

WISCONSIN SUPREME COURT
WEDNESDAY, FEBRUARY 14, 2007
1:30 p.m.

05AP2778

State v. Robert E. Post

This is a review of a decision by the Wisconsin Court of Appeals, District IV (headquartered in Madison), which affirmed a ruling of the Sauk County Circuit Court, Judge Patrick J. Taggart presiding.

This case examines the legality of a traffic stop, and whether there was reasonable suspicion to investigate when an officer observed a vehicle weaving within its own lane.

While on routine parole in February 2004, a Sauk Prairie police officer pulled over a vehicle he had seen weaving smoothly “in an S-type manner, from the parking lane to the yellow center line.” The officer testified that no specific traffic violation had been committed, but he suspected the driver was drunk, based on the drifting vehicle.

Post was charged with operating a motor vehicle while intoxicated and prohibited blood-alcohol concentration, each as a fifth offense and operating a motor vehicle after license revocation. Post’s blood-alcohol concentration was 0.212 percent.

The circuit court rejected a motion to suppress all evidence derived from the stop, and concluded the stop was based on reasonable suspicion of drunken driving.

The Court of Appeals reversed the circuit court’s decision. For a traffic stop to comport with the Fourth Amendment, the police must have a reasonable suspicion, grounded in specific facts and reasonable inferences, that an individual is violating the law, the Court of Appeals concluded.

The state asks the Supreme Court to decide whether weaving within a single traffic lane several times over two blocks gives an experienced patrol officer reasonable suspicion to make an investigatory stop for possible drunk driving. In its request for review, the state argues erratic driving for any reason, including a non-criminal one, can be very dangerous and warrant an investigatory stop.

Post acknowledges police may stop a driver who is not observed to have violated traffic law if the driving creates a reasonable suspicion of intoxication. However, this does not give police a license to stop every motorist who drives in a manner that is legal but less than perfect, Post contends.

A Supreme Court decision could help law enforcement officers, attorneys and courts, the state contends in its request for review.