v. Foust*, 214 Wis. 2d 567, 570, 570 N.W.2d 905 (Ct. App. 1997). Under WIS. STAT. § 974.05(1)(d)2 the State has the right to appeal the trial court's order.

of fifty feet. Officer Pitt saw three of the vehicle's tires travel on the grass. The vehicle then drove back fully onto the pavement and moved toward the exit of the parking lot. Based on the fact that it was close to bar time and that the driver of the vehicle had made the turn too tight, Officer Pitt thought the driver could possibly be an impaired driver. He activated his red and blue emergency lights and stopped Winters' vehicle.

¶4 Officer Pitt testified that in his opinion the driver had violated subsection (e) of VERONA, WIS. ORDINANCE § 10-1-40 entitled "Operation in Restricted Area Prohibited."³ However, he acknowledged he did not have the

³ VERONA, WIS., ORDINANCE § 10-1-40 provides in part:

Disturbance of the Peace with a Motor Vehicle.

(a) Unnecessary Noise Prohibited. It shall be unlawful for any person to operate a motor vehicle in such a manner which shall make or cause to be made any loud, disturbing, or unnecessary sounds or noises such as may tend to annoy or disturb another in or about any public or private area in the City of Verona.

(b) Unnecessary Smoke Prohibited. It shall be unlawful for any person to operate a motor vehicle in such a manner which shall make or cause to be made any smoke, gases, or odors which are disagreeable, foul, or otherwise offensive which may tend to annoy or disturb another in or about any public or private area in the City.

(c) Unnecessary Acceleration and Display of Power Prohibited. It shall be unlawful for any person to operate any vehicle, including motorcycles, all-terrain vehicles and bicycles, in such a manner as to cause, by excessive and unnecessary acceleration, the tires of such vehicle or cycle to spin or emit loud noises or to unnecessarily throw stones or gravel; nor shall such driver cause to be made by excessive and unnecessary acceleration any loud noise as would disturb the peace.

(d) Avoidance of Traffic Control Device Prohibited. It shall be unlawful for any person to operate a motor vehicle in such a manner as to leave the roadway and travel across private property to avoid an official traffic control device, sign, or signal.

(continued)

ordinance in mind when he decided to stop Winters. He had never issued a citation for a violation of the ordinance. He also acknowledged that he did not observe any speeding, lane weaving, or other violation before the driver turned into the parking lot, and he observed nothing illegal about the manner of driving while the vehicle was in the parking lot until the point of the turn. Initially he thought the driver was going into the police department for assistance, and, if the driver had done so, there would have been no violation of the ordinance.

¶5 Winters testified that she drove onto the grassy knoll in the parking lot. She disputed Officer Pitt's testimony as to how much of the vehicle drove

(e) Operation in Restricted Area Prohibited. It shall be unlawful for any person to operate a motor vehicle in such a manner as to leave the roadway and park, stop, or travel upon or across any public or private property, parking lot, driveway, or business service area for any purpose except the official conduct of business located on said property without the consent of the owner or lessee of the property. This Section shall specifically include, but not be limited to:

- (1) Public park property;
- (2) Cemetery properties;
- (3) School District property;
- (4) Medical facilities;
- (5) Funeral homes;
- (6) Service stations;
- (7) Grocery stores;
- (8) Restaurants;
- (9) Financial institutions; and
- (10) Other similar-type businesses with service driveways or drive-up or drive-through facilities.

(f) Stopping and Parking Prohibited. It shall be unlawful for any person to stop or park a motor vehicle in any manner on any public or private property or parking lot contrary to a regulatory sign posted thereon which may permit parking by certain persons and limits, restricts, or prohibits parking as to other persons without the consent of the owner or lessee of the property. Any vehicle parked in violation of this Section may be removed or towed by the property owner at the vehicle owner's expense.

(g) Use of Dynamic Braking Devices Prohibited.

onto the grassy knoll, claiming she had only clipped the corner of the grass, and only the two left tires had been on the grass.

¶6 The court found no indication of inappropriate driving other than the brief period of crossing the grass, and no indication that the officer considered the city ordinance in the stop. The trial court concluded there was no violation of the ordinance, interpreting it to be aimed at drivers who cross property to avoid traffic control devices. The trial court concluded Officer Pitt had a good hunch that Winters was an impaired driver, but that his hunch did not meet the test for reasonable suspicion. As a result, the trial court granted the motion to suppress.

DISCUSSION

¶7 Stopping an automobile and detaining the occupant is a seizure under the Fourth Amendment. *State v. Guzy*, 139 Wis. 2d 663, 674, 407 N.W.2d 548 (1987). In order for such a detention to be lawful, the officer must reasonably suspect the person has committed or is committing a criminal offense or ordinance violation. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). An officer has reasonable suspicion when there are specific articulable facts that when taken with rational inferences from those facts, reasonably merit a stop. *Id.* Reasonable suspicion is a common sense test, asking what a reasonable officer would reasonably suspect in light of the officer's experience and training. *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). An officer's inchoate and unparticularized suspicion or hunch will not suffice. *Waldner*, 206 Wis. 2d at 56.

