

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 17, 2003

Cornelia G. Clark
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. 03-0596-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01CT000343

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

FRANK JUDE STEFFES,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: DALE L. ENGLISH, Judge. *Affirmed.*

¶1 ANDERSON, P.J.¹ Frank Jude Steffes presents the question of when the failure to signal a turn will rise to the level of reasonable suspicion to justify an investigatory traffic stop. We answer that question by concluding that

¹ This is a one-judge appeal pursuant to WIS. STAT. § 752.31(2)(b) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

an investigatory stop is justified if a reasonable officer could conclude that the failure to signal a turn deprived other drivers of a warning of the change of direction or the time needed to safely react to the change of direction. Therefore, we affirm Steffes' conviction for operating a motor vehicle while under the influence, second offense, WIS. STAT. § 346.63(1)(a).

¶2 After being charged with operating a motor vehicle while under the influence, second offense, WIS. STAT. § 346.63(1)(a), and operating with a prohibited blood alcohol concentration, second offense, § 346.63(1)(b), Steffes brought a motion to suppress any evidence derived from an investigatory stop. Steffes contended that because the arresting officer did not corroborate information supplied by an anonymous tipster and otherwise lacked reasonable suspicion to initiate a traffic stop, the officer acted capriciously in initiating an investigatory stop. While the circuit court agreed with Steffes that the anonymous tip did not provide justification for an investigatory stop, it denied Steffes' motion, reasoning that his failure to properly signal three turns that affected other traffic was a violation of WIS. STAT. § 346.34, and constituted reasonable suspicion to support an investigatory stop. Steffes subsequently entered a plea to operating a motor vehicle while under the influence, second offense, and brought this appeal.

¶3 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. *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. *State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991); *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. *Krier*, 165 Wis. 2d at 676. We also review de novo questions of statutory construction when, as here, the facts are undisputed. *State v. Lenz*, 230 Wis. 2d 529, 533, 602 N.W.2d 173 (Ct. App. 1999). While our review is de novo, we value the opinion of the trial court, particularly where, as here, the court has provided a thorough and well-reasoned decision. See *Scheunemann v. City of West Bend*, 179 Wis. 2d 469, 475-76, 507 N.W.2d 163, 165 (Ct. App. 1993).

¶4 Sheriff's Deputy Ryan Murphy testified that at 5:18 p.m. on June 18, 2001, he was on routine patrol when he received a radio call from a dispatcher. The dispatcher told Murphy that an anonymous person had called the sheriff's department from the Roadhouse Tavern in Dundee and reported that a possible drunk driver had just left the tavern. The tipster provided a description of the car and the license plate number as well as the fact that it was traveling northbound on Vista Road. The dispatcher also commented that the sound of squealing tires was heard while the tipster was on the phone. Acting on this information, the deputy went to Vista Road and traveled southbound where he saw the vehicle described by the dispatcher. Murphy confirmed the vehicle matched the color and description given him and had the same license plate number. Steffes was ultimately identified as the driver of the vehicle.

¶5 The deputy turned around to follow Steffes and caught up with him as he was slowing for the stop sign at Vista Road and Highway B. Vista Road

ends when it intersects with Highway B; a vehicle on Vista Road must turn either right or left onto Highway B. Murphy saw Steffes come to a complete stop and then turn right without signaling the turn. As the deputy approached the same intersection and began to turn right, he saw two vehicles on Highway B approaching from his left. Murphy turned right onto Highway B and was immediately behind Steffes when he made a left-hand turn onto Armstrong Road. At that time, the deputy decided to stop Steffes and activated his emergency lights. On Armstrong Road, the deputy turned on his siren because Steffes was not stopping. Steffes then made another left-hand turn onto Church Road without a signal and he ultimately stopped in a driveway.

¶6 WISCONSIN STAT. § 346.34(1) governs signaling turns or movement on the highway:

346.34 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 or electric personal assistive mobility device, 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 or electric personal assistive mobility device 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 or electric personal assistive mobility device. (Emphasis added.)

¶7 Steffes latches on to the emphasized portion of the statute and argues that the State failed to present any evidence that any traffic was affected by his failure to signal the three turns that he made.

The way in which Wis. Stat. § 346.34 is written, an officer could not detain a person for failing to use a turn signal without alleging more than just the absence of the signal. Contrary to what is probably the common belief among the public, one need not use one's turn signal 100% of the time one is executing a lane change or turn. The signaling statute merely requires the use of a signal when "other traffic may be affected by such movement...."

He contends that only Murphy was behind him and did not testify that he was affected by Steffes' turning without signaling.

¶8 In his brief, he misrepresents the record when he asserts that at the intersection of Vista Road and Highway B he "waited for these vehicles [the two approaching from the left on Highway B] to pass, and after they did he executed his right turn." The record conclusively demonstrates that the two vehicles were on Highway B approaching the intersection with Vista Road when Steffes made the right-hand turn without signaling and that these two vehicles were behind Murphy and Steffes when Steffes made the first of his two left-hand turns without signaling. Therefore, the question is whether his failure to signal two turns affected the three vehicles that were in close proximity to him.

¶9 For reasons this court cannot discern, the legislature has seen fit not to be specific as to the duty of a driver to use his or her turn signal, choosing instead the ambiguous requirement that signals are to be used if movement might affect any other traffic. Fortunately, we are not required to engage in statutory

construction because the Wisconsin Supreme Court has defined the duty of a driver to use his or her turn signals. A driver preceding another has the duty to use the roadway in the usual manner with proper regard for all others using the road. *Burlison v. Janssen*, 30 Wis. 2d 495, 502, 141 N.W.2d 274 (1966).

¶10 In *Pedek v. Wegemann*, 275 Wis. 57, 61, 81 N.W.2d 49 (1957), the supreme court put the duty on the driver to be aware of his or her surroundings, including vehicles that might be following, before deciding whether to make a turn with or without a proper signal.

The operator of a motor vehicle should not be relieved from the statutory duty to signal a left turn if he should have been apprised of the approach of a vehicle from his rear by exercise of either the sense of sight or sound.²

² The Wisconsin Department of Transportation has incorporated these duties imposed by the courts in the WISCONSIN MOTORISTS' HANDBOOK, p. 36, which also explains how unsignaled turns may affect other traffic. <http://www.dot.Wisconsin.gov/drivers/docs/e-handbook.pdf>. (Last visited on August 25, 2003.)

Generally other drivers expect you to keep doing what you are doing. You must warn them when you are going to change direction or slow down. This will give them time to react if needed, or at least, to not be surprised by what you do.

Signal when you change direction—Signaling gives other drivers time to react to your moves. You should use your turn signals before you change lanes, turn right or left, merge into traffic or park.

- Get into the habit of signaling every time you change direction. This includes signaling before beginning to pass another vehicle, and before completing the pass. Signal even when you do not see anyone else around. It is easy to miss someone who needs to know what you are doing.
- Signal 100 feet before your intended turn. In most cases, that should be about three seconds before you make your move.

(continued)

¶11 The record in this case supports the reasonable inference that Steffes should have been aware that when he made his right-hand turn at the intersection of Vista Road and Highway B, Murphy was behind him on Vista Road, in a marked squad car, and two vehicles were approaching from his left on Highway B. It is also a reasonable inference that after turning northbound onto Highway B, Steffes should have been aware that there were three cars immediately behind him before he made an unsignaled left-hand turn onto Armstrong Road. Because Steffes' sense of sight should have alerted him to the presence of other traffic, *Pedek* makes it clear that he had a duty to signal his turns to give the other traffic "time to react if needed, or at least, to not be surprised." WISCONSIN MOTORISTS' HANDBOOK, p. 36; <http://www.dot.Wisconsin.gov/drivers/docs/e-handbook.pdf>. (Last visited on August 25, 2003.)

¶12 We are satisfied that a reasonable officer could conclude that other traffic was affected by Steffes' unsignaled turns because it deprived the other drivers of a warning of Steffes' change of direction and deprived them of the time that they may have needed for reaction to those moves.³

The WISCONSIN MOTORISTS' HANDBOOK has been prepared by the DOT pursuant to its duty to administer and enforce the laws relating to the licensing of drivers. *Sullivan v. Waukesha County*, 218 Wis. 2d 458, 472, 578 N.W.2d 596 (1998).

³ The Clerk of the Court of Appeals has brought to this court's attention a disturbing trend in appeals brought by Attorney Christopher A. Mutschler. In 2002 and 2003, of the seventeen appeals in which Attorney Mutschler has been the counsel of record, fifteen have required the issuance of a delinquency notice when the appellant's brief was not timely filed. *County of Green Lake v. John F. Lindemann*, No. 02-0080; *State v. Shawn A. Timm*, No. 02-0162-CR; *State v. Christopher E. Maas*, No. 02-0258-CR; *State v. Howard S. Cleaves*, No. 02-0487-CR; *State v. John M. Seth*, 02-0863-CR; *City of Fond du Lac v. Wendy A. Compton*, No. 02-1254-FT; *State v. Richard L. Verkler*, No. 02-1545; *State v. Lee R. Polacheck*, No. 02-1576-CR; *State v. Wade J. Rex*, No. 02-1946-CR; *City of Ripon v. Bruce M. Briskie*, No. 02-2991; *City of Fond du Lac v. John Binotto*, No. 02-3058-FT; *State v. Timothy L. Kostechka*, No. 02-3326-CR; *State v. Kevin M. Klotz*, No. 02-3358-CR; *County of Green Lake v. Clinton L. Duhm*, No. 03-0112; and *State v. Clinton L. Duhm*, No. 03-0232-CR.

(continued)

By the Court.—Judgment affirmed.

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

The Court of Appeals is a high-volume, error-correcting court and its efficient operation is dependent upon counsel's adherence to the Rules of Appellate Procedure, including all filing deadlines. The sending of a delinquency notice is a courtesy to counsel and the extension of any deadline is an exception rather than a routine practice. Counsel would do well to re-evaluate his workload and office procedures and immediately implement changes that will insure he meets all filing deadlines. Counsel is strongly cautioned that the continued failure to timely file his briefs will result in sanctions. *State v. Smythe*, 225 Wis. 2d 456, 464, 592 N.W.2d 628 (1999) (The supreme court will "support sanctions directed personally at those attorneys whose slipshod practices abuse the system, create unnecessary work, and delay speedy justice for others.").

