

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 25, 2015

Diane M. Fremgen
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. 2015AP338-CR

Cir. Ct. No. 2014CT24

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

NATHAN LEWIS TEASDALE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Grant County:
CRAIG R. DAY, Judge. *Affirmed.*

¶1 KLOPPENBURG, J.¹ Nathan Teasdale appeals the judgment of conviction for Operating While Revoked contrary to WIS. STAT. § 343.44(1)(b). Teasdale argues that the circuit court erred in denying his motion to suppress

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

evidence because the traffic stop that led to his conviction was unlawful. The dispositive issue is whether the deputy's observation of Teasdale's vehicle and the registration plates displayed on it supported a reasonable suspicion that Teasdale was violating a traffic statute. The State asserts that the deputy's observation provided reasonable suspicion that Teasdale violated WIS. STAT. § 341.61(2), which imposes a forfeiture for displaying upon a vehicle registration plates not issued for that vehicle.² Teasdale contends that there is no reasonable suspicion to support the traffic stop because there are "insufficient facts" to support the finding that the deputy made a reasonable mistake of fact as to the make and model of the vehicle that Teasdale was driving. For the reasons set forth below, we conclude that the deputy's mistake of fact was reasonable, and that the traffic stop was lawful based on the deputy's reasonable—even if mistaken—suspicion that Teasdale was violating WIS. STAT. § 341.61. Therefore, the judgment is affirmed.

² WISCONSIN STAT. § 341.61 provides:

Any person who does any of the following may be required to forfeit not more than \$500:

....

(2) Displays upon a vehicle a registration plate, insert tag, decal or other evidence of registration not issued for such vehicle or not otherwise authorized by law to be used thereon.

The violation of this non-criminal traffic law is a permissible basis for a stop. *See County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999) (“[A]n officer may make an investigative stop if the officer ‘reasonably suspects’ that a person has committed or is about to commit a crime, or reasonably suspects that a person is violating the non-criminal traffic laws.” (footnote, citation, and quoted source omitted)).

BACKGROUND

¶2 The State charged Teasdale with operating a motor vehicle while his operating privileges were revoked, contrary to WIS. STAT. § 343.44(1)(b). Teasdale filed a suppression motion challenging the lawfulness of the traffic stop and the evidence subsequently obtained. Deputy Duane Jacobson provided the only testimony at the motion hearing. A video and audio recording from the deputy's squad car camera was admitted into evidence. The following is a summary of the undisputed facts leading up to Teasdale's arrest.

¶3 At approximately 7:15 p.m. on February 14, 2014, Deputy Jacobson was parked near a state highway in the Village of Livingston in Wisconsin and was "checking vehicle registrations" when he observed what he "believed to be a teal colored Pontiac Sunfire drive by." The deputy checked the vehicle's registration and saw that the license plate displayed was registered to a red Chevrolet Cavalier. According to the deputy's report attached to the criminal complaint, the deputy "believed that the license plates displayed were not on the vehicle that they were registered to[]." The deputy then made the traffic stop.

¶4 The deputy testified that he told the driver, who identified himself as Teasdale, that he stopped the vehicle because the registration was to a red Chevrolet Cavalier. The deputy asked Teasdale to present his license. Teasdale responded that his license was suspended. The deputy then arrested Teasdale for operating a motor vehicle while his operating privileges were revoked. The deputy testified that he did not know the vehicle was actually a Chevrolet Cavalier, as opposed to a Pontiac Sunfire, until after he returned to his squad car.

¶5 The circuit court found that the deputy made a reasonable mistake of fact and concluded that the traffic stop was lawful. Accordingly, the circuit court denied Teasdale’s motion to suppress evidence obtained after the traffic stop.

DISCUSSION

¶6 The dispositive issue here is whether the deputy’s observations of Teasdale’s vehicle and the registration plates displayed on it supported a reasonable suspicion that Teasdale was violating a traffic statute. As we explain below, we answer this question in the affirmative and conclude that the traffic stop was lawful such that the circuit court properly denied Teasdale’s motion to suppress evidence obtained from the traffic stop.

Standard of Review

¶7 This court analyzes the denial of a suppression motion under a two-part standard of review: we uphold the circuit court’s findings of fact unless they are clearly erroneous, but we independently review whether those facts warrant suppression. *State v. Conner*, 2012 WI App 105, ¶15, 344 Wis. 2d 233, 821 N.W.2d 267. “We do not reweigh the evidence or reassess the witnesses’ credibility, but will search the record for evidence that supports findings the [circuit] court made, not for findings it could have made but did not.” *Dickman v. Vollmer*, 2007 WI App 141, ¶14, 303 Wis. 2d 241, 736 N.W.2d 202.

