

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 3, 2012

Diane M. Fremgen
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 Nos. 2011AP1608-CR
2011AP1609-CR**

**Cir. Ct. Nos. 2009CF50
2009CT74**

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROY A. VAN BROCKLIN,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Green County:
JAMES R. BEER, Judge. *Affirmed.*

Before Vergeront, Higginbotham and Sherman, JJ.

¶1 PER CURIAM. Roy Van Brocklin appeals judgments of conviction entered by the circuit court after he pled no contest to operating while under the influence (OWI) as a third offense and possession of methamphetamine with

intent to deliver, pursuant to WIS. STAT. §§ 346.63(1)(a) and 961.41(1m)(e)1. (2009-10).¹ Van Brocklin also appeals the circuit court's denial of his motions to suppress, both initially and on reconsideration. We affirm.

BACKGROUND

¶2 On March 20, 2009, Police Officer Brian Bennett observed Roy Van Brocklin turn his vehicle left at a stop sign without using a turn signal. After turning at the intersection, Van Brocklin turned left again without signaling and pulled into the parking lot of a liquor store. Van Brocklin then turned his vehicle around in the parking lot and returned to the street, where he proceeded driving in the opposite direction. Officer Bennett followed the vehicle and observed that the rear license plate was bent in such a way that he could not see the expiration tag. Officer Bennett then activated his emergency lights and pulled the vehicle over.

¶3 Officer Bennett informed Van Brocklin that he was being stopped for failure to give a turn signal. Officer Bennett observed that Van Brocklin was stuttering, slurring his speech, acting nervous, and moving around like he was uncomfortable. Officer Bennett testified at a motion hearing on Van Brocklin's suppression motion that he had professional contact with Van Brocklin in the past, and that he had not observed any stuttering during prior contact with him. After asking for Van Brocklin's driver's license, Officer Bennett went back to the squad car, contacted dispatch, and asked them to send another police unit and a K-9 unit to assist him.

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

¶4 After he contacted dispatch, Officer Bennett began to write citations for failure to give signal and improper display of plates or decals. While Officer Bennett was writing the citations, he observed Van Brocklin making furtive movements toward the glove compartment. Police Chief Thomas Moczynski arrived and conferred with Officer Bennett about the reason for the stop. Officer Bennett again contacted dispatch and made contact with Van Brocklin to confirm information on his driver's license, then returned to his squad to complete the citations.

¶5 Deputy Charles Worm arrived with the K-9 unit. Officer Bennett got out of his squad and instructed Van Brocklin to get out of his vehicle. Officer Bennett performed a pat-down search, which uncovered a pocket knife, lighter, and Seroquel pill for which Van Brocklin admitted he did not have a prescription. Deputy Worm conducted a free air sniff around Van Brocklin's vehicle with a trained dog. Based upon the dog's indications, Deputy Worm opened the door and commanded the dog to sniff the inside of the vehicle, which led to the discovery of a plastic baggie containing marijuana and a loose white pill.

¶6 Van Brocklin was placed under arrest. Officer Bennett handcuffed him and performed another search of his person for weapons. Officer Bennett noticed a strong odor of intoxicants coming from Van Brocklin, and issued an OWI citation after conducting field sobriety tests at the police station. A further search of Van Brocklin's vehicle after the arrest uncovered methamphetamine, materials for making methamphetamine, methamphetamine waste products, and drug paraphernalia.

¶7 Criminal complaints were filed against Van Brocklin in two separate cases. Van Brocklin filed motions to suppress in both cases, challenging the

legality of the traffic stop and the search of his vehicle. The circuit court denied the motions in an oral ruling. Van Brocklin filed motions for reconsideration, which the circuit court also denied. Van Brocklin entered no contest pleas in both cases. He now appeals his convictions and the circuit court's denial of his motions to suppress.

STANDARD OF REVIEW

¶8 Whether there is probable cause to stop a vehicle, and whether the stop was unreasonably prolonged, are questions of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569; *State v. Griffith*, 2000 WI 72, ¶23, 236 Wis. 2d 48, 613 N.W.2d 72. In reviewing questions of constitutional fact, we review the circuit court's findings of historical fact under the "clearly erroneous standard," and we review the application of those historical facts to constitutional principles de novo. *Popke*, 317 Wis. 2d 118, ¶10.

DISCUSSION

¶9 Van Brocklin argues two issues on appeal. First, he argues that Officer Bennett did not have probable cause to stop the vehicle when it made a turn without using a turn signal. Second, he argues that Officer Bennett illegally detained Van Brocklin for longer than was reasonable, in order to allow for the arrival of the K-9 unit to perform a free air sniff. We address each issue in turn.

I. Probable Cause to Stop the Vehicle

¶10 Van Brocklin argues that he did not violate the law when he failed to use his turn signal and, therefore, Officer Bennett did not have probable cause to stop him. In the context of traffic stops, probable cause refers to the "quantum of

evidence” that would lead a reasonable police officer to believe that a traffic violation occurred. *Id.*, ¶14 (citation omitted).

