COURT OF APPEALS
DECISION
DATED AND RELEASED

January 9, 1997

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. 96-1732

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RICK A. KNUTSON,

Defendant-Appellant.

APPEAL from an order of the circuit court for Sauk County: VIRGINIA A. WOLFE, Judge. *Affirmed*.

DYKMAN, P.J. This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS. Rick A. Knutson appeals from an order convicting him of operating a motor vehicle while intoxicated (OMVWI) in violation of § 346.63(1), STATS. Knutson argues that the trial court erred in denying his motion to suppress evidence of his intoxication because the officer who stopped him only had a hunch, not a reasonable suspicion, that he was driving while intoxicated. We conclude that the officer's investigative stop was based on a reasonable suspicion that Knutson was driving while intoxicated, and therefore affirm.

BACKGROUND

On July 28, 1994, Officer Gerard Vulstek of the Wisconsin State Patrol was travelling eastbound on Highway 12, which at that point has two lanes going in each direction. Vulstek noticed Knutson's vehicle approaching in the westbound lanes. After observing the right tires of Knutson's vehicle cross over into the right lane of traffic and then return to the left lane, Officer Vulstek turned to follow Knutson's car. Knutson's car crossed into the right lane two more times, and Vulstek activated his emergency lights. Knutson pulled over.

Vulstek approached Knutson and noticed that his breath smelled of intoxicants and that his eyes were red and watery. Knutson admitted that he had a few drinks. After Knutson performed field sobriety tests, Vulstek arrested him for OMVWI.

Knutson brought a motion to suppress all evidence obtained as a result of the stop on the grounds that the officer did not have a reasonable suspicion to believe that he was committing an offense. The trial court denied Knutson's motion. After a trial on stipulated facts, the court found Knutson guilty of OMVWI. Knutson appeals.

DISCUSSION

When reviewing a trial court's decision regarding a motion to suppress evidence, we will uphold the trial court's findings of fact unless they are against the great weight and clear preponderance of the evidence. ***State v. Jackson***, 147 Wis.2d 824, 829, 434 N.W.2d 386, 388 (1989). Whether those facts satisfy the constitutional requirement of reasonableness, however, is a question of law that we review *de novo*. ***Id.***

For a police officer to make an investigative stop, he or she must possess a reasonable suspicion that the person is committing, or has committed, an offense. ***Id.*** at 833-34, 434 N.W.2d at 390. The officer's reasonable suspicion must be based on "specific and articulable facts, which, taken together with rational inferences from those facts, reasonably warrant th[e] intrusion." ***Terry***

v. Ohio, 392 U.S. 1, 21 (1968). The facts must be "judged against an objective standard: would the facts available to the officer at the moment of the seizure ... `warrant a man of reasonable caution in the belief' that the action taken was appropriate?" ***Id.*** at 21-22.

Knutson argues that his conduct of crossing into an adjoining lane did not violate any traffic law and was no different than the conduct of "a very large category of presumably innocent travelers." Therefore, Knutson argues, the officer's investigatory stop was based only a "hunch" that Knutson was intoxicated, not a reasonable suspicion. *See* ***Reid v. Georgia***, 448 U.S. 438, 441 (1980).

We do not agree with Knutson that his crossing into an adjoining lane three times can be characterized as conduct that is repeated by "a very large category of presumably innocent travelers." Automobile drivers do not ordinarily cross into an adjoining lane three times in succession for no apparent reason. Rather, when the officer observed Knutson cross into the adjoining lane three times, he had specific and articulable facts on which to reasonably suspect that Knutson was driving while intoxicated or was occupied with something that interfered with the safe operation of his automobile. *See* § 346.89(1), STATS. Therefore, the investigatory stop was constitutionally justified.

We do not see the relevance of Knutson's assertion that he did not violate any traffic law by crossing into the adjoining lane. The officer did not stop Knutson because a traffic law was violated; rather, the officer stopped Knutson because he suspected that he was driving while intoxicated. In ***State v. Krier***, 165 Wis.2d 673, 678, 478 N.W.2d 63, 65 (Ct. App. 1991), we noted: "Suspicious activity justifying an investigative stop is, by its very nature, ambiguous. Unlawful behavior may be present or it may not. The behavior may be innocent. Still, officers have the right to temporarily freeze the situation to investigate further." (Citation omitted.)

Similarly, the fact that Knutson's conduct did not violate any law is of no consequence. What is relevant is that his behavior of crossing into the adjoining lane three times gave the officer a reasonable suspicion to believe that Knutson was committing the offense of OMVWI. Because the officer had a

reasonable suspicion to believe that Knutson was driving while intoxicated, the trial court did not err in denying the motion to suppress.

By the Court.—Order affirmed.

Not recommended for publication in the official reports. *See* RULE 809.23(1)(b)4, STATS.