

WISCONSIN SUPREME COURT
WEDNESDAY, APRIL 22, 2009
10:45 a.m.

This is a review of a decision of the Wisconsin Court of Appeals, District IV (headquartered in Madison), which reversed a Dane County Circuit Court decision, Judge Diane M. Nicks, presiding.

2008AP882-CR

[State v. Lange](#)

In this case, the state has asked the Supreme Court to review how the standards for determining probable cause should apply to an arrest for operating a motor vehicle while intoxicated.

Some background: Maple Bluff Police arrested Mitchell A. Lange for operating a motor vehicle while intoxicated, second offense, after a car crashed into a utility pole around 2:52 a.m. on Jan. 21, 2007. A police officer, who just got off work, and another officer who was on duty, each reported seeing a white car driving on the wrong side of the road. The on-duty officer visually estimated the car was travelling 15 miles per hour over the speed limit and followed the vehicle with activated overhead lights. At one point, the officer increased her speed to eighty-four miles per hour, but said she was unable to close the distance between herself and the white car. She then saw a cloud of gray smoke up ahead, and when she reached it, she saw a downed utility pole held off the ground by its wires, the white car flipped onto its roof, and Lange lying unconscious on the ground.

Lange moved to suppress the evidence obtained when his blood was drawn following his arrest, arguing police did not have probable cause to arrest him. The trial court denied Lange's motion. The Court of Appeals reversed, concluding that the facts of this case do not establish probable cause to arrest Lange for OWI, and remanded with directions to grant Lange's motion to suppress.

The state asks the Supreme Court to review whether, as a matter of law, some affirmative proof of the use of intoxicants, such as odor, admission to drinking or a found liquor bottle must be shown for probable cause.

Specifically, the state asks the Supreme Court to review the following issues:

Was there probable cause to arrest for OWI where the defendant was observed by police driving on the wrong side of a four-lane road at speeds over 80 m.p.h. in a 30 m.p.h. zone shortly after "bar time," and crashed into a utility pole causing his car to flip onto its roof and rendering him unconscious and unable to perform field sobriety tests?

To establish probable cause to arrest for OWI, must the state prove in every case specific "indicia" of intoxicant usage such as odors of intoxicants, the driver's admission to using intoxicants or the presence of intoxicant containers? Or, can probable cause be established without such indicia when the totality of the circumstances still support a reasonable inference that the driver was impaired by intoxicants?