**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**August 2, 2007**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal No. 2006AP1577-CR** **Cir. Ct. No. 2005CT419**

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

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CRYSTAL C. MATTHEWS,**

**DEFENDANT-APPELLANT.**

APPEAL from a judgment of the circuit court for Dodge County: DANIEL W. KLOSSNER, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] This case is before us for a second time. Crystal Matthews appealed a judgment of the circuit court finding her guilty of operating a

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

motor vehicle while under the influence of an intoxicant. Matthews argued that the circuit court erred by failing to grant her motion to suppress evidence based on her assertion that she was illegally detained. She contended that the officer who stopped her as she was leaving her car lacked reasonable suspicion that she had been driving while intoxicated. We rejected her arguments and affirmed the circuit court in a decision issued on December 7, 2006.

¶2 Matthews petitioned the supreme court for review and, on March 14, 2007, that court ordered that the petition be held in abeyance pending the court's decision in ***State v. Post***, No. 2005AP2778-CR. The supreme court issued its decision in ***Post*** on May 23, 2007. ***State v. Post***, 2007 WI 60, __ Wis. 2d __, 733 N.W.2d 634. On July 17, 2007, the court granted Matthews' petition for review, summarily vacated our decision, and remanded the matter to us for further consideration in light of ***Post***. Having now considered Matthews' case further in light of ***Post***, we conclude that ***Post*** does not warrant a different result. Accordingly, we affirm the circuit court's judgment.[2]

## *Background*

¶3 On Saturday, June 11, 2005, at 3:35 a.m., Officer Anthony Karel received information from a dispatcher directing him to the intersection of North Spring Street and Third Street. The dispatcher informed Karel that a man who identified himself as Eric Johnson called and said he had seen a Honda or Hyundai, possibly teal in color, weaving within its lane of traffic on North Spring

[2] In response to a supreme court order dated May 23, 2007, the parties submitted briefs addressing "the impact of the ***Post*** case, if any," on the issues raised in Matthews' petition for review. We have had the benefit of those briefs in reaching our conclusion that ***State v. Post***, 2007 WI 60, __ Wis. 2d __, 733 N.W.2d 634, does not warrant a different result.

Street.[3] Johnson told the dispatcher that he had been following the car, but he had turned off and the vehicle had continued northbound on North Spring Street.

¶4 Officer Karel arrived at the intersection of North Spring and Third about two minutes later. He proceeded northbound on North Spring and drove about a mile to Seippel Boulevard without seeing any other vehicles on North Spring or on any of the side streets he passed. When he reached Seippel Boulevard, however, Officer Karel observed a "smaller" car traveling eastbound on Seippel Boulevard toward some apartment complexes. Officer Karel briefly lost sight of the car as he turned around to follow. He believed the car entered the first apartment complex driveway because there were "no other houses down that area" and he would have seen the car had it proceeded farther to the second or third complex driveways.

¶5 As he entered the complex parking lot, Officer Karel did not see any car lights or cars in motion. He did, however, see a parked, "teal in color Hyundai – Honda" occupied by a white female, later identified as Matthews. As he drove into the lot, Officer Karel saw the woman get out of the car and "rapidly" head to an apartment building. Officer Karel saw no one else. Officer Karel got out of his patrol squad, said "ma'am," and waived her back to him. Matthews turned and approached the officer.

[3] Officer Karel sometimes used the term "Hyundai," but most often in his report and testimony he referred to the car he spotted as a "Honda." We do not consider this inconsistency significant.

¶6 After observing signs of intoxication and having Matthews perform field sobriety tests, which also indicated intoxication, Officer Karel arrested Matthews for operating a motor vehicle while under the influence of an intoxicant.

***Discussion***

¶7 Matthews makes three arguments. She argues that the information the officer possessed was insufficient to provide reasonable suspicion that the driver of the car identified by the citizen witness was driving while intoxicated. She argues that the officer lacked reasonable suspicion to believe he had located the car observed by the citizen. Finally, she argues that the citizen was not sufficiently reliable. We address and reject each argument.

¶8 Reasonable suspicion is a common sense standard that permits a brief investigatory stop if an officer reasonably suspects "'that criminal activity may be afoot.'" ***State v. Williams***, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106 (quoting ***Terry v. Ohio***, 392 U.S. 1, 30 (1968)). Reasonable suspicion is dependent on whether the officer's suspicion was grounded in specific, articulable facts, and reasonable inferences from those facts, that an individual was committing a crime. ***State v. Waldner***, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996). "The question of what constitutes reasonable suspicion is a common sense test: 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. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). When considering whether reasonable suspicion exists, an officer is not required to rule out the possibility of innocent behavior. ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶9 Matthews argues that the officer lacked knowledge of facts amounting to reasonable suspicion because the "only information supporting the idea that an OWI was occurring was the bald assertion that the vehicle had weaved." She states that no case law holds that mere weaving within a lane constitutes reasonable suspicion, and the officer here did not know the degree of weaving.

