

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 25, 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. 2007AP2672-CR

Cir. Ct. No. 2007CT176

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SUSAN MARIE VINJE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Douglas County:
GEORGE L. GLONEK, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Susan Vinje appeals a judgment of conviction for operating a motor vehicle while intoxicated, second offense. Vinje argues the

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

circuit court erred when it denied her motion to suppress because the arresting officer lacked reasonable suspicion to make a traffic stop. We disagree and affirm the judgment.

BACKGROUND

¶2 On May 5, 2007, a criminal complaint was filed charging Vinje with operating while intoxicated and operating a motor vehicle with a prohibited alcohol concentration, both as second offenses. Vinje filed a motion to suppress challenging the reasonable suspicion for the stop.

¶3 At the motion hearing, officer Patrick Carey testified that shortly after 8:30 p.m. on Saturday, May 5, 2007, he received a call from the dispatch center reporting that a yellow Hummer was being driven recklessly and “swerving on the bridge and that people were concerned.” Carey located a vehicle matching that description and followed it for three to four blocks. Carey testified that he observed the vehicle “swerving back and forth” within its lane. He stated that a concrete median divided the highway where Vinje was driving, and the median ended at an intersection. According to Carey, after the intersection, Vinje swerved to such a degree that “if the median had been there, then the vehicle would have struck it.” In addition to listening to Carey’s testimony, the court viewed a DVD of the incident that Carey recorded when pursuing Vinje’s vehicle.

¶4 After viewing the DVD, the court stated

and it certainly appears to this Court as though the vehicle goes far over toward the center line, and it appears to the Court based on the video that the wheels of Vinje’s vehicle actually touched upon or came very, very close to the center line and then almost immediately then move over to the left toward the fog line and actually touch upon or cross over the fog line. And then there is a point at which the

vehicle goes over so far as, according to Officer Carey, that it certainly would have struck the median if the median was there, but it happened to be in an area where the median wasn't there because there's a roadway there. Officer Carey testified, and that was confirmed by reviewing the tape, that Miss Vinje's vehicle certainly was not traveling in what would be considered a typical or normal fashion.

¶5 The court concluded Carey had reasonable suspicion to stop Vinje and denied the motion. Vinje then pled no contest to operating while intoxicated and the remaining charge was dismissed.

DISCUSSION

¶6 When reviewing a trial court's denial of a motion to suppress, we uphold the 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). However, whether those facts satisfy the constitutional requirement of reasonableness is a question of law we review without deference. *Id.*

¶7 The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. In order to make a constitutionally permissible investigative stop, the officer must have reasonable suspicion that the driver or occupants of the vehicle committed, is committing, or is about to commit an offense. *State v. Rutzinski*, 2001 WI 22, ¶14, 241 Wis. 2d 729, 623 N.W.2d 516. Reasonable suspicion depends on whether an officer's suspicion is grounded in "specific, articulable facts and reasonable inferences from those facts" indicating the individual committed or is committing an offense. *Waldner*, 206 Wis. 2d at 56. When determining whether reasonable suspicion exists, an officer need not rule out the possibility of innocent behavior. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). An officer need not observe unlawful

conduct; rather, the officer must consider the totality of the circumstances and draw reasonable inferences about the cumulative effect. *Waldner*, 206 Wis. 2d at 58.

¶8 Vinje argues that under the totality of the circumstances, Carey did not have reasonable suspicion to stop her because her swerving was “minimal and almost non-existent” and she was not speeding or committing any traffic violations. Vinje’s attempt to characterize her weaving as “minimal” is not consistent with Carey’s testimony or the trial court’s finding. Carey testified that, at one point, Vinje’s vehicle swerved to a degree that if the road had been divided by a median, the vehicle would have hit the median. Additionally, Carey testified that he received a report of a yellow Hummer being driven recklessly, that he located a vehicle matching that description and observed it swerve within its own lane for three to four blocks. Taken together, these facts give rise to a reasonable suspicion justifying the stop. It is irrelevant that Carey did not observe Vinje speeding or otherwise committing a traffic violation. *See id.*

By the Court.—Judgment affirmed.

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

