COURT OF APPEALS
DECISION
DATED AND FILED

August 24, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0965-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DEBORAH J. BURCH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: MORIA KRUEGER, Judge. *Affirmed.*

¶1 VERGERONT, J.[1] Deborah Burch appeals a judgment of conviction for operating while intoxicated, third offense, in violation of WIS. STAT. § 346.63(1)(a). She contends the police officer did not have reasonable suspicion to stop her vehicle and therefore the trial court erred in denying her

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (1997-98).

motion to suppress evidence. We conclude the trial court's ruling was correct and we therefore affirm.

BACKGROUND

¶2 The only witness at the hearing on the motion to suppress evidence was Officer Michael Mueller, a police officer for the City of Verona. He had been a police officer for four and one-half years. On March 25, 1999, at approximately 11:17 p.m. he was on routine traffic patrol in the City of Verona, driving south on South Main Street, when he observed a vehicle in front of him doing "a weave." He described the weave as "a quick weave within the lane of travel," approximately two feet to the right and then back to the left within the lane. There were no markings on the roadway except for the centerline and there was also an area on the street for parking.

¶3 This weave aroused Officer Mueller's suspicion that the driver might be impaired so he continued following the driver, who was later identified as Burch. As the vehicle continued south bound on South Main, which eventually becomes County M, it drifted from the fog line to the centerline two times. This was "not a significant weave or a sharp weave. It was rather a slow drift from the middle of the lane to the fog line and then to the center line and then back to the center of the lane." In all, there were three different occasions on which the officer observed the driver weaving. In Officer Mueller's experience, when he observes more than one or two incidents of this type, it is evidence of a possible impairment of the driver. He thought the driver of the vehicle he observed might be drowsy or intoxicated. He therefore stopped the vehicle, after it had stopped at the stop sign at County M and County PB and made the turn.

¶4 On cross-examination Officer Mueller acknowledged that the vehicle did not cross the fog line or the centerline, was not speeding, made a complete stop at the stop sign, signaled the turn, was not driving too slowly, did not affect other traffic and pulled over immediately when he activated his squad car lights. He also acknowledged he could not have given Burch a citation for lane deviation because she did not travel outside the lane, or a citation for crossing the centerline because she did not do that, although she drove right on the edge of the centerline.

¶5 The trial court entered a written decision in which it concluded that the facts were not disputed and based on the undisputed facts, Officer Mueller did have a reasonable suspicion for the stop.

¶6 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 inference 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, which we review de novo. *See* ***id.*** at 54.

¶7 We conclude the trial court applied the correct legal standard to the facts and correctly analyzed the facts in light of that standard. Indeed, there is little we need add to the trial court's complete and well-reasoned decision. After Officer Mueller observed the second and third weaves, based on his training and experience he could reasonably infer that the driver was either intoxicated or

tired.[2] 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 weaving 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 which by themselves are lawful; officers need not rule out possibility of innocent behavior before initiating a brief stop).

¶8 We agree with the trial court that Officer Mueller's affirmative responses to the leading questions on cross-examination that used the word "hunch" do not conclusively establish that the officer did not have a reasonable suspicion. While it is true that "an unparticularized suspicion" or "hunch" does not meet the objective test for reasonable suspicion, *see* ***id.*** at 56-57, it is the court's role to decide whether the specific and articulable facts known to the officer and reasonable inferences from those facts are a reasonable suspicion, on the one hand, or an "unparticularized suspicion" or "hunch," on the other hand. The trial court addressed this point fully and completely when it explained: "The officer may not have been aware of how that term [hunch] is used in caselaw. In any event, it is this decision-maker's characterization of these facts, not defense counsel's or even the officer's that is determinative."

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[2] In her reply brief, Burch suggests that the trial court did not credit all of the officer's testimony because it found that Burch "engaged in only two drifts from the center to the fog line during the two mile drive." We do not agree with this assessment of the trial court's decision. In the "Facts" section the court correctly described Officer Mueller as testifying to three weaves: the first was the one that initially drew his attention and the second and third occurred as he continued following her. In the "Decision" section the court stated, "Burch twice within two miles drifted all the way from the center line to the fog line and back to her proper position within the lane." The accompanying footnote said: "The two foot weave that initially attracted Officer Mueller's attention is not of sufficient deviation to be considered in this determination." Thus, the court is not disbelieving the officer's testimony, but rather does not consider the first weave significant to its legal analysis, as it does the second and third weaves.

¶9 Finally, it is not necessary, as Burch appears to suggest, that the facts in this case be as "egregious" as those in other reported cases, such as ***Waldner***. The proper question, as the trial court recognized, is not whether the facts in this case are the same as those in other cases in which reasonable suspicion was found, but whether there was reasonable suspicion in this case. We are persuaded that there was.

By the Court.—Judgment affirmed.

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