

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2012

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. 2011AP2924-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2009CF239

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MARGARET E. HINSHAW,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dunn County:
WILLIAM C. STEWART, Judge. *Affirmed.*

Before Hoover, P.J., Peterson and Mangerson, JJ.

¶1 PER CURIAM. Margaret Hinshaw appeals a judgment convicting her of fifth-offense operating a vehicle while intoxicated and operating after revocation of her license. She argues that the court erred by denying her motion to

suppress evidence.¹ She contends the police impermissibly extended her detention to investigate the traffic charges after they completed their investigation of a 9-1-1 call. We reject that argument and affirm the judgment.

BACKGROUND

¶2 Hinshaw's boyfriend, Gregory Reimer, called 9-1-1 during an altercation with Hinshaw. He hung up before talking to anyone. When the dispatcher called him back, he said he only made the call to scare Hinshaw so she would calm down. Reimer asked if he could cancel the 9-1-1 call. The dispatcher said police protocol required an investigation and officers were being dispatched.

¶3 When deputy Jason Stalker arrived, another deputy was already there, speaking with Reimer in the driveway. Stalker approached Hinshaw who was standing nearby and asked her what happened. She responded that she left a bar two hours earlier, came home and had an argument with Reimer. Stalker smelled the strong odor of intoxicants, and observed Hinshaw's "glossy eyes, slurred speech, [and] she appeared to be stumbling along." He asked how she got home from the bar and she responded that she drove home by herself, and she pointed to the car next to her. Stalker observed fresh tire marks in recently fallen snow. Hinshaw also confirmed she had been drinking and said she had not consumed any intoxicants after arriving home. Stalker had Hinshaw perform field sobriety tests which she failed. The officers then arrested Hinshaw and took her to a hospital for a blood draw. Her blood alcohol content was .274 g/100 ml.

¹ The motion sought dismissal of the complaint based on lack of probable cause for the police to continue to detain Hinshaw after they completed their initial investigation. The court treated the motion as a motion to suppress. The parties relied on testimony from the preliminary hearing.

DISCUSSION

¶4 An investigatory seizure of a person is constitutional if the officer has reasonable suspicion to believe a crime has been committed. *State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729. An officer may briefly detain a person to ascertain the presence of possible criminal behavior. *Id.* To determine whether a seizure is reasonable, the court first determines whether the initial interference with the person's liberty was justified by reasonable suspicion based on the officer's possession of specific and articulable facts. *Id.*, ¶21; *State v. Arias*, 2008 WI 84, ¶30, 311 Wis. 2d 358, 752 N.W.2d 748. Hinshaw does not challenge the officer's right to initially detain her to investigate the 9-1-1 call. The court then must determine whether subsequent police conduct was reasonably related to the scope of the circumstances that justified the original interference. *Arias*, 311 Wis. 2d 358, ¶30. Police conduct is unreasonable when the incremental liberty intrusion resulting from the investigation supersedes the public interest served by the investigation. *Id.*, ¶38. The appropriate inquiry involves a balancing of the public interest in the seizure, the degree to which the continued seizure advances the public interest and the severity of the interference with the detained person's liberty interest. *Id.*, ¶45.

¶5 Stalker's continuation of Hinshaw's seizure was reasonable. While Stalker was inquiring about the circumstances that led to the 9-1-1 call, Hinshaw indicated that she had been drinking and driving, and Stalker observed signs of intoxication and recent use of the vehicle. The brief detention to inquire about these matters, balanced against the public interest in prosecuting drunk drivers, was reasonable under the circumstances. *See State v. Griffith*, 2000 WI 72, ¶61, 236 Wis. 2d 48, 613 N.W.2d 72. The scope of Stalker's inquiry was appropriately broadened beyond the 9-1-1 call based on the additional suspicious factors that

came to his attention during the interview. *See State v. Malone*, 2004 WI 108, ¶¶24-26, 274 Wis. 2d 540, 683 N.W.2d 1; *State v. Betow*, 226 Wis. 2d 90, 94, 593 N.W.2d 499 (Ct. App. 1999).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

