

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**July 30, 2002**

Cornelia G. Clark  
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. 02-0832-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 01-CT-134**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-APPELLANT,**

**V.**

**PATRICK A. DECORAH,**

**DEFENDANT-RESPONDENT.**

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APPEAL from a judgment of the circuit court for Washburn County:  
EUGENE D. HARRINGTON, Judge. *Reversed.*

¶1 HOOVER, P.J.<sup>1</sup> The State appeals a judgment dismissing charges of operating while intoxicated and operating with a prohibited blood alcohol concentration, both third offenses, against Patrick Decorah. The State argues that

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f). All references to the Wisconsin Statutes are to the 1999-2000 version.

Wisconsin State Patrol trooper Patrick Kraetke had reasonable suspicion to stop Decorah. This court agrees and reverses the judgment.

¶2 The facts are undisputed. On October 12, 2001, at approximately 9:18 p.m., Kraetke noticed a vehicle traveling ahead of him weaving within its traffic lane. Kraetke followed the vehicle and then observed it cross over the fog line twice. He stopped the vehicle, identified the driver as Decorah and subsequently arrested Decorah for operating while intoxicated.

¶3 Decorah moved to dismiss the charges due to lack of reasonable suspicion to justify initiating the stop. After a hearing on the motion, the trial court concluded that Kraetke lacked reasonable suspicion to stop Decorah and dismissed the charges. The State now appeals.

¶4 The State argues that Kraetke had reasonable suspicion to justify a traffic stop. Although a traffic stop is a seizure within the Fourth Amendment, it is permissible if the officer has grounds to reasonably suspect a traffic violation has been or will be committed. *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996). Whether an officer had reasonable suspicion is an objective test. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). The suspicion must be “grounded in specific, articulable facts and reasonable inferences from those facts ....” *Id.* Whether the facts meet this standard is a question of law this court reviews de novo. *Id.* at 54. The focus is on the totality of the circumstances, not individual facts standing alone. *Id.* at 58.

¶5 Reasonable suspicion does not require that the officer have grounds to issue a traffic citation in order to make a traffic stop. *Id.* at 59. Nor does it require that the officer have grounds to believe that the weaving is caused by intoxication rather than drowsiness or some other more “innocent” cause before

the stop. *Id.* As the *Waldner* court observed, “when a police officer observes lawful but suspicious conduct, if a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, police officers have the right to temporarily detain the individual for the purpose of inquiry.” *Id.* at 60.

¶6 Here, the totality of what Kraetke observed permitted him to reasonably infer that the driver was somehow impaired, and he had a right to temporarily detain Decorah for the purpose of inquiry. Kraetke had observed three instances of unusual driving—weaving and then crossing the fog line twice. This reasonably aroused Kraetke’s suspicion and entitled him to stop Decorah. Indeed, one would expect an officer to stop a vehicle operated in this manner, and the officer would be remiss in not investigating. This court concludes that the trial court erred when it dismissed the charges against Decorah. Because there were reasonable grounds for Kraetke to stop Decorah, the judgment is reversed.

*By the Court.*—Judgment reversed.

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

