

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**February 14, 2013**

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. 2012AP1641-CR**

**3Cir. Ct. No. 2011CT1004**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**HEATHER M. TOLLEFSON,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Dane County: JULIE GENOVESE, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.<sup>1</sup> Heather M. Tollefson appeals a judgment of conviction for operating a motor vehicle while intoxicated, second offense, and

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

an order denying her motion to suppress the evidence. On appeal, Tollefson contends that the police officer lacked probable cause to conduct a traffic stop. For the reasons explained below, we affirm.

### **BACKGROUND**

¶2 Tollefson was charged with operating a motor vehicle while intoxicated and operating a motor vehicle with a prohibited alcohol concentration, both as a second offense. Tollefson moved to suppress on the ground that the officer lacked probable cause to conduct a traffic stop.

¶3 The following facts are undisputed and taken from the suppression hearing. On July 13, 2011, Officer Dustin Fehrmann was monitoring traffic at a four-way intersection in the City of Verona. After 10:00 p.m. each night, there are flashing red signals in each direction at the intersection. The officer was parked on a bike path approximately fifty feet from the intersection and had a clear view of the intersection. Around 12:56 a.m., the officer observed a red vehicle approach the intersection, traveling northbound. A gray vehicle followed behind the red vehicle, at a distance of “approximately two to three vehicle lengths.” The officer stated that the red vehicle stopped and proceeded through the intersection. However, according to the officer, the gray vehicle followed the red vehicle through the intersection without stopping. The officer activated his lights and stopped the gray vehicle. The officer determined that the driver of the gray vehicle was Tollefson and that she was driving while intoxicated.

¶4 On cross-examination, Officer Fehrmann was questioned about his observations regarding Tollefson’s vehicle as it approached the intersection. The officer testified that Tollefson probably slowed as the red vehicle approached the intersection, but he could not recall whether Tollefson actually stopped behind the

red vehicle. The officer testified that there was a white limit line prior to the intersection and that he was not sure whether the red vehicle stopped before or after that line.

¶5 Based on the officer's testimony, the court denied the motion to suppress and determined that the officer had probable cause to believe that a traffic violation occurred. The court found as follows:

[I]t appears to me that one vehicle approached the flashing red lights, stopped, went through, and the second vehicle should have then approached the flashing lights, stopped, and then gone through. Instead the testimony was that the gray vehicle followed through without stopping at the stop sign, so I think that the police officer did have ... probable cause to pull [Tollefson] over for a traffic violation ....

Tollefson appeals.

## DISCUSSION

¶6 Tollefson argues on appeal that the evidence does not establish that the officer had probable cause to believe a traffic violation occurred. Tollefson contends that, if she stopped behind the red car, and if the red car stopped after the limit line, then no traffic violation occurred because she stopped before proceeding through the intersection. The State contends that, while inferences could be drawn from the testimony that Tollefson stopped before proceeding through the intersection, we must rely on the inference drawn by the circuit court as long as it was not clearly erroneous. According to the State, the circuit court's finding that Tollefson failed to stop for a flashing red signal was not clearly erroneous, and that, based on that finding, the officer had probable cause to believe that Tollefson committed a traffic violation.

¶7 A motion to suppress raises a question of constitutional fact that presents a mixed question of fact and law. *State v. Knapp*, 2005 WI 127, ¶19, 285 Wis. 2d 86, 700 N.W.2d 899. We review the circuit court’s findings of historical fact under the clearly erroneous standard. *State v. Johnson*, 2007 WI 32, ¶13, 299 Wis. 2d 675, 729 N.W.2d 182. When more than one reasonable inference may be drawn from the credible evidence, we must accept the inference drawn by the trier of fact. *Stevenson v. Stevenson*, 2009 WI App 29, ¶14, 316 Wis. 2d 442, 765 N.W.2d 811. We review the application of historical facts to constitutional principles as a question of law subject to de novo review. *Johnson*, 299 Wis. 2d 675, ¶13.

¶8 The Fourth Amendment of the United States Constitution protects an individual’s right to be free from unreasonable searches and seizures. U.S. CONST. amend IV. It is well established that, “[d]etaining a motorist for a routine traffic stop constitutes a ‘seizure’ and, if the seizure was illegal, then evidence obtained as a result is inadmissible.” *State v. Longcore*, 226 Wis. 2d 1, 6, 594 N.W.2d 412 (Ct. App. 1999). An officer may conduct a traffic stop when the officer has probable cause to believe that a traffic violation has occurred. *State v. Popke*, 2009 WI 37, ¶13, 317 Wis. 2d 118, 765 N.W.2d 569. Probable cause means the “‘quantum of evidence which would lead a reasonable police officer to believe’ that a traffic violation has occurred.” *Id.*, ¶14 (quoting another source). Probable cause does not require “proof beyond a reasonable doubt or even 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.* (quoting another source).

¶9 The traffic violation at issue here is provided in WIS. STAT. § 346.39(1). It states:

FLASHING RED (STOP SIGNAL). When a red lens is illuminated with rapid intermittent flashes, operators of vehicles shall stop before entering the nearest crosswalk at an intersection or at a limit line when marked, or, if none, then before entering the intersection, and the right to proceed is subject to the rules applicable after making a stop at a stop sign.

A driver approaching a flashing red signal has the same duty as one approaching a stop sign. *See Seitz v. Seitz*, 35 Wis. 2d 282, 291, 151 N.W.2d 86 (1967).<sup>2</sup> We therefore consider a driver's duties under the stop sign statute, WIS. STAT. § 346.46. That statute provides, in relevant part:

(1) Except when directed to proceed by a traffic officer or traffic control signal, every operator of a vehicle approaching an official stop sign at an intersection shall cause such vehicle to stop before entering the intersection  
....

(2) Stops required by sub. (1) shall be made in the following manner:

(a) If there is a clearly marked stop line, the operator shall stop the vehicle immediately before crossing such line.

¶10 We conclude that the circuit court's finding is supported by a reasonable inference from the credible evidence and is not clearly erroneous. The officer testified on direct-examination that Tollefson followed the red car through the intersection without stopping. The officer testified on cross-examination that he was unsure whether Tollefson stopped behind the red vehicle and where the red vehicle stopped in relation to the limit line. Having heard the testimony, the circuit court found that Tollefson followed the red vehicle through the intersection

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<sup>2</sup> This case was overruled on other grounds by *Stromsted v. St. Michael Hospital of Franciscan Sisters*, 99 Wis. 2d 136, 299 N.W.2d 226 (1980).

without stopping. Because it is not clearly erroneous, we accept the inference drawn by the circuit court.

¶11 Based on that finding, we conclude that the officer had probable cause to believe that Tollefson committed a traffic violation. Similar to a driver at a stop sign, Tollefson had an absolute duty to stop at the flashing red signal. *See Seitz*, 35 Wis. 2d at 291. Specifically, Tollefson had a duty to stop immediately before “entering the nearest crosswalk at an intersection or at a limit line when marked.” WIS. STAT. § 346.39(1). A traffic violation is committed when a vehicle slows or stops behind another vehicle and then follows that vehicle through the intersection without stopping immediately before “entering the nearest crosswalk at an intersection or at a limit line when marked.” *Id.* The circuit court determined based on credible evidence that Tollefson slowed or stopped behind the red vehicle and then followed the red vehicle through the intersection without stopping. For that reason, we conclude that the officer had probable cause to believe a traffic violation occurred. *Popke*, 317 Wis. 2d 118, ¶13. Accordingly, we affirm.

*By the Court.*—Judgment and order affirmed.

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

