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DISTRICT IV

December 12, 2024

To:

Hon. Joseph G. Sciascia
Circuit Court Judge
Electronic Notice

Walter Arthur Piel Jr.
Electronic Notice

Kelly Enright
Clerk of Circuit Court
Dodge County Justice Facility
Electronic Notice

Michael C. Sanders
Electronic Notice

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

2023AP1778-CR

State of Wisconsin v. Brandon Joseph Matke (L.C. # 2023CF28)

Before Blanchard, Graham, and Nashold, 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).

Brandon Matke appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant as a ninth offense. He contends that the circuit court erred in denying his suppression motion, and more specifically that the court erred in concluding that the officer who stopped him had reasonable suspicion for the stop. Based on our review of the briefs and the record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21(1).¹ We affirm.

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

The officer who stopped Matke was on patrol at 11:38 p.m. when he noticed a pickup truck drive through a four-way intersection, stop in the roadway, back around a corner in the intersection, then drive away in the direction that the truck had originally come from. The officer was aware of recent criminal activity in the area and decided to follow the truck. After making additional observations, the officer stopped the truck based on his suspicion that the driver was engaged in criminal activity and had committed one or more traffic offenses, including unsafe backing under WIS. STAT. § 346.87.² The officer identified the driver of the truck as Matke, and additional investigation led to his arrest for intoxicated driving.

Matke moved to suppress all evidence obtained as a result of the stop. He argued that the officer lacked reasonable suspicion for the stop and that the stop was therefore unconstitutional. The circuit court disagreed and denied the motion.³ We reference additional facts as needed below.

“This court analyzes the grant or denial of a suppression motion under a two-part standard of review.” *State v. Adell*, 2021 WI App 72, ¶14, 399 Wis. 2d 399, 966 N.W.2d 115. “[W]e uphold the circuit court’s findings of fact unless they are clearly erroneous.” *Id.* However, we “review de novo the ultimate question of ‘whether the facts as found by the [circuit] court meet the constitutional standard.’” *Id.* (quoted source omitted).

² WISCONSIN STAT. § 346.87 provides: “**Limitations on backing.** The operator of a vehicle shall not back the same unless such movement can be made with reasonable safety.”

³ Although the circuit court did not expressly state that it was denying Matke’s motion, the court concluded that the stop was supported by reasonable suspicion.

Here, there is no dispute as to the circuit court’s factual findings. However, the parties disagree on whether the undisputed facts establish reasonable suspicion that Matke was engaged in criminal activity or, alternatively, that he committed one or more traffic offenses, including an unsafe backing violation under WIS. STAT. § 346.87.

“Reasonable suspicion is, in a nutshell, less than probable cause, but more than a hunch.” *State v. Batt*, 2010 WI App 155, ¶18, 330 Wis. 2d 159, 793 N.W.2d 104. ““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 [the officer’s] training and experience.”” *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (quoted source omitted).

Here, based on all of the facts and circumstances that we now describe, we agree with the State on the following dispositive point: the officer had reasonable suspicion that Matke committed the traffic offense of unsafe backing in violation of WIS. STAT. § 346.87. In other words, we conclude that the officer reasonably suspected that Matke backed his truck in a movement that could not be “made with reasonable safety.” *See* § 346.87.

The evidence at the suppression hearing included the officer’s squad video of Matke’s backing maneuver, a photograph of the intersection that Matke backed through, and testimony from the officer who observed the maneuver firsthand. The video and photograph establish that Matke backed around a corner through a four-way intersection onto a street that was not controlled by stop signs.⁴ The video and photograph also show that there was a building on the

⁴ The intersection was partially controlled, with stop signs on one of the two intersecting streets.

corner that could have obstructed Matke’s view around the corner and also could have obstructed approaching drivers’ views of Matke’s truck until it would be too late to avoid a collision.

The officer testified that the speed limit in the area was thirty miles per hour, and he described the corner as “dangerous.” He also testified that the building on the corner obstructed the view “for” approaching traffic.⁵ Additionally, the officer testified that he was familiar with the make and model of Matke’s truck, and that it was an older model that would have had no backup sensors or camera unless it had aftermarket equipment. Further, as the circuit court found, backing a pickup truck around a corner with obstructed views may be especially unsafe because, “when you back up a pickup truck, the back of the truck enters the traveled portion of roadway before you can see around the corner.”⁶

⁵ The officer’s testimony on this point is somewhat ambiguous. He testified that he observed Matke back around a dangerous corner “where the building is obstructing all sorts of view[s] for north and southbound traffic.” In the context of the officer’s other testimony regarding the directional orientation of the intersection, it appears that the officer meant that his perception at the time was that the building would have obstructed other drivers’ views of Matke’s truck.

⁶ The circuit court’s complete finding on this point is as follows:

Exhibit No. 2 [the photograph] shows that building. Apparently that must be ... in extremely close proximity to the traveled portion of the highway—which to me is a factor because, you know, without jumping in the car—in the driver’s seat of a [truck like Matke’s] ..., I don’t know exactly how far you’d have to back up in order to be able to see. But obviously when you back up a pickup truck, the back of the truck enters the traveled portion of roadway before you can see around the corner.

In context, we understand this to have been a finding that backing a pickup truck around a corner with an obstructed view may be especially unsafe because the truck bed enters the traveled portion of the roadway first. The State construes the circuit court’s finding differently, as a finding that Matke “obviously” could not see around the corner. We need not and do not rely on the State’s interpretation of this finding to conclude that the court had a factual basis to conclude that an officer in the position of the officer here could reasonably suspect Matke of unsafe backing.

Matke argues that his backing maneuver was reasonably safe because he proceeded slowly in a non-erratic manner and because there was no other traffic on the roadway that could have been affected by his driving. He points out that the circuit court found that he “probably had good reason to believe no one was coming down that road” because he had just come from a direction where he would have seen approaching traffic.

However, when we consider all of the facts and circumstances together, we conclude that on balance they establish that the officer had reasonable suspicion that Matke’s backing maneuver was not made with reasonable safety. As the circuit court ultimately concluded, there is “at least an arguable case for unsafe backing” under the circumstances. The most salient facts known to the officer were that Matke backed his pickup truck around a corner with obstructed views and onto a street that was not controlled by a stop sign. Further, the officer was aware that Matke’s truck likely lacked technologies that might have reduced the risk of the maneuver. The officer did not have to operate on the assumption that Matke must have been aware, through recent scrutiny of all area activity, that backing up in this “blind” manner carried no possibility of a collision with a vehicle, bicycle, or pedestrian. *See State v. Hogan*, 2015 WI 76, ¶36, 364 Wis. 2d 167, 868 N.W.2d 124 (“Although officers sometimes will be confronted with behavior that has a possible innocent explanation, a combination of behaviors—all of which may provide the possibility of innocent explanation—can give rise to reasonable suspicion.”).

Therefore,

IT IS ORDERED that the circuit court’s judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

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

Samuel A. Christensen
Clerk of Court of Appeals