COURT OF APPEALS
DECISION
DATED AND FILED

September 4, 2002

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 01-3312 **Cir. Ct. No. 01-TR-4843**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

CITY OF WHITEWATER,

PLAINTIFF-RESPONDENT,

V.

ROBERT P. MICHOR,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Walworth County: MICHAEL S. GIBBS, Judge. *Affirmed*.

¶1 BROWN, J.[1] The main issue is whether a Whitewater police officer had reasonable suspicion to stop Robert P. Michor's automobile to

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

investigate whether he was driving while intoxicated. Michor points out that the officer saw only that he was weaving in his own lane of traffic and that on one occasion he drove on top of the center line. He correctly states that neither of these activities is illegal but then jumps to the conclusion that the officer could therefore have had no reasonable suspicion to stop him. However, whether the observed conduct is lawful is not determinative of whether reasonable suspicion exists to make a traffic stop. A reasonable police officer could decide that Michor's behavior was erratic and that he was not driving with appropriate control. The stop was reasonable and we affirm.

¶2 The ultimate facts supporting the trial court's findings are, for purposes of this appeal, very brief. On January 26, 2001, at approximately 1:15 a.m., the officer was following a maroon-colored vehicle from forty feet away. The officer saw the vehicle weaving in its own lane of traffic and, on one occasion, drive on top of the center line. The officer stopped the vehicle, identified the driver as Michor, smelled alcohol, tested him and arrested him for driving while intoxicated. Michor moved to suppress all evidence based on, inter alia, an illegal stop. The trial court heard all evidence pertinent to that issue and announced that the City of Whitewater had carried its burden of proving that the stop was reasonable. Thereafter, Michor was found guilty based on stipulated facts. This appeal followed.

¶3 First, we need to resolve a preliminary issue. Michor relates several inconsistencies in the officer's testimony. For example, Michor points out that the officer first told the court that Michor had "crossed" the center line when, later on, the officer admitted that he wrote in his incident report that Michor had driven "on top" of the center line. He further points out that while one report of the officer had Michor driving on the center line twice, another said that Michor drove on the

center line once. Michor appears to argue that based on these inconsistencies, the trial court should have found the officer's account incredible compared with his own testimony that he neither weaved nor drove on the center line.

¶4 In reviewing a trial court's order denying the suppression of evidence, we will not reverse the trial court's factual findings unless they are clearly erroneous. ***State v. Roberts***, 196 Wis. 2d 445, 452, 538 N.W.2d 825 (Ct. App. 1995). On appeal, this court will examine the record not for evidence to support a finding, which the trial court did not make, but for facts to support the finding the trial court did make. ***First Nat'l Bank of Appleton v. Nennig***, 92 Wis. 2d 518, 535, 285 N.W.2d 614 (1979).

¶5 Our review of the record shows that the trial court made two findings pertinent to the issue on appeal. First, Michor traveled on top of the center line and, second, taking the evidence in a light most favorable to Michor, he only did it once. He also weaved within his own lane of traffic. The officer so testified, so the record supports the findings and the findings are not clearly erroneous. WIS. STAT. § 805.17(2).

¶6 Michor criticizes the trial court for having failed to "address the relative credibility of the officer and the defendant." We surmise his argument to be that there is some duty of the trial court to explain its credibility determinations and announce how it weighed the credibility of each witness and why it weighed the credibility in such a manner. There is no law in Wisconsin mandating that trial courts explain how they weighed certain testimony or why. While it might be good practice in some instances, most of the time the credibility call is self-evident and needs no elucidation. If a court does not believe a person, its belief is evident

in the findings of fact. To say "I don't believe the witness" would be superfluous. We decline to adopt any argument by Michor to the contrary.

¶7 We now reach what we view as the main issue. The reasonable suspicion necessary to detain a suspect for investigative questioning must be based on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity is afoot, and that action would be appropriate. ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968). The question of what constitutes reasonable suspicion is a commonsense test. That question is: Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience? ***State v. Jackson***, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989).

¶8 Michor asserts that neither weaving within a traffic lane nor driving on top of a center line is illegal. While Michor's statement is true, whether the observed conduct is lawful is not determinative of whether reasonable suspicion exists to make a stop. *See* ***State v. Waldner***, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996). Reasonable inferences of criminal activity can be drawn from perfectly legal behavior. Thus, the law does not require the officer to have grounds to issue a traffic citation in order to make a traffic stop. Nor does it require the officer to discount all innocent explanations for the behavior. As the ***Waldner*** court said, "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 purpose of inquiry." ***Id***. at 60.

¶9 Applying the law to the facts, the stop passes muster. The officer has been on the job at least since June 1999. So, he had at least three years of experience before observing Michor's vehicle. He was about forty feet behind Michor's vehicle. Thus, he had a good view. He observed Michor weaving within his lane. He then observed Michor drive on the center line at least once. Taking these two incidents together, a reasonable police officer could infer that Michor was having trouble controlling his vehicle. The officer thus had reasonable suspicion to believe that the cause of the lack of control might be intoxication. While the resultant stop was a personal intrusion into Michor's privacy, the intrusion is outweighed by society's interests in keeping drunk drivers off the road and bringing offenders to justice. *See* ***State v. Guzy***, 139 Wis. 2d 663, 680, 407 N.W.2d 548 (1987).

¶10 In his reply brief, Michor acknowledges ***Waldner*** and its discussion about how conduct does not have to be illegal to justify a stop. But he attempts to distinguish it on its facts. He correctly points out that Waldner's driving was "odd" and his act of spilling a liquid on the road was strange. He argues that in the case at bar, however, all we have is weaving within a traffic lane, conduct which he submits is neither strange nor odd, but "commonplace." He faults the City's case by pointing out that there was no evidence elicited to show to what degree, if any, the weaving was unsafe or unusual. He observes, for example, that the City did not attempt to determine how many times or in what manner he weaved. In Michor's view, the evidentiary record is threadbare and does not rise to the same level as the facts elicited in ***Waldner***. He asserts that an affirmance would be akin to adoption of a per se rule that weaving within a traffic lane always gives rise to a reasonable suspicion. He states that such a rule lacks common sense.

¶11 We agree that the record is threadbare and that the City could have done a better job of laying out the evidence. Nonetheless, Michor's argument suggests that the only fact we may look to is the weaving. In truth, while the trial court may have said the weaving would have been enough for a reasonable stop, the court also found that Michor had driven on the center line at least once. This added fact gives weight to the idea that although Michor was striving to stay in his lane of traffic, he was having trouble controlling the direction of his car. Not only would a reasonable police officer be able to arrive at such a conclusion, a reasonable citizen would arrive at a similar conclusion. Thus, the stop was justified.

By the Court.—Judgment and order affirmed.

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