

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 5, 2010

A. John Voelker
Acting 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. 2010AP149-CR

Cir. Ct. No. 2009CT276

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

LAURENCE EVAN OLSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
SCOTT L. HORNE, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.¹ Laurence Olson appeals his judgment of conviction for operating a motor vehicle with a prohibited blood alcohol concentration, third offense, on a plea of no contest following the court's order

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(d) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

denying his motion to suppress evidence. Olson argues that the court erred in denying the suppression motion because the traffic stop was invalid. We conclude that the circuit court correctly denied the motion to suppress evidence because probable cause existed to believe that Olson was operating a motor vehicle during hours of darkness without having maintained both tail lamps in good working order, contrary to WIS. STAT. § 347.13(1). We therefore affirm.

¶2 The following facts are taken from the hearing on Olson’s suppression motion. On March 17, 2009, at around 8:45 p.m., Wisconsin State Patrol Trooper Brad Bray was traveling south on Lakeshore Drive in La Crosse. He observed a slow moving vehicle equipped with four tail lamp bulbs, one of which was burnt out, driving north towards a dead end. The trooper waited for the vehicle to return and pulled it over near the intersection with Hanson Road. The driver was identified as Laurence Olson. He was later arrested for operating a motor vehicle while intoxicated, third offense, and driving with a prohibited blood alcohol concentration, third offense. Olson also received a warning for failing to keep his vehicle in compliance with WIS. ADMIN. CODE § TRANS 305.16(2), which provides that “[t]he tail lamps of every motor vehicle shall be maintained in proper working condition and in conformity with [WIS. ADMIN. CODE § TRANS 305.16] and § 347.13 (1) and (2), Stats.”

¶3 Olson filed a motion to suppress evidence, alleging that he was not in violation of WIS. ADMIN. CODE § TRANS 305.16(2) because the administrative rule does not explicitly require that *all* tail lamps be maintained in proper working condition. An evidentiary hearing was held on the motion. The trooper testified at the hearing that he believed that Olson was in compliance with WIS. STAT. § 347.13(1), which provides that “[n]o vehicle originally equipped at the time of manufacture and sale with 2 tail lamps shall be operated upon a highway during

hours of darkness unless both such lamps are in good working order.” The circuit court concluded that the trooper had probable cause to conduct the traffic stop because Olson’s vehicle was in violation of § TRANS 305.16(2). The circuit court denied the motion and Olson pled guilty to driving with a prohibited blood alcohol concentration, third offense. This appeal follows.

¶4 Whether an officer has reasonable suspicion or probable cause to stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. We review the circuit court’s findings of historical fact under the deferential clearly erroneous standard, but review de novo the application of those facts to constitutional principles. *Id.*

¶5 A traffic stop is a seizure within the meaning of the Fourth Amendment. *Id.*, ¶11. Both the United States Constitution and the Wisconsin Constitution prohibit unreasonable searches and seizures. U.S. CONST. amend. IV; WIS. CONST. art. 1, § 11. “A traffic stop is generally reasonable if the officers have probable cause to believe that a traffic violation has occurred, or have grounds to reasonably suspect a violation has been or will be committed.” *Popke*, 317 Wis. 2d 118, ¶11 (citations omitted). When an officer bases a traffic stop on a specific offense, “it must indeed *be* an offense; a lawful stop cannot be predicated upon a mistake of law.” *State v. Longcore*, 226 Wis. 2d 1, 9, 594 N.W.2d 412 (Ct. App. 1999), *aff’d*, 2000 WI 23, 223 Wis. 2d 278, 607 N.W.2d 620.

¶6 The parties dispute whether Olson’s vehicle was in compliance with WIS. ADMIN. CODE § TRANS 305.16(2), and offer differing interpretations of the code. Olson contends that if § TRANS 305.16(2) were interpreted to require that *all* tail lamps be maintained in proper working condition, it would conflict with WIS. STAT. § 347.13(1) and § TRANS 305.16(1), which require vehicles to be

equipped with two tail lamps.² Olson also argues that this interpretation of § TRANS 305.16(2) conflicts with WIS. ADMIN. CODE § TRANS 305.02(7), which provides that “[n]othing in this chapter is intended to modify the provisions of ch.347, Stats.”

