OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT IV

October 10, 2024

To:

Hon. Lyndsey A. B. Brunette
Circuit Court Judge
Electronic Notice

Heather Bravener
Clerk of Circuit Court
Clark County Courthouse
Electronic Notice

Kelsey Jarecki Morin Loshaw
Electronic Notice

Catherine Malchow
Electronic Notice

Michael C. Sanders
Electronic Notice

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

2023AP914-CR State of Wisconsin v. Amanda R. Smith (L.C. # 2021CF159)

Before Kloppenburg, P.J., Nashold, and Taylor, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Amanda Smith appeals a judgment of conviction for possession of methamphetamine. Smith argues that the circuit court erred by denying her motion to suppress evidence obtained during a search of her car. Smith argues that she was illegally seized when a traffic stop was extended beyond its initial scope. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).[1] We summarily affirm.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

At 4:00 a.m. on June 20, 2021, a police officer observed Smith driving on the highway at twenty-five miles per hour in a fifty-five miles per hour zone. Smith flashed her car's high beam headlights at the officer's squad car as the officer approached from the other direction and, after he passed her, crossed over the two-lane highway's centerline. The officer turned his squad car around and saw Smith pull over to the side of the road. The officer, who knew Smith from his work as a police officer over the past seven years, made contact with Smith and asked about her driving and whether she was okay. The officer also called for a K9 officer to assist him. After talking with Smith for about nine minutes, the officer asked Smith to step out of her car. The officer asked Smith if she had been drinking and she stated she had not. About three minutes after the officer had Smith exit her car, the officer asked Smith if she had smoked anything besides cigarettes that day. Smith stated that she had "two hits" that morning. About two minutes later, the officer had Smith perform field sobriety tests. While Smith was performing the field sobriety tests, the K9 officer arrived and started a dog sniff on Smith's car, which resulted in a positive alert. A search of Smith's car led to the discovery of methamphetamine and a pipe.

Smith was charged with possession of methamphetamine and possession of drug paraphernalia, and moved to suppress the evidence obtained during the search of her car. Smith argued that her detention was illegally extended beyond the scope of the stop. After an evidentiary hearing, the circuit court denied the suppression motion. Smith pled no-contest to

one count of possession of methamphetamine, and the possession of drug paraphernalia count was dismissed and read in.[2]

Smith argues that the officer impermissibly extended the traffic stop to investigate her for OWI without the necessary reasonable suspicion to extend the stop beyond its original purpose. *See* ***State v. Smith***, 2018 WI 2, ¶22, 379 Wis. 2d 86, 905 N.W.2d 353 ("[A] temporary detention [may] 'last[] no longer than is necessary to effectuate the purpose of the stop.'" (quoted source omitted)). At the outset, we disagree with this framing of the issue. The underlying premise of Smith's argument is that the officer initially stopped Smith for the traffic violations he observed, and then extended the scope of the stop to investigate Smith for an OWI offense. However, as we explain further below, we conclude that the issue before this court is whether, at the time the officer asked Smith to step out of her car, the officer had reasonable suspicion to detain her for a possible OWI offense. We conclude that the officer had reasonable suspicion of an OWI offense at that time, and the resulting seizure was therefore constitutional.

Traffic stops are "seizures" within the meaning of the Fourth Amendment to the United States Constitution. ***State v. Wright***, 2019 WI 45, ¶8, 386 Wis. 2d 495, 926 N.W.2d 157. Here, Smith had pulled her car over to the side of the road before the officer approached her car. The parties agree that the interaction between Smith and the officer became a seizure subject to the Fourth Amendment at the point at which the officer asked Smith to step out of her car. "A law enforcement officer may detain an individual for investigative purposes if reasonable suspicion … of criminal activity exists." ***State v. Rose***, 2018 WI App 5, ¶14, 379 Wis. 2d 664, 907

[2] Smith appeals the order denying her suppression motion pursuant to WIS. STAT. § 971.31(10).

N.W.2d 463 (2017). Reasonable suspicion requires that an officer have more than just an "inchoate and unparticularized suspicion or 'hunch,'" ***State v. Post***, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (quoted source omitted). Instead, an officer must possess specific and articulable facts which, taken together with rational inferences from those facts, warrant a reasonable belief that the person being stopped has committed a crime. ***Id.***, ¶¶10, 13. The test we apply in assessing whether reasonable suspicion exists is an objective one, in which we consider the totality of the circumstances and whether a reasonable officer, given the officer's training and experience, would have reasonably suspected that an individual has committed a crime. ***State v. Waldner***, 206 Wis. 2d 51, 56, 58, 556 N.W.2d 681 (1996). On our review, we uphold the circuit court's factual findings unless they are clearly erroneous, but independently apply those facts to constitutional principles. ***State v. Anderson***, 2019 WI 97, ¶20, 389 Wis. 2d 106, 935 N.W.2d 285.

