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**DISTRICT II**

November 6, 2024

*To:*

Hon. Rebecca L. Persick  
Circuit Court Judge  
Electronic Notice

David Malkus  
Electronic Notice

Chris Koenig  
Clerk of Circuit Court  
Sheboygan County Courthouse  
Electronic Notice

Abigail Potts  
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Will Straube  
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You are hereby notified that the Court has entered the following opinion and order:

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2023AP2352-CR                      State of Wisconsin v. Heath Martin VanBeek (L.C. #2021CF572)

Before Gundrum, P.J., Neubauer and Lazar, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Heath Martin VanBeek appeals from the judgment of conviction entered on his no contest plea to operating a motor vehicle while under the influence of an intoxicant (OWI), fifth offense. He contends the circuit court erred when it denied his suppression motion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for

summary disposition. *See* WIS. STAT. RULE 809.21 (2021-22).<sup>1</sup> For the following reasons, we affirm.

### ***Background***

VanBeek filed a motion to suppress all evidence resulting from a traffic stop, contending the police officer who performed the stop violated his constitutional right to be free from unreasonable searches and seizures. He specifically argued that the officer lacked the reasonable suspicion necessary to lawfully stop him. The circuit court held an evidentiary hearing on VanBeek’s motion, at which the following relevant evidence was presented.

The officer testified that around 1:13 a.m. on August 12, 2021, she conducted a traffic stop on VanBeek after observing the vehicle he was driving “hit the center line and then [go] to the fog line [on the ‘shoulder of the road’] and then back to the center line.” The State played the dashcam video from the officer’s squad car, with the officer testifying to various portions of the video.

The circuit court denied VanBeek’s suppression motion, concluding that under the totality of the circumstances there was “reasonable suspicion to stop the vehicle and further investigate.” The court based its decision on the time of VanBeek’s driving—1:13 a.m., near “bar close”—the officer’s testimony, and the video, which showed VanBeek “riding that center line,” then going across the lane to the fog line, and then back to the center line again.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

VanBeek subsequently pled no contest to OWI, fifth offense, was sentenced, and filed this appeal.

### *Discussion*

“[W]hether a traffic stop is reasonable is a question of constitutional fact.” *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. Where, as here, the historical facts are undisputed, we review independently the application of those facts to constitutional principles. *State v. Olson*, 2001 WI App 284, ¶6, 249 Wis. 2d 391, 639 N.W.2d 207. “The determination of reasonableness is a common sense test” that requires us to decide “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.” *Post*, 301 Wis. 2d 1, ¶13.

The reasonableness of a stop is determined based on the totality of the circumstances. *Id.* In order for an investigatory stop to be justified by reasonable suspicion, an officer must “possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot.” *State v. Young*, 2006 WI 98, ¶21, 294 Wis. 2d 1, 717 N.W.2d 729. “A mere hunch” is insufficient, but “police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.” *Id.* (citation omitted). “[I]t may be ‘the essence of good police work’ to briefly stop a suspicious individual ... ‘to maintain the status quo momentarily while obtaining more information.’” *State v. Chambers*, 55 Wis. 2d 289, 294, 198 N.W.2d 377 (1972) (citation omitted).

Here, specific and articulable facts “warrant[ed] a reasonable belief that criminal activity [was] afoot” when the officer observed VanBeek’s driving. *See Young*, 294 Wis. 2d 1, ¶21. Our

own review of the dashcam video supports the circuit court’s finding that VanBeek was “riding” the center line, then drifted across his lane to near the fog line, and then drifted back to the center line. Adding to those facts is the fact that VanBeek’s poor driving occurred near “bar time.”

In *Post*, our supreme court concluded that Post’s concerning driving, which was similar to VanBeek’s, provided reasonable suspicion to conduct a traffic stop when coupled with the time of night—there 9:30 p.m. 301 Wis. 2d 1, ¶36. The court stated that that time of night “does lend some further credence to [the arresting officer’s] suspicion that Post was driving while intoxicated.” *Id.* Of note, the court added that even the time of 9:30 p.m. “is not as significant as when poor driving takes place at or around ‘bar time.’” *Id.* In this case, VanBeek’s poor driving took place much closer to bar time than that in *Post*.

On appeal, the appellant, here VanBeek, bears the burden of demonstrating that the circuit court erred. *Gaethke v. Pozder*, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381. For the foregoing reasons, he has failed to meet his burden to demonstrate that the circuit court erred in determining the officer had reasonable suspicion to conduct the traffic stop and denying his suppression motion.

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Samuel A. Christensen*  
*Clerk of Court of Appeals*