

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 25, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 99-3073

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

CITY OF MADISON,

PLAINTIFF-RESPONDENT,

V.

WADE A. CATTELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: C. WILLIAM FOUST, Judge. *Affirmed.*

¶1 VERGERONT, J.¹ Wade Cattell appeals a judgment of conviction for operating a motor vehicle under the influence of an intoxicant contrary to MADISON GENERAL ORDINANCES § 12.64(1)(a) adopting WIS. STAT.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1997-98).

§ 346.63(1)(a) (1997-98).² He contends the trial court erred in determining that he was lawfully stopped by a police officer, and therefore the evidence obtained as a result of that stop should have been suppressed. We affirm the trial court's ruling.

¶2 The facts concerning the traffic stop are undisputed and were presented to the court through the testimony of Officer Melissa Schiferl of the City of Madison Police Department. She was on duty at 2:00 a.m. traveling eastbound on East Washington Avenue in the City of Madison in a marked patrol car, driving in the center lane of the three eastbound lanes. She noticed a vehicle, which she later learned was driven by Cattell, traveling in the right eastbound lane. When she first saw the vehicle, it was three to four vehicle lengths ahead of her.

¶3 Officer Schiferl observed the vehicle drift to the left so that the tires went over the white painted lines; then it drifted back into the right lane of traffic. Officer Schiferl did not see a turn signal at that time. When her squad car was approximately one vehicle length behind, she again saw the vehicle drift to the left into the center lane of traffic. When the vehicle was approximately halfway into the center lane of traffic, Officer Schiferl saw the left turn signal turn on. She did not consider this to be a safe lane change because of her proximity to the vehicle.

¶4 Officer Schiferl continued following the vehicle as it signaled to make a left turn onto Stoughton Road, then signaled to make a right lane change into the right northbound lane of traffic on Stoughton Road. When the vehicle signaled to make a right turn into the PDQ, Officer Schiferl activated her emergency lights and followed the vehicle into the lot. It was Schiferl's opinion that Cattell committed a traffic violation when he deviated halfway into the center

² All references to the Wisconsin Statutes are to the 1997-98 version.

lane before signaling, given that her squad car was only one vehicle length behind his car.

¶5 The trial court determined that Officer Schiferl had a lawful basis on which to stop Cattell because he violated WIS. STAT. § 346.34(1)(a)3 and (b).

¶6 To execute a valid investigatory stop consistent with the Fourth Amendment prohibition against unreasonable searches and seizures, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. *See State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). An investigatory stop is permissible when the person's conduct may constitute only a forfeiture. *See State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991); *see also State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996) (traffic stop is constitutionally permissible if officer has grounds to reasonably suspect traffic violation has been or will be committed). In assessing whether there exists reasonable suspicion for a particular stop, we must consider all the specific and articulable facts, taken together with the rational inferences from those facts. *State v. Dunn*, 158 Wis. 2d 138, 146, 462 N.W.2d 538 (Ct. App. 1990). Whether the facts meet the constitutional standard is a question of law, which this court reviews de novo. *See Krier*, 165 Wis. 2d at 676. We also review de novo questions of statutory construction, when, as here, the facts are undisputed. *See State v. Lenz*, 230 Wis. 2d 529, 533, 602 N.W.2d 173 (Ct. App. 1999), *review denied*, 2000 WI 2, 607 N.W.2d 292.

¶7 WISCONSIN STAT. § 346.34(1) provides:

**Turning movements and required signals on turning
and stopping.** (1) TURNING. (a) No person may:

1. Turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in s. 346.31.

2. Turn a vehicle to enter a private road or driveway unless the vehicle is in proper position on the roadway as required in s. 346.32.

3. Turn a vehicle from a direct course or move right or left upon a roadway unless and until such movement can be made with reasonable safety.

(b) In the event any other traffic may be affected by such movement, no person may so turn any vehicle without giving an appropriate signal in the manner provided in s. 346.35. When given by the operator of a vehicle other than a bicycle, such signal shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The operator of a bicycle shall give such signal continuously during not less than the last 50 feet traveled before turning. A signal by the hand and arm need not be given continuously if the hand is needed in the control or operation of the bicycle.

¶8 Cattell contends there was no violation of para. (a) because he made the lane change with reasonable safety and there is no additional requirement that a turn signal be used when making a lane change. Alternatively, Cattell argues that even if the statute does require the use of a turn signal when changing lanes, para. (b) requires the use of a turn signal only when other traffic may be affected, and no other traffic was affected in this case.

¶9 We disagree with Cattell's first proposed construction of the statute. It is true that WIS. STAT. § 346.34(a)3 requires only that movement of a vehicle right or left on a roadway must be made with reasonable safety. However, para. (b) imposes the additional requirement that "[i]n the event any other traffic may be

affected by such movement, no person may so turn any vehicle without giving an appropriate signal in the manner provided in s. 346.35.” Therefore, the stop was lawful if the officer had a reasonable basis for suspecting that Cattell was changing lanes either without reasonable safety or without using his turn signal if other traffic might be affected by the movement. We agree with the trial court’s analysis. A reasonable officer could conclude that, since the squad car was only one vehicle length behind Cattell’s vehicle when he made the lane change, other traffic might be affected by the movement; a reasonable officer could also conclude that signaling only after going halfway into the center lane does not comply with the requirements of § 346.34(b).

By the Court.—Judgment affirmed.

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

