

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 13, 2007

David R. Schanker
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. 2007AP216-CR

Cir. Ct. No. 2006CT204

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JUDITH A. FRIER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sheboygan County: JAMES J. BOLGERT, Judge. *Affirmed.*

¶1 SNYDER, P.J.¹ Judith A. Frier appeals from a judgment of conviction for operating a motor vehicle while intoxicated, contrary to WIS. STAT. § 346.63(1)(a), a second offense. She contends the circuit court erred when it concluded the initial investigatory stop was justified. We disagree and affirm the judgment of the circuit court.

¶2 On February 14, 2006, City of Sheboygan Police Officer Matthew Heimerl was on routine patrol when he observed a car improperly roll through a stop sign at between five and ten miles per hour. Heimerl ran the car's license plate number through a DMV check and learned that it was registered in Waukesha. He then observed the car park in a way that blocked an alley, and noted that the dome lights inside the car were on. After passing the car twice, Heimerl stopped, activated his overhead lights and made contact with the driver whom he later identified as Frier.

¶3 As Heimerl approached the car he realized that he had run the wrong license plate number through the DMV; nevertheless, he approached Frier to tell her she was blocking the alley. Frier explained that she had stopped to make a phone call. When Frier spoke, Heimerl noticed the odor of alcohol coming from the car. Heimerl called for a backup unit, which arrived about five minutes later. Heimerl then asked Frier to step out of the car to perform field sobriety tests. Frier complied, but had to steady herself against the car when she exited. Frier failed the first field test and she did not complete the second test. Heimerl then placed her under arrest for driving while intoxicated.

¹ This case 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.

¶4 Prior to trial, Frier moved to suppress all of her statements, all results of any chemical tests, and all observations of the arresting officer subsequent to the traffic stop. She argued that the investigative stop was unjustified and the arrest was made without probable cause. The circuit court denied Frier's motion. Frier pled no contest to the charge of OWI, second offense, and now appeals on grounds the court erred when it denied her motion to suppress.

¶5 We begin by clarifying the appellate issue. The only question Frier presents is "Whether the State met its burden of showing probable cause to initiate a traffic stop for blocking an alleyway in violation of WIS. STAT. § 346.53?" Though Frier frames the dispute in terms of probable cause, and the State follows without objection, the proper question is whether the initial investigation was supported by reasonable suspicion. Law enforcement officers may, in appropriate circumstances, detain and temporarily question an individual, without arrest, for investigative purposes. WIS. STAT. § 968.24. This is true whether the suspect's activity may constitute a civil forfeiture or a crime. *State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991). Accordingly, we analyze the appellate issue in terms of reasonable suspicion rather than probable cause.

¶6 Frier contends that the stop was unjustified and violated her Fourth Amendment right to be free from unreasonable search and seizure. An investigatory stop is generally permissible if an officer has reasonable grounds to suspect a traffic violation has been committed. *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996). In order to justify an investigatory seizure under the Fourth Amendment, the police must "have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is [or was] violating the law." *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (citation omitted).

¶7 Frier asserts that a reasonable officer, when confronted with the circumstances described by Heimerl, would not have reasonably believed Frier was violating WIS. STAT. § 346.53. Frier contends that this court “should find that the only reason [Frier] remained in front of the alley was that Officer Heimerl pulled behind her and activated the emergency lights of his squad car.”

¶8 When we review a circuit court’s decision on a motion to suppress evidence, we accept the circuit court’s findings of fact unless they are clearly erroneous. *State v. Fields*, 2000 WI App 218, ¶9, 239 Wis. 2d 38, 619 N.W.2d 279. However, whether the facts fulfill the applicable constitutional standard is a question of law, which we review de novo. *Id.* We first address Frier’s contention that her detention was unreasonable because she was only temporarily stopped in front of an alleyway and once Heimerl pulled up behind her and activated his lights, she could not lawfully drive away from the alleyway.

¶9 The relevant statute, which prohibits parking in specified areas, states in part:

No person shall stop or leave any vehicle standing in any of the following places except temporarily for the purpose of and while actually engaged in loading or unloading or in receiving or discharging passengers and while the vehicle is attended by a licensed operator so that it may promptly be moved in case of an emergency or to avoid obstruction of traffic:

....

(4) Within 4 feet of the entrance to an alley or a private road or driveway.

WIS. STAT. § 346.53. Therefore, temporary stopping is permitted for receiving or discharging passengers or goods. Also, under WIS. STAT. § 346.50, parking is not restricted under § 346.53 if the vehicle becomes disabled, or if stopping is

necessary to avoid conflict with other traffic or to comply with traffic regulations. Subsecs. 346.50(1)(a) and (b).

¶10 The record facts indicate that Heimerl saw Frier park her car in front of an alley entrance and remain there as he drove past her. Heimerl turned his squad around and drove past her twice more, and on his third approach finally stopped to investigate. Heimerl approached the driver to tell her to move her illegally stopped car.² During this time, Heimerl noted that Frier was not picking up or dropping off passengers. Furthermore, there is no indication from the record that Frier's vehicle was disabled or that she made her initial stop in front of the alleyway to comply with traffic regulations or to avoid conflict with another motorist. Frier had stopped at the alleyway well before Heimerl pulled in behind her and activated his lights. Thus, no exceptions to the parking restriction were evident. At the motion hearing, the circuit court held:

[T]he officer had probable cause that Ms. Frier was violating an ordinance and [was] parking blocking an alleyway.... I believe him that the reason he temporarily detained her and questioned her was because she was blocking an alley. I find that to be credible. I think it is true.

¶11 We ascertain nothing erroneous about the circuit court's finding that Frier was improperly blocking the alleyway, and thus the investigative stop was prompted by Frier's apparent violation of WIS. STAT. § 346.53(4). The totality of the circumstances demonstrates that Heimerl had "a reasonable suspicion,

² Frier emphasizes that when Heimerl decided to investigate, he was concerned that she was lost because the car was registered out of town. She suggests that once Heimerl realized he had run the wrong license plate, and therefore his concern might be misplaced, he should not have continued the investigative stop. The record indicates, however, that Heimerl approached the car because it was blocking the alleyway.

grounded in specific articulable facts and reasonable inferences from those facts” that Frier was violating the law. *See Colstad*, 260 Wis. 2d 406, ¶8. Therefore, Heimerl’s investigatory stop was justified. The circuit court properly denied Frier’s motion to suppress and, consequently, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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

