**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**May 17, 2007**

**David R. Schanker**
**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. 2006AP2019** **Cir. Ct. No. 2006CV314**

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

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**CITY OF MADISON,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHRISTOPHER ROTZIEN,**

**DEFENDANT-APPELLANT.**

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APPEAL from an order of the circuit court for Dane County: JAMES L. MARTIN, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.[1] Christopher Rotzien appeals the circuit court order finding him guilty of an ordinance violation for operating a motor vehicle

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

while under the influence of an intoxicant. Rotzien argues that the arresting officer lacked reasonable suspicion to initiate the underlying traffic stop. We disagree and affirm.

## *Background*

¶2 On January 17, 2005, at approximately 2:00 a.m., a City of Madison police officer initiated a traffic stop of Rotzien on suspicion of impaired driving. The officer subsequently cited Rotzien for operating a motor vehicle while impaired, in violation of a City of Madison ordinance adopting WIS. STAT. § 346.63(1)(a). Rotzien moved to suppress evidence resulting from the stop, arguing that the officer lacked reasonable suspicion. The circuit court denied the motion, and found Rotzien guilty of the ordinance violation.

¶3 We provide more details of the circumstances surrounding the stop in the discussion that follows.

## *Discussion*

¶4 We must decide whether the officer's testimony, accepted as true by the circuit court, supports the conclusion that reasonable suspicion supported the traffic stop.

¶5 Reasonable suspicion is a common-sense test that permits an investigatory stop if an officer reasonably suspects that unlawful activity may be afoot. *See* ***State v. Williams***, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106. The question is, "under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience." ***State v. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). Reasonable suspicion must be grounded in specific, articulable facts, and

reasonable inferences from those facts, that an individual was engaging in unlawful conduct. ***State v. Waldner***, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996). Whether a given set of facts constitutes reasonable suspicion is a question of law for our *de novo* review. ***State v. Young***, 2006 WI 98, ¶17, 294 Wis. 2d 1, 717 N.W.2d 729.

¶6 There is no dispute here that the officer did not witness Rotzien committing any traffic offenses before the stop, but, as the circuit court correctly recognized, this does not end our inquiry. The law allows a police officer to make an investigatory stop based on observations of lawful conduct so long as the activity supports a reasonable inference that unlawful activity is afoot. ***Waldner***, 206 Wis. 2d at 57.

¶7 The most pertinent circumstances here are the following:

- The officer, who had training and experience in detecting impaired drivers, observed Rotzien's driving over the course of six to seven blocks.

- The officer observed Rotzien make a slow, gradual "swerve" within his lane. Rotzien drifted to the right approximately three to four feet, coming within one to two feet of parked vehicles. Rotzien then slowly "swerved" back, slightly overcorrecting to the left, before returning to his line of driving. Rotzien subsequently made a second, similar "swerve." The officer observed nothing on the roadway that would have caused this type of movement.

- The officer next observed Rotzien slow down from the posted speed limit of 25 miles per hour to 20 miles per hour for approximately five seconds. Rotzien then sped back up. There was nothing apparent to the officer that would have necessitated this reduction in speed.

- The stop occurred at approximately 2:00 a.m., when bars in the vicinity were closing.

¶8 We agree with the circuit court and the City that these circumstances support the reasonable suspicion that Rotzien was driving while impaired.

¶9 Some of Rotzien's arguments lack merit because he isolates and attacks individual circumstances, suggesting they may have innocent explanations. We must, however, consider the circumstances in their totality. Moreover, "police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop." ***Waldner***, 206 Wis. 2d at 59. "Suspicious conduct by its very nature is ambiguous, and the principal function of the investigative stop is to quickly resolve that ambiguity." ***Id.*** at 60.

¶10 Rotzien argues that the deviations within his lane were insufficient to provide reasonable suspicion. We disagree. It is precisely the type of gradual, repeated deviations the officer described, combined with the bar-time hour, that raises suspicion of impaired driving in a reasonable mind.

¶11 Rotzien also argues that ***Waldner*** was a close case and that his case is "much closer." The facts in ***Waldner*** were these: the stop occurred at 12:30 a.m.; the vehicle was traveling at a "slow rate of speed"; the vehicle stopped at an intersection with no stop sign or light, then accelerated "at a high rate of speed," reaching 20 to 25 miles per hour in "several seconds"; and the driver subsequently pulled into a parking space, opened the driver's side door, poured "a mixture of liquid and ice" out of a plastic glass onto the roadway, and got out of the vehicle. ***Id.*** at 53. We concluded that these facts were insufficient for reasonable suspicion, but the supreme court unanimously disagreed. ***Id.*** at 53-54.

¶12 We agree with Rotzien that ***Waldner*** may appropriately be characterized as a "close case," but that does not help Rotzien because his case and ***Waldner*** involve qualitatively different scenarios. Rotzien's case is not

simply the ***Waldner*** case minus a significant fact. At most, we are persuaded that, like ***Waldner***, this is a close case that falls on the side of reasonable suspicion.

¶13 Rotzien points out that the evidence shows that he correctly signaled a lane change and a turn after the officer observed his other driving behaviors but immediately before the officer made the stop. He argues that this fact weighs against reasonable suspicion, particularly given the officer's testimony that impaired drivers frequently fail to use their turn signals properly. We agree that Rotzien's proper signaling is a relevant circumstance, but we do not agree that it was sufficient to dispel reasonable suspicion.

¶14 In what may be an alternative argument, Rotzien seems to say that the fact that the officer did not immediately stop Rotzien after observing behavior arguably constituting reasonable suspicion supports Rotzien's view that reasonable suspicion did not exist. If this is what he is arguing, it adds nothing to what we have already discussed, except to cast doubt on the officer's credibility. But, of course, that was a matter for the circuit court, not this court.

*By the Court.*—Order affirmed.

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