

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 5, 2007

A. John Voelker
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. 2006AP1711-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2005CT324

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

BILLY JO BLAHA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
GUY REYNOLDS, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.¹ Billy Jo Blaha appeals a circuit court judgment convicting her of operating a motor vehicle while intoxicated, third offense. Blaha

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

challenges the circuit court's decision denying her motion to suppress. She argues that the circuit court, in denying her motion, erred in concluding that the investigating officer had reasonable suspicion to detain her. We disagree and affirm the circuit court's judgment.

¶2 At approximately 2:25 a.m. on April 10, 2005, an officer with the Sauk County Sheriff's Department was dispatched to investigate a report of loud music and "lots of cars" at a boat landing. On his way to the boat landing, the officer noticed a car sitting at a stop sign at an intersection that led to another boat landing in the area.

¶3 The officer pulled up alongside the car and rolled down his window to speak with the driver of the car, later identified as Blaha. At this point, it was approximately 2:43 a.m. The officer asked Blaha what she was doing at the boat landing, and Blaha responded that she was there to see whether there were ice shanties or ice on the lake.

¶4 When the officer asked Blaha if she had been drinking, Blaha stated that she had one drink earlier. The officer noticed that Blaha's speech was "somewhat slurred." The officer told Blaha to stay where she was, turned his vehicle around, activated his emergency lights, and pulled in behind Blaha's car. After further investigation, the officer arrested Blaha for operating a vehicle while intoxicated.

¶5 The circuit court concluded that the officer had reasonable suspicion to stop Blaha. We will reference additional facts as needed below.

¶6 There is no dispute that, for Fourth Amendment purposes, the officer seized Blaha when he told her to remain where she was, just prior to turning his

car around and pulling in behind her car. The issue is whether the officer possessed reasonable suspicion for this seizure. We conclude that he did.

¶7 Reasonable suspicion is a common sense standard that permits a brief investigatory stop if an officer reasonably suspects “that criminal activity may be afoot.” *State v. Williams*, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106 (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). The question is, “under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience.” *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). Reasonable suspicion must be grounded in specific, articulable facts, and reasonable inferences from those facts, that an individual was committing a crime. *State v. Waldner*, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996).

¶8 Applying this common-sense, totality-of-the-circumstances test, the facts here provided the officer with reasonable suspicion. The officer was dispatched at approximately 2:25 a.m. to the general area to investigate a complaint of loud music and a lot of cars, possibly suggesting some sort of party. Approximately twenty minutes later, the officer came upon Blaha’s vehicle at the stop sign. Blaha admitted to having a drink earlier that night; and the officer observed that Blaha’s speech was somewhat slurred. Additionally, the officer testified that he normally never saw cars at that time of night at the boat landing where he found Blaha. This, combined with the time of night and the other circumstances recited, made Blaha’s explanation for her presence at the boat landing subject to reasonable question.

¶9 In arguing that the officer lacked reasonable suspicion, Blaha focuses on what she views as deficiencies in the evidence. She emphasizes that

(1) she admitted to having only one drink, an amount unlikely to result in illegal operation of a vehicle while intoxicated; (2) the officer did not observe certain “tell-tale signs” of intoxication, including the odor of intoxicants, glassy eyes, or unsteady balance; and (3) the officer indicated that Blaha’s speech was only “somewhat slurred” and was unable to say conclusively whether the slurring was a result of intoxication. Blaha summarizes her view of the evidence with the assertion that “‘somewhat slurred’ speech and admission to [consuming] one drink do not amount to reasonable suspicion.” However, whether somewhat slurred speech and an admission to having consumed one drink amount to reasonable suspicion is not the question before us. Blaha’s argument does not take into account all of the facts known to the officer that support reasonable suspicion. Moreover, the officer was not required to determine conclusively that Blaha’s speech pattern was due to intoxication. See *Waldner*, 206 Wis. 2d at 60 (“Police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop. If a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.”).

¶10 Blaha argues that the time of night adds nothing to the reasonable suspicion inquiry. We disagree. In making this argument, Blaha attempts to link her explanation of why she was at the boat landing at approximately 2:43 a.m. with a portion of the officer’s testimony in which he agreed that it was “not unreasonable for a person at that point in time to check if ice is on the lake.” This attempted link is misleading. Reading the officer’s testimony in context, it is clear that the officer’s reference to “point in time” is a reference to the time of *year*, not the time of night. Thus, this testimony does not support Blaha’s argument.

¶11 In sum, under the totality of the facts here, and the reasonable inferences from those facts, we agree with the circuit court that the officer had reasonable suspicion to detain Blaha.

By the Court.—Judgment affirmed.

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

