

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 11, 2009

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. 2009AP722-CR

Cir. Ct. No. 2008CT919

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

THOMAS E. ASUNTO,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:

LEE S. DREYFUS, JR., Judge. *Affirmed.*

¶1 SNYDER, J.¹ Thomas E. Asunto appeals from a judgment that followed his guilty plea to a charge of operating a motor vehicle while intoxicated, third offense, contrary to WIS. STAT. § 346.63(1)(a). Asunto contends that the circuit court erred when it denied his motion to suppress evidence obtained during an investigatory traffic stop. He contends that the stop was not based on reasonable suspicion and, therefore, violated his constitutional right to be free from unreasonable search and seizure. We disagree and affirm the judgment.

BACKGROUND

¶2 On April 19, 2008, City of Pewaukee Police Officer William Becker observed a vehicle traveling westbound on County Highway SS in Pewaukee. He saw the vehicle swerve within its own lane and cross the fog line once. Becker saw what appeared to be a defective rear license plate lamp. At this point, Becker pulled over to the side of the road on an angle to check whether the license plate light was operational. He determined that it was not. Becker began to pull back onto the road; however, he needed to wait until an oncoming car passed. The passing car was that of Sergeant Sneider of the City of Pewaukee Police Department.

¶3 After allowing Sneider to pass, Becker pulled out from the side of the road to initiate a traffic stop. Becker activated his emergency lights and Sneider then turned on her lights as well. Asunto pulled to the side of the road. Sneider then pulled in behind Asunto and Becker pulled in behind Sneider. It

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

appears that, prior to this stop, there was no communication between Becker, Sneider, or dispatch regarding the reasons for the traffic stop.

¶4 After the vehicles were stopped, Becker spoke to Sneider about his observations. Becker then approached Asunto's vehicle and issued a citation for a defective license plate lamp. Further investigation, which apparently led to an OWI arrest, is not part of the record and is not relevant to the issue on appeal. Asunto moved for suppression on grounds that the traffic stop was performed by Sneider, who had made no personal observations to justify the stop. He also offered the testimony of his wife to demonstrate that the license plate lamp had been operational on the night of his arrest. The court denied Asunto's motion and Asunto appeals.

DISCUSSION

¶5 When we review a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). Whether those facts satisfy the constitutional requirement of reasonableness is a question of law, which we review de novo. *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

¶6 The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution guarantee citizens to be free from unreasonable searches and seizures. *State v. Richardson*, 156 Wis. 2d 128, 137, 456 N.W.2d 830 (1990). When a person is stopped, the police officer must have a reasonable suspicion of a violation of the law. *State v. Waldner*, 206 Wis. 2d 51, 55, 556 N.W.2d 681 (1996). An officer needs to be able to show specific and articulable facts that, when taken together with reasonable inferences, warrants the

stop of the vehicle. *Young*, 212 Wis. 2d at 423-24. In order for an investigative stop to be warranted, it is required that a law enforcement officer reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. *State v. Limon*, 2008 WI App 77, ¶14, 312 Wis. 2d 174, 751 N.W.2d 877, *review denied*, 2008 WI 122, 314 Wis. 2d 71, 758 N.W.2d 91 (WI Jul. 28, 2008) (No. 2007AP1578-CR).

Collective Knowledge

¶7 Asunto first argues that there was no reasonable suspicion to support the investigatory traffic stop because Sneider, the officer whose squad car was closest to Asunto's when the stop was made, could not have known the reason for the stop. He contends that for the stop to be legal, Sneider would have to have shared "collective knowledge" with Becker regarding the reason for the stop. Asunto acknowledges that an officer may rely on all of the collective information known to the police department, *see State v. Mabra*, 61 Wis. 2d 613, 625, 213 N.W.2d 545 (1974), but argues that the doctrine of collective knowledge cannot apply because Sneider received no communication from Becker prior to initiating the traffic stop. Asunto correctly points out that Becker never relayed his observations or suspicions about Asunto to dispatch or to Sneider.

¶8 The question presented by Asunto is too narrow. His approach requires us to ignore the fact that Becker, who did make personal observations leading to the stop, also (1) made the stop contemporaneously with Sneider; (2) turned on his emergency lights and, in doing so, prompted Sneider to activate hers; and (3) informed Sneider about the reasons for the stop before going forward with the investigation. Becker articulated specific reasons for the stop. He saw Asunto swerve within his lane, cross the fog line, and fail to have an operational license

plate lamp.² These provide the substance of reasonable suspicion supporting the investigative stop.

Testimony rebutting observation of license plate lamp

¶9 Asunto next argues that Becker's suspicion regarding the malfunctioning license plate lamp was unreasonable in light of Asunto's wife's testimony at the motion hearing. There, she stated that she had observed the license plate lamp working both before and after Becker stopped Asunto. She produced a signed compliance order indicating that the license plate lamp was working on April 20, 2008, one day after the stop.

¶10 Despite his compelling argument that the license plate lamp was working when he was pulled over, Asunto again fails to frame the issue properly. The question before the circuit court, and now before us, is not whether the license plate lamp was out; rather, the question is whether Becker reasonably suspected that Asunto was in violation of WIS. STAT. § 347.13(3) when he made the stop. Essentially, Asunto argues that reasonable suspicion cannot be based upon the mistaken belief that a violation occurred. He asserts that the circuit court did not

² WISCONSIN STAT. § 347.13(3) states:

No person shall operate on a highway during hours of darkness any motor vehicle upon the rear of which a registration plate is required to be displayed unless such motor vehicle is equipped with a lamp so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible

(continued)

give his wife's testimony and the signed compliance order sufficient weight when it ruled on reasonable suspicion. We reject Asunto's argument for two reasons.

¶11 First, the credibility of a witness and the weight to be accorded the evidence is for the circuit court to decide, not this court. *See Lessor v. Wangelin*, 221 Wis. 2d 659, 665, 586 N.W. 2d 1 (Ct. App. 1998). When more than one conclusion can be drawn from the credible evidence, we must accept the one drawn by the circuit court. *See Siker v. Siker*, 225 Wis. 2d 522, 528, 593 N.W.2d 830 (Ct. App. 1999).

¶12 Second, even if Asunto's wife would have persuaded the circuit court that the license plate lamp had been working at the time of the traffic stop, it would not defeat a finding that Becker had reasonable suspicion to make the stop. Becker correctly believed that operating a vehicle at night with a malfunctioning license plate lamp violated WIS. STAT. § 347.13(3). Here, any mistake would have been of fact, not law. As long as Becker reasonably believed that the lamp was out, he had reasonable suspicion to make the stop. Becker testified that he thought perhaps the lamp was out and that he pulled over to get a better look at a different angle. By doing this, he confirmed his belief that the lamp was out.

from a distance of 50 feet to the rear. Such lamp may be incorporated as part of a tail lamp or may be a separate lamp.

Becker's decision to make an investigatory stop was reasonable under the circumstance.

CONCLUSION

¶13 The fact that Sneider's squad car was in front of Becker's at the time of the traffic stop does not defeat reasonable suspicion for the stop. Becker turned his emergency lights on and Sneider then activated hers. She assisted in making the stop, but Becker initiated it and offered specific articulable facts to support his belief that Asunto had violated a traffic law. Furthermore, the circuit court determined that Becker's belief that Asunto's license plate lamp was not working was reasonable, and we find ample testimony in the record to support that finding by the court. Judgment affirmed.

By the Court.—Judgment affirmed.

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

