

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 30, 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 No. 2011AP2005**

**STATE OF WISCONSIN**

Cir. Ct. Nos. 2010TR548  
2010TR549

**IN COURT OF APPEALS  
DISTRICT III**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**TRAVIS R. ANDERSON,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment of the circuit court for Marathon County:  
JILL N. FALSTAD, Judge. *Affirmed.*

¶1 MANGERSON, J.<sup>1</sup> Travis Anderson appeals a judgment of conviction for operating while intoxicated, first offense. Anderson argues the

---

<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.

officer unlawfully stopped his vehicle and, as a result, the circuit court erred by denying his suppression motion. We affirm.

### **BACKGROUND**

¶2 At the suppression hearing, officer Steven DeNovi testified that on January 24, 2010, at approximately 12:11 a.m., he was on patrol and driving north on a four-lane undivided highway. Traffic was medium to heavy, and it was raining.

¶3 DeNovi explained that he was traveling in a “group of three” vehicles. He was in the outside north lane and there were two vehicles traveling in the inside north lane. One vehicle was slightly in front of him and the other, lead vehicle, was in front of that one.

¶4 DeNovi observed the lead vehicle drift into his lane. After traveling in DeNovi’s lane for approximately 100 yards, the vehicle swerved back to the inside lane. The vehicle never signaled its intention to change lanes. Given the amount of traffic, DeNovi immediately stopped the vehicle for a “drastic” unsafe lane deviation, contrary to WIS. STAT. § 346.13(1). On cross-examination, DeNovi agreed no traffic was adversely affected by the lane deviation. The driver, who was identified as Anderson, was subsequently cited for operating while intoxicated.

¶5 The circuit court denied Anderson’s suppression motion. Following a court trial, Anderson was convicted of operating while intoxicated, first offense.

## DISCUSSION

¶6 On appeal, Anderson argues DeNovi lacked probable cause to stop his vehicle for an unsafe lane deviation and, as a result, the circuit court erred by denying his suppression motion. Whether there is probable cause to conduct a traffic stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. We uphold the circuit court’s factual findings unless they are clearly erroneous; however, we independently apply those facts to constitutional principles. *Id.*

¶7 Probable cause exists when the officer has “reasonable grounds to believe that the person is committing or has committed a [violation].” *Id.*, ¶14 (citation 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.* (citation omitted).<sup>2</sup>

¶8 In this case, DeNovi stopped Anderson for violating WIS. STAT. § 346.13(1). That statute provides: “The operator of a vehicle shall drive as nearly as practicable entirely within a single lane and shall not deviate from the traffic lane in which the operator is driving without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear.” WIS. STAT. § 346.13(1).

---

<sup>2</sup> We also observe that “[e]ven if no probable cause existed, a police officer may still conduct a traffic stop when, under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed.” *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569.

¶9 Anderson argues DeNovi lacked probable cause to stop his vehicle because there were no vehicles “approaching from the rear” and his lane deviations did not adversely affect traffic. Specifically, Anderson points out that DeNovi testified “we were going 25 miles per hour,” and argues that because all vehicles were moving at a uniform speed, there could be no approaching traffic from the rear. He also asserts that because DeNovi conceded Anderson’s lane deviations did not adversely affect traffic, Anderson could not have been stopped for a WIS. STAT. § 346.13(1) violation.

¶10 We reject Anderson’s arguments and conclude DeNovi had probable cause to stop Anderson for a WIS. STAT. § 346.13(1) violation. First, regarding Anderson’s “approaching from the rear” argument, the State points out that DeNovi testified Anderson was “just getting back into his lane ... when I *g[ot] up on him.*” (Emphasis added.) We agree with the State that DeNovi’s testimony creates a reasonable inference that he was in fact gaining on Anderson and therefore was a vehicle approaching from the rear. *See State v. Friday*, 147 Wis. 2d 359, 370-71, 434 N.W.2d 85 (1989) (inference drawn by the fact finder must be accepted by appellate court unless clearly unreasonable).

¶11 Second, because an adverse effect on traffic is not an element of WIS. STAT. § 346.13(1), we assume Anderson is relying on DeNovi’s testimony to argue that a lack of an adverse effect shows that Anderson, before he changed lanes, “ascertain[ed] that such movement c[ould] be made with safety to other vehicles approaching from the rear.” *See* WIS. STAT. § 346.13(1). However, Anderson’s argument overlooks the standard for probable cause as well as other facts in the record. As stated above, probable cause requires only that DeNovi had “reasonable grounds to believe” Anderson did not ascertain whether he could safely make the lane changes. *See Popke*, 317 Wis. 2d 118, ¶14.

¶12 Here, DeNovi testified that, while traveling in a group of three vehicles, he observed Anderson’s vehicle drift into the outside lane for approximately 100 yards and then swerve back to the inside lane. Both lane deviations were made without signaling and the second was “drastic.” It was also raining on a winter night. We agree with the circuit court that, irrespective of whether Anderson’s actions adversely affected traffic, this evidence “leads to a reasonable inference that the driver was not paying attention to other drivers at all[,] including determining [whether] his vehicle movement was being safely made in view of the vehicles behind him.” DeNovi had probable cause to stop Anderson for an unsafe lane deviation.

¶13 Additionally, we agree with the State’s alternative argument that DeNovi had probable cause to stop Anderson for failing to signal, contrary to WIS. STAT. § 346.34(1)(b). That statute requires motorists to signal whenever “any other traffic may be affected by the movement.” *See* WIS. STAT. § 346.34(1)(b). Here, given the proximity of the traffic, the bad weather, the darkness, and Anderson’s “drastic” lane change, we conclude Anderson was required, and failed, to signal his lane deviations. We reject Anderson’s argument that, because he did not adversely affect traffic, he did not need to signal. Under WIS. STAT. § 346.34(1)(b), it is irrelevant that Anderson’s failure to signal ultimately had no adverse effect on traffic. The statute applies where traffic “may” be affected.

*By the Court.*—Judgment affirmed.

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



