

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 2, 2011**

A. John Voelker  
Acting Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2010AP1756**

**STATE OF WISCONSIN**

Cir. Ct. Nos. 2010TR842  
2010TR917

**IN COURT OF APPEALS  
DISTRICT II**

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**COUNTY OF SHEBOYGAN,**

**PLAINTIFF-APPELLANT,**

**V.**

**WILLIAM M. LANE,**

**DEFENDANT-RESPONDENT.**

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APPEAL from orders of the circuit court for Sheboygan County:  
JAMES J. BOLGERT, Judge. *Reversed and causes remanded.*

¶1 NEUBAUER, P.J.<sup>1</sup> The County of Sheboygan cited William Lane for operating a motor vehicle while intoxicated (OWI) and operating a motor

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

vehicle with a prohibited blood alcohol content (PAC). Lane was initially stopped and issued a warning for driving too fast for conditions, contrary to WIS. STAT. § 346.57. Lane moved to suppress the evidence stemming from the stop of his vehicle on grounds that the officer lacked probable cause to believe that Lane had committed a traffic violation. The circuit court granted Lane's motion and dismissed the charges. The County of Sheboygan appeals. We conclude that probable cause existed for the initial stop of Lane's vehicle. We therefore reverse the circuit court's orders granting Lane's motion to suppress and remand for further proceedings.

## **BACKGROUND**

¶2 Sheboygan County sheriff's deputy Steven Wimmer testified at the suppression hearing as to the circumstances surrounding the stop of Lane's vehicle. On February 19, 2010, at approximately 2:20 a.m., Wimmer observed Lane's vehicle traveling northbound on State Highway 42 and preparing to enter the first "roundabout" located at State Highway 42 and Interstate 43. Wimmer observed Lane's vehicle approach a yield sign at "a high rate of speed" without any type of braking or slowing. Lane then entered the interior lane of the roundabout at a high rate of speed. As Lane went around the center island of the roundabout to continue northbound, Wimmer observed Lane's vehicle enter the outer lane in what Wimmer characterized as "apexing the curve." Wimmer followed Lane's vehicle, which was still proceeding at a "high rate of speed," and observed Lane enter a second roundabout with a "quick flash of the rear brake light assembly," again "entering the exterior lane[,] apexing the curve by straddling both lanes and he exited the roundabout." Wimmer testified that he was "unable to go through the roundabout in a safe and efficient manner at the speeds [Lane] was going through the roundabout." Finally, Wimmer followed Lane

through a third and final roundabout at Vanguard Road and again observed “very little braking” as Lane “accelerated through the roundabout interior lane apexing into the curve, and shot out of the roundabout.” Wimmer testified that there is a sign in the roundabout area indicating “roundabout ahead” and then below that is a sign that says “15 miles per hour.” Wimmer testified that fifteen miles per hour is the “recommended speed limit” for the roundabout, while the “posted speed limit” on Highway 42 is forty-five miles per hour. Wimmer estimated Lane’s speed to be forty-five miles per hour.

¶3 Wimmer did not observe Lane activate a turn signal as he was “apexing” or going into other lanes. Wimmer did not hear squealing tires; however, his vehicle windows were closed. Wimmer did not notice any other traffic or any significant swerving of Lane’s vehicle. Wimmer testified that both the weather and road conditions were “clear and dry.” Wimmer testified that the purpose of the roundabouts is “to slow traffic down” and to decrease the incident of serious crashes at those intersections.

¶4 Wimmer stopped Lane’s vehicle and issued a warning for driving too fast for conditions. Wimmer testified: “[T]he statute for too fast for conditions deals with curves, narrow roadways, and I felt in the roundabouts that was a curved, narrow roadway that was applicable.” The circuit court identified the issue as whether Lane was, in fact, driving too fast for conditions. Although the court found Wimmer credible, it determined that Lane, who had maintained control of his vehicle despite traveling in excess of the recommended speed limit, was not driving too fast for the conditions, which were clear and dry with no other

cars in the area. The court granted Lane's motion to suppress and subsequently dismissed the citations.<sup>2</sup> The County appeals.

## DISCUSSION

¶5 The temporary detention of individuals during the stop of an automobile by the police constitutes a seizure within the meaning of the Fourth Amendment. *State v. Popke*, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569. Whether an officer has probable cause or reasonable suspicion to make an investigatory stop presents a question of constitutional fact. *Id.*, ¶10. As such, we will uphold the circuit court's findings of historical fact unless clearly erroneous; however, we review de novo the application of constitutional principles to these historical facts. *See id.*

¶6 As a threshold matter, the County addresses the proper test for assessing the validity of the traffic stop. The County contends that the appropriate standard is "reasonable suspicion" as opposed to "probable cause." We disagree. When an officer is acting upon an observation of a traffic violation committed in his or her presence and is not acting upon a suspicion warranting further investigation, the appropriate test is whether the officer had probable cause to

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<sup>2</sup> The transcript of the June 22 hearing reflects that, in response to the assistant district attorney's request to consult with her superiors, the circuit court set a July 9 deadline for any "further request." Prior to the court entering its orders on July 12, 2010, the County submitted a letter brief in which it "expanded" on its position as set forth at the June 22 hearing. The letter reflects a handwritten notation that it was received by the court on July 12; however, the orders entered by the court simply confirmed its oral ruling made at the June 22 hearing. Lane contends on appeal that the County failed to preserve the arguments set forth in its letter brief by failing to submit it prior to the July 9 deadline set by the court. Regardless of the merits of Lane's argument, the County did not file a reply brief and, thus, concedes this point. *See Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (arguments not refuted are deemed admitted). We therefore disregard the County's letter brief to the circuit court.

believe that a law has been broken. *State v. Longcore*, 226 Wis. 2d 1, 8-9, 594 N.W.2d 412 (Ct. App. 1999), *aff'd by an equally divided court*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620. Because Wimmer stopped Lane's vehicle based on his belief that Lane had committed a traffic violation, the question is whether the facts observed by Wimmer constituted probable cause that Lane violated WIS. STAT. § 346.57.

