COURT OF APPEALS
DECISION
DATED AND FILED

July 19, 2012

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2011AP2106

Cir. Ct. Nos. 2010TR28542
2010TR28543

STATE OF WISCONSIN

IN COURT OF APPEALS
DISTRICT IV

DANE COUNTY,

PLAINTIFF-RESPONDENT,

V.

AMY JOLENE JUDD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: WILLIAM E. HANRAHAN, Judge. *Affirmed*.

¶1 SHERMAN, J.[1] Amy Judd appeals a judgment of conviction for operating a motor vehicle under the influence of an intoxicant, first offense. Judd

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

contends that the arresting officer lacked reasonable suspicion to believe that Judd had been driving while intoxicated, and that the court should have suppressed evidence obtained from her detention. I affirm.

BACKGROUND

¶2 At approximately 2:45 a.m. on December 12, 2010, Dane County Deputy Sheriff Richard Larson was dispatched to a rural house regarding a disturbance. When Deputy Larson was walking back to his vehicle after speaking with an individual in the house, he met Judd who was walking up toward the house. Deputy Larson testified that he observed that Judd's eyes were bloodshot and glassy, and that he observed a "moderate to fairly strong" odor of intoxicants coming from her. Deputy Larson testified that Judd informed him that she had driven to the house in order to pick up a friend, and that she had consumed her last drink approximately one hour before. Deputy Larson also testified that he observed a van parked in the house's driveway, which had not been there when he arrived at the residence. Deputy Larson testified that based upon these observations, he detained Judd and asked her to undergo field sobriety tests.

¶3 Judd was later arrested and charged with OWI, first offense. Judd moved to suppress evidence obtained as a result of her detention on the basis that Larson lacked reasonable suspicion to believe that she had been operating a motor vehicle under the influence of an intoxicant. The court denied Judd's motion and Judd subsequently entered a plea of no contest to the charge. Judd appeals.

DISCUSSION

¶4 On review of a circuit court's decision on a motion to suppress, an appellate court will uphold the circuit court's factual findings unless those findings

are clearly erroneous. ***State v. Popke***, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. We review de novo whether the facts lead to reasonable suspicion. ***Id.***

¶5 To support reasonable suspicion, an officer must have an objectively reasonable suspicion of wrongful conduct. *See* ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). Reasonable suspicion sufficient to make an investigatory stop is based on a common sense test: what would a reasonable police officer reasonably suspect in light of his or her training and experience under all of the facts and circumstances present. ***State v. Jackson***, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). The officer's suspicion must be "grounded in specific articulable facts and reasonable inferences from those facts" that the driver consumed enough alcohol to impair his or her ability to drive. ***State v. Colstad***, 2003 WI App 25, ¶¶8, 19, 260 Wis. 2d 406, 659 N.W.2d 394.

¶6 Judd contends that Larson's observations were not sufficient to give rise to reasonable suspicion for an investigatory stop. Judd seems to argue that Larson could not reasonably believe that she had been operating a motor vehicle under the influence of an intoxicant because "[s]he acted, spoke and thought clearly, [spoke] coherently and articulately and she carried herself without stumbling or swaying or any physiological impairment." Judd also argues that an unpublished opinion, ***State v. Meye***, 2010AP336-CR, unpublished slip op. (WI App July 14, 2010), supports a conclusion that Larson's observations in this case did not give rise to reasonable suspicion. In ***Meye***, this court held that the odor of intoxicants *alone* "on a person who has alighted from a vehicle after it has stopped" did not give rise to reasonable suspicion to make an investigatory stop. ***Id.***, ¶¶5-6. Judd argues that the only difference between ***Meye*** and the present case is that Larson testified that in addition to the smell of intoxicants, he also

observed that Judd's eyes were bloodshot and glassy, an observation which Judd asserts is not indicative of impairment.

¶7 I disagree that ***Meye*** is analogous to the present case. In ***Meye***, the officer smelled the odor of intoxicants, but was unable to identify whether that odor was emanating from Meye or her companion. ***Id.***, ¶2. Here, there was no ambiguity as to whom the odor was coming from. In addition, unlike ***Meye***, Judd admitted that she had driven her car to the residence; Judd admitted to having consumed alcohol earlier; Larson observed that Judd's eyes were bloodshot and glassy; and it was 2:45 a.m. The odor of alcohol, admission of drinking earlier, bloodshot glassy eyes, and time of day, in conjunction with Larson's awareness that Judd had driven her car, were sufficient to provide Larson with reasonable suspicion to believe that Judd had driven her vehicle while under the influence of an intoxicant. *See, e.g.*, ***State v. Lange***, 2009 WI 49, ¶32, 317 Wis. 2d 383, 766 N.W.2d 551 (time of night is a relevant consideration for suspicion of impaired driving); ***State v. Hughes***, No. 2011AP647, unpublished slip op. ¶21 (WI App Aug. 25, 2011) (odor of alcohol, admission of drinking, and glassy eyes sufficient to give rise to reasonable suspicion that defendant was driving while intoxicated); ***In re Wendt***, No. 2010AP2416, unpublished slip op. ¶19 (WI App June 23, 2011) (bloodshot and glassy eyes and the odor of alcohol are "obvious and classic" indications of intoxication). Judd has not cited this court to any authority which supports her claim that a defendant's ability to walk and speak without apparent impairment is definitive in a reasonable suspicion analysis, negating all other observations of impairment. Thus, the fact that Judd was able to walk and speak without apparent impairment does not alter my conclusion that there was other evidence before Larson which was sufficient to support a reasonable suspicion that Judd was impaired.

¶8 Accordingly, I conclude that the circuit court did not err in denying Judd's motion to suppress and 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.