

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 5, 2003

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. 03-1336-CR
STATE OF WISCONSIN**

Cir. Ct. No. 02CT000755

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

SCOTT M. DOERING,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
EMILY S. MUELLER, Judge. *Affirmed.*

¶1 NETTESHEIM, J.¹ Scott M. Doering appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OWI), contrary to WIS. STAT. § 346.63(1)(a). Doering contends that the trial court erred in denying

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All statutory references are to the 2001-02 version.

his motion to suppress evidence on the grounds that the arresting officer did not have reasonable suspicion for stopping the vehicle he was operating. We reject Doering's argument and affirm the judgment.

FACTS

¶2 The controlling facts as established at the motion to suppress hearing are not in dispute. On May 20, 2002, at approximately 1:13 a.m., Racine County Deputy Sheriff Keven Kazmierski was on patrol in the area of Six Mile Road and Highway 32 in Racine county. He was traveling eastbound on Six Mile Road, and came to a stop behind a vehicle at the intersection of Six Mile Road and Highway 32. Later investigation established that Doering was the driver of the vehicle.

¶3 The traffic light turned green, and Doering's vehicle pulled ahead and proceeded down Six Mile Road. Kazmierski testified that he observed the vehicle weaving within its own lane of traffic as he proceeded down Six Mile Road. Additionally, Kazmierski observed Doering's vehicle cross the center line between the eastbound and westbound lanes of traffic.

¶4 After seeing Doering's vehicle cross the center line, Kazmierski activated his emergency lights and stopped the vehicle. Kazmierski observed an odor of intoxicants on Doering and an open intoxicant in the vehicle. After conducting field sobriety tests, Kazmierski arrested Doering for OWI. The ensuing criminal complaint charged Doering with OWI as a third-time offender.²

² The complaint also charged Doering with operating a motor vehicle with a prohibited alcohol concentration (PAC), contrary to WIS. STAT. § 346.63(1)(b).

Doering responded with a motion to suppress, contending that Kazmierski did not have reasonable suspicion to stop his vehicle.

¶5 Based on the evidence we have recited, the trial court found that Doering had deviated from his lane of travel by crossing over the center line, a violation of the traffic code. Therefore, the court ruled that Kazmierski had a reasonable, articulable suspicion to stop the vehicle.

¶6 Doering subsequently pled guilty to OWI, third offense. He now appeals the judgment based on the trial court's denial of his motion to suppress.

DISCUSSION

¶7 Determining whether Kazmierski's investigative stop of Doering's vehicle was reasonable is a question of law that we review de novo. *State v. Guzy*, 139 Wis. 2d 663, 671, 407 N.W.2d 548 (1987). However, despite our de novo standard of review, we value a trial court's decision on such a question. *Scheunemann v. City of West Bend*, 179 Wis. 2d 469, 475, 507 N.W.2d 163 (Ct. App. 1993). Although the ultimate question is one of law, the trial court's findings of fact will be sustained unless they are contrary to the great weight and clear preponderance of the evidence. *State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996).

¶8 The Fourth Amendment, which prevents unreasonable searches and seizures, applies to traffic stops because they have been found to be a form of seizure. *Guzy*, 139 Wis. 2d at 672. The Constitution does not forbid all searches and seizures, only unreasonable searches and seizures. *Terry v. Ohio*, 392 U.S. 1, 9 (1968). The question of what constitutes reasonableness is a commonsense test. *State v. Anderson*, 155 Wis. 2d 77, 83, 454 N.W.2d 763 (1990). There is no

simple test for determining the reasonableness of a search and seizure; rather, it is a balancing test, weighing the need for the search against the invasion it produces. *Terry*, 392 U.S. at 21. In order for the search to be considered reasonable, the police officer must be able to point to “specific and articulable facts” which, taken together with rational inferences from those facts, reasonably warrant that intrusion. *Id.* The police officer is entitled to draw specific reasonable inferences from the facts in light of his experience. *Id.* at 27. The ultimate question is whether the facts available to the officer at the moment of the seizure would warrant a person of reasonable caution to believe that the appropriate action was taken. *Id.* at 22.

¶9 Kazmierski testified that he observed Doering’s vehicle weave within its own lane and, subsequently, cross the center line between the eastbound and westbound lanes of traffic. This conduct constituted a violation of WIS. STAT. § 346.13, which requires the operator of a vehicle to drive in his or her designated lane when the lanes have been marked. A traffic violation provides sufficient grounds for an investigation. *See County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999).

¶10 Doering offers an alternative explanation for his crossing of the center line. He contends that he deviated from his lane of travel as he crossed a railroad crossing and that his vehicle was “jostled momentarily.” Even accepting that explanation, the fact remains that he crossed the center line. At a minimum, Kazmierski was entitled to conduct an investigatory stop to determine the reason for the deviation. *See* WIS. STAT. § 968.24. Doering also questions whether Kazmierski could have maintained visual contact with his vehicle for the fifteen seconds testified to by Kazmierski. This argument, however, goes to the trial court’s assessment of Kazmierski’s credibility—a function uniquely for the trial

court in its role as the fact finder. As noted, we do not disturb a trial court's finding of fact in a suppression hearing unless the finding is contrary to the great weight and clear preponderance of the evidence. *Waldner*, 206 Wis. 2d at 54. We have reviewed the transcript of the suppression hearing and we hold that the trial court's findings are not contrary to this standard of proof.

¶11 When looking at the totality of the circumstances surrounding the stop, it is apparent that Kazmierski had specific and articulable facts for conducting the stop. For that reason, the stop was reasonable, and the suppression of evidence motion was properly denied.

CONCLUSION

¶12 We conclude that Kazmierski had reasonable suspicion to stop Doering's vehicle. We uphold the order denying Doering's motion to suppress. We affirm the judgment.

By the Court.—Judgment affirmed.

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

