

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 6, 2009

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. 2008AP2904-CR

Cir. Ct. No. 2007CT841

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TRACEY L. HANSEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Walworth County:
MICHAEL S. GIBBS, Judge. *Affirmed.*

¶1 BROWN, C.J.¹ Tracey L. Hansen appeals her conviction for operating a vehicle with a prohibited blood alcohol concentration on grounds that

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

the officer lacked reasonable suspicion to stop her vehicle. She asserts that the officer did not see her violate any traffic laws, but dismisses the fact that the officer observed the vehicle she was driving improperly exit a parking lot of a bar at 1:30 a.m. and then suddenly disappear while the officer was following her in his squad, only to be spied again, parked behind a closed office building. We conclude this behavior was sufficient to establish reasonable suspicion for an investigative stop.

¶2 Hansen also argues that the results of her blood alcohol test should be suppressed because the person who drew her blood did not testify at trial and the State did not otherwise submit evidence to show that person's position and qualifications and the manner in which the blood test was drawn. However, the law is well settled that blood test results are admissible so long as they are properly authenticated. The officer's testimony and the Blood/Urine Analysis form provided that authentication by showing that the results were from Hansen's blood and the blood was drawn by a medical technologist. Therefore we affirm Hansen's conviction.

¶3 The relevant facts are brief and undisputed. On October 6, 2007, at about 1:30 a.m., a Whitewater police officer saw a vehicle in a bar parking lot exit the lot on the left side of the driveway where a vehicle would typically enter the lot. The officer decided to follow the vehicle, travelling about fifteen miles per hour, one hundred feet behind it. But when the officer followed the vehicle onto another street, he lost sight of it. The officer found this unusual. So, he drove around the block for a minute or a minute and a half and found the vehicle parked in a parking lot behind a closed business. The officer then stopped his squad car, blocking the vehicle, and confronted the driver, who he identified as Hansen. We

will relate additional facts necessary to Hansen’s blood test argument when we address that argument.

¶4 The first issue in this case is whether the officer had reasonable suspicion to conduct an investigatory (*Terry*)² stop. Hanson argued before the circuit court and argues here that the officer lacked reasonable suspicion for an investigatory stop, and thus, the evidence was obtained illegally. The circuit court denied Hansen’s motion, finding that the officer had reasonable suspicion at the time he initiated the investigatory stop. We review de novo whether the facts constitute reasonable suspicion. See *State v. Dubose*, 2005 WI 126, ¶16, 285 Wis. 2d 143, 699 N.W.2d 582.

¶5 *Terry* allows police to stop citizens when they have reasonable suspicion that “criminal activity may be afoot.” *State v. Williams*, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106 (citation omitted). Reasonable suspicion requires that the officer’s suspicion was grounded in specific, articulable facts, and reasonable inferences from those facts. *State v. Waldner*, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996). “The question of what constitutes reasonable suspicion is a common sense test: 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).

¶6 Hansen points out that the officer did not see her violate any traffic laws. It is true that the officer could not tell whether she unlawfully exited the bar

² See *Terry v. Ohio*, 392 U.S. 1 (1968).

parking lot and he did not see her weave or drive erratically or violate any other traffic law. And, had Hansen driven on without any road violations, and without disappearing, there would have been little or nothing to justify the stop. In fact, we surmise that the reasonable police officer likely would have concluded that her behavior in the parking lot, though perhaps a technical violation of the rules of the road, was innocent.

¶7 But, as she was being followed by the officer after leaving the bar, she did a disappearing act. The officer went around the block and hunted around for her before locating her parked behind the closed office building. Actions displaying evasion or flight may properly give rise to reasonable suspicion when viewed in the totality of the circumstances. *See State v. Young*, 2006 WI 98, ¶75, 294 Wis. 2d 1, 717 N.W.2d 729.

