

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2015AP715-CR
Trial Court Case No. 2014CT000009

STATE OF WISCONSIN,
Plaintiff-Respondent,
vs.

MARK A. TRALMER,
Defendant-Appellant.

ON APPEAL OF JUDGMENT OF CONVICTION AND DECISIONS
DENYING SUPPRESSION AND RECONSIDERATION MOTIONS,
ENTERED IN THE MONROE COUNTY CIRCUIT COURT, THE
HONORABLE J. DAVID RICE, PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT

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STATEMENT OF THE ISSUES

- I. DID THE TRIAL COURT APPLY THE CORRECT LEGAL STANDARD TO DETERMINE WHETHER THE OFFICER CONDUCTED A LAWFUL STOP OF TRALMER'S VEHICLE?

The trial court answered: yes.

- II. DID OFFICER STEINBORN HAVE REASONABLE SUSPICION THAT TRALMER VIOLATED A TRAFFIC LAW?

The trial court answered: yes; Officer Steinborn had reasonable suspicion to believe Tralmer operated left of center.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiff-Respondent anticipates that the issues raised in this appeal can be fully addressed by the briefs. Accordingly, respondent is not requesting oral argument. Plaintiff-Respondent agrees that this opinion will not merit publication because the issues are fact-specific, and the case is governed by existing precedent.

STANDARD OF REVIEW

Whether reasonable suspicion or probable cause is necessary for a law enforcement officer to stop a vehicle is a question of law to be reviewed *de novo*. State v. Kramer, 2001 WI 132, ¶ 17. Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact subject to a two-step standard of review. State v. Phillips, 218 Wis.2d 180, 189, 577 N.W.2d 794 (1998). First, the circuit court's findings of historical fact must be upheld unless they are clearly erroneous. State v. Williams, 2002 WI 94, ¶ 17. Then, the circuit court's determination of the constitutional question is reviewed *de novo*. Id.

ARGUMENT

I. THE TRIAL COURT APPLIED THE CORRECT LEGAL STANDARD WHEN ANALYZING THE TRAFFIC STOP ON TRALMER'S VEHICLE

A. The Proper Standard for Assessing the Legality of a Traffic Stop is Reasonable Suspicion

At the time Defendant-Appellant filed its brief, the Supreme Court of Wisconsin had not yet issued its opinion in State v. Houghton, 2015 WI 79. In that opinion, the Supreme Court clearly stated that reasonable suspicion that a traffic law has been or is being violated is

sufficient to justify all traffic stops. Id., ¶ 30. This decision was based on the Supreme Court of the United States’ holding in Heien v. North Carolina, 135 S.Ct. 530.

In that case, the Supreme Court held that “an objectively reasonable mistake of law could give rise to reasonable suspicion.” Id. at 534. The Court further noted that “reasonable suspicion arises from the combination of an officer’s understanding of the facts and his understanding of the relevant law. The officer may be reasonably mistaken on either ground.” Id. at 536. This interpretation of the Fourth Amendment allows law enforcement officers “fair leeway for enforcing the law in the community’s protection.” Id.

As a result, the Wisconsin Supreme Court held in Houghton that “an objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop.” 2015 WI 79, ¶ 52. The Court further noted that “all Wisconsin cases holding otherwise are hereby overruled to the extent they conflict with this holding.” Id. This decision overruled two cases relied upon by Defendant-Appellant, State v. Longcore, 226 Wis.2d 1, 594 N.W.2d 412 (Ct. App. 1999), and State v. Brown, 2014 WI 69.

B. The Trial Court Applied the Correct Legal Standard

The trial court in this case applied the correct legal standard when analyzing the traffic stop on Tralmer's vehicle. The court held that Officer Steinborn had reasonable suspicion to believe that a traffic violation occurred; either that "the driver was not paying careful attention and had to swerve toward the last minute when he saw vehicles" or that the driver had driven too far over the centerline. (19: 42-43). Therefore, Defendant-Appellant's request that this Court assess whether the officer had probable cause to believe Tralmer violated a traffic law should be denied, as it asks the Court to apply the wrong legal standard in light of recent case law.

**II. OFFICER STEINBORN HAD REASONABLE
SUSPICION THAT TRALMER VIOLATED A
TRAFFIC LAW, AND THEREFORE THE TRAFFIC
STOP WAS PROPER**

A traffic stop may be initiated when, under the totality of circumstances, the officer "has grounds to reasonably suspect that a crime or traffic violation has been or will be committed." State v. Popke, 2009 WI 37, ¶ 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." Id. However, the officer may be reasonably mistaken on the facts or the relevant law surrounding a traffic stop. Heien at 536.

