

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 21, 2008

David R. Schanker
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. 2007AP1979

STATE OF WISCONSIN

Cir. Ct. Nos. 2006TR5866
2006TR5868

**IN COURT OF APPEALS
DISTRICT IV**

DANE COUNTY,

PLAINTIFF-RESPONDENT,

V.

DANIEL A. KNUEPPEL,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Dane County:
JAMES L. MARTIN, Judge. *Affirmed.*

¶1 BRIDGE, J.¹ Daniel A. Knueppel appeals judgments convicting him of operating a motor vehicle while under the influence of an intoxicant in violation of WIS. STAT. § 346.63(1)(a) and of operating a motor vehicle with 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.

prohibited alcohol concentration in violation of WIS. STAT. § 346.63(1)(b). He contends that the circuit court erred in denying his motion to suppress evidence because the arresting officer lacked a reasonable suspicion to stop his vehicle. We disagree and affirm the judgments.

BACKGROUND

¶2 Dane County Sheriff's Deputy Robert Ladik stopped the vehicle Knueppel was driving on March 28, 2006, at approximately 2:00 a.m. As a result of that stop, Knueppel was charged with operating a motor vehicle while intoxicated in violation of WIS. STAT. § 346.63(1)(a) and operating a motor vehicle with a prohibited alcohol concentration in violation of § 346.63(1)(b). Knueppel moved to dismiss the complaint or to suppress evidence gathered following his stop on the ground that Deputy Ladik did not have reasonable suspicion to stop his vehicle.

¶3 At the hearing on Knueppel's motion, Deputy Ladik testified as follows. Ladik was traveling southbound on Highway 51 in the Village of McFarland. There was a light and misty rain at the time. While traveling in the right lane, Ladik observed two cars in front of him. The car directly in front of him continually swerved in its own lane, and touched the fog line on two separate occasions. The car also crossed over the fog line by approximately one foot and continued to drive over the line for approximately 200 feet. Ladik testified that he made these observations over approximately one and one-half miles and over one minute in time. Ladik testified that based on his training and experience, he believed that the driver of the vehicle was "impaired, or had some type of reduced alertness." He then initiated a traffic stop and Knueppel was subsequently arrested.

¶4 The court found that the totality of the circumstances provided Ladik with sufficient facts and reasonable suspicion to stop Knueppel and conduct the investigation. Knueppel was subsequently convicted by the court of operating a motor vehicle while under the influence of an intoxicant and operating a motor vehicle with a prohibited alcohol concentration. Knueppel appeals.

DISCUSSION

¶5 This case requires an examination of whether there existed reasonable suspicion to support a traffic stop. The question of whether a traffic stop is reasonable is a question of constitutional fact. *State v. Knapp*, 2005 WI 127, ¶19, 285 Wis. 2d 86, 700 N.W.2d 899. A question of a constitutional fact is a mixed question of law and fact, and requires the application of a two-step standard of review. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. We first review the circuit court’s findings of fact under a clearly erroneous standard. We then review independently the application of those facts to constitutional principles. *Id.* What constitutes reasonable suspicion is a common sense test. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). We look to what a reasonable police officer would “reasonably suspect in light of his or her training and experience.” *Id.* at 56.

¶6 The facts in this case are undisputed and neither party takes issue with any of the trial court’s factual findings. Accordingly, there is nothing in the record which would lead us to conclude that any of the trial court’s factual findings are clearly erroneous.

¶7 Applying the court’s factual findings to constitutional principles, we further conclude that Ladik had probable cause to stop Knueppel’s car. In *Post*, 301 Wis. 2d 1, ¶14, the supreme court held that weaving within one’s own lane

was not alone sufficient to provide reasonable suspicion to warrant a traffic stop. Knueppel argues that *Post* should govern in the present case because he was stopped for “slight” weaving within this lane of traffic and for momentarily crossing the fog line.

¶8 Knueppel is correct that under *Post*, weaving within his own lane would not alone support a reasonable suspicion conclusion. The proper determination of reasonable suspicion is based on the totality of the circumstances. *Id.*, ¶18. Here, Knueppel’s weaving was only one fact giving rise to reasonable suspicion. Ladik testified that, in addition to continually swerving in its own lane, Knueppel’s car touched the fog line ten times over a mile and half distance, went over the fog line by approximately one foot and continued travelling over the fog line for about 200 feet along the roadway. These actions support a reasonable suspicion that the driver of the car may be impaired. In addition, the fact that the incident took place just before 2:00 a.m., which is around closing time for bars, is also a factor to be considered in the totality of circumstances. See *State v. Allen*, 226 Wis. 2d 66, 74-75, 593 N.W.2d 504 (Ct. App. 1999). Considered together, the facts in this case favor a determination that there was reasonable suspicion for an investigative stop of Knueppel’s car. We therefore affirm the circuit court’s denial of Knueppel’s motion to suppress and uphold the judgments of conviction.

By the Court.—Judgments affirmed.

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

