

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 22, 1998

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

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No. 98-0528-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JED M. BOSSELL,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Brown County: WILLIAM ATKINSON, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

MYSE, J. Jed M. Bossell appeals a judgment of conviction finding him guilty of operating a motor vehicle after revocation, third offense within a five-year period, and an order denying his motion to suppress evidence. Bossell contends that the trial court's refusal to suppress evidence derived from a law enforcement officer's investigative stop was error because the investigative

stop was based upon a reasonable suspicion. He contends that probable cause is necessary for an investigatory stop of a violation of a noncriminal traffic regulation, in this case operating an improperly registered motor vehicle. Bossell contends that an investigative stop which is based on less than probable cause of a violation of a noncriminal traffic regulation violates his Fourth Amendment right to be free from unreasonable searches and seizures. Because we conclude that reasonable suspicion is a sufficient basis to stop an individual suspected of violating a noncriminal traffic regulation, we affirm the trial court's order denying Bossell's motion to suppress and the judgment of conviction.

Jed Bossell was operating a motor vehicle which either bore a cardboard "license applied for" plate, or a dealership applied-for plate or had no plate at all.¹ Officer Michael Reignier observed the vehicle without proper license plates and stopped Bossell to investigate the status of the vehicle's registration. After Bossell identified himself, Reignier ran a computer check of Bossell's driving record and determined that Bossell's operating privileges had been revoked.

Bossell now contends that because the officer did not have probable cause to stop him to investigate a noncriminal traffic violation, the stop violated

¹ Section 341.04(1), STATS., prohibits the operation of a motor vehicle that is either unregistered or for which a registration application has not been filed. The statutes provide four ways of showing compliance: (1) the display of metal registration plates issued by the Department of Transportation, *see* § 341.15, STATS.; (2) producing a certificate of registration, *see* § 341.11, STATS.; (3) producing proof that an application for registration has been filed, *see* §§ 341.04(1) and 341.08, STATS.; or (4) displaying temporary plates issued by the Department of Transportation, *see* § 341.09, STATS. Section 341.09(2)(f), STATS., further provides, however, that "[n]othing in this subsection requires a person who has complied with s. 341.04(1) to obtain a temporary operation plate under this subsection." The failure to properly register a vehicle or to properly display issued registration plates may subject a violator to a forfeiture penalty not to exceed \$200. *See* §§ 341.04(3)(a) and 341.15(3), STATS.

his Fourth Amendment right to be free from unreasonable searches and seizures. This contention raises an issue of constitutional fact which we traditionally treat as a mixed question of fact and law. *See State v. Phillips*, 218 Wis.2d 180, 189, 577 N.W.2d 794, 798-99 (1998). We apply a two-step standard when reviewing trial court determinations of constitutional fact. *Id.* The trial court's historical findings of fact are reviewed under a clearly erroneous standard and will not be upset on appeal unless they are contrary to the great weight and clear preponderance of the evidence. *Id.* The application of constitutional principles to the facts determined by the trial court, however, is made without deference to the trial court's determination even though the trial court's analysis is of assistance to appellate review. *Id.* Where facts are undisputed, the question of whether a stop was constitutionally valid is a question of law this court reviews independently. *See State v. Jackson*, 147 Wis.2d 824, 829, 434 N.W.2d 386, 388 (1989).

Bossell argues that in investigating a noncriminal traffic violation an officer may not stop and detain a citizen without probable cause to believe that the citizen has violated a noncriminal traffic regulation. Bossell contends that in this case, at best, Reignier had a reasonable suspicion that the vehicle was unregistered and, therefore, the stop and all information obtained as a result of that stop was a violation of Bossell's Fourth Amendment rights to be free from unreasonable searches and seizures.

In support of this position Bossell cites a series of United States Supreme Court decisions which suggest that the provisions for an investigatory stop authorized by *Terry v. Ohio*, 392 U.S. 1 (1968), do not apply to violations of noncriminal traffic regulations. In each case cited, the officer's reasonable suspicion related to criminal conduct. While we agree that a litany of United States Supreme Court decisions speaks of an investigative stop based upon

reasonable suspicion of criminal conduct, we conclude the language is descriptive of the offense to which the reasonable suspicion applied and is not a limitation on an officer's right to conduct an investigatory stop based on reasonable suspicion of a violation of a noncriminal traffic regulation. In no United States Supreme Court case has the Court stated that reasonable suspicion is an insufficient constitutional basis to stop an individual suspected of violating a noncriminal traffic regulation. In fact, the Court, in dicta, has suggested that a motorist can be stopped based upon a reasonable suspicion of an offense relating to motor vehicle regulations. In *Delaware v. Prouse*, 440 U.S. 648, 663 (1979), a driver was stopped for a purely random, discretionary check of the driver's license and vehicle registration. While the Court affirmed the Delaware Supreme Court's decision suppressing evidence discovered subsequent to the stop, the Court stated:

Accordingly, we hold that *except in those situations in which there is at least articulable and reasonable suspicion that a motorist is unlicensed or that an automobile is not registered . . . stopping an automobile and detaining the driver in order to check his driver's license and the registration of the automobile are unreasonable under the Fourth Amendment.*

See id. at 663 (emphasis added). At the very best, it can only be argued that the United States Supreme Court has not yet directly addressed this issue.

Wisconsin courts, however, have specifically addressed this issue and concluded that a reasonable suspicion is an adequate basis to justify an investigative stop when the suspicion relates to violation of a noncriminal traffic regulation. In *State v. Griffin*, 183 Wis.2d 327, 329, 515 N.W.2d 535, 537 (Ct. App. 1994), we held that the absence of a registration plate and the reasonable inferences that can be drawn from that fact constitute reasonable suspicion sufficient to justify an investigatory stop of a motor vehicle. While Bossell argues

that *Griffin* is not controlling, we see no basis for such a contention. The language in *Griffin* clearly and unambiguously provides that an investigatory stop based on reasonable suspicion is constitutionally valid when the suspicion relates to a violation of a noncriminal traffic regulation. We are bound by the provisions of *Griffin* and are required to apply those provisions to the contentions advanced in this case. Because the law of the State of Wisconsin has authorized investigatory stops based upon a reasonable suspicion of a violation of a noncriminal traffic regulation, Bossell's contention that the results of the stop should have been suppressed as an unreasonable violation of his Fourth Amendment rights must fail.

Bossell argues that in Wisconsin the reasonableness of a particular seizure may depend on the gravity of the offense investigated. We agree that the reasonableness of a stop based upon a reasonable suspicion of a violation of noncriminal traffic regulation may be different from the reasonableness of a stop based upon a reasonable suspicion when criminal conduct is suspected. We do not, however, construe Bossell's contention to include a claim that the stop was constitutionally infirm because the investigatory methods Reigner employed extended beyond what was reasonably necessary to investigate the status of the car's registration. Because Bossell has not advanced such arguments, we do not consider them and view this issue to have been waived because it was insufficiently developed in his brief. See *Shannon v. Shannon*, 150 Wis.2d 434, 446, 442 N.W.2d 25, 31 (1989). Further, we find no support for this contention in the record.

We conclude that *Griffin* controls and that a reasonable suspicion is a sufficient basis for a law enforcement officer to conduct an investigative stop of an individual suspected of violating a noncriminal traffic regulation. Because we

conclude that the officer here was justified in stopping Bossell to determine whether his vehicle was properly registered as required by law, the trial court's order denying the motion to suppress evidence of Bossell's driving revocation and the judgment of conviction are affirmed.

By the Court.—Judgment and order affirmed.

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