



OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688

Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

July 24, 2019

To:

Hon. Daniel J. Bissett
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Lisa E.F. Kumfer
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Britteny M. LaFond
Petit & Dommershausen, SC
2830 Curry Court, #2
Green Bay, WI 54311

Christian A. Gossett
District Attorney
P.O. Box 2808
Oshkosh, WI 54903-2808

You are hereby notified that the Court has entered the following opinion and order:

2018AP2273-CR State of Wisconsin v. Michael J. Mentzel (L.C. #2017CF394)

Before Neubauer, C.J., Reilly, P.J., and Gundrum, J.

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).

Michael Mentzel appeals from a judgment of conviction for operating a motor vehicle while intoxicated, fourth offense. He asserts the circuit court erred in denying his motion to suppress evidence from the traffic stop that led to his conviction because, he claims, the arresting officer did not have reasonable suspicion or probable cause to lawfully perform the stop. 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 (2017-18).¹ We affirm.

In reviewing a circuit court’s ruling on a motion to suppress evidence, we will uphold the court’s findings of fact unless they are clearly erroneous, but we review de novo the application of such facts to constitutional principles. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569.

An officer may lawfully conduct a traffic stop based upon reasonable suspicion that unlawful activity is afoot or probable cause to believe the suspect has violated the law. *Id.*, ¶¶10-11. Reasonable suspicion exists where there are

grounds to reasonably suspect that a crime or traffic violation has been or will be committed. The officer “‘must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the intrusion of the stop.” “‘The crucial question is whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime.’” An “officer’s inchoate and unparticularized suspicion or hunch,” however, will not give rise to reasonable suspicion.

Id., ¶23 (citations omitted). Although individual acts or circumstances, standing alone, may be lawful and fall short of reasonable suspicion, as various acts or circumstances accumulate, rational inferences may be drawn that amount to reasonable suspicion. *See id.*, ¶25. “[P]robable cause to believe a traffic violation has occurred” exists “when the officer has ‘reasonable grounds to believe that the person is committing or has committed a crime.’” *Id.*, ¶¶13, 14. Both reasonable suspicion and probable cause are based upon the totality of the circumstances, *id.*, ¶23

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

(reasonable suspicion); *State v. Brown*, 2013 WI App 17, ¶14, 346 Wis. 2d 98, 827 N.W.2d 903 (probable cause), and are objective determinations based upon the facts of which law enforcement officers are aware at the time, *see State v. Rose*, 2018 WI App 5, ¶15, 379 Wis. 2d 664, 907 N.W.2d 463 (2017). As the circuit court found in this case, the arresting officer unquestionably had probable cause to believe Mentzel had violated WIS. STAT. § 346.05 and reasonable suspicion to believe he was operating his motor vehicle while intoxicated, in violation of WIS. STAT. § 346.63.

The relevant, uncontested evidence from the suppression hearing is as follows. Around 12:38 a.m. on Sunday, July 2, 2017, a City of Oshkosh police officer observed a vehicle, driven by Mentzel, “stop and sit” at a yield sign for approximately one minute even though there was “no cross traffic at all” and “no other vehicles on the road that would have forced him to stop for a longer period of time.” The officer observed Mentzel, on a road with one lane of traffic traveling in each direction, “deviate[] from his lane several times,” including “just driving down the middle of the road,” and “at one point ... have his whole vehicle on the opposing side ... all the way into the opposing lane of traffic to where he’s only a foot or two off the opposing lane curb.”

WISCONSIN STAT. § 346.05, “Vehicles to be driven on right side of roadway,” provides in relevant part that “[u]pon all roadways of sufficient width the operator of a vehicle shall drive on the right half of the roadway.”² The above facts provided the officer with probable cause to believe Mentzel had violated this statute.

² WISCONSIN STAT. § 346.05(1) provides for exceptions that are not applicable to this case.

The officer also had reasonable suspicion that Mentzel was operating his vehicle while under the influence of an intoxicant or other drug, in violation of WIS. STAT. § 346.63(1). Mentzel’s stopping at a yield sign for approximately one minute when no traffic was in the area, repeated weaving on the road, including to the point of “deviat[ing] all the way into the opposing lane of traffic” and coming within “a foot or two” of the curb on that side, was more than sufficient evidence constituting reasonable suspicion of intoxicated driving. Added to that is the fact that such erratic driving occurred on a day and at a time of night more commonly associated with intoxicated driving—12:38 a.m. on a Sunday (more informally known as “late Saturday night”), which our courts have recognized as further supporting the determination of reasonable suspicion of intoxicated driving. *See State v. Post*, 2007 WI 60, ¶36, 301 Wis. 2d 1, 733 N.W.2d 634 (time of night “does lend some further credence” to an officer’s suspicion of intoxicated driving); *see also State v. Lange*, 2009 WI 49, ¶32, 317 Wis. 2d 383, 766 N.W.2d 551 (The time of day is relevant for an OWI probable cause (or reasonable suspicion) determination and “[i]t is a matter of common knowledge that people tend to drink during the weekend when they do not have to go to work the following morning.”).

IT IS ORDERED that the judgment of the circuit court is summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals