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**DISTRICT III/II**

November 6, 2013

To:

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You are hereby notified that the Court has entered the following opinion and order:

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2013AP345-CR

State of Wisconsin v. Kevin C. Stahlbusch (L.C. #2011CF146)

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

Kevin C. Stahlbusch appeals from a judgment convicting him upon his no-contest plea of sixth-offense operating while intoxicated. Stahlbusch challenges the denial of his motion to suppress, in which he argued that the arresting officer lacked reasonable suspicion to stop him. We disagree and affirm. Based upon our review of the briefs and the record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).

According to his testimony at the suppression hearing, at about 2:00 a.m. on a winter night, City of Eau Claire police sergeant Derek Thomas observed Stahlbusch make a wide right turn without stopping at the stop sign. He also observed that Stahlbusch overcorrected the wide

turn, deviating from the lane of traffic and “coming close” to striking the curb and snowbank area. Thomas testified that the “excessive right turn” made him suspect driver impairment but that he also mistakenly thought the failed stop was a traffic violation.<sup>1</sup> The officer activated the squad’s lights and pulled Stahlbusch over. The complaint indicates that Stahlbusch exhibited physical signs of intoxication and demonstrated impairment on field sobriety tests. His blood test result was 0.173 grams per 100 milliliters of blood.

Stahlbusch moved to suppress the evidence gathered after the stop, arguing that Thomas did not have reasonable suspicion to stop him. In addition to Thomas’s testimony, the circuit court viewed a video from the squad car’s dashboard camera. Concluding that the overcorrection of the wide turn and nearly hitting the curb gave Thomas a reasonable, articulable basis for an investigative stop, the court denied the motion to suppress. Stahlbusch appeals.

Whether a traffic stop is reasonable is a question of constitutional fact, so we apply a two-step analysis. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. First, we will uphold the circuit court’s findings of fact unless they are clearly erroneous. *Id.* Next, we apply those facts to constitutional standards de novo. *Id.*

Reasonable suspicion to stop a vehicle requires that the officer “be able to point to specific and articulable facts which, taken together with rational inferences from those facts,” justify the traffic stop. *State v. Anagnos*, 2012 WI 64, ¶48, 341 Wis. 2d 576, 815 N.W.2d 675. Reasonableness is determined by the totality of the facts and circumstances. *Post*, 301 Wis. 2d 1, ¶13. “The crucial question is whether the facts of the case would warrant a reasonable police

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<sup>1</sup> The stop sign was only for traffic proceeding straight but allowed right turns without a stop.

officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.” *Id.*

Stahlbusch contends that the stop of his vehicle was unwarranted because Thomas’s suspicion of impaired driving was not reasonable and no traffic violation justified the stop. But driving need not be illegal to give rise to reasonable suspicion. *Anagnos*, 341 Wis. 2d 576, ¶47. Observations of lawful conduct can support an investigatory stop if it is reasonable to infer from the conduct that criminal activity is afoot. *Id.*

The circuit court found that Thomas observed Stahlbusch overcorrect his wide right turn, deviate from his lane of traffic, and nearly nudge the curb. The court concluded that Stahlbusch’s handling of the overwide turn at that time of morning constituted a reasonable, articulable basis for a traffic stop to investigate if Stahlbusch was operating while under the influence of an intoxicant. These findings are not clearly erroneous. The stop was supported by reasonable suspicion.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*