

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 8, 2009

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. 2009AP1569-CR

Cir. Ct. No. 2008CT1695

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEANNE M. TREML,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
SUE E. BISCHEL, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Deanne Treml appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, third

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

offense. Treml argues the arresting officer lacked reasonable suspicion to initiate the traffic stop. We disagree and affirm.

BACKGROUND

¶2 Shortly after 3:00 a.m. on August 3, 2008, deputy Jason Stuckart saw a vehicle leave the parking lot of an abandoned business in the Town of Ledgeview. Stuckart followed the car for one half of a mile to a mile and saw “the vehicle weav[e] sharply from side to side making corrections left to right [in] a pinball style.” Stuckart, who has eight years of experience detecting impaired drivers, described this weaving as “very erratic driving” that led him to believe the driver was intoxicated. He stopped the car, determined the driver, Treml, was intoxicated and arrested her.

¶3 Treml moved to suppress all evidence obtained from the stop, arguing Stuckart lacked reasonable suspicion to stop her. The circuit court denied her motion. It concluded Stuckart’s observation of Treml leaving an abandoned parking lot at 3:00 in the morning and then weaving sharply within her lane of traffic provided reasonable suspicion to initiate the stop.

DISCUSSION

¶4 A police officer may initiate an investigatory traffic stop if “the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.” *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. Whether a stop is reasonable is a question of constitutional fact. *Id.*, ¶8. We review questions of constitutional fact under a mixed standard of review, upholding the circuit court’s findings of fact unless clearly erroneous, but

reviewing independently the application of these facts to the constitutional standard. *Id.*

¶5 On appeal, Treml argues Stuckart failed to give specific details about why Treml’s driving was erratic, and that the description he did give was inadequate because, under *Post*, weaving within a single lane of traffic does not necessarily give rise to reasonable suspicion. We disagree.

¶6 First, we reject Treml’s assertion that Stuckart “provided no objective information concerning what, exactly, [her alleged erratic driving] entailed.” Stuckart’s testimony that Treml was “weaving sharply from side to side making corrections left to right and making very sharp turns” describes exactly what her driving entailed.

¶7 Second, we also reject Treml’s contention *Post* requires more information than Stuckart provided here. In *Post*, a police officer stopped Post after watching him “traveling in a smooth ‘S-type’ pattern” for two blocks within an extra wide traffic lane at 9:30 p.m. *Id.*, ¶¶5, 36. The court held that “weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop.” *Id.*, ¶2. But it affirmed “that courts must determine whether there was reasonable suspicion for an investigative stop based on the totality of the circumstances.” *Id.*, ¶26. The court then concluded, under the totality of the circumstances, there was reasonable suspicion for the stop, pointing to the width and frequency of Post’s weaving, as well as the time the incident took place. *Id.*, ¶¶35-36.

¶8 Here too, the totality of the circumstances provided Stuckart with reasonable suspicion to initiate the stop. Stuckart testified he had eight years of experience detecting drunk drivers and that the weaving he observed indicated the

driver was possibly intoxicated. He specifically pointed to the manner of Treml’s weaving, characterizing it as “sharp” corrections from side to side of the lane that resembled the motion of a pinball. Further, the time of the incident—3:00 a.m—is significant. In *Post*, the court noted that while the time of an incident that occurred at 9:30 p.m. was “not as significant as when poor driving takes place around ‘bar time,’ it does lend some further credence to [the officer’s] suspicion that Post was driving while intoxicated.” *Id.*, ¶36. Here, the erratic driving Treml saw actually did take place after bar time, lending additional support to suspicion Treml was driving erratically because she was intoxicated. *See id.*

By the Court.—Judgment affirmed.

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

