

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 21, 2005

Cornelia G. Clark
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. 2005AP1620-CR

Cir. Ct. No. 2004CT1381

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

PATRICK T. GLOVER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Waukesha County:
KATHRYN W. FOSTER, Judge. *Affirm.*

¶1 ANDERSON, J.¹ Patrick T. Glover appeals from a judgment convicting him of operating a motor vehicle while under the influence of an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

intoxicant, third offense (OWI). He challenges the trial court's ruling that the arresting officer possessed the reasonable suspicion necessary to conduct the traffic stop of his vehicle. We hold that the officer had sufficient grounds for an investigative stop and affirm.

¶2 On June 29, 2004, the State filed an amended criminal complaint charging Glover with OWI and operating a motor vehicle with a prohibited alcohol concentration, both as third offenses. Glover filed a motion to suppress evidence based upon lack of probable cause to arrest. The trial court held a suppression hearing on February 4, 2005.

¶3 Glover and the arresting officer, City of Waukesha Patrol Officer Erin Peters, testified to the events leading to his arrest. Peters testified that on June 5, 2004, at 2:10 a.m., while she was out on patrol, she observed Glover's vehicle in her rearview mirror. She turned her vehicle around and began to follow him. She testified that as she was following him, she noticed that his license plate light was not operating.² Peters continued to follow Glover and observed him stop at an intersection with a flashing red light for three to five seconds before proceeding. She opined that although the cross traffic had a flashing yellow light and the right-of-way, three to five seconds was a "lengthy period of time" for Glover to stop at the light. She indicated that there was no traffic at the time. She then pulled Glover over. She testified that she pulled him over both because his license plate light was out and because he stopped for too long at the traffic light.

² There appears to be some dispute about whether Peters' testimony showed that she first saw the defective license plate light in her rearview mirror. Regardless, Peters without question testified that when she turned her squad car around and followed Glover from behind, she noticed the defective light.

She testified that she did not observe any other type of traffic violation or erratic driving.

¶4 After making contact with Glover, Peters testified that she apprised him of the reasons for the stop and requested his drivers license. She averred that as Glover pulled out his license, he advised her that he was coming from a local pub where he had consumed one beer. Based on this admission, she asked Glover to perform field sobriety tests, which he did. Peters then asked Glover to submit to a preliminary breath test. The preliminary breath test produced a reading of .13 percent. At that point, Peters arrested Glover for OWI.

¶5 Glover offered a slightly different account of the night's events. Glover testified that Peters told him that she pulled him over because he paused too long at the flashing red light. He stated that he gave Peters his drivers license and she went back to her squad car. When she returned, she asked him to step out of his vehicle and perform field sobriety tests. Glover testified that she asked him to do so because she noticed he had two prior OWI convictions.

¶6 Glover denied telling Peters he had been at a local pub. Glover refuted Peters' testimony that she told him she was conducting the stop because his license plate light was defective. Glover testified that he did not learn of Peters' allegation concerning his license plate light until he received a copy of the criminal complaint two or three days after his arrest. Glover checked the license plate light at that time and discovered it was working properly. He also noted that he had a trailer hitch installed. The trailer hitch had a separate light, which further illuminated the license plate light. This light was also working properly. Glovers' wife also testified at the hearing that the plate and hitch lights were both working properly two or three days after Glover's arrest.

¶7 In his argument following testimony, Glover argued that Peters lacked both reasonable suspicion to perform the traffic stop and probable cause to arrest. With regard to Peters' reasonable suspicion, Glover maintained that the only basis for the traffic stop was Peters' observation that he stopped at the flashing red light for three to five seconds. He claimed that under *State v. Fields*, 2000 WI App 218, ¶23, 239 Wis. 2d 38, 619 N.W.2d 279, this observation was not sufficient grounds for the stop. *See id.* (holding that the defendant's slightly longer than normal stop at a stop sign alone did not justify a traffic stop).

¶8 The trial court denied Glover's motion to suppress, finding that reasonable suspicion supported the stop and probable cause supported the arrest. The court refused to determine whether the license plate light was in fact defective and accepted Glover's representation that Peters did not mention the defective license plate light when she pulled him over. However, the court adopted as credible the remainder of Peters' testimony and noted Peters' statement that she observed the license plate light failing to work properly. The court also recognized that the stop took place at 2:00 a.m., or "bar time," on a Friday night/early Saturday morning and called Glover's stop at the flashing red light "inordinately long" given that he was on a well-lit city street. The court distinguished this case from *Fields* in part because of "the added element of the plate light out." Following the trial court's ruling, Glover entered a no contest plea to the OWI charge.