¶7 WISCONSIN STAT. § 346.57 addresses speed restrictions. It provides in relevant part:

(2) REASONABLE AND PRUDENT LIMIT. No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a vehicle shall be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and using due care.

(3) CONDITIONS REQUIRING REDUCED SPEED. The operator of every vehicle shall, consistent with the requirements of sub. (2), drive at an appropriate reduced speed when ... approaching and going around a curve ... when traveling upon any narrow or winding roadway ... and when special hazard exists with regard to other traffic or by reason of weather or highway conditions.

Lane contends on appeal that these provisions do not apply in this case because (1) there were no "conditions" requiring restricted speed because the weather was "clear and dry" and (2) Lane was able to maintain control of his vehicle while navigating the three roundabouts. Lane reads the statute too narrowly.

¶8 Wimmer testified that he considered the curved, narrow roadway of the roundabout to fall under WIS. STAT. § 346.57. Wimmer explained that, as part of his professional training, he had been informed of the history of roundabouts, including their purpose and design. He had been instructed that the roundabouts

are built with a raised center island to decrease visibility and encourage slowing traffic, and that they have a “tight circular pattern” and narrow roadway also designed to slow traffic.

¶9 Wimmer’s testimony is supported by the “Rules for Driving Roundabouts” brochure issued by the Wisconsin Department of Transportation. *See Rules for Driving Roundabouts*, WIS. DOT, <http://www.dot.state.wi.us/safety/motorist/roaddesign/roundabouts/docs/rab-brochure.pdf> (last visited Jan. 8, 2011). According to the brochure, the first step for driving a roundabout is to “[s]low down”; the fifth step is to “[k]eep your speed low within the roundabout.” *Id.* The DOT’s Web site indicates that the smaller circle and sharper curves of modern roundabouts are designed to slow traffic and that “[i]n urban settings, entering vehicles negotiate a curve sharp enough to slow speeds to about 15-20 mph; in rural settings, entering vehicles may be held to somewhat higher speeds (25-30 mph).” *Roundabouts—Frequently asked questions*, WIS. DOT, <http://www.dot.wisconsin.gov/safety/motorist/roaddesign/roundabouts/faq.htm> (last visited Jan. 8, 2011). Wimmer testified that the speed limit sign preceding entry to the roundabout advises drivers to travel at fifteen miles per hour.

¶10 Here, Wimmer observed Lane enter the roundabouts with no or “very little” braking. While Wimmer testified that he did not observe other traffic in the area, this does little to negate Lane’s obligation to slow down for a period of time sufficient to ascertain that the intersection is clear. Once in the roundabout, Wimmer described Lane as “apexing the curve,” stating at one point that Lane “Mario Andretti’d the corner.” Lane’s counsel also compared the maneuver to a “racer’s corner” or “racer’s line,” which he described as “driving as straight a line through a corner as you can.” Finally, Wimmer, who worked frequently in the

area of the roundabouts, felt that Lane entered the roundabout at a high rate of speed. In pursuing Lane, Wimmer felt that even he, in his “pursuit certified patrol vehicle,” was “unable to go through the roundabout in a safe and efficient manner” at the speed Lane was traveling.

¶11 In sum, Wimmer saw Lane enter the roundabout without yielding or sufficiently yielding to observe potential traffic, and then witnessed Lane proceed through the roundabout at approximately forty-five miles per hour by straddling lanes and taking a “racer’s corner.” Although the posted speed limit on Highway 42 leading up to the roundabout is forty-five miles per hour, the speed limit posted in conjunction with the roundabout warning sign was fifteen miles per hour. Based on these observations, which the circuit court accepted as credible, Wimmer stopped Lane and issued a warning for driving too fast for conditions.

¶12 In *Popke*, the court observed:

An officer may conduct a traffic stop when he or she has probable cause to believe a traffic violation has occurred.

Probable cause refers to the “quantum of evidence which would lead a reasonable police officer to believe” that a traffic violation has occurred. The evidence need not establish proof beyond a reasonable doubt or even that guilt is more probable than not, but rather, probable cause requires that “the information lead a reasonable officer to believe that guilt is more than a possibility.” In other words, probable cause exists when the officer has “reasonable grounds to believe that the person is committing or has committed a crime.”

*Popke*, 317 Wis. 2d 118, ¶¶13-14 (citations omitted). In this case, Wimmer believed Lane’s driving violated WIS. STAT. § 346.57. The circuit court’s later determination that Lane had not violated § 346.57 does not negate the reasonableness of Wimmer’s belief at the time of the stop.

## CONCLUSION

¶13 Given the facts as found by the circuit court, we conclude that probable cause existed for the initial stop of Lane's vehicle. We therefore reverse the circuit court's orders and remand for further proceedings.

*By the Court.*—Orders reversed and causes remanded.

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