¶10 We agree that the caller did not describe the degree of weaving and that no case suggests that mild weaving alone is sufficient. But the inference a reasonable police officer would draw is that the citizen did not observe mild weaving precisely because mild weaving does not suggest intoxication and would not normally prompt a citizen to call the police. We conclude that the officer was permitted to assume that the witness observed weaving significant enough to suggest intoxication.

¶11 In ***Post***, 2007 WI 60, the supreme court held that "weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigative stop of a vehicle." ***Id.***, ¶2. The court appeared to suggest further that, if reasonable suspicion is to be based solely on weaving, it will not suffice if the weaving is "minimal or happens very few times over a great distance." ***Id.***, ¶19.

¶12 Matthews' argument seems to be that ***Post*** precludes our determination that the officer could infer significant weaving even though the caller did not describe the degree of weaving. We disagree. ***Post*** was not concerned with whether the exact nature of weaving must always be known to the officer by direct observation, but rather with whether the exact nature of the

driver's maneuvers in that case was sufficient for reasonable suspicion given the general absence of any other significant suspicious factors.[4]

¶13 Moreover, we are not faced here with a situation involving only weaving within a lane. Rather, there are two other pieces of information in addition to weaving within a lane that support the circuit court's decision. First, the observation was made at about 3:30 a.m., a time at which it is more likely that drivers on the road have been drinking during the evening and very early morning hours. Second, the officer was permitted to infer that Matthews was "rapidly" leaving her car toward the apartment building because she had seen the officer's squad car enter her parking lot, thus evincing a guilty mind. Matthews complains that the circuit court did not make an express finding that she was fleeing. However, we will follow our normal practice of assuming facts, in the absence of express fact finding, reasonably inferable from the record, in a manner that supports the trial judge's decision. *See, e.g.*, ***State v. Wilks***, 117 Wis. 2d 495, 503, 345 N.W.2d 498 (Ct. App.), *aff'd*, 121 Wis. 2d 93, 358 N.W.2d 273 (1984).

¶14 We next address Matthews' argument that the officer lacked reasonable suspicion to believe he had located the right car. This argument is easily rejected. The context here is that the suspect car was observed at about 3:30 a.m., a time when very few cars are on the road. In fact, the officer saw no cars, during his approximately one-mile drive, on North Spring or on any of the side streets he passed until he spotted taillights on Seippel Boulevard. Obviously, the

[4] The court in ***Post*** concluded that the totality of the circumstances there provided reasonable suspicion. ***Post***, 2007 WI 60, ¶2. The court apparently viewed the time of night, 9:30 p.m., as a factor that contributed to that conclusion. *See* ***id.***, ¶36. The court recognized, however, that the time of 9:30 "is not as significant as when poor driving takes place at or around 'bar time.'" ***Id.***

absence of cars on the road makes it much more likely that the car he did finally spot was the same car.

¶15 Matthews argues that the gap between when the citizen observed the car and when the officer spotted the car precludes reasonable suspicion that the car Matthews was driving was the same car. However, the chronology of events we describe in the background section of this decision shows that Matthews' car was very likely the car observed by the citizen.

¶16 Finally, Matthews asserts that the only identifying information was that the car was a "'possible teal in color Hyundai, Elantra type vehicle.'" But even if the only description was that the car was a small teal-colored vehicle, that information, combined with the circumstances discussed above and detailed in our background section, easily provides reasonable suspicion that the car the citizen observed and the one Matthews was seen exiting were one and the same.

¶17 Matthews' final argument, that the citizen was not reliable, is not sufficiently developed. In this regard, Matthews merely points to ***State v. Rutzinski***, 2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516, and states that the facts here are distinguishable. We agree that the facts are distinguishable. But that does not explain why the officer in this case could not rely on the information provided by the citizen in this case. We generally do not address insufficiently developed arguments, and decline to do so here. *See* ***State v. Pettit***, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (stating that we may decline to review an issue inadequately briefed).

¶18 For all of the reasons above, we affirm the circuit court.

*By the Court.*—Judgment affirmed.

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