COURT OF APPEALS
DECISION
DATED AND FILED

January 14, 2010

David R. Schanker
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. 2009AP2469-FT **Cir. Ct. No. 2009TR3233**

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

COUNTY OF GRANT,

PLAINTIFF-RESPONDENT,

V.

KALEENA E. COLLINS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County: ROBERT P. VAN DE HEY, Judge. *Affirmed.*

¶1 LUNDSTEN, J.[1] Kaleena Collins appeals the circuit court's judgment convicting her of operating a motor vehicle while under the influence of

[1] This is an expedited appeal under WIS. STAT. RULE 809.17, decided by one judge pursuant to WIS. STAT. § 752.31(2)(c). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

an intoxicant. She challenges the circuit court's ruling that a police officer lawfully stopped her car based on a license plate violation. I affirm the judgment.

Background

¶2 On May 17, 2009, at about 2:24 a.m., a police officer was on patrol when he observed a car with a rear license plate bracket covering up the name of the state in which the vehicle was registered. The officer stopped the car and observed that the driver, Collins, exhibited signs of intoxication. The officer arrested Collins and cited her for operating a motor vehicle while under the influence of an intoxicant.

¶3 A photographic image of Collins' rear license plate as it appeared at the time of the stop shows that the bracket covers the word "Wisconsin" at the top of the plate except for a small portion of the "W." The words "America's Dairyland" are partially obscured but legible at the bottom.

¶4 The circuit court held that the stop was valid because WIS. STAT. § 341.15(2) requires license plates to be displayed so that the entire plate can be readily and distinctly seen and read. The court acknowledged that the stop may have been a pretext, but concluded that the law allows such stops.

Discussion

¶5 The issue in this case is whether the officer could stop Collins for a violation of WIS. STAT. § 341.15. This presents a question of statutory interpretation for our *de novo* review. ***State v. Volk***, 2002 WI App 274, ¶34, 258 Wis. 2d 584, 654 N.W.2d 24. Section 341.15(2) provides:

> Registration plates shall be attached firmly and rigidly in a horizontal position and conspicuous place. The

> plates shall at all times be maintained in a legible condition and *shall be so displayed that they can be readily and distinctly seen and read.* Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.

(Emphasis added.)

¶6 Collins argues that the circuit court erred by interpreting the italicized language to require that a plate be displayed so that the "entire" plate can be readily and distinctly seen and read. She points out that license plates often require bolts or washers that obscure one or more letters or numbers.

¶7 I need not decide whether the circuit court's interpretation of the statute is correct. The bracket on Collins' plate did not simply obscure a small or inconsequential portion of the plate, as a bolt or washer often might, but instead effectively concealed the entire name of the state of issuance. Along with the license plate number, the state of issuance is among the most basic information pertaining to vehicle identification and registration. The statutory requirement in question must, at a minimum, refer to such basic information; otherwise, the requirement would be an empty one. Accordingly, Collins violated WIS. STAT. § 341.15(2) by using a bracket covering the word "Wisconsin" on her plate.

¶8 Collins notes that "America's Dairyland" was legible on the plate and that the officer testified that he knew that this identified the plate as a Wisconsin plate.[2] Therefore, Collins argues, the statute's purpose of allowing law enforcement officers to identify motor vehicles and their owners was served. I reject this argument. The pertinent statutory language does not suggest that a

[2] The officer's testimony is not clear on this point, but, even if I assume the officer's testimony is as Collins characterizes it, Collins' argument fails.

violation depends on what a particular viewer could or did infer from visible portions of the plate. Rather, the language focuses on how the owner has "displayed" the plate and whether the manner of display ensures that the plate is easily seen and read.

¶9 Collins also argues that her conduct in covering up the plate could not form the basis for a stop because it is not defined as a violation of the statute. In support of this argument, she points out that the statute imposes a forfeiture for certain specified types of conduct, but not for covering up the state name on the plate.[3] But the issue in this case is not what penalty, if any, could be imposed. WISCONSIN STAT. § 341.15(2) makes clear that a violation of the statute occurs if plates are not displayed so that they can be readily and distinctly seen and read. Moreover, § 341.15(2) implicitly authorizes any "peace officer" to stop a vehicle for such a violation.

