

**RECEIVED**

**06-03-2016**

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT IV

**CLERK OF COURT OF APPEALS  
OF WISCONSIN**

---

Case No. 2016AP385-CR

---

STATE OF WISCONSIN,  
Plaintiff-Respondent,

v.

JEFFREY JACOB UDELHOFEN,  
Defendant-Appellant.

---

ON APPEAL FROM AN ORDER OF THE CIRCUIT COURT OF GRANT  
COUNTY, THE HONORABLE CRAIG R. DAY PRESIDING, DENYING A  
MOTION TO SUPPRESS EVIDENCE DUE TO LACK OF REASONABLE  
SUSPICION OR PROBABLE CAUSE TO CONDUCT TRAFFIC STOP

---

BRIEF OF THE PLAINTIFF-RESPONDENT

---

Lisa A. Riniker  
District Attorney  
State Bar No. 1036164  
Grant County District Attorney's Office  
130 West Maple Street  
Lancaster, Wisconsin 53813  
(608) 723-4237

## TABLE OF CONTENTS

STATEMENT ON ORAL ARGUMENT AND PUBLICATION.....	3
ARGUMENT.....	3-5
I.    Both Probable Cause And Reasonable Suspicion Existed For a Traffic Stop and the Court's Ruling Should be Affirmed.	
A.    Standard of Review	
B.    Probable Cause to Believe A Violation of a Traffic Law Was Shown.	
C.    Reasonable Suspicion to Conduct an Investigatory Traffic Stop Was Also Shown.	
CONCLUSION .....	5
SUPPLEMENTAL APPENDIX INDEX .....	8

#### CASES CITED

<i>State v. Popke</i> .....	3
2009 WI 37, ¶20, 317 Wis. 2d 118	
765 N.W.2d 569	
 <i>State v. Post</i> .....	5
2007 WI 60, ¶10, 301 Wis. 2d 1	
733 N.W.2d 634	
 <i>State v. Turner</i> .....	3
136 Wis. 2d 333, 343, 401	
N.W.2d 827 (1987)	

#### STATUTES CITED

Wisconsin Statutes § 346.05 .....	3-4
-----------------------------------	-----

**STATEMENT ON ORAL ARGUMENT  
AND PUBLICATION**

Undersigned counsel for the State requests neither oral argument nor publication, believing the issues presented can be resolved on the basis of settled precedent as discussed in the parties' briefs.

**ARGUMENT**

**I. Both Probable Cause and Reasonable Suspicion Existed For a Traffic Stop and the Court's Ruling Should Be Affirmed.**

**A. Standard of Review**

Review of the circuit court's findings of fact are reviewed under the "clearly erroneous standard." *State v. Popke*, 2009 WI 37, ¶20, 317 Wis. 2d 118, 765 N.W.2d 569. "[w]e are bound not to upset the trial court's findings of historical or evidentiary fact unless they are contrary to the great weight and clear preponderance of the evidence." *Id.*, citing *State v. Turner*, 136 Wis. 2d 333, 343, 401 N.W.2d 827 (1987).

**B. Probable Cause to Believe a Violation of a Traffic Law was Shown.**

Traffic stops may be conducted when an officer has probable cause to believe that there was a violation of a traffic law. *Popke* at ¶13. In assessing whether a traffic violation has occurred, a reasonable police officer must have a "quantum of evidence" leading him or her to that conclusion. *Id.* at ¶14. It is not necessary that there be proof beyond a reasonable doubt nor even that it be more probable than not. *Id.* Instead, there must be "information lead(ing) a reasonable officer to believe that guilt is more than a possibility." *Id.*

Probable cause in this case existed to believe that Mr. Udelhofen violated § 346.05, Wisconsin Statutes. Wis. Stat. § 346.05(1) reads, in part,

Upon all roadways of sufficient width the operator of a vehicle shall drive on the right

half of the roadway and in the right-hand lane of a 3-lane highway except:...

There are seven exceptions listed in the statute, none of which pertain to this case and none of which are being argued by Mr. Udelhofen. Therefore, the State will not further explore these exceptions.

Officer Schwarz<sup>1</sup> testified that Mr. Udelhofen's vehicle was traveling well into the opposite lane of travel and estimated that his vehicle would have been at least half over the center line, had a center line been painted on the road.

