

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 15, 2010

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. 2009AP2338-FT

STATE OF WISCONSIN

Cir. Ct. Nos. 2008TR5023
2008TR5024

**IN COURT OF APPEALS
DISTRICT III**

SHAWANO COUNTY,

PLAINTIFF-RESPONDENT,

V.

WILLIAM P. PARI,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Shawano County:
THOMAS G. GROVER, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ William Pari appeals a conviction for first offense operating while intoxicated. Pari argues the traffic stop was not supported by reasonable suspicion. We affirm.

BACKGROUND

¶2 On November 23, 2008, at 3:01 a.m., Shawano County Sheriff's Deputy William Uelmen was patrolling State Highway 22 near Cecil. He observed Pari's vehicle approaching him at a speed of 47 m.p.h. in a 55 m.p.h. zone. As he passed the approaching vehicle, Uelmen observed the vehicle's passenger side tires on or over the fog line. Uelmen made a U-turn and followed the vehicle at a distance of 75 to 100 yards.

¶3 Upon catching up to the vehicle, Uelmen noted it "kept about [the] same speed under the speed limit." However, the posted speed limit dropped to 40 m.p.h. approximately half of a mile to one mile beyond that point and Pari then reduced his speed. Uelmen also observed the vehicle drive over the fog line again, for two to four seconds.

¶4 Uelmen stated the vehicle was continually deviating within its own lane of traffic, by which he meant "[t]he vehicle ... was not staying perfectly in the center of the roadway in their lane." He further explained, "The vehicle did not stay in a straight line. [The highway] is a straight road. The vehicle would go a little bit to the right or a little bit to the left but never over the center line." Uelmen added, "It would go slowly and kind of go one way and then the other

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted. This is an expedited appeal under WIS. STAT. RULE 809.17.

way. It would not be a hard jerk.” He estimated the deviations to be “a couple of feet.” He did not recall how many deviations occurred.

¶5 Uelmen observed the vehicle on a straight stretch of road until it negotiated a sweeping left-hand curve. The vehicle did not make a smooth arc through this turn. Instead, the vehicle was “[r]ather jerky. Goes near the fog line ... and kind of made a little bit of a jerky motion.” Shortly after the curve, the vehicle signaled and made a right turn. Uelmen then activated his emergency lights to perform a traffic stop and Pari “almost immediately” stopped his vehicle. Pari was subsequently arrested for driving while intoxicated.

¶6 Deputy Uelmen had been a law enforcement officer a little over ten years, most of which was spent as a night shift patrol officer. He spent a total of approximately two minutes observing Pari’s vehicle, having followed it for a mile or two.

¶7 Pari filed a suppression motion arguing Uelmen lacked reasonable suspicion to stop Pari’s vehicle. After the circuit court denied his motion, Pari entered a no contest plea. He now appeals.

DISCUSSION

¶8 Pari challenges the reasonable suspicion for the traffic stop. A stop must be based on “more than an officer’s ‘inchoate and unparticularized suspicion or ‘hunch.’” Rather, the officer ‘must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the intrusion of the stop.” *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (quoting *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). The determination of reasonableness is a commonsense test. *Id.*, ¶13. The crucial

question is whether the facts would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime. *Id.* This commonsense approach balances the interests of the state in detecting, preventing, and investigating crime and the rights of individuals to be free from unreasonable intrusions. *Id.* The reasonableness of a stop is determined based on the totality of the facts and circumstances. *Id.*

¶9 Pari asserts Uelmen’s stop was based on nothing more than a hunch and proceeds to individually attack or minimize the facts relied on in support of the stop. He fails to appreciate, however, the totality of the circumstances.

¶10 We agree that Pari’s minimal deviations within the traffic lane do not alone give rise to reasonable suspicion that he was operating while intoxicated. *See id.*, ¶¶18-21. Nor do we place great emphasis on that fact here when considering the totality of the circumstances. “Indeed, if failure to follow a perfect vector down the highway [was] sufficient reason[] to suspect a person of driving while impaired, a substantial portion of the public would be subject each day to an invasion of their privacy.” *Id.*, ¶20 (quoting *United States v. Lyons*, 7 F.3d 973, 974 (10th Cir. 1993)).

¶11 Pari was not, however, stopped solely due to his minimal lane deviations. In addition, he was driving eight miles under the speed limit on the open highway. Uelman testified that in his experience this was unusual. Pari also drove over the fog line not once, but twice in a relatively short distance. This occurred at 3 a.m., not long after “bar time.” Additionally, his steering was jerky rather than smooth as he navigated the highway’s curve. Taking all these facts

together, it was reasonable to suspect Pari may have been driving while intoxicated.

By the Court.—Judgment affirmed.

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

