

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 22, 2004

Cornelia G. Clark
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. 03-2737
STATE OF WISCONSIN**

Cir. Ct. No. 03TR001360

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

PAUL A. BALTHAZOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waupaca County:
JOHN P. HOFFMANN, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ Paul Balthazor appeals the judgment finding him guilty of operating a motor vehicle while intoxicated in violation of WIS. STAT. § 346.63(1)(a). The issue on appeal is whether the officer had the requisite

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(g) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

reasonable suspicion to investigate whether Balthazor was operating a motor vehicle while intoxicated. We conclude the officer did, and we therefore affirm.

BACKGROUND

¶2 State Trooper Sam Ridgway was the only witness to testify at the hearing on Balthazor's motion to suppress evidence. He testified as follows. He was on duty at 12:30 a.m. on March 16, 2003, in the City of Waupaca. From a parking lot he observed a vehicle traveling east with an excessively loud exhaust, loud enough in his view to constitute a violation of the traffic laws.² The trooper activated his emergency lights and siren and pulled out of the parking lot after the vehicle. The vehicle pulled over to the side of the road and the trooper went up to the vehicle, observing two people inside. The trooper asked the driver for his driver's license, and the license identified the driver as Balthazor. The trooper observed that Balthazor's eyes appeared to be bloodshot and glassy.

¶3 The trooper asked Balthazor whether he had been drinking alcohol and Balthazor stated he had three to four beers. The trooper detected an odor of alcohol coming from inside the vehicle.

¶4 The trooper next asked Balthazor to step out of the vehicle to perform field sobriety tests, and Balthazor did. Subsequently the trooper gave Balthazor a citation for operating while under the influence of an intoxicant.

¶5 Based on the trooper's testimony, the trial court denied Balthazor's motion to suppress all evidence obtained once the initial stop had been effectuated.

² WISCONSIN STAT. § 347.39 requires motor vehicles be equipped with "an adequate muffler ... to prevent any excessive or unusual noise."

The trial court concluded that the trooper had the requisite reasonable suspicion to detain Balthazor for field sobriety tests.

DISCUSSION

¶6 On appeal, Balthazor does not dispute the lawfulness of the initial stop based on the loud exhaust. His position is that the trooper unlawfully expanded the scope of the initial stop to investigate whether he was driving while under the influence of an intoxicant. According to Balthazor, the observation of bloodshot and glassy eyes, his admission that he had had three to four beers, and the odor of alcohol from the vehicle were not sufficient to constitute the reasonable suspicion necessary for expansion of the scope of the investigation.

¶7 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). The violation may be of either a criminal law or a non-criminal traffic law. *See id.*, ¶13. 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. *Id.*, ¶8. Reasonableness is measured against an objective standard taking into consideration the totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W. 2d 830 (1990). If during a valid traffic stop, the officer becomes aware of additional suspicious circumstances that give rise to a reasonable suspicion that the driver has committed or is committing an offense distinct from that prompting the initial

stop, the officer may extend the stop for further investigation. *Colstad*, 260 Wis. 2d 406, ¶19.

¶8 A trial court's determination of whether undisputed facts establish a reasonable suspicion justifying police to perform an investigative stop presents a question of law, subject to de novo review. *Id.*, ¶8.

¶9 We conclude that the trooper here did have the requisite reasonable suspicion to expand the scope of the initial stop. It is true that WIS. STAT. § 346.63(1)(a) does not prohibit operating a motor vehicle after having consumed alcohol, but, rather, prohibits driving “under the influence of an intoxicant ... to a degree which renders [one] incapable of safely driving.” *County of Jefferson v. Renz*, 222 Wis. 2d 424, 444, 588 N.W.2d 267 (Ct. App. 1998), *rev'd on other grounds*, 231 Wis. 2d 293, 603 N.W.2d 541 (1999). However, we disagree with Balthazor's contention that the facts known to the trooper together with their reasonable inferences did not constitute a sufficient basis to reasonably suspect that his ability to drive safely was impaired by alcohol. A reasonable officer could infer from Balthazor's bloodshot and glassy eyes and the odor of alcohol coming from inside the vehicle that Balthazor had had enough to drink to impair his ability to drive safely. The availability of alternative reasonable inferences favorable to Balthazor—that his eyes were glassy and bloodshot because it was late or that the odor of alcohol came from the passenger, not Balthazor—does not defeat reasonable suspicion; an officer is not obligated to accept the inferences consistent with innocence rather than those consistent with guilt. *See State v. Jackson*, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989); *Colstad*, 260 Wis. 2d 406, ¶14.

¶10 Because the trial court correctly concluded that the trooper had the requisite reasonable suspicion to extend the stop for field sobriety tests, we affirm the trial court's judgment.

By the Court.—Judgment affirmed.

Not recommended for publication. See WIS. STAT. RULE 809.23(1)(b)4.

