

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 6, 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. 2006AP1639-CR**

**Cir. Ct. No. 2004CM983**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOHN B. AHLERS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Washington County: DAVID C. RESHESKE, Judge. *Affirmed.*

¶1 SNYDER, P.J.<sup>1</sup> John B. Ahlers appeals from a judgment of conviction for a second offense of operating a motor vehicle with a prohibited alcohol concentration contrary to WIS. STAT. § 346.63(1)(b). Ahlers moved the circuit court to suppress evidence obtained after what he characterizes as an illegal stop. He contends that the court erred when it did not grant his motion. We disagree and affirm the judgment of the circuit court.

¶2 At approximately 2:20 a.m. on January 10, 2004, Washington County Sheriff's Deputy Keith Uhan was on regular patrol running moving radar from his squad car. He observed a vehicle traveling thirty-eight miles per hour in a zone with a posted limit of sixty-five miles per hour. Uhan followed the vehicle and saw it weave within its lane, crossing onto the fog line twice. He decided to make an investigatory stop. Uhan identified the driver as Ahlers.

¶3 During his contact with Ahlers, Uhan noticed an odor of intoxicants on Ahlers' breath and also observed that Ahlers' eyes were bloodshot. Ahlers admitted that he had consumed alcohol before driving. Uhan then asked Ahlers to perform field sobriety tests, which Ahlers failed. Uhan cited Ahlers for operating a motor vehicle while intoxicated and with a prohibited alcohol content.

¶4 Ahlers moved to suppress evidence gathered after the investigatory stop and the circuit court denied his motion. Ahlers subsequently pled no contest to the PAC charge and the OWI charge was dismissed and read in at sentencing.

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

¶5 On appeal, Ahlers renews his argument that the traffic stop was unsupported by reasonable suspicion and that the evidence should have been suppressed. When reviewing a circuit court’s denial of a motion to suppress, we will uphold the circuit court’s findings of fact unless they are clearly erroneous. *See State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). Whether those facts satisfy the constitutional standard of reasonableness, however, is a question we review de novo. *See id.*

¶6 Here, the circuit court found as fact that Ahlers was traveling approximately twenty-seven miles per hour under the speed limit at 2:20 a.m., that he was weaving within his lane, and that he crossed onto the fog line on two occasions. These findings are supported in the record. Therefore, the only question remaining is whether the totality of these circumstances amounts to reasonable suspicion for a traffic stop.

¶7 The question of reasonableness is determined by a commonsense test. *See id.* at 56. It requires that the officer possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot. *Id.* at 55. It may also be based on rational inferences drawn from those facts. *See id.* at 60. A mere hunch that a person has been, is, or will be involved in criminal activity is not sufficient to support an investigatory stop. *See id.* at 55.

¶8 Ahlers’ primary argument rests on the fact that he did not break any traffic laws prior to the investigatory stop. He argues that because he was not exceeding the speed limit and his weaving occurred entirely within his traffic lane, his conduct was lawful. In fact, the circuit court agreed with Ahlers on this point. The court stated, “Based upon what has been cited here I can’t find a specific violation of the traffic code ....” Nonetheless, the court properly went on to

consider “whether under the totality of the circumstances the observations of the officer are such that they would give rise to a reasonable suspicion” that justifies further investigation.

¶9 Our supreme court has held that unlawful conduct, whether it be in the nature of a violation of the traffic code or of the criminal code, is not a condition precedent to a legal investigatory stop. *See id.* at 58, 59. The supreme court expressly rejected the argument that lawful conduct cannot form the basis for reasonable suspicion, holding that if this were correct, “there could never be investigative stops unless there was simultaneously sufficient grounds to make an arrest. That is not the law.” *Id.* at 59. Accordingly, Ahler’s first argument fails.

¶10 In the alternative, Ahlers argues that Uhan’s decision to conduct the investigative stop was based on a mere hunch rather than reasonable suspicion. He contends that traveling twenty-seven miles per hour below the posted speed limit was not unusual because he was approaching an off ramp, where people often decelerate, and because he was in the right lane, which is designated for slow moving traffic. He also argues that Uhan was unable to sufficiently articulate how much time passed between the lane weaves or how abrupt the weaving appeared.

¶11 The circuit court agreed that the evidence supporting reasonable suspicion was not “overwhelming.” Nonetheless, we conclude that the totality of the circumstances supports Uhan’s decision to freeze the situation and investigate. Suspicious conduct is by its very nature ambiguous and the function of the investigative stop is to quickly resolve that ambiguity. *See id.* at 60; *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). Here, it was reasonable for Uhan to suspect something was amiss. As the circuit court observed, the vehicle’s speed and weaving suggested that the driver was tired, perhaps impaired,

or may have had some mechanical problems with the vehicle. It was apparent that the driver did not have full and complete control of the vehicle.

¶12 Based on Ahlers’ conspicuously slow speed, his weaving within the lane, his crossing to the fog line twice, and the time of night, we hold that Uhan’s suspicion was based on specific, articulable facts and rational inferences from those facts. A stop under these circumstances does not represent the “inchoate and unparticularized suspicion or ‘hunch’” condemned in *Terry*. See *Terry v. Ohio*, 392 U.S. 1, 27 (1968). Accordingly, the circuit court properly denied Ahlers’ motion to suppress.

*By the Court.*—Judgment affirmed.

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

