

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 10, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-1025-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GREGORY T. KEILER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
MICHAEL G. GRZECA, Judge. *Affirmed.*

¶1 CANE, C.J.¹ Gregory Keiler appeals from a judgment of conviction for operating while intoxicated, second offense, in violation of WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98). All references to the Wisconsin Statutes are to the 1997-98 version.

§ 346.63(1)(a). He contends the police officer did not have reasonable suspicion to stop his vehicle and therefore the trial court erred by denying his motion to suppress evidence. Because the trial court's ruling was correct, the judgment is affirmed.

¶2 The underlying facts are undisputed. While on patrol on a four-lane roadway, officer Norbert Delebreaux of the Brown County Sheriff's Department observed a Ford traveling behind him in the same southbound direction. He observed that the Ford was straddling the dashed white line dividing the left and right lanes in the southbound direction. This observation lasted about three seconds. Delebreaux then changed from the left southbound lane to the right lane and slowed down in order to allow the Ford to pass him. The speed limit was thirty-five miles per hour. When Delebreaux reduced his speed to fifteen miles per hour, the Ford also reduced its speed so as not to pass the sheriff's vehicle. The roadway was straight, and Delebreaux explained that there were no traffic, weather or road conditions that would explain the Ford's reduction in speed other than an attempt to avoid the police vehicle. Delebreaux then pulled into a parking lot and let the Ford pass him. He caught up to the Ford and stopped it, suspecting the driver was intoxicated.

¶3 Although a traffic stop is a seizure within the Fourth Amendment, it is permissible if the officer has grounds to reasonably suspect a traffic violation has been or will be committed. *See State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996). The test of reasonable suspicion is an objective one and must be a suspicion "grounded in specific, articulable facts and reasonable inferences from those facts." *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). Whether the facts meet this standard is a question of law that this court reviews de novo. *See id.* at 54.

¶4 This court is satisfied that the trial court applied the correct legal standard to the facts and correctly analyzed the facts in light of that standard. After officer Delebreaux observed the Ford cross the dividing line and then substantially slow down so as to not pass the police vehicle, based on his training and experience he could reasonably infer that the driver was either intoxicated or tired. Reasonable suspicion does not require that he have grounds to issue a traffic citation in order to make a traffic stop, nor does it require that the officer have grounds to believe that the unusual driving is caused by intoxication rather than drowsiness or some other more "innocent" cause, before the stop. *See id.* at 59 (reasonable suspicion may be based on acts that by themselves are lawful; officers need not rule out possibility of innocent behavior before initiating a brief stop).

¶5 Here, as the trial court noted, WIS. STAT. § 346.13(1) requires the operator of a vehicle to drive as nearly as practicable entirely within a single lane and to not deviate from the traffic lane. Even though the lane deviation was observed for approximately three seconds, that could be a basis for the stop. However, that alone was not the basis for the initial detention. The officer made the stop on a suspicion that the driver was intoxicated based on the observation of Keiler's vehicle straddling the lane and subsequently driving unusually slow in order to avoid passing the police vehicle. This gross reduction in speed, combined with his lane deviation, gave rise to reasonable suspicion that Keiler was driving while intoxicated. As it turned out, the officer's reasonable suspicion was correct. A blood test revealed that Keiler's blood contained .205% by weight of alcohol.

By the Court.—Judgment affirmed.

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

