

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 19, 2008

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. 2007AP1779-CR

Cir. Ct. No. 2006CT823

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ADAM D. BERLANGA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
S. MICHAEL WILK, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Adam D. Berlanga appeals from a judgment of conviction of operating a motor vehicle while intoxicated (OWI), second offense, in violation of WIS. STAT. § 346.63(1)(a). He contends that the trial court erred in denying his motion to suppress evidence because the arresting officer lacked a reasonable suspicion to stop his vehicle. We affirm the judgment of conviction.

¶2 The underlying facts were established at the suppression hearing where the arresting officer, Kenosha County Sheriff's Deputy Ryan Schabo, testified that on August 13, 2006, at approximately 3:20 a.m., he was on duty and was informed of a vehicle traveling westbound on Highway 50 at Highway D in an eastbound lane. While responding to the dispatch, Schabo observed a bronze Infiniti vehicle stopped in the turn lanes on Highway 50 just west of Highway 45, and received a second call describing the suspect wrong-way vehicle as "a gold, newer Cadillac." Schabo determined that the bronze Infiniti matched the description, turned around, and caught up to the Infiniti.

¶3 Deputy Schabo stated that he followed the Infiniti for "maybe 10 seconds" and for "maybe a quarter mile," during which he observed the Infiniti "swerving all over the road" and "making short, rapid swerves going from fog line to centerline." Schabo said that he observed the Infiniti cross the fog line and "with its right tires it crossed the fog line by about a foot." Schabo testified that the Infiniti went from fog line to centerline "about 15 or so times." Schabo stopped the Infiniti and issued a citation for lane deviation and a citation for OWI.

¹ This is a one-judge case pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version

¶4 Berlanga challenges whether or not Officer Schabo’s observations of his vehicle “weaving within his own lane of traffic constitutes reasonable suspicion to conduct a traffic stop of his vehicle *for O.W.I.?*” (Emphasis added.) The issue, however, is whether Schabo’s observation of the lane deviations of the Infiniti was sufficient to support Schabo’s stop of the Berlanga vehicle.² We agree with the trial court that Schabo’s lane deviation observations provided an articulated, reasonable basis to stop Berlanga’s Infiniti vehicle.

¶5 A traffic stop is a seizure under the Fourth Amendment; however, it is permissible if there are grounds to reasonably suspect that a traffic violation has been or will be committed. *See State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996). The test of reasonable suspicion is objective, and suspicion must be “grounded in specific, articulable facts and reasonable inferences from those facts.” *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). Whether the facts meet this standard is a question of law that we review de novo. *Id.* at 54.

¶6 Berlanga specifically contends that the State cannot use the dispatch information that Deputy Schabo received concerning a vehicle proceeding westbound in the eastbound lane of Highway 50 to provide a reasonable suspicion to stop his vehicle. We agree, as did the trial court. The trial court concluded, “This is not a bad anonymous tip case. It’s an over the fog line case.” The trial court properly addressed whether or not the deputy had a reasonable suspicion to stop Berlanga for lane deviations.

² An appellate court is not required to address the appellate issue as structured by a party. *See State v. Waste Mgmt. of Wis., Inc.*, 81 Wis. 2d 555, 564, 261 N.W.2d 147 (1978).

¶7 The trial court concluded that the officer's articulated observations were reasonable and sufficient to support the stop:

[I]t's undisputed that the officer observed rapid, short, sharp swerves staying in the lane of traffic moving from the fog line to the centerline and back and forth. At approximately the 8100 block when there was a slight eastbound curve [Berlanga] drove onto the shoulder of the road with [his vehicle's] right tires crossing the fog line by about one foot.

¶8 The trial court concluded that Deputy Schabo had a reasonable, articulated suspicion that Berlanga committed improper lane deviations and denied the suppression motion. We are satisfied that the trial court correctly analyzed the facts and applied the correct legal standard to those facts. Reasonable suspicion does not require that an officer have grounds to issue a traffic citation in order to make a traffic stop, nor does it require that the officer have grounds to believe that the unusual driving is caused by intoxication, rather than some other cause, before making the stop. *See id.* at 59 (reasonable suspicion may be based on acts that by themselves are lawful; officers need not rule out possibility of innocent behavior before initiating a brief stop).

¶9 WISCONSIN STAT. § 346.13(1) requires the operator of a vehicle to drive as nearly as practicable entirely within a single lane and to not deviate from the proper traffic lane without first ascertaining that movement can be made safely. We conclude that Deputy Schabo's stop of Berlanga's vehicle was reasonable, based upon his observations of lane deviation as related in the suppression hearing record. The OWI charge resulted from Schabo's further observations and investigation after he made the legal lane deviation stop of Berlanga's vehicle.

By the Court.—Judgment affirmed.

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