[3] WISCONSIN STAT. § 341.15(3) provides:

> Any of the following may be required to forfeit not more than $200:
>
> (a) A person who operates a vehicle for which a current registration plate, insert tag, decal or other evidence of registration has been issued without such plate, tag, decal or other evidence of registration being attached to the vehicle, except when such vehicle is being operated pursuant to a temporary operation permit or plate;
>
> (b) A person who operates a vehicle with a registration plate attached in a non-rigid or non-horizontal manner or in an inconspicuous place so as to make it difficult to see and read the plate;
>
> (c) A person who operates a vehicle with a registration plate in an illegible condition due to the accumulation of dirt or other foreign matter.

¶10 Finally, Collins argues that it is unreasonable to allow a pretextual stop based on a minor traffic violation like the one here. In this regard, Collins relies on a brief statement in ***State v. Newer***, 2007 WI App 236, 306 Wis. 2d 193, 742 N.W.2d 923. In ***Newer***, a three-judge panel of this court, without discussion, questioned the wisdom of ignoring an officer's subjective motivation to use a minor traffic violation as a pretext to make a stop. *See* ***id.***, ¶4 n.2. The panel stated: "We question the wisdom of this rule when it comes to extremely minor traffic violations, but that is for another day." ***Id.*** I add to this "and for another court." Our supreme court has made it clear that police officers may stop vehicles for minor traffic offenses, even if subjectively motivated by a different reason. *See* ***State v. Baudhuin***, 141 Wis. 2d 642, 650-51, 416 N.W.2d 60 (1987). This court does not have the power to impose a different rule. *See* ***Cook v. Cook***, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997) ("The supreme court is the only state court with the power to overrule, modify or withdraw language from a previous supreme court case.").

¶11 Furthermore, I disagree with the ***Newer*** panel's suggestion that, for some undefined category of minor violations, it might be a good idea to consider an officer's subjective motivations when the officer makes a stop. I doubt there is a workable means of distinguishing supposedly undesirable pretext stops from pretext stops the ***Newer*** panel would find acceptable. But more fundamentally, it defies common sense to say that an officer may stop a person for a minor violation, except when the officer is subjectively concerned that some more serious wrongdoing is afoot. In a recent case, writing for a different three-judge panel, I wrote:

> As a unanimous United States Supreme Court recently explained: "An action is 'reasonable' under the Fourth Amendment, regardless of the individual officer's

> state of mind, 'as long as the circumstances, viewed *objectively*, justify [the] action.'" ***Brigham City, Utah v. Stuart***, 547 U.S. 398, 404 (2006) (quoting ***Scott v. United States***, 436 U.S. 128, 138 (1978)) (emphasis added in ***Brigham City***); *see also* ***Whren v. United States***, 517 U.S. 806, 813 (1996) (United States Supreme Court "unwilling to entertain Fourth Amendment challenges based on the actual motivations of individual officers").
>
> The reason for this objective approach is that "evenhanded law enforcement is best achieved by the application of objective standards of conduct, rather than standards that depend upon the subjective state of mind of the officer." ***Horton v. California***, 496 U.S. 128, 138 (1990). Society's interest in assistance and protection, and the constitutional rights of suspects, should not depend on the happenstance of a particular officer's subjective motivation. Consequently, in ***Brigham City***, the Court declined to address the defendant's argument that an entry into a residence was illegal because police were subjectively motivated, in part, by an interest in making arrests when they entered to quell a disturbance. *See* ***Brigham City***, 547 U.S. at 404-05.

State v. Kramer, 2008 WI App 62, ¶¶31-32, 311 Wis. 2d 468, 750 N.W.2d 941, *aff'd*, 2009 WI 14, 315 Wis. 2d 414, 759 N.W.2d 598.

By the Court.—Judgment affirmed.

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