

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 22, 2010

David R. Schanker
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. 2009AP2096-CR

Cir. Ct. No. 2009CT38

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

ALAN D. PINTAR,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Jefferson County:
WILLIAM F. HUE, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Alan Pintar appeals his judgment of conviction for operating a motor vehicle with a prohibited alcohol concentration,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.21(2)(d) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

second offense, on a plea of no contest following the court's order denying his motion to suppress evidence. The court denied Pintar's suppression motion, concluding that there was reasonable suspicion to believe that Pintar was operating his motor vehicle while intoxicated. Pintar argues that the court erred in concluding that reasonable suspicion existed to justify the stop. We conclude that the circuit court correctly denied the motion to suppress evidence, but on grounds other than those on which the court relied. We conclude that because probable cause existed to believe that Pintar violated WIS. STAT. § 346.13(1) of the traffic code by unsafely deviating from his lane of travel, the stop was reasonable. We therefore affirm.

BACKGROUND

¶2 The following facts are taken from the hearing on Pintar's suppression motion. On December 4, 2008, around 8:50 p.m., Wisconsin State Patrol Trooper Nathan Henriksen was driving eastbound on Interstate 94 towards its intersection with Highway 67. At about Mile Post 275 on Interstate 94, he observed two vehicles approximately four car lengths ahead of his own: a pickup truck in the right lane, and a passenger car in the left lane. The car was close to overtaking the truck. When the car was within approximately ten feet of the truck, the truck moved across the center skip line separating the two lanes and into the left lane. The car's brake lights came on and the car moved out of the way as the truck crossed into the car's lane of travel. The trooper activated his squad video recording system and followed the truck.

¶3 As the trooper followed the truck over the course of five miles in roughly five minutes, it weaved within its lane, slowly drifting from fog line to center skip line and back. On at least two occasions, it crossed the fog line and

then came back across the lane and made contact with the center skip line. On one occasion it crossed over the center skip line while it was driving through a curve. The truck's speed was somewhat inconsistent, varying between sixty and seventy miles per hour. The trooper waited for a safe location to pull it over, ultimately turning on his emergency lights and siren and stopping the truck near Mile Post 280 on Interstate 94. The driver was subsequently identified as Alan Pintar. He was later arrested for operating a motor vehicle while intoxicated and operating a motor vehicle with a prohibited alcohol concentration.

¶4 Pintar filed a motion to suppress evidence alleging that the stop was unlawful for lack of reasonable suspicion and probable cause. Following an evidentiary hearing, the trial court determined that the events captured by the squad video recording system, taken alone, did not give rise to reasonable suspicion to stop Pintar for operating while intoxicated. But the trial court concluded that the totality of the circumstances, including the incident that initially drew the trooper's attention, gave rise to reasonable suspicion to stop. The trial court denied the motion and Pintar was ultimately found guilty of operating a motor vehicle with a prohibited alcohol concentration, second offense. This appeal follows.

DISCUSSION

¶5 Pintar contends that Trooper Henriksen lacked reasonable suspicion to stop him, and, in the alternative, that any reasonable suspicion that may have existed at the time the trooper initially observed his truck dissipated over the course of the next five minutes. Whether an officer has reasonable suspicion or probable cause to stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. We review the trial court's

findings of historical fact under the deferential clearly erroneous standard, but review de novo the application of those facts to constitutional principles. *Id.*

¶6 A traffic stop is a seizure within the meaning of the Fourth Amendment. *Id.*, ¶11. Both the United States Constitution and the Wisconsin Constitution prohibit unreasonable searches and seizures. U.S. CONST. amend. IV; WIS. CONST. art. 1, § 11. In order for a traffic stop to be a reasonable seizure, it must be based on either probable cause or reasonable suspicion. *Popke*, 317 Wis. 2d 118, ¶11; *see also State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634.

¶7 Pintar contends the circuit court erred in concluding that the trooper had reasonable suspicion to initiate a traffic stop because the driving that initially drew the trooper's attention was clearly anomalous when viewed in light of the trooper's observations over the following five miles. Pintar argues that any reasonable suspicion that may have existed when the trooper turned on his squad video recording system dissipated when further observation failed to reveal any other suspicious driving. Pintar suggests that weaving within a lane, crossing the fog line, crossing the center skip line once, and fluctuations in speed are not suspicious when observed over the course of five miles and are in fact commonplace.

¶8 The State argues that the trooper had reasonable suspicion to stop Pintar for violating WIS. STAT. § 346.13(1) based on Pintar's vehicle crossing the center skip line the first time. The State also contends that the stop was reasonable because the trooper had reasonable suspicion to believe that Pintar was operating his motor vehicle while intoxicated. Because we conclude that the trooper had

probable cause to believe that Pintar was in violation of § 346.13(1) for crossing the center skip line, we conclude that the stop was reasonable.²

¶9 WISCONSIN STAT. § 346.13(1) provides that “[t]he operator of a vehicle shall drive as nearly as practicable entirely within a single lane and shall not deviate from the traffic lane in which the operator is driving without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear.”

¶10 At the evidentiary hearing, the trooper gave uncontested testimony that Pintar’s truck moved across the center skip line into the lane of a car that was approaching from the rear, causing the car to activate its brake lights and move out of the way. This conduct gave the trooper probable cause to believe a violation of WIS. STAT. § 346.13(1) occurred, providing reasonable grounds for a stop.

¶11 Pintar suggests that there is some confusion surrounding the basis for the stop. The fact that the apparent violation of WIS. STAT. § 346.13(1) may not have been the trooper’s subjective reason for the stop³ does not render the stop unlawful. In general, Wisconsin has adopted an objective approach to Fourth Amendment questions. *State v. Kramer*, 2008 WI App 62, ¶33, 311 Wis. 2d 468,

² Because we conclude that the officer had probable cause to believe that Pintar committed a traffic violation, and thus the stop was reasonable, we need not address the argument that the stop was supported by a reasonable suspicion to believe that Pintar was operating his vehicle while intoxicated. *See State v. Robert K.*, 2005 WI 152, ¶4 n. 6, 286 Wis. 2d 143, 706 N.W.2d 257 (an appellate court may affirm on a different ground than that relied on by the circuit court).

³ The trooper testified at the hearing on the motion to suppress that he was initially concerned for Pintar’s welfare after observing Pintar drive across the center skip line, and that he did not believe at that time that there was a traffic violation.

750 N.W.2d 941, *aff'd*, 2009 WI 14, 315 Wis. 2d 414, 759 N.W.2d 598. The subjective reasons for an intrusion upon one's personal liberty does not determine the legality of the intrusion. *See State v. Sykes*, 2005 WI 48, ¶¶29-31, 279 Wis. 2d 742, 695 N.W.2d 277 (officer's subjective intent not relevant to whether there was probable cause to arrest); *State v. Repenshek*, 2004 WI App 229, ¶10, 277 Wis. 2d 780, 691 N.W.2d 369 ("[T]he legality of an arrest does not depend on the subjective motivation of the arresting officer."). Whether a legal basis exists for a stop is an objective inquiry focused on the facts known to the officer at the time. As long as the objective facts constitute reasonable suspicion or probable cause to believe that a violation has been committed, the stop is lawful no matter whether the officer's subjective reason for the intrusion was reasonable. Here, Pintar's conduct gave the trooper objective facts supporting a probable cause to believe that a violation of § 346.13(1) occurred, and thus the stop was reasonable.

By the Court.—Judgment affirmed.

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

