COURT OF APPEALS DECISION DATED AND RELEASED

DECEMBER 3, 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(1), 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. 96-1776-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PIERRE A. LaFORTE,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Chippewa County: THOMAS J. SAZAMA, Judge. *Affirmed.*

CANE, P.J. Pierre LaForte appeals his judgment of conviction after a no contest plea to operating a motor vehicle while intoxicated, second offense. He contends the trial court erred by denying his motion to suppress the evidence obtained as a result of the stop of his car. LaForte raises two issues on appeal. First, he contends the police officer's stop of his car was without justification and therefore illegal. Second, he contends the conviction violates his constitutional protection under double jeopardy because of his previous administrative driver's license suspension based on the same conduct. Because the officer had a reasonable basis to stop LaForte's car, and the conviction does not violate the principles of double jeopardy, the conviction is affirmed.

At approximately 12:20 a.m., state trooper William Heino noticed the car driven by LaForte approaching him from the south at thirty miles per hour on a county highway. The speed limit on this highway is fifty miles per hour. As the car passed him, Heino also noticed that its license light was out. Heino turned around and followed LaForte's car for about a mile. After observing the car make a left turn onto another highway without signaling, the car sped up to fifty-five miles per hour and then slowed down again to thirty miles per hour. When the trooper activated his siren and lights, he had to follow LaForte for another mile before he stopped. At the suppression hearing, the officer testified that he stopped LaForte because he was driving slowly and the car's license light was out. LaForte presented evidence that the license light was working before and after the time he was stopped. The trooper admitted that LaForte was not impeding other traffic by driving slowly, nor, given LaForte's location, was it necessary to signal a left turn.

Without deciding whether the license light was functioning at the time of the stop, the court concluded the trooper was justified in making the stop because LaForte was driving slowly and failed to signal a left turn. The trial court acknowledged that at the scene of the arrest, the trooper showed the inoperable license light to LaForte who agreed that it was out. The court also concluded that the trooper had a reason to believe LaForte could have been lost or in trouble, thereby constituting another reasonable basis for the stop.

In reviewing an order regarding suppression of evidence, this court will uphold the trial court's factual findings unless they are clearly erroneous. Section 805.17(2), STATS. Whether a stop meets statutory and constitutional standards is a question of law subject to de novo review. ***State v. Drexler,*** 199 Wis.2d 128, 133, 544 N.W.2d 903, 905 (Ct. App. 1995). Whether the officer reasonably suspected unlawful behavior is an objective test. Under all the facts and circumstances, would a reasonable police officer reasonably suspect an unlawful activity in light of his or her training and experience. ***State v. Jackson,*** 147 Wis.2d 824, 834, 434 N.W.2d 386, 390 (1989). In the alternative, an officer's act may be considered reasonable even in the absence of reasonable suspicion, if the stop meets the standards of a "community caretaker" action. ***State v. Anderson,*** 142 Wis.2d 162, 167-68, 417

N.W.2d 411, 413 (Ct. App. 1987), *reversed on other grounds*, 155 Wis.2d 77, 454 N.W.2d 763 (1990).

First, LaForte contends that because the arresting officer was mistaken about his observation that the license light was not working on the early morning of the arrest, the officer lacked probable cause to stop him. The owner of the car testified that the light was working when she loaned the car to LaForte and it was working when she retrieved the car after LaForte's arrest. On the other hand, the officer testified that the license light was out and at the time of the arrest showed it to LaForte who agreed it was out. The trial court noted the dispute in testimony, but made no specific factual finding as to whether the license light was operable at the time of the arrest. Nor did the trial court mention the license light's defect as a justification for the stop.

LaForte contends that without a factual finding that the license light was inoperable, this court should not uphold the stop of the car on the basis of a defective license light. This court is not persuaded. In ***State v. Lee,*** 97 Wis.2d 679, 681, 294 N.W.2d 547, 549 (Ct. App. 1980), the court held that evidence is properly admissible against a person mistakenly arrested as long as: (1) the arresting officer acts in good faith, and (2) has reasonable, articulable grounds to believe that the suspect is the intended arrestee. Similarly, it stands to reason that when the officer acting in good faith observes a car operating at 12:20 a.m. without an operable license light, this is an articulable fact sufficient to stop the car.

Whether LaForte was innocent of operating a car with an inoperable license light is not the question. Probable cause does not mandate that it is more likely than not that he committed this traffic violation. *See* ***State v. Mitchell,*** 167 Wis.2d 672, 684, 482 N.W.2d 364, 368 (1992). Although the trial court observed that the trooper suspected the driver of the car was under the influence of an intoxicant, it did not conclude the arrest was a sham. Implicit in the trial court's finding is that the officer was acting in good faith when making the arrest because the driver was going twenty miles under the speed limit and failed to make a left turn signal. In fact, the trial court added that the trooper had a basis to stop the car because the motorist could have been lost or in trouble, implying that it accepted the trooper's testimony. By virtue of the officer acting in good faith and belief that the license light was out, it was not necessary for the trial court to resolve the dispute about whether the license

light was operable. Therefore, because the trooper in good faith believed the license light was inoperable, he had a sufficient articulable basis for the stop. In light of this conclusion, it is unnecessary to address whether the good samaritan or community caretaker rationale applies to the facts as an alternative basis for the stop.

Next, LaForte contends that ***State v. McMaster,*** 198 Wis.2d 542, 553, 543 N.W.2d 499, 503 (Ct. App. 1995), was wrongly decided when it concluded that the previous administration suspension of a person's license does not violate the principles of double jeopardy. Because ***McMaster***'s holding is binding on this court, it need not be decided whether the decision was right or wrong.

Therefore, because the trooper had a reasonable basis to stop LaForte's car and ***McMaster***'s ruling is binding on this court, the judgment of conviction is affirmed.

By the Court.—Judgment affirmed.

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