

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

October 8, 1996

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, 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. 96-1356-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DONALD S. CABUNAC,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

FINE, J. Donald S. Cabunac appeals from a judgment entered on a no-contest plea convicting him of operating a motor vehicle while under the influence of an intoxicant. See §§ 346.63(1)(a) and 346.65(2), STATS. The sole issue presented by this appeal is whether the police officer's stop of Cabunac was lawful.¹ We affirm.

¹ A defendant may appeal from an order denying a motion to suppress evidence even though the judgment of conviction rests on a guilty or no-contest plea. Section 971.31(10), STATS.; *State v.*

A police officer employed by the City of Greenfield testified at the suppression hearing that he stopped the Chevrolet pickup truck that Cabunac was driving because the officer saw that the truck had "black tinted windows on the back window and the side windows, that the coloring appeared to the officer to be "after-market tint," and that in his experience he had not "seen any factory-installed tint on windows like that." He told the trial court that he had "stopped other Chevy pickup trucks, none with factory-installed tint." The officer testified that he stopped the truck for violating then-existing WIS. ADM. CODE § MVD 5.52(1), which made it "unlawful for any vehicle to be operated on a highway if ... (b) The front side windows or rear windows ... have been tinted by any means other than that used in the original manufacturing process."²

Although the trial court found that the officer could not have seen the truck's side windows until after he stopped it, the trial court determined that the officer had reasonable grounds to suspect that the truck's rear window violated WIS. ADM. CODE § MVD 5.52(1)(b), and, therefore, the stop was lawful. We uphold a trial court's findings of fact unless they are "clearly erroneous." See RULE 805.17(2), STATS., made applicable to criminal proceedings by § 972.11(1), STATS. The question of whether an investigatory stop was legally justified, however, presents a question of law that we decide *de novo*. *State v. Krier*, 165 Wis.2d 673, 676, 478 N.W.2d 63, 65 (Ct. App. 1991).

An investigatory stop is permissible if the law enforcement officer reasonably suspects, considering the totality of the circumstances, that some type of criminal activity either is taking place or has occurred. *Alabama v. White*, 496 U.S. 325, 328-331 (1990); *State v. Richardson*, 156 Wis.2d 128, 139, 456 N.W.2d 830, 834 (1990). Although Cabunac attacks the officer's decision to stop his truck as a mere "hunch," the officer's uncontradicted testimony reveals that his suspicion that the truck's back window violated WIS. ADM. CODE § MVD 5.52(1)(b) was based on "specific and articulable facts," see *Richardson*, 156 Wis.2d at 139, 456 N.W.2d at 834, in light of his "training and experience,"

(..continued)

Howard, 171 Wis.2d 743, 745 n.1, 492 N.W.2d 371, 372 n.1 (Ct. App. 1992), *reversed on other grounds*, 176 Wis.2d 921, 501 N.W.2d 9 (1993).

² Subsequent to the stop in this case, WIS. ADM. CODE CH. MVD 5 was repealed, effective February 29, 1996. The subject matter of former WIS. ADM. CODE § MVD 5.52 is now in WIS. ADM. CODE § TRANS 305.32, which became effective March 1, 1996.

see State v. Jackson, 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989). The stop was lawful.

By the Court.—Judgment affirmed.

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