¶9 On appeal, Glover challenges only the trial court's reasonable suspicion determination. To execute a valid investigatory stop consistent with the Fourth Amendment prohibition against unreasonable searches and seizures, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of illegal activity has taken or is taking place. *Fields*, 239 Wis. 2d 38,

¶10; WIS. STAT. § 968.24. A police officer can make an investigative traffic stop if he or she reasonably suspects that a person is violating or is about to violate civil traffic regulations. *State v. Colstad*, 2003 WI App 25, ¶¶11, 13, 260 Wis. 2d 406, 659 N.W.2d 394. The question of whether the officer’s suspicion was reasonable is a commonsense test: was the suspicion grounded in specific, articulable facts and reasonable inferences from those facts that the individual was committing a crime. *Fields*, 239 Wis. 2d 38, ¶10. An inchoate and unparticularized suspicion or hunch will not suffice. *Id.* However, the officer is not required to rule out the possibility of innocent behavior. *Id.*

¶10 Whether reasonable suspicion existed for an investigatory stop is a question of constitutional fact. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. We will uphold the trial court’s findings of fact unless clearly erroneous, WIS. STAT. § 805.17(2), but we review de novo whether those facts meet the constitutional standard. *Williams*, 241 Wis. 2d 631, ¶18.

¶11 Glover complains that the trial court rested its determination solely upon “its belief that a three to five second stop at a flashing red light, where cross traffic has preference ... constitutes reasonable suspicion when it is close to bar time, there is no other traffic, and the street in question is well lit.” He argues that the trial court’s conclusion runs afoul of this court’s holding in *Fields* and “effectively converts activity which suggests a reasonably cautious driver into reasonable suspicion to stop the driver.” We disagree and hold that the trial court correctly determined that Peters had reasonable suspicion to temporarily detain Glover.

¶12 First, we reject Glover’s reliance on *Fields*. Glover mischaracterizes the basis for the trial court’s holding in this case. In *Fields*, we held that the

defendant's waiting five to ten seconds at a stop sign on a rural road with no traffic, standing alone, did not support a particularized and reasonable suspicion of wrongdoing. *Fields*, 239 Wis. 2d 38, ¶¶5, 23. Here, the court considered more than just the length of Glover's stop at the flashing red light at a well-lit city intersection when it rendered its reasonable suspicion ruling. The trial court pointed out it was bar time on a Friday night/early Saturday morning. The court also factored in Peters' assessment of Glover's license plate light. The court specifically stated that it was "the added element of the plate light out" that distinguished this case from *Fields*.

¶13 Second, as noted, Peters could lawfully perform an investigatory detention of Glover if she reasonably suspected that he was violating a civil traffic regulation. See *Colstad*, 260 Wis. 2d 406, ¶¶11, 13. WISCONSIN STAT. § 347.13(3) requires drivers to equip their vehicles with a lamp "so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear." Peters testified that she observed that Glover's license plate light was not working when she followed him. She stated that it was *both* Glover's longer than normal stop at the flashing red light *and* the defective license plate light that aroused her suspicions and caused her to pull him over. Although the court accepted Glover's representation that Peters did not mention the defective license plate light when she pulled him over, the court deemed Peters' testimony otherwise credible. We are not in a position to disturb this determination. See *Turner v. State*, 76 Wis. 2d 1, 18, 250 N.W.2d 706 (1977) (the trial court's credibility determinations are generally not subject to review).

¶14 Finally, contrary to Glover's assertion, it does not matter that the trial court refused to resolve the question of whether Glover's license plate light

was in fact defective when Peters pulled him over. The principal function of the investigative stop is to temporarily freeze the situation so as to allow officers possessing reasonable suspicion of wrongful activity the opportunity to further investigate the situation and to quickly establish whether the suspect's activity is indeed legal or illegal. *See State v. Jackson*, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989). Thus, for purposes of our review, it matters only that the trial court adopted as credible Peters' testimony that she had reason to believe that Glover's license plate light was not operating at the time she pulled him over.

¶15 In sum, we uphold the trial court's reasonable suspicion determination and its order denying Glover's motion to suppress evidence. When looking at the totality of the circumstances surrounding the stop, it is apparent that Peters, unlike the officer in *Fields*, had specific and articulable facts supporting her investigatory detention of Glover. Peters' observations of the length of Glover's stop at the flashing red light, at that time and at that location, when coupled with her observations of Glover's defective license plate light provide an objective basis to conduct the stop. Accordingly, we affirm the judgment of conviction.

By the Court.—Judgment affirmed.

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

