

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

JANUARY 14, 1997

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

No. 96-2548

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

COUNTY OF BUFFALO,

Plaintiff-Respondent,

v.

THOMAS P. SCHAEFER,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Buffalo County:
ROBERT W. WING, Judge. *Affirmed.*

CANE, P.J. Thomas Schaefer appeals his conviction for operating a motor vehicle while intoxicated. The sole issue on appeal is whether the arresting police officer had a reasonable basis to stop Schaefer's car before obtaining evidence of his intoxication. Because this court agrees that the arresting officer had a reasonable basis to make an investigative stop, the conviction is affirmed.

The facts are undisputed. While traveling northbound on Highway 35 in Buffalo County, officer Wayne Boese observed Schaefer's vehicle traveling southbound on the highway at approximately thirty miles per hour and then abruptly make a U-turn. Boese described Schaefer's turn as a fast U-

turn, commonly known as “spinning a donut” or a “louie.” He stated that Schaefer’s vehicle in making the U-turn went back over into the southbound lane while traveling northbound and then continued back into the northbound lane. He also testified that Schaefer did not stop to observe oncoming traffic before making the U-turn. Finally, Boese stated that he stopped Schaefer because of the vehicle’s fast turn and going over into the oncoming traffic’s lane while making the turn. After stopping Schaefer, the officer gathered evidence leading to the arrest for OWI. Schaefer challenges only the basis for the stop leading to the arrest for OWI.

The issue of whether a set of particular facts meet the constitutional requirement of reasonableness for a stop by a police officer is a question of law, which this court reviews de novo. *State v. Griffin*, 183 Wis.2d 327, 331, 515 N.W.2d 535, 537 (Ct. App. 1994). In *State v. Krier*, 165 Wis.2d 673, 677, 478 N.W.2d 63, 65 (Ct. App. 1991), we held that when a person’s activity can constitute either a civil forfeiture or a crime, a police officer may validly perform an investigative stop pursuant to § 968.24, STATS.

Here, Schaefer argues that the officer did not have reasonable grounds to believe Schaefer had violated a traffic regulation and, therefore, the evidence gathered as a result of the illegal stop must be suppressed. He reasons that the officer admitted that it was not illegal to make a U-turn on that particular part of the highway and the officer was unable to articulate any traffic violation by Schaefer when he decided to make the stop. The trial court rejected his argument as does this court.

The trial court found that the officer had observed Schaefer driving on the highway at thirty miles per hour, hitting his brakes and whipping the car around and then crossing the centerline into the oncoming traffic’s lane and then back into the northbound lane. The trial court concluded that the only reason Schaefer crossed the centerline was because he lost control of his car.

The County cites § 346.05, STATS., requiring the driver to operate his vehicle on the right half of the roadway and § 346.57(2), requiring the person to not

drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a vehicle should be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and using due care.

Additionally, the County cites § 346.62(2), which states that “No person may endanger the safety of any person or property by the negligent operation of a vehicle.”

The trial court accepted the officer’s testimony and, based on these facts, this court is satisfied that the officer had a reasonable basis to believe Schaefer had committed a traffic offense when crossing into the oncoming traffic lane and failing to keep his vehicle under control. Because the officer had a reasonable basis for the stop, the trial court correctly denied Schaefer’s motion to suppress the evidence supporting his conviction for OWI. Therefore, the judgment of conviction is affirmed.

By the Court. – Judgment affirmed.

This opinion will not be published. RULE 809.23(1)(b)4, STATS.