¶11 The statute governing turn signals, WIS. STAT. § 346.34(1)(b), states in relevant part, “[i]n the event any other traffic may be affected by the movement, no person may turn any vehicle without giving an appropriate signal[.]” Van Brocklin contends that no traffic was affected by his lack of a turn signal and that no violation of § 346.34(1)(b) occurred. He testified at a hearing on the suppression motion that no other cars were in or approaching the intersection when he made his turn. He further testified that Officer Bennett’s squad car was located about a block away and was stationary. Officer Bennett’s testimony differed from Van Brocklin’s testimony about the location of the squad car. Officer Bennett testified that he was traveling two to three car lengths behind Van Brocklin’s vehicle when he saw Van Brocklin make the turn at the stop sign without signaling.

¶12 We recently examined the legality of a stop for an alleged turn signal violation in *State v. Anagnos*, 2011 WI App 118, ¶9, 337 Wis. 2d 57, 805 N.W.2d 722. In that case, the court concluded that the defendant did not violate WIS. STAT. § 346.34(1)(b) when he made a left turn at a highway intersection without signaling, where the only other vehicle on the road was a police car in the far right-hand turn lane of the same intersection. *Anagnos*, 337 Wis. 2d 57, ¶9. The court reasoned, “we cannot see how [the police officer] was affected by Anagnos’s failure to use a turn signal in the left lane.” *Id.*

¶13 In the present case, unlike in *Anagnos*, the evidence indicates that the squad car was directly behind Van Brocklin’s left-turning vehicle. Although the exact distance between Van Brocklin’s vehicle and Officer Bennett’s squad car

is disputed, we note that the circuit court stated, in denying Van Brocklin's motion to suppress, "I've got to assume he was close enough ... to have it affect him." Implicit in this statement is a finding that Officer Bennett's testimony regarding the distance between the vehicles was more credible than Van Brocklin's.

¶14 This court has frequently stated that it is not our function to review the credibility of witnesses, and we will not disturb the circuit court's credibility determinations where more than one reasonable inference can be drawn from the evidence. *See State v. Turner*, 114 Wis. 2d 544, 550, 339 N.W.2d 134 (Ct. App. 1983). That is the case here. The circuit court's finding that Officer Bennett's squad car was close enough to be affected by Van Brocklin's left turn is supported by the evidence and is not clearly erroneous. Applying this finding to the applicable law, we conclude that a reasonable police officer could have believed that a violation of WIS. STAT. § 346.34(1)(b) occurred, such that Officer Bennett had probable cause to stop Van Brocklin's vehicle.

II. Reasonableness of the Duration of Seizure

¶15 We begin by noting that the Wisconsin Supreme Court has held that the use of a drug sniffing dog around the outside perimeter of a vehicle located in a public place is not a search under the Wisconsin Constitution. *State v. Arias*, 2008 WI 84, ¶24, 311 Wis. 2d 358, 752 N.W.2d 748. We turn, then, to the issue of whether Officer Bennett prolonged writing out Van Brocklin's citations during the traffic stop, which is considered a seizure. *Id.*, ¶29; *see* U.S. CONST. amend. IV; WIS. CONST. art. I, § 11.

¶16 Van Brocklin argues that Officer Bennett improperly prolonged the traffic stop in order to allow for the arrival of the K-9 unit. The traffic stop began at 2:22 p.m. Deputy Worm testified that he received a call at his residence at 2:28

p.m. requesting that he come to the scene of the stop with his K-9 unit. The police department's records show that Deputy Worm arrived at the scene at 2:44 p.m., but Worm testified that he believed he arrived sooner than that. Officer Bennett testified that he completed writing the citations two to three minutes before Deputy Worm began a free air sniff with the dog.

¶17 In the time frame between when he first pulled Van Brocklin over and when the K-9 unit arrived, Officer Bennett made contact with Van Brocklin twice, talked to dispatch twice, and wrote out two citations. Chief Moczynski testified that the time it takes to write a citation varies depending on how quickly dispatch can be accessed, how slow the computers are, and how quickly the particular officer writes. The circuit court heard detailed testimony about the process that Officer Bennett goes through when he writes a citation. The circuit court concluded that there was no prolonged detention, and also that the two minutes between when Officer Bennett finished writing the citation and when the free air sniff began was not an unreasonable amount of time. We agree.

¶18 There is no hard-and-fast time limit for when a detention has become too long and therefore becomes unreasonable. *Arias*, 311 Wis. 2d 358, ¶34. The circuit court did not make, and the record does not support, a finding that Officer Bennett intentionally drew out the process of writing two citations to allow the K-9 unit to arrive. Nothing in the record indicates that the duration of the detention was unreasonable, given the tasks Officer Bennett performed in conjunction with the traffic stop. Thus, we conclude that Van Brocklin was not unlawfully detained in violation of his constitutional rights. *See* U.S. CONST. amend. IV; WIS. CONST. art. I, § 11.

By the Court.—Judgments affirmed.

This opinion will not be published. *See* WIS. STAT. RULE
809.23(1)(b)5.