**A. Officer Steinborn had Reasonable Suspicion that
Tralmer Operated Left of Center**

Officer Steinborn testified at the suppression hearing that he observed Tralmer's vehicle go left of the center portion of the roadway into the oncoming lane, and then go back into its own lane (19: 6-7). It was 2:30 a.m. and around bar time (19: 7-8). Officer Steinborn further testified that he believed Tralmer's vehicle crossing the center line was a traffic violation, and he suspected the driver may have been intoxicated (19: 8). Officer Steinborn performed a traffic stop on Tralmer's vehicle and identified Tralmer as the driver (19: 12-13).

Defendant-Appellant argues that the fact that Tralmer swerved to the center and back is not sufficient for probable cause to believe Tralmer violated Wis. Stat. sec. 346.05. As discussed above, the proper legal standard is reasonable suspicion that a traffic law has been violated, not probable cause.

Wis. Stat. sec. 346.05(1) states that "upon all roadways of sufficient width the operator of a vehicle shall drive on the right half of the roadway." Defendant-Appellant notes that Wis. Stat. sec. 346.05(1) contains numerous exceptions for when driving left of center is permissible, including when overtaking an obstruction in the right half of the roadway. Tralmer testified at the suppression hearing that he observed vehicles parked by the road side and crossed the center area

of the road before moving back towards the snowbank (19: 21).

Tralmer further testified that he swerved around one of the parked vehicles because he believed the parked car he maneuvered around was an obstruction to him (19: 24). Tralmer also testified regarding pictures and measurements of the roadway that he took the same week as the stop (19: 27). However, the defense did not lay any foundation to establish the basis of Tralmer's knowledge or expertise regarding that evidence.

In support of its argument, Defendant-Appellant points to the fact that Officer Steinborn acknowledged at the suppression hearing that the road was snow-covered and there were parked cars on Tralmer's side of the road (19: 15-16). However, Officer Steinborn further testified that Tralmer did not move over for the first several parked vehicles, and Officer Steinborn did not know why Tralmer would have needed to cross over the centerline for the last parked vehicle (19: 17).

Moreover, a law enforcement officer is not required to rule out the possibility of innocent behavior before initiating a traffic stop. State v. Waldner, 206 Wis.2d 51, 59-60, 556 N.W.2d 681 (1996). The court in Waldner further noted that "if a reasonable inference of unlawful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the

right to temporarily detain the individual for the purpose of inquiry.”

Id. The officer may also be reasonably mistaken on the facts or the relevant law surrounding the traffic stop. Heien at 536.

In this case, Officer Steinborn observed Tralmer’s vehicle swerve abruptly from his lane into the oncoming lane of traffic and back into his lane (19: 42-43). This observation, together with the time of night, allowed Officer Steinborn to reasonably infer that Tralmer’s conduct was unlawful, and as a result, Officer Steinborn initiated a traffic stop. It does not matter whether Tralmer believed the parked vehicle was an obstruction in his lane of travel. Officer Steinborn did not observe any reason that Tralmer had to cross the centerline to avoid the parked vehicle, so he concluded under the totality of the circumstances that a traffic violation of Wis. Stat. sec. 346.05 had occurred. Even if Officer Steinborn was incorrect, and the parked vehicle was an obstruction to Tralmer, that is a reasonable mistake of fact under Heien.

Based on the totality of the circumstances, Officer Steinborn had reasonable suspicion that Tralmer violated a traffic law by operating on the left half of the roadway. Accordingly, the traffic stop on Tralmer’s vehicle was lawful and proper.

CONCLUSION

The trial court applied the correct legal standard of reasonable suspicion when analyzing whether the traffic stop on Tralmer's vehicle was lawful. Based on the totality of the circumstances, Officer Steinborn had reasonable suspicion that Tralmer violated a traffic law. Therefore, Plaintiff-Respondent respectfully requests that the trial court's ruling be upheld, and the Appellant-Defendant's appeal be denied.

Dated this 9th day of September, 2015 in Sparta, WI.

Respectfully submitted,
STATE OF WISCONSIN,
Plaintiff-Respondent

BY: _____

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (8)

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes or footnotes, leading of minimum of 2 points, maximum of 60 characters per full line of body text. The length of this brief is 11 pages, 2,046 words.

Dated this 9th day of September, 2015.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE WITH RULE 809.19 (12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of s. 809.19 (12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 9th day of September, 2015.

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