

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 10, 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. 2005AP2778-CR

Cir. Ct. No. 2004CF94

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT E. POST,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Sauk County:
PATRICK TAGGART, Judge. *Reversed.*

Before Dykman, Deininger and Higginbotham, JJ.

¶1 PER CURIAM. Robert Post appeals a judgment convicting him of operating a motor vehicle with a prohibited alcohol concentration, as a fifth offense. The issue is whether the police violated Post's constitutional right to be free from unreasonable searches and seizures when the police stopped Post while

he was driving. We conclude that the stop violated the Fourth Amendment. Therefore, we reverse.

¶2 “A traffic stop is a form of seizure triggering Fourth Amendment protections from unreasonable searches and seizures.” *State v. Gammons*, 2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623. For a traffic stop to comport with the Fourth Amendment, “[t]he police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is violating the law.” *Id.* The determination of whether Post has been subjected to a seizure in violation of the Fourth Amendment is an issue we review de novo. *State v. Williams*, 2002 WI 94, ¶17, 255 Wis. 2d 1, 646 N.W.2d 834.

¶3 The arresting officer testified at the suppression hearing that Post drifted from the right part of his lane toward the left side of his lane and back several times. The officer testified that Post stayed in his lane, but moved back and forth approximately five feet in either direction. The officer also testified that Post was never closer than one foot to the center line and never closer than eight feet to the curb. Finally, the officer testified that Post did not jerk back and forth, did not drive erratically, did not speed and did not otherwise commit any traffic violations.

¶4 Based on the officer’s testimony, we conclude that the police did not have a reasonable suspicion that Post was violating the law that would justify a traffic stop. Post’s slight deviations within one lane of travel, with nothing more, does not, in our view, reach that quantum of evidence necessary to make the officer’s hunch that Post might be intoxicated reasonable under the Fourth Amendment. The State argues that we should consider the fact that Post appeared

to be traveling in tandem with the car in front of him and *that* car committed a traffic offense while turning. The State contends that the other car's violation justifies the stop of both vehicles. In evaluating the reasonableness of the decision to stop Post, however, we will not consider other than Post's actions.

¶5 Because the police violated the Fourth Amendment in stopping Post, any evidence flowing from Post's illegal seizure must be suppressed. We reverse the appealed judgment and remand for further proceedings consistent with this opinion.

By the Court.—Judgment reversed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

