

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

December 23, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-1630

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MICHAEL M. MEININGER,

Defendant-Appellant.

APPEAL from an order of the circuit court for Milwaukee County:
KITTY K. BRENNAN, Judge. *Affirmed.*

FINE, J. Michael M. Meininger appeals from the trial court's order determining that his refusal to submit to a chemical test of his blood-alcohol content was unreasonable. See § 343.305(9), STATS. The sole issue on appeal is whether the trial court correctly determined that the police officer who arrested Meininger acted lawfully in stopping him. We affirm.

A police officer may lawfully stop a person to investigate whether that person has committed or is committing a crime if the officer “possesses specific and articulable facts which would warrant a reasonable belief that criminal activity was afoot.” *State v. Waldner*, No. 95-1291-CR, slip op. at 3, (Wis. Dec. 13, 1996). The question of whether an investigatory stop was legally justified presents a question of law that we decide *de novo*. *State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991). The trial court's findings of historical fact will not be reversed, however, unless they are “clearly erroneous.” See RULE 805.17(2), STATS., made applicable to criminal proceedings by § 972.11(1), STATS.; see also *State v. Angiolo*, 186 Wis.2d 488, 494–495, 520 N.W.2d 923, 927 (Ct. App. 1994). We must, of course, give substantial deference to the trial court's assessment of the evidence when that assessment is based on the trial court's perception of the witnesses' credibility. *Id.*, 186 Wis.2d at 495, 520 N.W.2d at 927. The lawfulness of an investigatory stop is analyzed in a “common sense” way under the “totality of the facts.” *Waldner*, slip op. at 4–5.

The police officer who arrested Meininger testified that Meininger was driving at approximately sixty miles per hour in a thirty-five miles-per-hour zone, and that he was weaving in his lane. If believed, that testimony was sufficient to support the officer's stop of Meininger. Meininger, however, contends that the officer was not telling the truth, and points to several instances of what he asserts was the officer's inconsistent testimony:

1. The officer first testified on direct-examination that when he initially saw Meininger, Meininger was “drifting in and out of [his] traffic lane.” Moments later, the officer testified that as he continued to follow Meininger he saw that Meininger was “drifting within [his] lane, nearly striking the curb -- drifting in the gutter area.” On cross-examination, the officer testified that he saw Meininger drifting within his traffic lane and did not “believe” that Meininger “completely exited the lane.”

2. The officer first testified that the speed limit on the route where he saw Meininger driving at sixty miles per hour was thirty-five. When confronted with photographs and other documents, however, the officer admitted that the speed limit was forty miles per hour.

3. The officer did not give Meininger a speeding ticket despite the officer's testimony that Meininger was speeding.

4. Meininger claims that the officer's testimony that the officer followed him for almost two and one-half miles before finally stopping him was "almost inconceivable" given the officer's testimony that Meininger was speeding and driving erratically.

Finally, Meininger points to his own testimony, which contradicted the officer's on all essential points.

The trial court found that although there "was some successful impeachment of the officer," that the spine of the officer's testimony established the lawful justification for the stop: that Meininger was speeding and was drifting, "up to the gutter" at one point.¹ The trial court also determined that the officer's delay in stopping Meininger was "perfectly reasonable and rational." The trial court's finding that Meininger was speeding has support in the evidence and is not, therefore, "clearly erroneous." Given that finding, the officer's stop of Meininger was lawful.

By the Court. – Order affirmed.

This opinion will not be published. See RULE 809.23(1)(b)4, STATS.

¹ The trial court discounted as being "a moot point" the discrepancy between the officer's initial recollection that the speed limit in the area was thirty-five miles per hour, and the fact that the speed limit was forty miles per hour.