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DISTRICT IV

February 19, 2026

To:

Hon. Ramona A. Gonzalez
Circuit Court Judge
Electronic Notice

Tammy Pedretti
Clerk of Circuit Court
La Crosse County Courthouse
Electronic Notice

Dennis M. Melowski
Electronic Notice

Michael C. Sanders
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2025AP389-CR	State of Wisconsin v. Scott S. Dee (L.C. #2024CF80)
2025AP390	In the matter of the refusal of Scott S. Dee: State of Wisconsin v. Scott S. Dee (L.C. #2021TR2925)

Before Graham, P.J., Nashold, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

In these consolidated cases, the State appeals circuit court orders that granted Scott Dee's motion to suppress evidence obtained after a traffic stop and dismissed two cases brought against him. The court suppressed the evidence on the ground that Dee was unconstitutionally detained because police lacked reasonable suspicion that he had operated a vehicle while intoxicated. Because the State would be unable to present key evidence at trial as a result of the suppression

decision, the court dismissed the State's license revocation and OWI cases against Dee.[1] After review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We summarily reverse the orders suppressing evidence and dismissing the cases.

The following facts are not disputed. On the night of September 22, 2021, a person called the La Crosse County Emergency Dispatch Center and reported seeing a silver car with a license plate beginning with "LAX" swerving on the street before pulling into the parking lot of a bar called Tom Sawyer's. The dispatcher relayed this information to Patrol Sergeant Joe Kernin, who found a silver sedan with a license plate beginning with "LAX" parked partially in the parking lot of Tom Sawyer's "and about three to four feet onto the sidewalk." When Kernin approached the vehicle, which was running, he noticed a man later identified as Dee sitting in the driver's seat with his chin on his chest and his eyes closed. Kernin knocked on the window, and Dee rolled it down. While speaking with Dee, Kernin noticed that Dee had "glossy" eyes and slurred speech. Dee admitted that he had driven to the bar. Kernin called a second officer to the scene, who conducted field sobriety tests before placing Dee under arrest for operating under the influence of an intoxicant.

Dee moved to suppress all evidence on the ground that his Fourth Amendment[2] rights were violated because the officers lacked reasonable suspicion of criminal activity at the time they detained Dee for field sobriety tests. The circuit court granted Dee's motion, concluding

[1] These appeals were consolidated for briefing and disposition by an order dated September 8, 2025. *See* WIS. STAT. RULE 809.10(3) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

[2] U.S. CONST. amend. IV.

that the officers "detained Dee on a 'hunch' that he had committed a moving traffic violation and that he may have been under the influence of an intoxicant while driving." The court stated that "slurred speech and glossy eyes alone [are not] enough to lead a reasonable law enforcement officer to believe a defendant was operating under the influence of an intoxicant." Although the State argued that the call to dispatch contributed to reasonable suspicion, the court found that argument unpersuasive because "[t]here was no evidence that Dee … weaved out of his lane of traffic" and "weaving in one's own lane of traffic does not on its own demonstrate a crime has been committed." The State appeals.

The Fourth Amendment protects people from unreasonable government searches and seizures. *E.g.*, ***State v. Young***, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729. Whether law enforcement officers' conduct violated the Fourth Amendment presents a question of constitutional fact. ***State v. Brereton***, 2013 WI 17, ¶17, 345 Wis. 2d 563, 826 N.W.2d 369. In our review of a circuit court's decision as to whether a seizure was constitutional, we uphold the circuit court's factual findings unless they are clearly erroneous, while independently applying constitutional principles to those facts. ***State v. Anderson***, 2019 WI 97, ¶20, 389 Wis. 2d 106, 935 N.W.2d 285. The determination of when a seizure occurs for Fourth Amendment purposes is also subject to independent review. ***State v. Williams***, 2002 WI 94, ¶17, 255 Wis. 2d 1, 646 N.W.2d 834.

Not all contacts between law enforcement and members of the public constitute a seizure subject to Fourth Amendment safeguards. ***Young***, 294 Wis. 2d 1, ¶18. There is no seizure if "a reasonable person would have believed [the person] was free to disregard the police presence and go about [their] business." ***Id.*** Generally, police contact is not considered a seizure unless an

officer restrains a person's liberty by physical force or a show of authority that makes a person reasonably believe that the person is not free to leave. ***Id.***

If an investigatory seizure has occurred, it is constitutional only if it is supported by reasonable suspicion; "[a] law enforcement officer may detain an individual for investigative purposes if reasonable suspicion … of criminal activity exists." ***State v. Rose***, 2018 WI App 5, ¶14, 379 Wis. 2d 664, 907 N.W.2d 463 (2017). Reasonable suspicion requires that an officer have more than just an "inchoate and unparticularized suspicion or 'hunch.'" ***State v. Post***, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (quoted source omitted). Instead, an officer must possess specific and articulable facts which, taken together with rational inferences from those facts, warrant a reasonable belief that the person being stopped has committed an offense. ***Id.***, ¶¶10, 13. The question is what an officer would have reasonably suspected given the officer's training and experience. ***State v. Waldner***, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). We look to the totality of the circumstances, and as facts accumulate, reasonable inferences about their cumulative effect can be drawn. ***Id.*** at 58.

