

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

FILED

AT KNOXVILLE

APRIL 1999 SESSION

June 28, 1999

Cecil Crowson, Jr.
Appellate Court
Clerk

STATE OF TENNESSEE,

Appellee,

VS.

GUY BINETTE,

Appellant.

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NO. 03C01-9802-CR-00075

HAMILTON COUNTY

HON. REBECCA J. STERN,
JUDGE

(Certified Question of Law)

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OPINION FILED: _____

AFFIRMED

**JOE G. RILEY,
JUDGE**

OPINION

Defendant, Guy Binette, was indicted for driving under the influence and filed a motion to suppress evidence challenging the validity of the traffic stop. The trial court denied the motion. Defendant subsequently pled guilty but reserved a certified question of law regarding the validity of the initial stop. We find there were sufficient articulable facts to support the officer's stop of defendant, and the trial court properly denied the motion to suppress. The judgment of the trial court is **AFFIRMED**.

FACTS

A police officer stopped defendant about midnight on February 13, 1997, after the officer observed him driving his car in a suspicious manner and videotaped him for over two miles. The car weaved within its lane, approached the dividing lines a number of times, and touched the center line at least twice.

Charged with driving under the influence, the defendant filed a motion to suppress evidence of his intoxication obtained as a result of the stop. He claimed there were insufficient specific and articulable facts to authorize the stop of defendant's car.

At the motion to suppress, the trial court viewed the videotape and heard testimony from defendant. It determined that "there was weaving within the lines, fairly significant weaving about the time the video started up until the time . . . the lights were activated, so I do find that there was articulable suspicion for the stop." The trial court denied the motion to suppress.

The defendant subsequently pled guilty while reserving the following certified question of law: were there specific and articulable facts to authorize the officer's stop of defendant's vehicle?

MOTION TO SUPPRESS

The findings of fact made by the trial court at the hearing on a motion to suppress are binding upon this Court unless the evidence contained in the record preponderates against these findings. State v. Henning, 975 S.W.2d 290, 299 (Tenn. 1998). The defendant has the burden of establishing that the evidence contained in the record preponderates against the findings of fact made by the trial court. Braziel v. State, 529 S.W.2d 501, 506 (Tenn. Crim. App. 1975).

An investigatory stop of an automobile is constitutionally permissible where based upon reasonable suspicion, supported by specific and articulable facts indicating a violation. State v. Watkins, 827 S.W.2d 293, 294 (Tenn. 1992). The court must consider the totality of the circumstances in making this determination. State v. Yeargan, 958 S.W.2d 626, 632 (Tenn. 1997). The court should also consider the rational inferences and deductions a trained officer may draw from the circumstances known to him. *Id.*

This Court's review of the videotape reveals the same objective view of the evidence seen by the trial court. Defendant's vehicle did swerve and weave, although certainly not to an exaggerated degree, and touched the center line at least twice. The evidence does not preponderate against the trial court's finding of reasonable suspicion of impaired driving supported by the officer's observations. The officer's stop of defendant was justified, and the trial court's denial of the motion to suppress was proper.¹

The issue is without merit.

CONCLUSION

Based upon the foregoing, the judgment of the trial court is AFFIRMED.

¹The parties stipulated to the admission of the videotape without the necessity of the officer testifying. Prior to the stop, the officer states on the videotape that the defendant is traveling 60 m.p.h. in a 45 m.p.h. zone. The defendant testified he was not speeding. This factual issue was not addressed by the trial court in its ruling. Had the officer actually testified to this fact and been found credible by the trial court, the stop would have been justified based upon speeding alone.

JOE G. RILEY, JUDGE

CONCUR:

JERRY L. SMITH, JUDGE

NORMA McGEE OGLE, JUDGE