¶7 Olson suggests that if WIS. ADMIN. CODE § TRANS 305.16(2) were intended to require that *all* tail lamps be maintained in proper working condition, it would include the same explicit language to that effect found in § TRANS 305.16(3) and (4), which regulate other vehicle components.³ Olson argues § TRANS 305.16(2) merely requires that a vehicle have at least two functioning tail lamps, one on each side of the vehicle.

¶8 The State argues that because the surrounding and closely related code sections consistently use the term “all” in describing other vehicle components that must be maintained in proper working condition, WIS. ADMIN. CODE § TRANS 305.16(2) requires that *all* tail lamps be maintained in proper working condition. The State argues § TRANS 305.16(1) requires a vehicle to be equipped with *at least* two tail lamps. Therefore, if a vehicle were equipped with

² Wisconsin Admin. Code § TRANS 305.16(1) provides as follows:

Every automobile originally manufactured commencing with the 1950 models, every light truck or motor home originally manufactured commencing with the 1955 models, and every homemade or reconstructed vehicle registered on or after January 1, 1975, shall be equipped with 2 tail lamps. All other motor vehicles shall be equipped with at least one tail lamp.

³ WISCONSIN ADMIN. CODE § TRANS 305.16 provides, in pertinent part: “(3) All wiring and connections shall be maintained in good condition. (4) All tail lamp lens and reflectors shall be installed and maintained in proper condition and may not be covered or obscured by any object or material.”

more than two tail lamps, those additional tail lamps must also be maintained in proper working condition under § TRANS 305.16(2). The State contends that these interpretations of § TRANS 305.16(1) and (2) provide the clearest guidance for effective law enforcement.

¶9 We decline to address whether Olson’s vehicle was in compliance with WIS. ADMIN. CODE § TRANS 305.16(2). Rather, we conclude that the stop was lawful because probable cause existed to believe that Olson’s vehicle was in violation of the requirement of WIS. STAT. § 347.13(1) that both tail lamps be “in good working order.”

¶10 This conclusion is based on our reading of WIS. STAT. §§ 347.13(1) and 340.01(66). Statutory interpretation begins with the language of the statute. *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶54, 271 Wis.2d 633, 681 N.W.2d 110. If the meaning is plain from the statutory language, we ordinarily stop the inquiry and apply that meaning. *Id.*

¶11 WISCONSIN STAT. § 347.13(1) provides that “[n]o vehicle originally equipped at the time of manufacture and sale with 2 tail lamps shall be operated on a highway during hours of darkness unless both such lamps are in good working order.” WISCONSIN STAT. § 340.01(66) provides that “‘tail lamp’ means a device to designate the rear of the vehicle by a warning light.” We observe that the statute does not state that each *bulb* taken individually is a “tail lamp”; it defines a “tail lamp” as a “device.” Olson’s vehicle was equipped with two clusters of two bulbs each placed on opposite sides of the rear of the vehicle. These clusters of bulbs function together as a single device. We therefore conclude that, consistent with the definition of the term provided in § 340.01(66), a tail lamp is a unitary “device” that may consist of two or more clusters of bulbs.

¶12 Turning to the facts of the present case, we note that it is undisputed that one of the two bulbs constituting the right tail lamp was burnt out at the time of the stop. The plain language of WIS. STAT. § 347.13(1) unambiguously requires that both tail lamps be “in good working order.” A tail lamp with a burnt out bulb cannot be said to be “in good working order.” Accordingly, we conclude that the traffic stop was valid in this case because the investigating officer had probable cause to believe that Olson’s vehicle was in violation of § 347.13(1).

¶13 We note that the officer testified that he believed Olson’s vehicle was not in violation of WIS. STAT. § 347.13(1), and that he made the stop for other reasons. However, the fact that the observed violation of § 347.13(1) was not the officer’s subjective reason for stopping Olson does not render the traffic stop unlawful. “In determining whether probable cause exists, the court applies an objective standard and is not bound by the officer’s subjective assessment of motivation.” *State v. Kutz*, 2003 WI App 205, ¶12, 267 Wis. 2d 531, 671 N.W.2d 660 (citation omitted). Here, the officer observed that one bulb in the tail lamp to the right of the license plate was burnt out, a fact that gave the officer probable cause to believe Olson was in violation of § 347.13(1). This fact provided the trooper with a legal basis to perform a traffic stop, no matter the officer’s subjective reason for the stop.

By the Court.—Judgment affirmed.

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

