

**COURT OF APPEALS
DECISION
DATED AND FILED**

January 26, 1999

Marilyn L. Graves
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 § 808.10 and RULE 809.62, STATS.

No. 98-2737-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MICHAEL MAGELAND,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Trempealeau County: JOHN A. DAMON, Judge. *Affirmed.*

HOOVER, J. Michael Mageland appeals a conviction for operating a motor vehicle while intoxicated based on the trial court's refusal to dismiss the charge on the grounds that the officer did not have a reasonable suspicion to stop Mageland's vehicle. As a result of the stop, Mageland was arrested and convicted of operating a motor vehicle while intoxicated. Mageland contends that because his driving did not violate the law, and no one instance alone gave rise to a

reasonable suspicion, the officer had no authority to stop him. This court disagrees. Under the totality of the circumstances, the officer had a reasonable suspicion giving him the right to stop Mageland's vehicle.

The facts are not in dispute. The officer observed Mageland's vehicle straddle two lanes of traffic when stopped at an intersection (although there was no painted demarcation), turn and drive along the far right side of the travel lane and weave within its own lane of traffic (three times touching the fog line and going to, but not over the centerline) for over one and one-half miles.

The test for determining whether an officer may make a "*Terry*" stop¹ is an objective one, focusing on whether the officer has a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed or was committing a crime. *State v. Waldner*, 206 Wis.2d 51, 56, 556 N.W.2d 681, 684 (1996). The focus is on the totality of the circumstances, not individual facts standing alone. *Id.* at 58, 556 N.W.2d at 685. Suspicious conduct by its very nature is ambiguous, and the principal function of the investigative stop is to quickly resolve that ambiguity. *Id.* at 60, 556 N.W.2d at 686. "Thus, when a police officer observes lawful but suspicious conduct, if a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, police officers have the right to temporarily detain the individual for the purpose of inquiry." *Id.*

Here, the totality of what the officer observed permitted him to reasonably infer that the driver was somehow impaired, and he had a right to

¹ *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

temporarily detain Mageland's vehicle for the purpose of inquiry. As the trial court noted, the officer had observed three instances of unusual driving and, although all three were legal, they gave rise to a reasonable suspicion entitling the officer to stop Mageland's vehicle.

This court concludes that the trial court did not err by refusing to dismiss the action. There were reasonable grounds for the officer to stop Mageland's vehicle. The judgment of conviction is affirmed.

By the Court.—Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.

