

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 16, 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. 2007AP383-CR

Cir. Ct. No. 2006CT995

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PAUL A. SCHRAMEYER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
STEVEN D. EBERT, Judge. *Affirmed.*

¶1 LUNDSTEN, J.¹ Paul Schrameyer appeals the circuit court's judgment convicting him of operating a motor vehicle while under the influence of

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

an intoxicant, fourth offense. He challenges the circuit court's denial of his motion to suppress, arguing that the investigating officer lacked reasonable suspicion to stop his vehicle. We reject Schrameyer's challenge and affirm the judgment.

¶2 At the suppression hearing, the officer testified that on February 4, 2005, in the late afternoon, he was traveling westbound near the intersection of two highways when he observed a vehicle in front of him with its passenger-side tires across the fog line. The officer noted that there were no vehicles traveling eastbound at the time and that there was no other observable reason why the vehicle needed to be in that position on the road.

¶3 The officer observed the vehicle cross the fog line several more times over the course of approximately three miles. The officer explained that the driver "would be in his lane, then he would go across the fog stripe, then he would come back." The officer could not recall how long the vehicle would stay across the fog line in each instance, but testified that it was very uncommon for a vehicle to deviate past the fog line so many times. The officer further testified that he had seen this type of driving behavior before and that most of the incidents involved intoxicated drivers.

¶4 The officer also observed that the vehicle paused at a stop sign for ten to fifteen seconds, even though there was no traffic coming. The officer subsequently stopped the vehicle, which was being driven by Schrameyer, at 5:53 p.m.

¶5 The officer acknowledged that Schrameyer was obeying the speed limit, did not cross the center line, and used his turn signal when making a turn. The officer also acknowledged that, when the vehicle was not over the fog line, it

was closer to the fog line than to the center line, and that it was common for people to travel toward the right side of their lane. The officer further acknowledged that he never saw the vehicle do any “severe weaving.” When asked how far beyond the fog line the vehicle would go, the officer testified “[e]nough for both passenger tires to cross the fog [line],” or approximately the width of the vehicle’s tires, nine inches.

¶6 Schrameyer argues, as he did in the circuit court, that the officer lacked reasonable suspicion to stop his vehicle. At issue is whether the officer had at least a reasonable suspicion that Schrameyer either was violating WIS. STAT. § 346.13, which defines illegal lane violations, or was otherwise engaging in unlawful conduct.² We need not address whether Schrameyer may have been violating § 346.13 because we conclude that the officer could have reasonably suspected that Schrameyer was otherwise engaging in unlawful conduct, namely, driving while impaired by an intoxicant. Accordingly, the stop was justified.

¶7 Reasonable suspicion is a common sense standard that permits a brief investigatory stop if an officer reasonably suspects “that criminal activity may be afoot.” *State v. Williams*, 2001 WI 21, ¶21, 241 Wis. 2d 631,

² WISCONSIN STAT. § 346.13 provides, in part, as follows:

Driving on roadways laned for traffic. Whenever any roadway has been divided into 2 or more clearly indicated lanes, including those roadways divided into lanes by clearly indicated longitudinal joints, the following rules, in addition to all others consistent with this section, apply:

(1) The operator of a vehicle shall drive as nearly as practicable entirely within a single lane and shall not deviate from the traffic lane in which the operator is driving without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear.

623 N.W.2d 106 (quoting *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). 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 illegal conduct. *State v. Waldner*, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996).

¶8 Schrameyer concedes that police may stop a vehicle based on observations of lawful conduct so long as the reasonable inferences drawn from that conduct indicate that unlawful activity is afoot. *See Waldner*, 206 Wis. 2d at 57; *see also State v. Post*, 2007 WI 60, ¶24, ___ Wis. 2d ___, 773 N.W.2d 634 (“[I]t is clear that driving need not be illegal in order to give rise to reasonable suspicion.”). Schrameyer also concedes that courts “give deference to reasonable inferences drawn by police officers in light of their experiences.” Applying these standards, we are persuaded that the facts known to the officer constituted reasonable suspicion of impaired driving.

¶9 We acknowledge that merely crossing a fog line a single time does not constitute reasonable suspicion of impaired driving, but here there is significantly more. Schrameyer crossed the fog line several times for no observable reason. Furthermore, Schrameyer paused for ten to fifteen seconds at a stop sign even though there was no oncoming traffic. One need only watch a clock for ten seconds to realize that this is odd behavior in the absence of some apparent reason why a car might remain stopped. We conclude that the above facts alone supply reasonable suspicion.

¶10 Schrameyer argues that the circuit court erred in relying on the officer's testimony that, based on the officer's experience, the nature of Schrameyer's movements over the fog line was an indicator of impaired driving. Although we conclude that we need not rely on this part of the officer's testimony to affirm the circuit court, we note that the officer's testimony supports a finding that he had sufficient experience to offer this opinion. The weight to give this opinion was up to the circuit court.

By the Court.—Judgment affirmed.

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

