

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 19, 2002**

Cornelia G. Clark  
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. 01-2573-CR**

**Cir. Ct. No. 00-CT-527**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT III**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JERRY M. MCANULTY,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Outagamie County: DEE R. DYER, Judge. *Affirmed.*

¶1 CANE, C.J.<sup>1</sup> Jerry McAnulty appeals from his conviction for operating a motor vehicle while under the influence of an intoxicant, second offense, contrary to WIS. STAT. § 346.63(1)(a). McAnulty argues that the officer

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<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 1999-2000 version unless otherwise noted.

did not have reasonable suspicion to stop his vehicle and therefore any evidence following the stop should have been suppressed. We reject his argument and affirm the conviction.

¶2 The relevant facts are undisputed. Officer Michael Parker observed McAnulty driving at an estimated speed of forty to forty-five miles per hour in a twenty-five mile-per-hour zone. McAnulty then continued at this speed through a yellow control light, at which time Parker stopped McAnulty. After stopping McAnulty, Parker observed that McAnulty's eyes appeared glassy, his speech was very rapid and he had a strong odor of alcohol coming from his breath. When McAnulty was unable to successfully perform the field sobriety tests, Parker arrested him for OWI.

¶3 At the hearing on McAnulty's motion to suppress, Parker stated that he estimated the intersection's control light had turned yellow approximately three to four seconds before McAnulty's vehicle went through the intersection. Based on this testimony, the court found that McAnulty had significant time to stop safely before proceeding through the intersection. It concluded that Parker therefore had probable cause to stop McAnulty and issue a citation under WIS. STAT. § 346.37(1)(b) for proceeding through an intersection while the intersection's control light was yellow. Thus, any evidence gathered after the stop was admissible. After a trial on stipulated facts, the court found McAnulty guilty of OWI.

¶4 McAnulty approaches this appeal on the basis that the officer lacked reasonable suspicion to stop his vehicle. However, the stop in this case did not occur as a result of an investigatory stop. Rather, the stop was based on probable cause because of the observed traffic violation, namely driving through a

controlled intersection in violation of WIS. STAT. § 346.37(1)(b). Therefore, we will address, as did the circuit court, whether the officer had probable cause to stop the vehicle because of the perceived traffic violation.

#### *STANDARD OF REVIEW*

¶5 We sustain a circuit court's findings of fact relating to a suppression motion unless they are clearly erroneous. *State v. Roberts*, 196 Wis. 2d 445, 452, 538 N.W.2d 825 (Ct. App. 1995). Whether the established facts constitute probable cause to arrest is a question of law that we review de novo. *State v. Babbitt*, 188 Wis. 2d 349, 356, 525 N.W.2d 102 (Ct. App. 1994).

#### *PROBABLE CAUSE*

¶6 The test for probable cause is a commonsense test. *County of Dane v. Sharpee*, 154 Wis. 2d 515, 518, 453 N.W.2d 508 (Ct. App. 1990). A police officer has probable cause to arrest when the totality of the circumstances within that officer's knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant probably committed an offense. *State v. Koch*, 175 Wis. 2d 684, 701, 499 N.W.2d 152 (1993). The officer's observations supporting an arrest need not be sufficient to prove guilt beyond a reasonable doubt, nor adequate to prove that guilt is more likely than not. *Babbitt*, 188 Wis. 2d at 357; *State v. Mitchell*, 167 Wis. 2d 672, 681-82, 482 N.W.2d 364 (1992). It is only necessary that the evidence would lead a reasonable officer to believe that guilt is more than a possibility. *State v. Paszek*, 50 Wis. 2d 619, 625, 184 N.W.2d 836 (1971).

¶7 Here, Parker observed McAnulty drive at an excessive speed and then continue through an intersection when the controlling traffic light had been

yellow for three to four seconds before McAnulty's vehicle entered the intersection. WISCONSIN STAT. § 346.37(1)(b) provides:

**Traffic-control signal legend. (1)** Whenever traffic is controlled by traffic control signals exhibiting different colored lights successively, or with arrows, the following colors shall be used and shall indicate and apply to operators of vehicles and pedestrians as follows:

....

(b) *Yellow.* When shown with or following the green, traffic facing a yellow signal shall stop before entering the intersection unless so close to it that a stop may not be made in safety.

¶8 The circuit court implicitly found Parker's testimony to be credible. The evidence is more than sufficient to establish that the traffic signal had turned yellow three to four seconds before McAnulty entered the intersection and that McAnulty had a sufficient amount of time to make the required stop in safety. Because Parker had probable cause to stop McAnulty for violating § 346.37(1)(b), the stop was permitted and the trial court properly denied the motion to suppress. Accordingly, the conviction for OWI is affirmed.

*By the Court.*—Judgment affirmed.

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



