

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 9, 2015

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. 2015AP701-CR

Cir. Ct. No. 2013CT1322

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MANUEL TALAVERA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
MICHAEL J. APRAHAMIAN, Judge. *Affirmed.*

¶1 REILLY, P.J.¹ Manuel Talavera appeals an order denying his motion to suppress evidence. He argues that when relying on a violation of WIS.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

STAT. § 346.34(1)(b) to justify a warrantless traffic stop, the State must present evidence that a defendant's failure to signal prior to turning his vehicle actually affected other traffic. We affirm as the plain language of the statute requires motorists to signal impending turns whenever "other traffic may be affected by the movement." Evidence that Talavera failed to signal prior to turning when there was a vehicle following him at a distance of two car lengths was sufficient to provide reasonable suspicion of a § 346.34(1)(b) violation.

BACKGROUND

¶2 Waukesha County Sheriff's Deputy Scott Knipfer was on patrol at 2:30 in the morning when he started following Talavera's vehicle. Knipfer's vehicle was approximately two car lengths directly behind Talavera's vehicle when Knipfer observed Talavera make a left turn without using a turn signal. Knipfer continued to follow Talavera and observed him make a right turn and then another left turn, both times without signaling. Knipfer stopped Talavera's vehicle due to his failure to signal prior to turning. Based on evidence obtained following the stop, Talavera was charged with operating a motor vehicle while intoxicated and with a prohibited alcohol concentration, both as second offenses.

¶3 Talavera moved to suppress the evidence on the basis that Knipfer did not have reasonable suspicion that a law had been violated prior to the stop. At the hearing on his motion, Talavera argued that the stop was unreasonable as the State provided no testimony that Knipfer or any other driver had been affected by his failure to signal. The court² denied the motion, and Talavera subsequently

² The Honorable Donald J. Hassin, Jr. presided over the motion hearing. The Honorable Michael J. Aprahamian signed the judgment of conviction.

pleaded guilty to second-offense operating a motor vehicle while intoxicated. Talavera appeals.

STANDARD OF REVIEW

¶4 We employ two standards in reviewing the denial of a suppression motion: the circuit court's findings of fact will be upheld unless clearly erroneous; whether those facts satisfy the constitutional standard, however, presents a question of law that we review de novo. *State v. Gaulrapp*, 207 Wis. 2d 600, 604, 558 N.W.2d 696 (Ct. App. 1996). Whether a statute has been properly interpreted and applied is a question of law that we review de novo. *Koskey v. Town of Bergen*, 2000 WI App 140, ¶4, 237 Wis. 2d 284, 614 N.W.2d 845.

DISCUSSION

¶5 Talavera argues on appeal that his stop was unconstitutional as the State did not have probable cause to detain him at the time of the stop. We note that Talavera based his argument to the circuit court on the absence of reasonable suspicion, not probable cause, and it was on that basis that his motion to suppress was denied. Issues not raised before the circuit court, even alleged constitutional errors, generally will not be considered on appeal. *State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727. Furthermore, Talavera fails to present an argument supported by legal authority for why we should not apply *State v. Houghton*, 2015 WI 79, ___ Wis. 2d ___, ___ N.W.2d ___, to his case. We normally adhere to the rule that judicial decisions are to be applied retroactively unless compelling arguments can be made for prospective application. *See State v. Thiel*, 2001 WI App 52, ¶¶7, 11, 241 Wis. 2d 439, 625 N.W.2d 321. Accordingly, we consider the stop under the reasonable suspicion standard.

¶6 Our supreme court recently held that “reasonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops.” *Houghton*, 2015 WI 79, ¶30. A law enforcement officer’s reasonable suspicion that an individual has violated the law must be “grounded in specific articulable facts and reasonable inferences from those facts.” *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (citation omitted). This employs a common sense inquiry “under all of the facts and circumstances present, [as to] what would a reasonable police officer reasonably suspect in light of his or her training and experience.” *Id.* (citation omitted).

¶7 Talavera argues that the court erred in denying his suppression motion as the State did not present evidence that he violated WIS. STAT. § 346.34(1)(b) by failing to signal prior to turning his vehicle. According to Talavera, in order for there to be a violation of that statute, another vehicle must be affected by his failure to signal and the evidence must show this effect, such as through sudden braking or swerving to avoid a collision. We disagree. By its plain language, § 346.34(1)(b) requires a motorist to use a turn signal when “any other traffic *may be* affected by the movement.” (Emphasis added.) An actual effect on other traffic by the motorist’s movement is not required.

¶8 Talavera’s reliance on *State v. Anagnos*, 2011 WI App 118, 337 Wis. 2d 57, 805 N.W.2d 722, *reversed on other grounds*, 2012 WI 64, 341 Wis. 2d 576, 815 N.W.2d 675, is misplaced. In *Anagnos*, we held that the defendant could not be stopped for a violation of WIS. STAT. § 346.34(1)(b) for making a left turn without signaling when the only other vehicle in the vicinity was the deputy’s vehicle in the far right-hand turn lane. *Anagnos*, 337 Wis. 2d 57, ¶9. Not only was the deputy not affected by the defendant’s left turn in *Anagnos*,

but because of the location of his vehicle, there was no possibility that the deputy could have been affected. *See id.*

¶9 In contrast, Knipfer testified at the suppression hearing that he was about two car lengths directly behind Talavera when he followed him through three turns that Talavera failed to signal ahead of time. It is reasonable to infer that a vehicle traveling two car lengths behind another may be affected when the lead car makes a turn, and therefore it was reasonable for Knipfer to suspect that Talavera violated WIS. STAT. § 346.34(1)(b) by failing to signal his impending turns. There was reasonable suspicion for the stop.

By the Court.—Judgment affirmed.

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

