**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

July 18, 2001

**Cornelia G. Clark**
**Clerk of Court of Appeals**



**No. 01-0249**

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

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**COUNTY OF WAUKESHA,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GENE W. SQUIRE,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Waukesha County: PATRICK C. HAUGHNEY, Judge. *Affirmed.*

¶1 ANDERSON, J.[1] Gene W. Squire appeals from a judgment of conviction for operating while intoxicated, first offense, in violation of WIS. STAT.

[1] This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(f) (1999-2000). All references to the Wisconsin Statutes are to the 1999-2000 version unless otherwise noted.

§ 346.63(1)(a).[2] He contends that the arresting officer did not have reasonable suspicion to stop his vehicle, and therefore the trial court erred in denying his motion to suppress the evidence. We conclude that the trial court's ruling was correct, and therefore we affirm.

¶2 The only witness presented by Waukesha County at the suppression hearing was Deputy John Lappley. He was on patrol in the area of Delafield on May 27, 2000, at approximately 11:30 p.m. when he observed a black SUV in front of him. As he was watching the SUV, he saw it pass over the fog line along the right side of State Trunk Highway (STH) 16 and then return to its lane of travel. Initially he thought the deviation was due to the rain that was falling that evening. The SUV approached the exit ramp on STH 16 to STH 83 and at the last minute it crossed over the white markings on the highway that divide the exit ramp from the highway and then took the ramp to STH 83. Lappley testified that the maneuver was "almost like he had forgotten where he was going." Because of this maneuver, Lappley decided to follow the SUV. The SUV and the deputy turned south on STH 83. While still behind the SUV, the deputy saw it again pass over the fog line and return to its proper lane of travel. After this maneuver, Lappley decided to stop the SUV because of its erratic driving. He identified Squire as the driver of the SUV.

¶3 On cross-examination, the deputy testified that he did not issue Squire a citation for crossing the fog line or crossing the lines dividing STH 16

[2] The judgment of conviction incorrectly recites that Squire violated WIS. STAT. § 346.65(2)(a), the statute proscribing the penalty for violation of WIS. STAT. § 346.63(1)(a). Upon remittitur, the trial court should issue an amended judgment of conviction reciting a violation of § 346.63(1)(a).

and the exit ramp to STH 83. He testified that he believed that crossing a white painted line on a highway would constitute unsafe lane deviation. During his cross-examination, he was shown a series of photos of other vehicles in the general area of STH 83 where he stopped Squire and testified that he probably would not have issued those vehicles a citation for crossing the white line. Squire's counsel argued to the trial court that Lappley lacked a reasonable suspicion to justify an investigative stop because counsel knew of no law that made it a civil forfeiture to touch or cross over the fog line along the right side of a highway.

¶4 The trial court issued an oral decision denying Squire's motion to suppress. The court reasoned that "there does not have to be a traffic violation or a crime, to justify an investigatory stop or the investigation of a crime." Squire appeals the denial of his suppression motion and raises the same argument in this court.

¶5 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. ***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 inferences 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. ***Id.*** at 54.

¶6 We conclude that 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 well-reasoned bench decision. After

Lappley's observations of Squire's erratic driving and based on his training and experience, he could reasonably infer that the driver was either intoxicated or tired. 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. ***Id.*** at 59. As the ***Waldner*** court observed, "[W]hen 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.*** at 60.

*By the Court.*—Judgment affirmed.

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