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COURT OF APPEALS
STATE OF WISCONSIN
DISTRICT III

04-26-2016

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

CASE NO. 2015AP002440-CR

STATE OF WISCONSIN,

Plaintiff-Respondent

v.

CURTIS D. CHRISTIANSON,

Defendant-Appellant.

APPEAL FROM JUDGMENT OF CONVICTION IN
EAU CLAIRE COUNTY CIRCUIT COURT
THE HONORABLE PAUL J. LENZ, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT OF ORAL ARGUMENT AND PUBLICATION

Oral argument should not be necessary for the prosecution of this appeal. It is expected that the parties' legal briefs will fully present and address the issue presented for appeal. Additionally, the court's decision need not be published since it is anticipated that it will be controlled by existing case law.

ARGUMENT

THE TRIAL COURT DID NOT ERR IN DENYING CHRISTIANSON'S
MOTION TO SUPPRESS EVIDENCE

Christianson challenges the trial court's ruling that Deputy Gunderson's traffic stop of Christianson's vehicle was lawful. He argues there was no probable

cause that Christianson disobeyed any traffic regulation and there was no reasonable suspicion that Christianson was under the influence of an intoxicant.

At the time of this traffic stop, October 16, 2014, an officer needed to have probable cause to believe a traffic violation had occurred or reasonable suspicion that a crime or traffic violation had been or would be committed. *See State v. Popke*, 2009 WI 36, ¶¶13, 23, 317 Wis.2d 118, 765 N.W.2d 569. Whether probable cause or reasonable suspicion exists to conduct a traffic stop is a question of constitutional fact. *Id.*, ¶10. The circuit court’s factual findings are upheld unless they are clearly erroneous. *Id.*

In its decision filed July 14, 2015, the Wisconsin Supreme Court held that “an officer’s reasonable suspicion that a motorist is violating or has violated a traffic law is sufficient for the officer to initiate a stop of the offending vehicle.” *State v. Houghton*, 2015 WI 79, ¶78. The traffic stop conducted by Deputy Gunderson was lawful under either legal standard.

The trial court’s factual findings were that Deputy Gunderson noticed Christianson’s vehicle traveling on Highway 37 in the area of the Little Red School (19:49-50). Deputy Gunderson noticed that the vehicle was deviating within its lane and that the vehicle crossed the centerline of the roadway on more than one occasion (19:50). Deputy Gunderson activated the emergency lights of his squad car which effected the traffic stop of the vehicle driven by Christianson (19:50).

Deputy Gunderson testified at the hearing that the pickup truck that was traveling in front of his squad car appeared to be deviating in its lane (19:5). He clarified that at different times, he saw the truck drift to the right over the fog line and then jerk back into the lane of traffic (19:5). He testified that he observed the vehicle cross the center line of the roadway on more than one occasion (19:5,6). After the traffic stop was initiated, Deputy Gunderson asked Christianson if there was a mechanical problem with his vehicle which could have caused the driving that Deputy Gunderson observed (19:9). Christianson responded that he wasn't aware of any mechanical problem with his vehicle (19:9).

Christianson has not alleged that the court's factual findings were clearly erroneous. He infers that because Deputy Gunderson activated his squad camera after his initial observations of Christianson's driving, Deputy Gunderson's observations should be rejected. No testimony or evidence contrary to Deputy Gunderson's testimony was presented at the hearing to cause the court to reject the testimony of Deputy Gunderson.

Christianson asserts that a violation of Section 346.13(1), Wis. Stats., can only occur if another vehicle was actually or possibly affected by Christianson's lane deviation. This claim ignores the specific language of Section 346.13(3) which states that "...when lanes have been marked or posted for traffic moving in a particular direction or at designated speeds, the operator of a vehicle shall drive in the lane designated." Section 346.13(1) simply states that a vehicle must

remain in its own lane, even if it intends to switch lanes, until the lane change can be made safely.

CONCLUSION

Deputy Gunderson had probable cause to believe that Christianson had committed a traffic violation when he drove across the centerline of the roadway on more than one occasion over a distance of two miles. Additionally, Deputy Gunderson had reasonable suspicion that Christianson may have been driving while intoxicated based on the time of night, 12:53 a.m. (19:4), the repeated drifting over the fog line and jerking back into the lane of traffic (19:5-6), and the slow speed of travel, 27-30 miles per hour in a marked 45 mile per hour zone (19:7-8). Under either theory, the traffic stop was lawful.

For the reasons stated, the decision of the trial court denying Christianson's Motion to Suppress Evidence should be upheld.

Dated this 22nd day of April, 2016.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4 pages and 730 words.

Dated this 22nd day of April, 2016.

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