

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 15, 2012

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. 2011AP2226-CR

Cir. Ct. No. 2010CT547

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JORDAN T. GRIFFITH,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Winnebago County: KAREN L. SEIFERT, Judge. *Affirmed.*

¶1 REILLY, J.¹ Jordan T. Griffith appeals his judgment of conviction for operating while under the influence of an intoxicant (OWI). Griffith argues

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

that there was not reasonable suspicion to support the traffic stop that led to his arrest and conviction. We disagree and affirm.

BACKGROUND

¶2 A little after 1:30 a.m. on April 17, 2010, Deputy Duane Luker of the Winnebago County Sheriff's Department observed a pickup truck driven by Griffith on Highway 45 cross over the painted white fog line by about six inches. Later, Luker witnessed Griffith cross the center line of traffic. Luker pulled over Griffith and subsequently arrested him for OWI.

¶3 Griffith filed a motion to suppress on the grounds that Luker did not have reasonable suspicion to stop Griffith's truck. The circuit court denied the motion to suppress. Luker was convicted of OWI and now appeals.

STANDARD OF REVIEW

¶4 When we review a circuit court's ruling on a motion to suppress evidence, we apply the clearly erroneous standard to the court's factual findings. *State v. Smiter*, 2011 WI App 15, ¶9, 331 Wis. 2d 431, 793 N.W.2d 920 (WI App 2010). Our review of the circuit court's application of constitutional principles to those facts, however, is de novo. *Id.*

¶5 In order for an investigatory stop to be justified by reasonable suspicion, the officer must have a "particularized and objective basis' for suspecting the person stopped of criminal activity." *State v. Walli*, 2011 WI App 86, ¶9, 334 Wis. 2d 402, 799 N.W.2d 898 (citation omitted). The officer's reasonable suspicion that an individual was or is violating the law must be grounded in specific and articulable facts and reasonable inferences from those

facts. *Id.* We examine the totality of the circumstances to determine if there was reasonable suspicion. *Id.*

DISCUSSION

¶6 Griffith's only argument on appeal is that there was not enough evidence to support the circuit court's finding that Deputy Luker had reasonable suspicion. The record contains sufficient evidence to support the circuit court's finding. Luker testified that Griffith crossed over a fog line by about six inches on the right side of the road and that Griffith crossed over the center line of traffic. Griffith complains that Luker did not mention "whether the movements were gradual or abrupt, or for a short or longer distance." Those facts are not dispositive as to the question of whether there was reasonable suspicion under the totality of the circumstances. Given the erratic nature of Griffith's driving, it was reasonable for Luker to suspect that Griffith was drinking and driving. Griffith's conviction is affirmed.

By the Court.—Judgment and order affirmed.

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