The video from Officer Schwarz' squad car was shown and the court relied upon that video to rule that there was ample evidence to show a violation of § 346.05 from it. The court noted several deviations into the opposite lane of traffic but made specific reference to the video at thirty seconds when the court indicated that Mr. Udelhofen's vehicle was "plum (sic) in the middle of the road." App., p. 122, ll. 11-12.

In *Popke*, the defendant's vehicle swerved into the left lane of traffic causing his vehicle to be three-quarters left of the center of the road, identified by a black strip of tar. *Popke* at ¶16. The court found that operating left of center pursuant to Wis. Stat. § 346.05 had been violated and that none of the exceptions in that statute applied, and that there was probable cause to believe that a traffic violation had occurred, providing the basis for a proper traffic stop. *Id.* at ¶17. Likewise, Mr. Udelhofen failed to operate his vehicle on the right half of the roadway as required by Wis. Stat. § 346.05, thereby providing probable cause for a traffic stop by Officer Schwarz.

**C. Reasonable Suspicion to Conduct an Investigatory Traffic Stop was Also Shown.**

In this case, the court not only found probable cause for a traffic violation, but also found reasonable suspicion for a traffic stop. There must be "specific and

---

<sup>1</sup> Throughout the transcript of the motion hearing contained in Mr. Udelhofen's Appendix and throughout Mr. Udelhofen's Brief, the arresting officer's name is spelled "Schwartz." The correct spelling of the officer's name is "Schwarz."

articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop." *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634. There must be more than an inchoate, unparticularized suspicion or hunch. *Id.*

Weaving within a single lane of traffic, in and of itself, does not establish reasonable suspicion. *Id.* at ¶¶26-27. However, when observations such as weaving within a certain lane of traffic and other specific and articulable facts exist, reasonable suspicion may be present. *Id.* at ¶37.

In *Popke*, the court found reasonable suspicion based upon the following:

1. The officer observed a traffic code violation.
2. The events took place at 1:30 a.m.
3. The events occurred within one block.
4. There was erratic driving.

*Popke* at ¶27.

In our case, the driving occurred at 9:52 p.m. Mr. Udelhofen's vehicle was varying speeds and traveling left of center. He was deviating within his lane of traffic. There was a violation of the traffic code.

Similar to *Popke*, Officer Schwarz had reasonable suspicion to initiate a traffic stop on Mr. Udelhofen's vehicle based upon the specific and articulable facts taken together with rational inferences.

## CONCLUSION

Both probable cause and reasonable suspicion were shown to provide a basis for Officer Schwarz to stop Mr. Udelhofen's vehicle. The trial court's findings of fact supporting those assertions are not clearly erroneous and should not be upset. The State requests that this Court affirm the ruling of the Circuit Court.

Dated this 2nd day of June, 2016.

Respectfully submitted,

Lisa A. Riniker  
District Attorney  
State Bar No. 1036164

District Attorney's Office  
Grant County Courthouse  
130 West Maple Street  
Lancaster, WI 53813  
(608) 723-4237

**FORM AND LENGTH CERTIFICATION**

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

Dated this 2nd day of June, 2016.

---

Lisa A. Riniker  
District Attorney  
State Bar No. 1036164  
Grant County, Wisconsin



**SUPPLEMENTAL APPENDIX INDEX**

Partial Motion Hearing Transcript ..... 1

## **APPENDIX CERTIFICATION**

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with the content requirements of Wis. Stat. S (Rule) 809.19(2)(a); that is, the record documents contained in the respondent's appendix fall into one of the categories specified in sub. (2)(a).

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 2nd day of June, 2016.

Signed:

---

Lisa A. Riniker  
District Attorney  
State Bar No. 1036164

District Attorney's Office  
Grant County Courthouse  
130 West Maple Street  
Lancaster, WI 53813  
(608) 723-4237

**CERTIFICATE OF COMPLIANCE  
WITH WIS STAT. §(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 Wis. Stat. § (Rule) 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 2nd day of June, 2016.

---

Lisa A. Riniker  
District Attorney  
State Bar No. 1036164  
Grant County, Wisconsin