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DISTRICT II

January 21, 2026

To:

Hon. Andrew J. Christenson
Circuit Court Judge
Electronic Notice

Walter Arthur Piel Jr.
Electronic Notice

Michelle Weber
Clerk of Circuit Court
Fond du Lac County Courthouse
Electronic Notice

Kathleen E. Wood
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You are hereby notified that the Court has entered the following opinion and order:

2024AP2326-CR

State of Wisconsin v. Craig J. Immel (L.C. #2023CF791)

Before Neubauer, P.J., Gundrum, and Grogan, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Craig J. Immel appeals from a judgment of the circuit court convicting him of operating a motor vehicle with a prohibited alcohol concentration (PAC), as a fourth offense. Immel contends that the court erroneously denied his motion to suppress evidence derived from the stop of his vehicle. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See WIS. STAT. RULE 809.21 (2023-24).*¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

At the suppression hearing held in this matter, the sheriff's deputy who initiated the traffic stop on Immel testified as follows. On a September morning at about 2:46 a.m., while responding to another call, the deputy began following Immel's vehicle. The deputy reported that he began paying more attention to Immel's vehicle after he observed it cross over the fog line "approximately two times, one of which [he] observed it contact the gravel shoulder creating a small puff of dust." The deputy further noticed that the vehicle's speed was "inconsistent ... going between 45 and 50 miles an hour" in a 55 miles per hour zone. After the two instances of the vehicle crossing the fog line, the deputy started to record Immel's vehicle on his squad car camera. While the camera was recording, the deputy "observed persistent and consistent weaving within the lane of travel, not quite crossing the centerline, not quite crossing the fog line again, but slowly drifting between the two."

Based on Immel's driving and the time of night, which could indicate that he was operating a motor vehicle while intoxicated (OWI), the deputy initiated a traffic stop to investigate further. The deputy observed that Immel had red, bloodshot, glassy eyes, poor balance, and smelled of intoxicants. Immel admitted to drinking before driving. The State charged Immel with OWI, fourth offense, and later amended the Information to add a count of operating with a PAC, fourth offense.

Immel moved to suppress all evidence obtained as a result of the traffic stop. He argued that the deputy lacked reasonable suspicion to pull him over. As noted, the circuit court held a hearing on the suppression motion at which the arresting deputy testified to the facts set forth above. In addition, the defense presented a portion of the deputy's squad video depicting several events leading up to the stop. The deputy testified that he could observe in the video some of the incidents of weaving within the lane that he described. The defense also presented testimony at

the suppression hearing from a female passenger in the car Immel was driving when he was stopped. The passenger stated that she was looking out the windshield and did not observe the vehicle cross over the fog line or center line at any time. However, the passenger admitted that she and the other passengers were drinking at a party prior to riding in the vehicle and were engaged in conversation while riding. The court denied the suppression motion.

After the circuit court denied his motion, Immel entered a guilty plea to the PAC-fourth-offense charge. The court sentenced him to 120 days in jail. Immel appeals, arguing that the court erred in denying his motion to suppress.

A police officer may temporarily detain an individual to investigate possible criminal behavior when the officer has reasonable suspicion that the individual has committed or is about to commit a crime. WIS. STAT. § 968.24; *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. The detention is a seizure within the meaning of the Fourth Amendment of the United States Constitution and art. I, §11 of the Wisconsin Constitution and triggers their protections. See *State v. Harris*, 206 Wis. 2d 243, 253, 256, 557 N.W.2d 245 (1996). “[A]n order granting or denying a motion to suppress evidence” based on whether reasonable suspicion existed presents “a question of constitutional fact, which requires a two-step analysis” on appellate review. *State v. Asboth*, 2017 WI 76, ¶10, 376 Wis. 2d 644, 898 N.W.2d 541. “First, we review the circuit court’s findings of historical fact under a deferential standard, upholding them unless they are clearly erroneous. Second, we independently apply constitutional principles to those facts.” *State v. Robinson*, 2010 WI 80, ¶22, 327 Wis. 2d 302, 786 N.W.2d 463 (internal citations omitted).

What constitutes reasonable suspicion in a given situation depends on the totality of the circumstances. *Post*, 301 Wis. 2d 1, ¶¶37-38. There need not be a violation of the law to support an investigative stop. *State v. Anagnos*, 2012 WI 64, ¶47, 341 Wis. 2d 576, 815 N.W.2d 675. “The law allows a police officer to make an investigatory stop based on observations of lawful conduct so long as the reasonable inferences drawn from the lawful conduct are that criminal activity is afoot.” *State v. Waldner*, 206 Wis. 2d 51, 57, 556 N.W.2d 681 (1996). One reasonable inference to be drawn from unusual and impulsive driving is that the driver is impaired. *See Anagnos*, 341 Wis. 2d 576, ¶¶56, 58. Weaving can contribute to reasonable suspicion that a driver is impaired so as to justify an investigatory stop. *See State v. Popke*, 2009 WI 37, ¶26, 317 Wis. 2d 118, 765 N.W.2d 569 (swerving over the center line can be a factor giving rise to reasonable suspicion to conduct a traffic stop); *Post*, 301 Wis. 2d 1, ¶¶36-38 (weaving, even within a lane, can be part of the totality of circumstances justifying a stop). Finally, the time of day may be a factor considered in assessing the totality of the circumstances for reasonable suspicion of an operating while intoxicated offense. *See, e.g., Anagnos*, 341 Wis. 2d 576, ¶58; *Post*, 301 Wis. 2d 1, ¶4; *Waldner*, 206 Wis. 2d at 58, 60.

Here, the arresting deputy testified at the motion hearing on Immel’s suppression motion, and the circuit court implicitly determined the deputy was credible. Based on that testimony, the court found that it did see “some weaving within the lane” on the squad video. It described the weaving as “moderate, but … notable toward the centerline and then back to the center of the lane.” The court further found the testimony of Immel’s passenger to be less credible, highlighting her testimony that she “was coming from a party, she had been drinking, she’s in the vehicle with the defendant, she could be potentially biased, and perhaps was not paying attention to the gravel, she was apparently watching out the windshield”

“[B]ased on all the testimony regarding the weaving, the speed inconsistency, the slow speed, the time of night,” the circuit court explicitly found that the deputy had reasonable suspicion to initiate the stop to conduct further investigation. The court further found that the reasonable suspicion created by the deputy’s witnessing Immel’s vehicle twice crossing the fog line did not dissipate over the course of the one or two miles that the deputy followed Immel. Having reviewed the record, the court’s factual findings, which as noted were based on the deputy’s credible testimony, are not clearly erroneous. *See Robinson*, 327 Wis. 2d 302, ¶22.

Under the second part of the analysis, this court “independently appl[ies] constitutional principles to” the circuit court’s factual findings to determine whether reasonable suspicion existed. *See id.* “The legal determination of reasonable suspicion is an objective test: ‘What would a reasonable police officer reasonably suspect in light of his or her training and experience.’” *Anagnos*, 341 Wis. 2d 576, ¶60. An “officer ‘must be able to point to specific and articulable facts’ supporting reasonable suspicion, and an officer’s subjective belief can be considered in the totality of the circumstances.” *Id.* (citations omitted). Based on the totality of the circumstances, this court is satisfied that the arresting deputy had reasonable suspicion to suspect Immel was operating while intoxicated. *See id.; Post*, 301 Wis. 2d 1, ¶13 (“The reasonableness of a stop is determined based on the totality of the facts and circumstances.”).

First, the deputy observed Immel weaving within his lane of traffic. While this alone is insufficient to support reasonable suspicion, *see Post*, 301 Wis. 2d 1, ¶2, the deputy also twice observed Immel weave outside of his lane of travel. Second, the deputy’s observations occurred after 2 a.m.—bar time—and it is well-established that the time of day can inform the reasonable suspicion analysis. *See, e.g., id.*, ¶36 (noting that although the officer’s observation of the vehicle weaving in lane occurred at 9:30 p.m. was “not as significant as when poor driving takes

place at or around “bar time,” the time gave “further credence” to officer’s suspicion of OWI); *State v. Lange*, 2009 WI 49, ¶32, 317 Wis. 2d 383, 766 N.W.2d 551 (time of night of a traffic stop is a relevant factor in OWI investigation). Third, Immel’s speed was “inconsistent,” driving slowly and fluctuating between driving about five to ten miles per hour below the speed limit. Here, the weaving, along with the initial crossing of the fog line, the vehicle’s inconsistent, slow speed, and the late time of night, when considered together, gave rise to reasonable suspicion. *See Waldner*, 206 Wis. 2d at 60-61 (finding slow speed and unexplained changes in speed relevant to reasonable suspicion). Accordingly, this court concludes that when taken together, these facts are sufficient to lead a reasonable officer to suspect that a driver might be operating while under the influence contrary to WIS. STAT. § 346.63.

Upon the foregoing reasons,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

*Samuel A. Christensen
Clerk of Court of Appeals*