With these principles in mind, we first clarify the point in time at which Dee was seized for Fourth Amendment purposes. In his motion to suppress, Dee argued that he "was unconstitutionally seized ... by [the second officer when that officer] detained [Dee] for the purpose of undergoing field sobriety testing." In Dee's appellate brief, however, he suggests that a seizure occurred at an earlier point. He states that it is "irrefutable that Mr. Dee was not free to leave once Deputy Kernin came upon him" and that there were only "two facts known to Deputy Kernin [at that time]—the alleged reckless driving complaint and the vague similarity between the description of that vehicle and the one being operated by Mr. Dee"—that could legitimately be considered in the reasonable-suspicion analysis.

We conclude, as the circuit court concluded and as Dee argued in that court, that Dee was detained—and "seized" for the purposes of the Fourth Amendment—when the second officer was called to conduct field sobriety tests and Dee was asked to exit his vehicle. In so doing, we reject the argument Dee makes on appeal that he was detained at an earlier point during his interaction with Kernin. "Questioning by law enforcement officers does not alone effectuate a seizure" and is "unlikely to result in a Fourth Amendment violation" absent facts suggesting intimidation such "that a reasonable person would have believed he was not free to leave if he had not responded." ***Williams***, 255 Wis. 2d 1, ¶22. Dee has made no attempt to demonstrate that any such facts existed in his interaction with Kernin, and the record does not suggest intimidation; thus, to the extent Dee argues that he was detained or seized "once Deputy Kernin came upon him," he is incorrect.

Although the circuit court correctly determined when the seizure occurred, it erred when it counted Dee's slurred speech and "glossy" eyes as the only relevant facts known to the officers at the time of detention. It is true that Kernin observed these indicia of intoxication before Dee was detained, after Kernin approached Dee's vehicle and Dee voluntarily rolled down his window. *See, e.g.*, ***State v. Powers***, 2004 WI App 143, ¶11, 275 Wis. 2d 456, 685 N.W.2d 869 (including slurred speech and glassy eyes in a list of indicia of intoxication). But there is no dispute that at that time, Kernin was *also* aware that a car with a matching description had been reported as swerving on the road before pulling into the specific parking lot in which Dee's car was parked. While the court discounted this fact, stating that there was no evidence that the person who called dispatch witnessed a crime, swerving or driving erratically is a common and longstanding indication of intoxicated driving. *See, e.g.*, ***State v. Rutzinski***, 2001 WI 22, ¶¶32-34, 241 Wis. 2d 729, 623 N.W.2d 516 (concluding that an informant's tip regarding erratic

driving justified an investigatory stop because "[e]rratic driving is one possible sign of intoxicated use of a motor vehicle"). In addition to these facts, Kernin was aware (even before talking to Dee) that Dee's car was parked on a sidewalk and that Dee appeared to have fallen asleep in his running vehicle. These too are indicia of intoxication. *See, e.g.*, ***State v. Coffee***, 2020 WI 53, ¶57, 391 Wis. 2d 831, 943 N.W.2d 845 (listing the fact that the defendant had "parked poorly" among evidence of intoxication); ***County of Dane v. Campshure***, 204 Wis. 2d 27, 32, 552 N.W.2d 876 (Ct. App. 1996) (observation of a driver asleep in his parked vehicle contributed to reasonable suspicion of driving while intoxicated).

Considering, as we must, the totality of the circumstances, Kernin was aware of sufficient facts to form a reasonable suspicion that Dee had operated a vehicle while intoxicated. *See* ***Waldner***, 206 Wis. 2d at 58. This is not a close case.

On appeal, Dee attempts to cast doubt on the significance of some of the individual facts that support reasonable suspicion. For example, he spends several pages discussing the call from the witness to dispatch, arguing that there was only a "vague similarity between the description of that vehicle and the one being operated by Mr. Dee" and asserting that it would be "patently unreasonable" to believe that only one vehicle had a license plate starting with "LAX" in La Crosse County. Dee emphasizes Kernin's testimony that the reported vehicle was "possibly a silver Chevy Cruze," which is not the same as the gray Lexus Dee had been driving. In fact, a transcript of the call to dispatch shows that the caller reported "a silver car swerving" and makes no mention of the vehicle's make or model. Regardless, the issue is *reasonable* suspicion, and any officer would reasonably suspect that a silver or gray sedan with a license plate beginning with "LAX" that was found in the parking lot of Tom Sawyer's Bar—the exact place the caller reported the car to be pulling into—was the silver car with a license plate beginning with "LAX"

that the caller reported. The erratic driving reported by the concerned caller indisputably contributes to the officers' reasonable suspicion that Dee had committed a crime.

Similarly, Dee argues that his "glossy" eyes cannot contribute to reasonable suspicion based on a study finding that "other, non-alcohol related factors ... could contribute" to "glossy" eyes, and he argues that his slurred speech cannot contribute because Kernin "had no idea how his speech was 'to sound'" normally. These arguments are unpersuasive. *See, e.g.*, ***State v. Tullberg***, 2014 WI 134, ¶35 & n.18, 359 Wis. 2d 421, 857 N.W.2d 120 (noting that the study relied on by Dee does not conclude that intoxication is not a cause of bloodshot and glassy eyes and reaffirming that bloodshot and glassy eyes are one of several indicators of intoxication); ***State v. Kennedy***, 2014 WI 132, ¶22, 359 Wis. 2d 454, 856 N.W.2d 834 (counting slurred speech among numerous factors supporting probable cause to arrest for drunk driving).

We conclude that the objective facts known to police at the time Dee was detained were clearly sufficient to form a reasonable suspicion of intoxicated driving. We therefore reverse the orders suppressing evidence and dismissing the cases.

IT IS ORDERED that the orders of the circuit court are summarily reversed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals