

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 25, 2012

Diane M. Fremgen
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. 2012AP966-CR

Cir. Ct. No. 2011CT835

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAN P. HOGAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
ROGER A. ALLEN, Judge. *Affirmed.*

¶1 LUNDSTEN, P.J.¹ Jan Hogan appeals a judgment of the circuit court finding him guilty of operating a motor vehicle while under the influence of

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

an intoxicant, as a third offense. Hogan argues that the circuit court erred when it denied his motion to suppress evidence of intoxication. Hogan asserts that this evidence warranted suppression because it arose from an illegal investigative stop. I agree with the circuit court that the circumstances do not merit suppression, and affirm.

Background

¶2 On May 27, 2011, Cross Plains Police Officer Kosharek observed Hogan driving a vehicle in the village of Cross Plains. The officer saw a “red dealer imitation marketing plate” on the front and back of the vehicle, but no permanent or temporary license plates. Based on this observation, the officer stopped Hogan and requested to see identification and registration. Hogan provided the officer with purchase paperwork indicating that Hogan had taken possession of the vehicle earlier that same day.

¶3 Upon speaking with Hogan, the officer gathered probable cause to arrest him for operating his vehicle while intoxicated. Hogan moved to suppress the evidence of his intoxication, arguing that the initial investigative stop was illegal. The circuit court denied his motion, and convicted him of operating while under the influence, as a third offense. Hogan appealed.

Discussion

¶4 When reviewing a motion to suppress, the circuit court’s findings of fact will be upheld unless they are clearly erroneous. *State v. Dubose*, 2005 WI 126, ¶16, 285 Wis. 2d 143, 699 N.W.2d 582. The application of constitutional principles to these facts is a question of law reviewed de novo. *Id.*

¶5 A traffic stop constitutes a seizure that triggers Fourth Amendment protections from unreasonable searches and seizures. *State v. Griffin*, 183 Wis. 2d 327, 330, 515 N.W.2d 535 (Ct. App. 1994) (citing *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987)). “Law enforcement officers may only infringe on the individual’s interest to be free of a stop and detention if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime.” *Guzy*, 139 Wis. 2d at 675. Wisconsin law has codified the standard for a temporary stop, allowing an officer to stop any person when the officer “reasonably suspects that such person is committing, is about to commit or has committed a crime.” WIS. STAT. § 968.24. Moreover, an officer can stop a person even if an innocent explanation exists for the person’s behavior, as long as the officer has a reasonable inference of wrongdoing. *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990).

¶6 Hogan argues that the circuit court erred when it denied his motion to suppress evidence of intoxication because that evidence arose from an unlawful investigative stop. Hogan contends that the absence of a permanent or temporary license plate on his vehicle does not constitute reasonable articulable suspicion that Hogan was violating Wisconsin law and, thus, the evidence gathered from that stop should be suppressed.

¶7 Wisconsin law requires automobiles and light trucks to display a permanent or temporary plate “within 2 business days” of purchase. *See* WIS. STAT. § 341.04(1). It is uncontested that Hogan’s vehicle did not display either a permanent or temporary license plate at the time of his stop. After the two-day window, a vehicle not displaying either permanent or temporary license plates is in violation of Wisconsin law requiring display of registration plates and might be in violation of the underlying requirement of registration. *See* WIS. STAT.

§ 341.15(1) (requiring display of license plates); § 341.04(1) (requiring vehicle registration).

¶8 I agree with the circuit court that this case is controlled by *Griffin*, 183 Wis. 2d 327. In *Griffin*, a police officer stopped Griffin because his vehicle did not have registration plates but only a “licensed applied for” placard. *Id.* at 329. This court held that this stop was lawful because the officer “could reasonably question” whether Griffin was in violation of WIS. STAT. § 341.15 for failure to display a license plate. *Id.* at 333. Without stopping the vehicle in question, the officer had “no way of knowing that the application for registration had been made and the fee had been paid.” *Id.*

¶9 Hogan tries to distinguish *Griffin* by pointing out that, in that case, there were facts known to the police supporting the inference that the vehicle might have been stolen. The court in *Griffin* heard testimony that another officer had recovered stolen vehicles displaying “license applied for” placards. *Id.* Hogan contends that there was no similar evidence before the circuit court here linking dealer imitation plates like those on his vehicle to stolen vehicles.

¶10 Hogan’s argument is unconvincing because the reasonable suspicion conclusion in *Griffin* did not hinge on the existence of stolen vehicle testimony. When this court explained why the stop was supported by reasonable suspicion, the discussion focused solely on the absence of license plates. *See id.* at 333-34. Both this court and the supreme court have read *Griffin*’s holding as being limited in this fashion. *See State v. Williams*, 2001 WI 21, ¶95, 241 Wis. 2d 631, 623 N.W.2d 106 (characterizing the “leading case,” *Griffin*, as holding “that the absence of license plates, and reasonable inferences that can be drawn from that fact, provide reasonable suspicion sufficient to justify an investigatory stop of a

motor vehicle”); *State v. Williams*, 2010 WI App 39, ¶18, 323 Wis. 2d 460, 781 N.W.2d 495 (citing *Griffin* as “holding that a dealer-printed ‘license applied for’ placard in the back window of a vehicle provided ‘reasonable suspicion’ that the vehicle’s operator was violating [a traffic law]”).

¶11 Hogan’s reliance on *Delaware v. Prouse*, 440 U.S. 648 (1979), adds nothing. First, *Griffin* more specifically addresses the situation here. Second, *Griffin* post-dates *Prouse*, and it is apparent from the concurring opinion in *Griffin* that this court was aware of *Prouse*. See *Griffin*, 183 Wis. 2d at 334-35 (Fine, J., concurring). Thus, this is not a situation where this court’s opinion may be ignored because it has been overridden by a controlling decision of the United States Supreme Court.

¶12 Hogan points to court decisions from a number of other jurisdictions that reach results contrary to *Griffin*. However, regardless how persuasive such cases might be, those cases are not controlling in Wisconsin, see *Roy v. St. Lukes Medical Center*, 2007 WI App 218, ¶15, 305 Wis. 2d 658, 741 N.W.2d 256, and I am bound by *Griffin*, see *Cook v. Cook*, 208 Wis. 2d 166, 189-90, 560 N.W.2d 246 (1997).

¶13 For the reasons above, I conclude that the circuit court properly denied Hogan’s motion to suppress. I affirm the judgment.

By the Court.—Judgment affirmed.

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