¶8 The circuit court asked the right rhetorical questions: “What is somebody doing in a parking lot behind a building that’s closed at 1:30 in the morning? Was she attempting to elude the police officer because it was odd that she vanished so quickly?” We agree with the implicit holding of the circuit court that the sequence of these events would lead a reasonable police officer to suspect that Hansen was trying to evade the officer, trying to shake him, trying to hide. It was therefore good police work for the officer to investigate whether Hansen’s conduct was, in fact, designed to avoid being detected for a crime. We conclude this was a valid *Terry* stop.

¶9 The second issue is whether Hansen’s blood alcohol test results were properly introduced at trial. Hansen contends that the results were inadmissible because the State did not have either the person who drew Hansen’s blood, or her supervisor, testify at trial or otherwise submit evidence showing the position and

qualifications of the person doing the blood draw and the procedures or methods used.

¶10 To authenticate the blood alcohol test results at trial, the State offered the arresting officer's testimony and introduced into evidence a Blood/Urine Analysis form. The Blood/Urine Analysis form shows that a medical technologist collected the blood specimen: the medical technologist signed her name on the form under the section "Specimen collected by" and checked "Med. Tech." to indicate that she was a medical technologist at the hospital. The arresting officer also testified at trial that he was at the hospital and observed the medical technologist draw Hansen's blood, package and seal the blood in a box and fill out the Blood/Urine Analysis form. The officer then took custody of the sample and had it transmitted to the Wisconsin state hygiene lab. The same Blood/Urine Analysis form then shows that a certified analyst received the blood alcohol kit, performed the analysis, recorded Hansen's blood alcohol level, and signed the form. And, that certified analyst also testified at trial.

¶11 The law is that the results of a blood alcohol test mandated by statute are prima facie correct and admissible so long as the results are properly authenticated. *See State v. Disch*, 119 Wis. 2d 461, 463, 470, 351 N.W.2d 492 (1984). Results are properly authenticated when the chain of custody is proven—the blood is drawn from the person in question by a qualified person. *See id.* at 471, 473. WISCONSIN STAT. § 343.305(5)(b) addresses which persons are qualified to draw blood from someone in custody for driving while under the influence of an intoxicant:

Blood may be withdrawn from the person arrested for [operating a motor vehicle with a prohibited alcohol concentration] ... to determine the presence or quantity of alcohol ... in the blood only by a physician, registered

nurse, medical technologist, physician assistant or person acting under the direction of a physician.

¶12 The proof required for authentication is not contained in a bright line rule. Rather, the degree of proof necessary to establish a chain of custody is a matter within the trial court's discretion. *See B.A.C. v. T.L.G.*, 135 Wis. 2d 280, 290, 400 N.W.2d 48 (Ct. App. 1986). And, while WIS. STAT. § 343.305(5)(b) specifies which persons are qualified, it does not specify how the State must prove that the person drawing the blood is one of the persons listed. Nor does the statute expressly require the person to testify at trial. Thus, we look to the evidence presented to determine whether the person who drew Hansen's blood met the qualifications required by the statute. This is a question of law that we review without deference to the trial court. *See State v. Penzkofer*, 184 Wis. 2d 262, 264, 516 N.W.2d 774 (Ct. App. 1994).

¶13 We conclude that the officer's testimony at trial and the Blood/Urine Analysis form sufficiently prove that the results were from a blood test of Hansen's blood drawn from a qualified person. The form shows that the person who drew Hansen's blood was a medical technologist. And, the officer's and the certified analyst's testimony establishes that the blood drawn from Hansen by that person was indeed the blood used in the chemical analysis at the hygiene lab leading to the results admitted at trial. Therefore the results are admissible. Once admissible, challenges to the qualifications of the operator and the facility, the methods of operation or the accuracy of the equipment are challenges to the weight of the evidence, not the admissibility. *See State v. Turner*, 114 Wis. 2d 544, 548-49, 339 N.W.2d 134 (Ct. App. 1983). 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.