We conclude that the totality of the circumstances gave rise to reasonable suspicion that Smith had operated her vehicle while intoxicated at the time the officer asked Smith to step out of her car. First, at 4:00 a.m., the officer observed Smith driving twenty-five miles per hour in a fifty-five miles per hour zone, flashing her bright lights at the officer's squad car, crossing over the centerline of the two-lane highway, and, unprompted, pulling over to the side of the road. *See* ***Waldner***, 206 Wis. 2d at 53 ("unusual driving at a late hour" may contribute to reasonable suspicion). Second, when the officer made contact with Smith, he noted that she "didn't appear to be her normal self" in that she was "very, very talkative" and avoided eye contact with him. *See* ***State v. Morgan***, 197 Wis. 2d 200, 204, 212-14, 539 N.W.2d 887 (1995) (unusual demeanor may be considered in reasonable suspicion analysis). Finally, the officer also noted that Smith had bloodshot, glassy eyes. *See* ***State v. Tullberg***, 2014 WI 134, ¶35, 359 Wis. 2d 421, 857

N.W.2d 120 (stating that "a law enforcement officer may consider bloodshot and glassy eyes to be one of several indicators of intoxication"). Those are articulable facts that, taken together and in light of the officer's training and experience, supported the reasonable inference that Smith was driving while intoxicated. *See* ***Waldner***, 206 Wis. 2d at 58 (we look to the totality of the circumstances in deciding whether an officer had reasonable suspicion to support a stop; reasonable suspicion may be supplied by the facts as a whole even when any one fact standing alone would be insufficient).

Smith argues that the facts did not amount to reasonable suspicion of OWI because: (1) the officer did not provide sufficient details as to how Smith did not appear to be her "normal self"; (2) the officer could have drawn innocent inferences from each of the facts set forth above; (3) none of those facts, standing alone, supported reasonable suspicion; and (4) the officer did not observe several other common signs of intoxication, such as the odor of alcohol or slurred speech, and Smith was cooperative and responsive to the officer's questioning. However, the officer explained the basis for his observation that Smith did not appear to be her "normal self": while Smith "sometimes" could be "very talkative," he noted that she was "very, very talkative" and also avoided eye contact with him. Moreover, the officer was not required to draw an innocent inference as to any of the facts. *See* ***State v. Nieves***, 2007 WI App 189, ¶14, 304 Wis. 2d 182, 738 N.W.2d 125 ("[A]n officer is not required to draw a reasonable inference that favors innocence when there also is a reasonable inference that favors probable cause."); *see also* ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990) ("Although many innocent explanations could be hypothesized … a reasonable police officer who is charged with enforcing the law as well as maintaining peace and order cannot ignore the inference that criminal activity may well be afoot."). And, as explained, we consider the totality of the circumstances rather

than individual facts in our reasonable suspicion analysis. Here, the totality of the facts and reasonable inferences from the facts, in light of the officer's training and experience, gave rise to reasonable suspicion that Smith had driven while intoxicated.

Finally, Smith argues that, even if the officer had reasonable suspicion of an OWI offense, the officer impermissibly extended the stop to engage in activities unrelated to an OWI investigation. She argues that the following actions by the officer were unrelated to the OWI investigation and therefore improperly added time to the stop: (1) joking about a banana peel lying on the side of the road (by pointing to the banana peel and asking Smith, "That's not your banana peel?"); (2) discussing with Smith her recent transportation of gravel in her car and other issues about her car; (3) smoking "a couple" of cigarettes with Smith; and (4) repeating questions that Smith had already answered.[3] *See* ***Rodriguez v. United States***, 575 U.S. 348, 357 (2015) (the "critical question" is whether officer conduct outside the scope of the stop "'prolongs'—i.e., adds time to—'the stop'" (quoted source omitted)). She argues that all of those activities unlawfully extended the length of the stop, and that the State must be able to show "reasonable suspicion of additional criminal activity" to justify them. We disagree.

"In assessing whether a detention is too long in duration to be justified as an investigative stop, we … examine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the defendant." ***State v. Floyd***, 2017 WI 78, ¶22, 377 Wis. 2d 394, 898 N.W.2d 560 (quoted

[3] Smith also argues that the officer extended the stop by taking time to call for the K9 officer. However, the parties agree that the officer called for the K9 officer before he asked Smith to step out of her car. Because the officer called for assistance by a K9 officer before he effectuated the seizure, that action did not extend the stop.

source omitted). "Thus, we draw the line between … stops of proper duration and those that extend into unconstitutional territory according to functional considerations." ***Id.*** "Generally speaking, an officer is on the proper side of the line so long as the incidents necessary to carry out the purpose of the … stop have not been completed, and the officer has not unnecessarily delayed the performance of those incidents." ***Id.***

Within about three minutes of exiting her car, Smith told the officer she had taken "two hits" that morning. The officer's actions during those three minutes that Smith argues were unrelated to the OWI investigation—the officer joking about a banana peel on the road, discussing Smith's car and recent driving with her, smoking a couple of cigarettes with Smith, and repeating questions—did not take the officer off the mission of the stop to investigate a possible OWI offense or measurably prolong that OWI investigation. *See* ***Rodriguez***, 575 U.S. at 355 ("The seizure remains lawful only 'so long as [unrelated] inquiries do not measurably extend the duration of the stop.'" (quoted source omitted; alteration in original)). The complained-of conduct was incidental to the officer's interactions with Smith while he investigated whether she had driven while intoxicated, and did not "'measurably extend the duration of the stop.'" ***Id.*** (quoted source omitted). It therefore did not render the stop unconstitutional.

Therefore,

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

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals