

RECEIVED

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

08-11-2017

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Appeal No. 2017AP536-CR

DENNIS ZEMANOVIC,

Defendant-Appellant.

An Appeal From a Judgment of Conviction and Order Denying
Defendant's Motion to Suppress Evidence Entered by the Honorable
Michael Maxwell, Circuit Judge, Branch 8, Waukesha County

BRIEF OF PLAINTIFF-RESPONDENT

Kristina Gordon
Assistant District Attorney
State Bar No. 1084309
Waukesha County District Attorney's Office
Waukesha County Courthouse
515 West Moreland Boulevard
Waukesha, Wisconsin 53188
(262) 548-7076

TABLE OF CONTENTS

TABLE OF AUTHORITIES.....	ii
STATEMENT OF THE ISSUES	1
POSITION ON ORAL ARGUMENT AND PUBLICATION	2
STATEMENT OF THE CASE	3
ARGUMENT	5
 I. OFFICER ORTIZ HAD REASONABLE SUSPICION TO PERFORM A TRAFFIC STOP BASED UPON A TOTALITY OF THE CIRCUMSTANCES ANALYSIS.	
CONCLUSION.....	8
CERTIFICATION OF BRIEF	9
CERTIFICATION OF COMPLIANCE WITH RULE 809.19(12).....	10

TABLE OF AUTHORITIES

Wisconsin Statutes

Wisconsin Statute Section 346.63 4, 6

Wisconsin Cases

State v. Post, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634 (2007) 4, 5

State v. Stout, 2002 WI App 41, 250 Wis. 2d 768, 641 N.W.2d 474 (2002) 4

STATEMENT OF THE ISSUES

QUESTION PRESENTED

Did the circuit court err in finding that Officer Ortiz had reasonable suspicion a traffic violation occurred and denying Dennis Zemanovic's pre-conviction motion to suppress evidence based upon an unlawful stop?

BRIEF ANSWER

No. The circuit court correctly held that Officer Ortiz had the requisite reasonable suspicion to conduct a traffic stop on Mr. Zemanovic's vehicle.

POSITION ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent (“State”) submits that oral argument is unnecessary because the issues can be set forth fully in the briefs.

Publication is unnecessary as the issues presented relate solely to the application of existing law to the facts of the record.

STATEMENT OF THE CASE

As the plaintiff-respondent, the State exercises its option not to present a full statement of the case. Wis. Stat. § 809.19(3)(a)(2) (2017).

ARGUMENT

THE CIRCUIT COURT PROPERLY DENIED MR. ZEMANOVIC'S MOTION TO SUPPRESS.

On July 8, 2016, the Honorable Michael P. Maxwell, presiding over the Waukesha County Court, denied the Defendant-Appellant Dennis Zemanovic's motion to suppress evidence based upon an unlawful traffic stop. Mr. Zemanovic subsequently pled guilty to operating a motor vehicle under the influence of an intoxicant (OWI), second offense, contrary to Wis. Stat. § 346.63(1)(a). Mr. Zemanovic now appeals from the judgment of conviction, again asserting that the circuit court erred in denying his pre-conviction motion to suppress evidence based on an unlawful traffic stop. Mr. Zemanovic argues that Officer Ortiz lacked reasonable suspicion to believe Mr. Zemanovic was operating a motor vehicle while intoxicated.

When reviewing a circuit court's denial of a motion to suppress evidence, this court will uphold the court's factual findings unless clearly erroneous, but will review the court's application of the facts to constitutional principles de novo. *State v. Stout*, 2002 WI App 41, ¶9, 250 Wis. 2d 768, 641 N.W.2d 474. The existence of reasonable suspicion is a question of both law and fact. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. This Court should uphold the factual findings concerning

the existence of reasonable suspicion unless clearly erroneous, and review de novo the application of these factual findings to constitutional principles.

Here, Mr. Zemanovic's arguments fail because the circuit court's findings were not clearly erroneous. The circuit court properly denied Mr. Zemanovic's motion to suppress, and this court should affirm the judgment of conviction.

I. OFFICER ORTIZ HAD REASONABLE SUSPICION TO PERFORM A TRAFFIC STOP BASED UPON A TOTALITY OF THE CIRCUMSTANCES ANALYSIS.

The circuit court correctly held that Officer Ortiz had reasonable suspicion that Mr. Zemanovic was operating a motor vehicle while intoxicated. Reasonable suspicion is “more than a police officer's inchoate and unparticularized suspicion or hunch; rather, the officer must be able to point to specific and articulable facts that, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop.” *State v. Post*, 301 Wis.2d 1, 8, 733 N.W.2d 634, 637 (2007). Determining the reasonableness of a traffic stop is a “common-sense” test, in which “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.” *Id.* at Wis.2d 9, 733 N.W.2d 638. This test is based upon the totality of the facts and circumstances. *Id.* at Wis.2d 9, 733 N.W.2d 638.

On appeal, Mr. Zemanovic argues that Officer Ortiz’s observations of the defendant’s driving did not rise to the level of reasonable suspicion. The circuit court appropriately considered all of the evidence including testimony and video evidence before determining Officer Ortiz had the requisite reasonable suspicion to conduct a traffic stop for operating while intoxicated. The circuit court reasoned that based upon the totality of the circumstances including “the time of the morning and the initial concern the officer had after running the plates and the route that was taken” coupled “with at least the one veering” and the “final crossing over of the white line into the shoulder” that the Officer had reasonable suspicion to believe that Mr. Zemanovic was operating a motor vehicle while intoxicated contrary to section 346.63 of the Wisconsin Statutes. (R. at 31).

Under the reasonable suspicion standard, the court must look at the totality of the circumstances to determine whether Officer Ortiz had reasonable suspicion to make a traffic stop of Mr. Zemanovic. Officer Ortiz observed Mr. Zemanovic veering within his lane, veering “over the fog line a few times. . . [and] riding the shoulder for a bit.” (R. at 6). The officer also noted that the path of travel was “kind of weird” because the road that the driver turned on “goes into the lake, it doesn’t go to Eagle” where the

registration was listed. (R. at 7). Officer Ortiz also took into account the time of night being 3:39 am and that local taverns close around 2 am. (*Id.*)

On the date in question, Officer Ortiz reasonably relied on his four years of experience in the jurisdiction in question to identify possible impaired drivers. Further, the Circuit Court found the Officer's testimony credible, and after hearing testimony made a finding that sufficient facts supported the Officer's reasonable suspicion that Mr. Zemanovic was operating a motor vehicle while intoxicated. (R. at 31-32). Thus, considering the totality of the circumstances available to Officer Ortiz , a reasonable officer would believe Mr. Zemanovic was operating a motor vehicle while under the influence, and the traffic stop of Mr. Zemanovic's vehicle was lawful.

CONCLUSION

For all the foregoing reasons, the State respectfully requests that the Court affirm the circuit court's decision denying the defendant's motion to suppress.

Dated this 8th day of August, 2017.

Respectfully,

s/Kristina J. Gordon _____
Kristina J. Gordon
Assistant District Attorney
Waukesha County
Attorney for Plaintiff-Respondent
State Bar No. 1084309

CERTIFICATION OF BRIEF

I hereby certify that this document conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c), for a brief produced with proportional font. The length of this brief is 972 words long.

Dated this 8th day of August, 2017.

s/Kristina J. Gordon
Kristina J. Gordon
Assistant District Attorney
Waukesha County
Attorney for Plaintiff-Respondent
State Bar No. 1084309

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE)
809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certification has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 8th day of August, 2017.

s/Kristina J. Gordon
Kristina J. Gordon
Assistant District Attorney
Waukesha County
Attorney for Plaintiff-Respondent
State Bar No. 1084309