

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 24, 2011

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. 2010AP3128-CR

Cir. Ct. No. 2009CM19

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRIDGETTE M. GLAZE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
JOHN S. JUDE, Judge. *Affirmed.*

¶1 BROWN, C.J.¹ Bridgette M. Glaze appeals from a judgment convicting her of OWI, second offense, and challenges an order denying her motion to suppress. Glaze was arrested after an off-duty deputy witnessed her arguing heatedly with a man. As the off-duty deputy watched, Glaze and the man

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

got into a car together and then the man got out and ran away from the car, cutting between buildings. The deputy was concerned that this might be a domestic violence incident. He reported his observation to dispatch and began to follow Glaze when she drove away. While following, the deputy witnessed her cross the centerline and touch the fog line during a turn as well as weave within her lane. Meanwhile, dispatch had directed another deputy to her location and that deputy stopped Glaze in her driveway. That deputy smelled and saw indicia of intoxication and arrested her.

¶2 Glaze primarily alleges that the *arresting* deputy lacked reasonable suspicion to stop her because all that deputy knew was the possibility of a domestic violence dispute, which he claims was without any factual basis. But the off-duty deputy saw evidence of impaired driving. That information then became collective knowledge within the police department. *See State v. Mabra*, 61 Wis. 2d 613, 625-26, 213 N.W.2d 545 (1974). Therefore, it is the off-duty deputy's observations that are important, not the subjective knowledge of the arresting deputy. The stop was valid. We also address, and sustain, the finding of probable cause to arrest.

FACTS

¶3 The argument that the off-duty deputy witnessed from across the street was loud and profane and caused the deputy to report a "possible domestic." Dispatch then asked him to keep them advised of what was happening and informed him that there was a squad car en route.

¶4 Soon after calling dispatch, the deputy witnessed Glaze and the man enter a vehicle. After a few minutes, the male exited and Glaze drove away. The deputy followed the vehicle and provided dispatch with frequent updates. While

following the vehicle, the deputy observed the vehicle weaving within its lane. He also witnessed Glaze cross the center line while making a wide turn and overcorrect onto the fog line.

¶5 When Glaze reached her residential street, she performed a U-turn to pull alongside and verbally confront the off-duty deputy. During the confrontation, the deputy observed that Glaze had slurred speech and glossy eyes. Glaze then pulled away and continued into a nearby driveway. Around that time, the dispatched squad car arrived on the scene and pulled into the driveway behind Glaze with its emergency lights activated. The dispatched deputy proceeded to question Glaze about the argument with the man. While talking with Glaze, the deputy noted an odor of intoxicants, slurred speech and glossy, red eyes. The deputy then spoke with the off-duty deputy who had followed Glaze. The off-duty deputy relayed his observations and expressed his independent belief that Glaze was intoxicated. The dispatched deputy returned to Glaze and asked her to perform field sobriety tests. Glaze refused testing. Glaze was then arrested, driven to the police station and ultimately charged with OWI, second offense.

¶6 At trial, Glaze filed two motions to suppress alleging that the initial detention in her driveway was unlawful for lack of reasonable suspicion of criminal activity by Glaze, and that she was unlawfully arrested without probable cause when she was handcuffed and transported to the police department for field sobriety testing.

¶7 The trial court concluded that the seizure was lawful because the arresting deputy had reasonable suspicion to believe that Glaze was involved in a crime of domestic violence. Similarly, the trial court concluded that the arrest was lawfully supported by probable cause to believe that Glaze had operated a motor

vehicle while intoxicated. After the trial court denied Glaze's motion to suppress, she pled guilty. She now appeals.

DISCUSSION

¶8 In reviewing the denial of a motion to suppress evidence, we will uphold the trial court's findings of historical fact unless they are clearly erroneous. *County of Jefferson v. Renz*, 231 Wis. 2d 293, 316, 603 N.W.2d 541 (1999). Then, we review de novo whether those facts satisfy the constitutional standards. *See State v. Richardson*, 156 Wis. 2d 128, 137-38, 456 N.W.2d 63 (1990).

¶9 Both Glaze and the State direct their arguments to the reasonable suspicion for the initial report of domestic violence. On that issue, we agree with Glaze that the initial report forms a weak basis for reasonable suspicion of domestic violence. Nevertheless, we may affirm the trial court's rulings for reasons other than what was argued to the trial court or to us. *See State v. Holt*, 128 Wis. 2d 110, 124-25, 382 N.W. 2d 679 (Ct. App. 1985), *superseded by statute on other grounds*. Here, we affirm because the off-duty deputy's observations of Glaze's driving formed reasonable suspicion to stop.²

¶10 Two legal maxims are key to our holding. First, as long as there were objective facts to support reasonable suspicion, an officer's subjective intent does not alone invalidate a seizure of a vehicle or its occupants. *State v. Baudhuin*, 141 Wis. 2d 642, 651, 416 N.W.2d 60 (1987). So, it does not matter whether the off-duty deputy, initially, was subjectively focused on possible

² We also believe that there was a community caretaker function at work here, but do not need to address it.

domestic violence so long as there was an objective justification to stop based on suspicion of OWI. Nor does it matter that all the arresting deputy knew was that he was being dispatched regarding a possible domestic violence incident. Second, courts recognize that the police force is a considered a unit and that an officer may rely on the collective information within the department when dispatched to a scene. *See Mabra*, 61 Wis. 2d at 625-26. So, the off-duty deputy's observations are imputed to the dispatched officer, regardless of what dispatch says or does not say.

¶11 An investigative stop meets constitutional requirements when it is supported by reasonable suspicion. *State v. Rutzinski*, 2001 WI 22, ¶14, 241 Wis. 2d 729, 623 N.W.2d 516. Reasonable suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant [the] intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968).

¶12 Here, the off-duty deputy relayed a “possible domestic” to dispatch. Dispatch requested that he keep them advised. The deputy followed Glaze when she drove away. While following Glaze, the deputy observed the vehicle weaving within its lane. He witnessed Glaze cross the center line on a wide turn and overcorrect onto the fog line. The deputy also directly observed slurred speech and glossy eyes when Glaze pulled alongside him. Taken together, these facts

support reasonable suspicion.³ As we explained above, the off-duty deputy's knowledge and observations are imputed to the dispatched deputy. *See Mabra*, 61 Wis. 2d at 625-26. The dispatched deputy was acting as his surrogate when he made the stop.

¶13 During the stop, the dispatched deputy observed additional indicia of intoxication and arrested Glaze. An arrest without a warrant requires probable cause to suspect that a crime has been committed. *State v. Lange*, 2009 WI 49, ¶19, 317 Wis. 2d 383, 766 N.W.2d 551. Probable cause is determined by the totality of the circumstances on a case-by-case basis. *Id.*, ¶20. Probable cause does not require proof “beyond a reasonable doubt or even that guilt is more likely than not.” *State v. Young*, 2006 WI 98, ¶22, 294 Wis. 2d 1, 717 N.W.2d 729 (citation omitted).

¶14 Probable cause to arrest for OWI is “that quantum of evidence within the arresting officer's knowledge at the time of the arrest that would lead a reasonable law enforcement officer to believe that the defendant was operating a motor vehicle while under the influence of an intoxicant.” *Lange*, 317 Wis. 2d 383, ¶19. No particular factor or set of factors is required to find probable cause for OWI. *See id.*, ¶37.

³ We acknowledge that weaving within one's lane, without more, can be insufficient to create reasonable suspicion. *See State v. Post*, 2007 WI 60, ¶26, 301 Wis. 2d 1, 733 N.W.2d 634. Here, however, Glaze did more than weave, she crossed the center line. We point out that since *Post*, the supreme court has acknowledged that even a momentary crossing of the center line provides probable cause to believe a traffic code violation has occurred, which makes an ensuing traffic stop reasonable. *State v. Popke*, 2009 WI 37, ¶17, 317 Wis. 2d 118, 765 N.W.2d 569. So here, when the deputy witnessed Glaze cross the center line, he had probable cause to believe that she had operated left of center in violation of WIS. STAT. § 346.05. This is especially so because Glaze overcorrected to bring her vehicle under control.

¶15 Glaze argues that without field sobriety tests, the officer's observations of intoxication were insufficient to form probable cause for OWI.⁴ But our supreme court has upheld findings of probable cause without field sobriety tests. See *Washburn Cnty. v. Smith*, 2008 WI 23, ¶¶30, 33-36, 308 Wis. 2d 65, 746 N.W.2d 243. Here, despite the absence of field sobriety tests, the totality of the circumstances gave the arresting deputy probable cause to arrest for OWI. When the arresting deputy first approached Glaze, he noted an odor of intoxicants, slurred speech and glossy, red eyes. Before arresting Glaze, the deputy also spoke with the off-duty deputy, who expressed his own observations and belief that she might be intoxicated. Given the observations of both deputies, a reasonable officer would believe that Glaze was operating a motor vehicle while under the influence of an intoxicant. We therefore affirm the trial court's denial of her suppression motion.⁵

By the Court.—Judgment affirmed.

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

⁴ Glaze also argues that any alleged uncooperativeness did not establish probable cause. Because we hold that the totality of the circumstances provided probable cause without considering her uncooperativeness, we need not address this argument.

⁵ We gather, from reading Glaze's brief, that the off-duty deputy had no business following her in the first place, based on the almost complete absence of actual violence. But the off-duty officer is ostensibly a citizen of this country and can drive wherever he wants. He does not need a reason.