¶8 The State contends that the day and time (Saturday at 1:53 a.m.) and the fact that the tires moved from the pavement onto the grass are sufficient to create a reasonable suspicion that Winters was driving under the influence of an

intoxicant. We disagree. Officer Pitt testified that before Winters entered the parking lot, he did not observe any violation or anything else to indicate Winters was an impaired driver. The brief driving off the pavement onto the grass in the parking lot does not give rise to a rational inference that the driver was impaired. The day and time do not give rise to a rational inference that the driver had been drinking alcohol. Putting these facts together, we agree with the trial court that they may provide the basis for a good hunch, but they are not sufficient to provide the basis for reasonable suspicion. *See State v. Fields*, 2000 WI App 218, ¶¶21-22, 239 Wis. 2d 38, 619 N.W.2d 279 (a vehicle's pausing longer than normal at a stop sign even though there was traffic does not constitute reasonable suspicion that the driver had committed or was committing an unlawful act).

¶9 The State next argues that an officer may stop a vehicle if the officer observes acts that constitute a violation of an ordinance, even if the officer's actual reason for the stop is unrelated to the ordinance. According to the State, under VERONA, WIS., ORDINANCE § 10-1-40(e) it was illegal for Winters to drive into the parking lot without the intent to conduct business on the property. Winters contends the officer's lack of awareness of the Verona ordinance at the time of the detention distinguishes *State v. Baudhuin*, 141 Wis. 2d 642, 652, 416 N.W.2d 60 (1987), from the facts in this case. We need not resolve this issue because we conclude there was no violation of the ordinance, although we interpret the ordinance somewhat differently than did the trial court.

¶10 The application of an ordinance to a set of undisputed facts is a question of law, which we review de novo. *County of Adams v. Romeo*, 191 Wis. 2d 379, 383, 528 N.W.2d 418 (1995). When we interpret an ordinance, we apply the same rules of construction we apply to statutes. We begin with the language of the ordinance and, if it is plain on its face, we apply that language to the facts at

hand and do not look beyond the language to ascertain the meaning of the ordinance. *Schroeder v. Dane County Bd. of Adjustment*, 228 Wis. 2d 324, 333, 596 N.W.2d 472 (Ct. App. 1999). The ordinance is ambiguous if it may be reasonably interpreted in more than one manner. *Id.* Whether an ordinance is ambiguous is a question of law. *Id.*

¶11 In interpreting statutes, we do not read sections in a vacuum but read the entire section in order to best determine the plain and clear meaning. *J.L.W. v. Waukesha County*, 143 Wis. 2d 126, 130, 420 N.W.2d 398 (Ct. App. 1988). The cardinal rule is that the purpose of the whole act will be sought and favored over a construction that would defeat the manifest object of the act. *Id.* The State asserts that the correct interpretation of the ordinance is that any entry into the parking lot of the municipal building that is not for the purpose of conducting business with the City of Verona or is without the city's permission is a violation of subsection (e) of the ordinance. Assuming without deciding that this is a reasonable construction of subsection (e), we conclude it is more reasonable to construe this section to apply only to entries into parking lots of public buildings that in some manner disturb the peace.

¶12 VERONA, WIS., ORDINANCE § 10-1-40 is entitled Disturbance of the Peace with a Motor Vehicle and contains seven sections. Subsection 10-1-40(e) provides:

(e) Operation in Restricted Area Prohibited. It shall be unlawful for any person to operate a motor vehicle in such a manner as to leave the roadway and park, stop, or travel upon or across any public or private property, parking lot, driveway, or business service area for any purpose except the official conduct of business located on said property without the consent of the owner or lessee of the property. This Section shall specifically include, but not be limited to:

- (1) Public park property;
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- (3) School District property;
- (4) Medical facilities;
- (5) Funeral homes;
- (6) Service stations;
- (7) Grocery stores;
- (8) Restaurants;
- (9) Financial institutions; and
- (10) Other similar-type businesses with service driveways or drive-up or drive-through facilities.

¶13 The six other sections each address some activity that has the potential to disturb other persons or their property, for example, unnecessary smoke, unnecessary noise, and driving across private property to avoid traffic signals. In keeping with this purpose, we must construe subsection (e) to prohibit persons in motor vehicles from entering the parking lots of the listed places or similar businesses in a manner that might disturb other persons or their property—such as by trespassing on private property, disrupting the flow of other vehicles, or interfering with persons who are conducting business in these places. Assuming without deciding that subsection (e) applies to the Verona City Hall/Police Department building, there is no evidence that Winters’ brief drive into and out of the parking lot was such as to disturb the peace in any way. Therefore, we conclude that a reasonable officer, based on the articulable facts within Officer Pitt’s knowledge, would have neither a reasonable suspicion nor probable cause to believe Winters had violated the ordinance.

By the Court.—Order affirmed.

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

