

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 14, 2007

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. 2007AP824-CR

Cir. Ct. No. 2006CT1481

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DOUGLAS E. BOYD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Brown County:
MARK A. WARPINSKI, Judge. *Affirmed.*

¶1 BRUNNER, J.¹ Douglas Boyd appeals a judgment of conviction for operating a motor vehicle while intoxicated, third offense. Boyd argues the circuit

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

court erred when it denied his motion to suppress because the court erroneously excluded evidence that would have shown the arresting officer lacked reasonable suspicion to make a traffic stop. We disagree and affirm the judgment.

BACKGROUND

¶2 Boyd received a citation for operating while intoxicated on August 4, 2006. He was stopped at approximately 2:30 a.m. by officer Jay Atlas for operating his vehicle without headlamps. Boyd filed a motion to suppress any evidence derived from the stop, alleging Atlas did not have a reasonable suspicion to stop and seize him. In support of the motion, Boyd attached affidavits from Jennah Guyette and Sandi Kemp. Kemp owned the vehicle Boyd drove at the time of the stop. Guyette, a friend of Kemp's who drove the vehicle daily, was familiar with the operation of the vehicle's lights. The affidavits stated that the vehicle's headlights could not be turned off while it was running. Guyette's affidavit further stated that the lights worked normally "up to August 4, 2006 and since that date." Boyd also attached an excerpt of the owner's manual to explain the vehicle's daytime running lamp system. According to the manual, the lights were designed to come on at reduced brightness when the engine is running and the parking brake is off. Additionally, the lights were designed to come on at full brightness when the engine is running, the parking brake is off, and the light sensor indicates it is dark outside.

¶3 At the suppression hearing, Atlas testified he saw a vehicle driving "without its exterior lights in operation." He further clarified that the vehicle did not have any fog lamps or any other lights on in the front. He stated that when he first saw the vehicle it was about seventy-five feet away, but that he passed the vehicle and turned his head to see if the vehicle had rear lights. Atlas stated the

rear lights were not illuminated. He made a U-turn and pulled behind the vehicle. Atlas then activated his emergency lights and observed the vehicle begin to “swerve in its lane.”

¶4 Kemp testified the exterior lights of the vehicle turn on automatically when it is started. She also testified that the lights functioned normally both before and after the incident and that the lights were on the night in question. However, on cross-examination she conceded that she did not walk around outside the vehicle to check if the lights were on. The court did not allow the admission of the owner’s manual to corroborate Kemp’s testimony, concluding the manual was hearsay. Guyette also testified that the lights of the vehicle came on automatically when it was turned on.

¶5 The court found Atlas’s testimony more credible on whether the lights were on and thus denied the motion. The court also stated that Boyd’s weaving in his own lane gave Atlas “a second legitimate purpose” to stop Boyd.

DISCUSSION

¶6 When reviewing a circuit court’s denial of a motion to suppress, we uphold the circuit court’s findings of fact unless they are clearly erroneous. *See State v. Waldner*, 206 Wis. 2d 51, 54, 556 N.W.2d 681 (1996). However, whether those facts satisfy the constitutional requirement of reasonableness is a question of law we review without deference. *Id.*

¶7 The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. In order to make a constitutionally permissible investigative stop, the officer must have reasonable suspicion that the driver or occupants of the vehicle committed an offense. *State v. Rutzinski*, 2001

WI 22, ¶14, 241 Wis. 2d 729, 623 N.W.2d 516. Reasonable suspicion depends on whether an officer's suspicion is grounded in "specific, articulable facts and reasonable inferences from those facts" indicating the individual committed a crime. *Waldner*, 206 Wis. 2d at 56. When conflicting reasonable inferences may be drawn from the evidence, it is the circuit court's function to determine witness credibility. *See Cogswell v. Robertshaw Controls Co.*, 87 Wis. 2d 243, 250, 274 N.W.2d 647 (1979).

¶8 In this case, Atlas stated he decided to stop Boyd after observing him operate his vehicle with no headlamps at 2:30 a.m. WISCONSIN STAT. § 347.12 requires drivers to use headlamps "during hours of darkness." In addition to Atlas's testimony, the court heard testimony from Kemp who owned the vehicle and was a passenger at the time of the stop. Kemp testified the lights were on. Kemp also admitted that she had been drinking that evening. After listening to all of the testimony, the court found Atlas's testimony that the lights were not on more credible.

¶9 Boyd argues the circuit court erred by not admitting the owner's manual as evidence to corroborate Kemp's testimony. We need not address whether the court's ruling was in error because any potential error is harmless. An error is harmless if there is no "reasonable possibility that the error contributed to the outcome of the action or proceeding at issue." *Martindale v. Ripp*, 2001 WI 113, ¶32, 246 Wis. 2d 67, 629 N.W.2d 698.

¶10 The only information the owner's manual could have provided is whether the vehicle's lights were designed to come on automatically. The manual could not have informed the court as to whether the vehicle's lights were actually on at the time in question. There could have been a malfunction with the vehicle's

light system. Kemp and Guyette both testified as to how the vehicle was designed to work. The court did not express any disbelief with their testimony in that regard. Rather, the circuit court indicated it did not believe Kemp that the lights were on at the time in question. The court properly weighed the witnesses' credibility and we see no erroneous exercise of discretion.

¶11 Therefore, because the circuit court believed Atlas's account that the lights were not activated, he had reasonable suspicion to stop Boyd for violating WIS. STAT. § 347.12. We need not address the alternative argument that Atlas also had reasonable suspicion to stop Boyd due to his swerving, as cases should be decided on the narrowest grounds. *See State v. Blalock*, 150 Wis. 2d 688, 703, 442 N.W. 2d 514 (Ct. App. 1989).

By the Court.—Judgment affirmed.

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

