

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 22, 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. 2010AP2836  
STATE OF WISCONSIN**

Cir. Ct. Nos. 2010TR330, 2010TR331

**IN COURT OF APPEALS  
DISTRICT III**

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**VILLAGE OF HORTONVILLE,**

**PLAINTIFF-RESPONDENT,**

**V.**

**GEORGE A. BUCHMAN,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Outagamie County: MITCHELL J. METROPULOS, Judge. *Affirmed.*

¶1 HOOVER, P.J.<sup>1</sup> George Buchman appeals a judgment of conviction for operating while intoxicated, first offense, and an order denying his

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

suppression motion. He asserts the circuit court erred by denying his suppression motion. Because we conclude the officer had both probable cause and reasonable suspicion to stop Buchman's vehicle, we affirm.

### **BACKGROUND**

¶2 Buchman was arrested for operating while intoxicated and operating a motor vehicle with a prohibited alcohol concentration. Buchman filed a suppression motion, alleging that Village of Hortonville police officer Karla Wegner did not have probable cause that Buchman committed a traffic violation or reasonable suspicion to stop his vehicle.

¶3 At the suppression hearing, Wegner testified she pulled out behind Buchman's vehicle and began following it down a two-lane highway. It was foggy and rainy. The road was narrow, had no shoulder, and the side dropped off into a field.

¶4 Wegner testified she observed Buchman's vehicle swerve to the left of his lane and touch the yellow centerline for approximately two seconds. Buchman's vehicle swerved back into its lane. Then, it swerved back to the yellow centerline, where its front and rear left tires crossed the line for approximately two seconds before moving back into the lane of traffic. On cross-examination, Wegner could not remember whether there were marked yellow lines on the road but explained that because she wrote in her police report that she observed Buchman cross the yellow line, she was certain the lanes were marked. Wegner activated her emergency lights and effectuated a traffic stop on Buchman's vehicle. The court denied Buchman's suppression motion. Buchman was found guilty following a court trial.

## DISCUSSION

¶5 On appeal, Buchman argues Wegner lacked both probable cause and reasonable suspicion to stop his vehicle. A traffic stop is generally reasonable if officers have probable cause to believe a traffic violation has occurred or if they have reasonable suspicion that a violation has been or will be committed. *State v. Popke*, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569. Whether there is probable cause or reasonable suspicion is a question of constitutional fact. *Id.*, ¶10. “A question of constitutional fact is a mixed question of law and fact to which we apply a two-step standard of review. We review the circuit court’s findings of historical fact under the clearly erroneous standard, and we review independently the application of those facts to constitutional principles.” *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634.

### I. Probable Cause

¶6 “An officer may conduct a traffic stop when he or she has probable cause to believe a traffic violation has occurred.” *Popke*, 317 Wis. 2d 118, ¶13. Probable cause exists when the officer has “reasonable grounds to believe that the person is committing or has committed a [violation].” *Id.*, ¶14 (quotations omitted). The evidence to support probable cause need not establish proof beyond a reasonable doubt or 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.’” *Id.* (quotation omitted).

¶7 Wegner testified she observed Buchman operating left of center. Operating left of center is a violation of WIS. STAT. § 346.05, which provides “upon all roadways of sufficient width the operator of a vehicle shall drive on the right half of the roadway.” Buchman argues Wegner’s testimony that the road was

narrow shows it was impracticable for him to stay in his lane. Buchman also asserts WIS. STAT. § 346.13(3), which requires operators to drive in designated lanes, should not apply because “it’s unclear whether the lanes were marked or posted.”

¶8 We reject Buchman’s arguments. Here, the circuit court considered Wegner’s testimony that the road was narrow and that, but for her written police report, she could not recall whether the lanes were marked. The circuit court determined that Wegner observed Buchman cross a marked centerline, and that finding was not clearly erroneous. The traffic violation of operating left of center occurs even if the vehicle only momentarily crosses the centerline. *Popke*, 317 Wis. 2d 118, ¶¶18-19. We conclude there was probable cause to believe Buchman violated WIS. STAT. § 346.05.

## II. Reasonable Suspicion

¶9 In addition to having probable cause, Wegner also had reasonable suspicion to stop the vehicle. An officer may conduct a traffic stop when, under the totality of the circumstances, he or she has reasonable suspicion that a crime or traffic violation has been or will be committed. *Id.*, ¶23. 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.” *Post*, 301 Wis. 2d 1, ¶10 (quotations omitted).

¶10 Buchman relies on the same arguments to assert Wegner lacked reasonable suspicion. He argues the road was too narrow for him to stay in his lane, and it was unclear whether the lane was marked. However, we conclude the officer had reasonable suspicion that Buchman was violating WIS. STAT. § 346.05. The officer observed Buchman’s vehicle swerve to the centerline, swerve back

into its lane, and swerve back to and across the centerline. Under the totality of the circumstances, we conclude the accumulation of these specific and articulable facts gives rise to a reasonable suspicion that Buchman was committing a traffic violation.

*By the Court.*—Judgment and order affirmed.

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

