

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 23, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

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

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

Appeal No. 2006AP11-CR

Cir. Ct. No. 2003CT216

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ANDREW P. THOMPSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Lincoln County: JAY R. TLUSTY, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Andrew Thompson appeals a judgment convicting him of operating a motor vehicle while intoxicated, second offense, and an order

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

denying his motion to suppress evidence. He contends the police did not have reasonable suspicion to stop him. This court disagrees and affirms the judgment and order.

¶2 On October 17, 2003, just after 2 a.m., officer Michael Hamman of the City of Merrill Police Department was driving westbound on Grand Avenue as Thompson was driving eastbound. Thompson was driving nearly on the center line as the two vehicles passed one another, and Thompson did not maneuver his vehicle to provide a safer distance between them. Grand Avenue is relatively wide at that location, and there were no parked cars, construction work, or other apparent reason for driving so close to the center line. The court found Thompson's driving to be abnormal under the circumstances. Hamman performed a u-turn and began following Thompson, who made a quick series of turns before pulling into a private driveway and extinguishing his headlights.² Hamman believed Thompson was attempting to elude him, and the court found this to be a reasonable inference, given that Thompson did not take the most direct route to his destination, and he increased his speed as he maneuvered the turns.

¶3 A police officer may lawfully conduct an investigatory stop if, based upon the officer's experience, he or she reasonably suspects that criminal activity may be afoot. *State v. Begicevic*, 2004 WI App 57, ¶3, 270 Wis. 2d 675, 678 N.W.2d 293. Reasonable suspicion is dependent on whether the officer's suspicion was grounded in specific, articulable facts, and reasonable inferences from those facts. *Id.* An officer may also make an investigatory traffic stop if he

² Aside from the testimony of the witnesses, the court also had the benefit of a videotape from Hamman's squad car.

or she reasonably suspects that a person is violating or is about to violate a civil traffic regulation. *Id.*, ¶5. When police observe lawful but suspicious conduct, if a reasonable inference of unlawful conduct can be objectively discerned, regardless of other innocent inferences that could be drawn, police have the right to temporarily detain the individual for inquiry. *State v. Waldner*, 206 Wis. 2d 51, 60, 556 N.W.2d 681 (1996). This court reviews de novo whether the circuit court's findings of historical fact supported a reasonable suspicion. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106.

¶4 Under the totality of the circumstances, this court concludes the facts supported a reasonable suspicion to stop Thompson. Hamman believed, and the circuit court concluded, that Thompson's driving near the center line of Grand Avenue was abnormal under the circumstances. Given the abnormal driving at 2 a.m., Hammon understandably followed Thomson to investigate further.

¶5 The court found the facts supported an inference that Thompson then attempted to elude Hamman. While innocent inferences could also be drawn from Thompson's behavior, Hamman could reasonably suspect that unlawful activity was afoot, justifying an investigative stop. *See Waldner*, 206 Wis. 2d at 61.³

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

³ This court does not discuss the cases cited in Thompson's reply brief because they are unpublished. *See* WIS. STAT. RULE 809.23(3). This court notes, however, that those cases are distinguishable from this one.

