

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 29, 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. 2008AP581-CR

Cir. Ct. No. 2007CT107

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PAUL T. SHEFCHEK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Door County:
D.T. EHLERS, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Paul Shefchek appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, second

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

offense. Shefchek argues the circuit court erred when it denied his motion to suppress because the arresting officer lacked reasonable suspicion to make a traffic stop. We disagree and affirm the judgment.

BACKGROUND

¶2 On August 15, 2007, a criminal complaint was filed charging Shefchek with operating while under the influence of an intoxicant and operating a motor vehicle with a prohibited alcohol concentration, both as second offenses, and first offense operating after revocation. Shefchek filed a motion to suppress challenging the reasonable suspicion for the stop.

¶3 At the motion hearing, officer Robert Osborne testified that at about 2:00 a.m. on July 14, 2007, he observed a truck traveling westbound on Highway 42/57 in Sturgeon Bay. He observed the truck drive onto the solid yellow line which separated the highway from a left turn lane. Osborne stated the vehicle then weaved within its own lane and then changed lanes into the right lane.² Osborne then stopped Shefchek.

¶4 The court concluded Osborne had reasonable suspicion to stop Shefchek and denied Shefchek's suppression motion. Shefchek then pled no contest to operating while intoxicated, and the remaining charges were dismissed.

DISCUSSION

¶5 When reviewing a trial court's denial of a motion to suppress, we uphold the court's findings of fact unless they are clearly erroneous. *See State v.*

² While the trial court concluded that Shefchek changed lanes without signaling, Osborne's testimony did not elaborate on whether Shefchek signaled before changing lanes.

Waldner, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). However, whether those facts satisfy the constitutional requirement of reasonableness is a question of law we review without deference. *Id.*

¶6 The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. In order to make a constitutionally permissible investigative stop, an officer must have reasonable suspicion that the driver of a vehicle has committed, is committing, or is about to commit an offense. *State v. Rutzinski*, 2001 WI 22, ¶14 n.5, 241 Wis. 2d 729, 623 N.W.2d 516. Reasonable suspicion must be grounded in “specific, articulable facts and reasonable inferences from those facts....” *Waldner*, 206 Wis. 2d at 56 (citation omitted). When determining whether reasonable suspicion exists, an officer need not rule out the possibility of innocent behavior. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). An officer need not observe unlawful conduct; rather, the officer must consider the totality of the circumstances and draw reasonable inferences about the cumulative effect. *Waldner*, 206 Wis. 2d at 58.

¶7 Shefchek argues that under the totality of the circumstances, Osborne did not have reasonable suspicion to stop him. Shefchek cites *State v. Post*, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634, when asserting that his behavior could not have given rise to reasonable suspicion. In *Post*, our supreme court held “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 also stated that where weaving is “minimal or happens very few times over a great distance” it might not be sufficient to “give rise to reasonable suspicion.” *Id.*, ¶19. However, the court concluded that under the totality of circumstances in that case, there was reasonable suspicion because the degree of weaving was significant and the incident took place at 9:30 at night. *Id.*, ¶36. The

court further elaborated that while the time was a contributing factor, it was “not as significant as when poor driving takes place at or around ‘bar time.’” *Id.*

¶8 While the weaving in this case apparently is not as substantial as in *Post*, Shefchek also drove onto the yellow line. Even more significant, this occurred “at or around ‘bar time.’” *Id.* While this is a close call, under the totality of the circumstances, these facts gave rise to a reasonable suspicion justifying the stop. It is irrelevant that Osborne did not observe Shefchek speeding or otherwise committing a traffic violation. *See Waldner*, 206 Wis. 2d at 58.

By the Court.—Judgment affirmed.

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

