

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 13, 2011

A. John Voelker
Acting 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. 2011AP1191-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2010CT1757

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TODD A. SCHREIBER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: CLARE L. FIORENZA, Judge. *Affirmed.*

¶1 KESSLER, J.¹ Todd A. Schreiber appeals his judgment of conviction after he pled guilty to operating a motor vehicle while under the influence of an intoxicant as a fourth offense. Schreiber contends that the circuit court erred in denying his motion to suppress evidence of his intoxication because

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

the arresting officer lacked reasonable suspicion to stop his vehicle. We disagree and affirm.

BACKGROUND

¶2 On June 14, 2010, Schreiber was charged with: (1) one count of operating a motor vehicle while under the influence of an intoxicant, as a fourth offense; (2) one count of operating a motor vehicle with a prohibited alcohol concentration, as a fourth offense; and (3) one count of operating after revocation.² According to the criminal complaint, on May 1, 2010, Schreiber was stopped by Milwaukee County Deputy Sheriff Matthew Grunwald after the deputy observed Schreiber deviating from his designated lane on southbound U.S. Highway 45. The complaint further states that upon the stop, Grunwald observed that Schreiber had “a strong odor of an alcoholic beverage on his breath, slurred speech, and red and glassy eyes.” Schreiber was subsequently arrested and transported to a local hospital for blood testing, the results of which indicated that Schreiber’s blood alcohol content was .148 percent. Schreiber was subsequently charged.

¶3 Schreiber filed a motion to suppress the evidence of his intoxication that was obtained as a result of the traffic stop. At the suppression hearing, Grunwald testified that while driving southbound on U.S. Highway 45 at approximately 11:00 p.m. on the night of Schreiber’s arrest, Grunwald observed a white-panel van deviate about one foot from the center lane of the highway into the right lane. Grunwald testified that he activated his squad camera and began following the vehicle. Grunwald further testified that he followed the vehicle for

² Counts two and three were dismissed at Schreiber’s plea hearing. Only Schreiber’s investigative stop is at issue in this appeal.

approximately one and one half miles, during which he twice observed the right tires of the vehicle drive over the dashed line separating traffic lanes while navigating curves, though the vehicle did not actually cross lanes. Grunwald stated that he then activated his emergency lights and stopped the vehicle. The video from Grunwald's squad camera was also played before the circuit court.

¶4 The circuit court denied Schreiber's motion, finding that Grunwald had sufficient reasonable suspicion to stop Schreiber. Schreiber subsequently entered a guilty plea and was sentenced by the circuit court.³ This appeal follows.

DISCUSSION

¶5 When reviewing a circuit court's order to deny a motion to suppress, we will uphold a circuit court's factual findings unless they are clearly erroneous. *State v. Richardson*, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). Whether an investigatory stop meets constitutional standards is a question of law that we review independently. *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

¶6 Schreiber contends that none of the alleged deviations constitute traffic offenses, particularly driving on the dashed line separating traffic lanes. The latter deviations, Schreiber contends, are common traffic occurrences insufficient to support reasonable suspicion of criminal activity. He also argues that Grunwald was at too far a distance to be able to observe Schreiber allegedly deviate one foot into the right traffic lane. Therefore, Schreiber argues, the circuit

³ Schreiber was sentenced to: eight months in the House of Correction, consecutive to any other sentence with credit for two days served; a fine of \$600, plus costs, fees and assessments; driver's license revocation for two years; ignition interlock on all vehicles titled and registered to him for two years; and Alcohol and Other Drug Abuse (AODA) assessment.

court erred in finding that the facts surrounding Schreiber's stop amounted to reasonable suspicion. We disagree.

¶7 To make an investigatory stop of a person, officers must have reasonable suspicion that criminal activity is afoot. *State v. Allen*, 226 Wis. 2d 66, 71, 593 N.W.2d 504 (Ct. App. 1999). In evaluating whether a stop is supported by reasonable suspicion, we consider whether “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant” the stop. *Terry v. Ohio*, 392 U.S. 1, 21 (1968). We determine the reasonableness of the stop based on the totality of the circumstances. *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. “The determination of reasonableness is a common sense test.” *Id.* “The crucial question is whether 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.” *Id.* The reasonableness tests purports to “strike[] a balance between individual privacy and the societal interest in allowing the police a reasonable scope of action in discharging their responsibility.” *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996).

¶8 The societal interest involved is the prevention of harm that an intoxicated driver may cause to himself or others. This interest underlies the recognition that an officer may stop an individual with a reasonable inference of unlawful conduct, even if other innocent inferences can be drawn. *Id.* at 60.

¶9 In applying these standards, we agree with the circuit court that Grunwald had sufficient reasonable suspicion to stop Schreiber. Grunwald testified that he had five years of experience patrolling roads, was assigned to the OWI task force at the time of Schreiber's stop, and had a total of seventeen years

of experience with the sheriff's office. Grunwald also testified that he observed three separate lane deviations by Schreiber. Schreiber relies on *State v. Anagnos*, 2011 WI App 118, ___ Wis. 2d ___, ___N.W.2d___, to argue that there is no evidence of a traffic violation in this case, as lane deviations, particularly within a driver's own lane, are common to most drivers. Although our supreme court declined to adopt a bright-line rule "that repeated weaving within a single lane alone gives rise to reasonable suspicion," the court recognized that an evaluation of the totality of the circumstances is necessary for a determination of whether reasonable suspicion exists for a stop. *Post*, 301 Wis. 2d 1, ¶14. A single instance of weaving is not at issue. Prior to weaving twice within his own lane, Schreiber was observed crossing over one foot from the center lane into the right lane without signaling a lane change. Arguably, the individual deviations could have innocent explanations, but that is not determinative. "The law of investigative stops allow police officers to stop a person when they have less than probable cause.... [P]olice officers are not required to rule out the possibility of innocent behavior before initiating a brief stop." *Waldner*, 206 Wis. 2d at 59.

¶10 The circuit court obviously believed Grunwald's account of the initial one foot deviation. The circuit court also viewed the video from Grunwald's squad car, from which it observed Schreiber "weaving," "not staying straight in the lane," and "going from one side to the other." "The building blocks of fact accumulate. And as they accumulate, reasonable inferences about the cumulative effect can be drawn." *Post*, 301 Wis. 2d 1, ¶16 (citation omitted). We conclude that Grunwald's experience, taken together with his observation of three separate instances of weaving, along with the circuit's court's description of the squad car video, constitute reasonable suspicion under the totality of the circumstances.

CONCLUSION

¶11 For all the forgoing reasons, based on the totality of the circumstances, we affirm.

By the Court.—Judgment affirmed.

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