¶8 “Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact.” *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. The ultimate question of “whether the facts as found by the [circuit] court meet the constitutional standard” is reviewed de novo. *State v. Hindsley*, 2000 WI App 130, ¶22, 237 Wis. 2d 358, 614 N.W.2d 48.

Reasonable Suspicion to Support Traffic Stop

¶9 The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution offer protection against unreasonable searches and seizures.³ “The temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a seizure of persons within the meaning of the Fourth Amendment.” *Popke*, 317 Wis. 2d 118, ¶11 (quoted source omitted). “If the seizure is unreasonable and therefore unconstitutional, then evidence obtained as a result is generally inadmissible.” *State v. Brown*, 2014 WI 69, ¶19, 355 Wis. 2d 668, 850 N.W.2d 66.

¶10 A traffic stop is reasonable if supported by probable cause that a traffic violation has occurred or by reasonable suspicion that a violation has been or will be committed. *Popke*, 317 Wis. 2d 118, ¶11. The United States Supreme Court has “recognized that searches and seizures based on mistakes of fact can be reasonable.” *Heien v. North Carolina*, ___ U.S. ___, 135 S. Ct. 530, 536 (2014). “The limiting factor is that ‘the mistakes must be those of reasonable men.’” *Id.* (quoted source omitted). “The determination of reasonableness is a common sense test.” *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. “The reasonableness of a stop is determined based on the totality of the facts and circumstances.” *Id.*

³ The Fourth Amendment of the United States Constitution states, “The right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause” Article I, Section 11 of the Wisconsin Constitution provides, “The right of the people to be secure in their persons ... against unreasonable searches and seizures shall not be violated; and no warrant shall issue but upon probable cause”

¶11 In this case, there are no factual disputes arising out of the deputy's testimony. Implicit in the circuit court's finding that there was a reasonable mistake of fact is that the court found the deputy's testimony credible. *See State v. Echols*, 175 Wis. 2d 653, 672-73, 499 N.W.2d 631 (1993) ("When a [circuit] court does not expressly make a finding necessary to support its legal conclusion, an appellate court can assume that the [circuit] court made the finding in the way that supports its decision."). We accept the circuit court's credibility determination as it is not patently incredible. *See Dickman*, 303 Wis. 2d 241, ¶14 ("Because it is for the [circuit] court to resolve conflicts in the testimony, we will uphold its calls as to witness credibility unless they are inherently or patently incredible, and we will not second-guess the [circuit] court's reasonable factual inferences.").

¶12 As noted above, the deputy testified that he made the traffic stop because the license plate on Teasdale's vehicle was registered to a red Chevrolet Cavalier and that, based upon his observation from a distance of three car lengths away at approximately 7:15 at night, he believed the vehicle was a teal Pontiac Sunfire. The deputy testified that his focus, after checking the license plate registration, was on the three occupants in the vehicle, and that he did not know that the vehicle was actually a Chevrolet Cavalier, rather than a Pontiac Sunfire, until he later returned to his squad car. The deputy confirmed that he believed the Chevrolet Cavalier and the Pontiac Sunfire look similar.

¶13 Teasdale does not present any evidence discrediting the deputy's reasonable belief that the car he observed was not the same car to which the registration plates were issued. As Teasdale's counsel pointed out during cross examination, the Chevrolet emblem typically on the trunk of the vehicle was actually missing, and there was only a "glue imprint ... where an emblem had

been.” Teasdale’s counsel recognized that “you can’t see it clearly,” but nevertheless asked the deputy whether the imprint looked “like a Chevy bowtie ... where that emblem would have been attached.” The deputy responded, “It is possible, I can’t tell.”

¶14 Thus, I conclude that the facts observed by the deputy provided a reasonable basis to suspect that Teasdale’s vehicle was displaying registration plates that were not issued for his vehicle, contrary to WIS. STAT. § 341.61(2). Accordingly, there is reasonable suspicion to support the traffic stop.

¶15 Before concluding, I note that Teasdale cites to WIS. STAT. § 349.02(2)(c), which provides that “a law enforcement officer may not stop a vehicle *solely* because the vehicle’s color differs from the color stated in the application for registration of that vehicle.” (Emphasis added.) However, as noted above, the deputy testified that he stopped the car based on the color discrepancy *and* his reasonable mistaken belief as to the make and model. Thus, to the extent that Teasdale may be making an argument based on § 349.02(2)(c), it is not dispositive here. Rather, the dispositive issue is whether the totality of the facts and circumstances give rise to reasonable suspicion that Teasdale violated WIS. STAT. § 341.61(2), the statute pertaining to the display of registration plates.

CONCLUSION

¶16 For the reasons set forth above, I conclude that the traffic stop was supported by reasonable suspicion and therefore lawful. Accordingly, the circuit court properly denied Teasdale’s motion to suppress evidence obtained from the traffic stop, and, therefore, I affirm the judgment.

By the Court.—Judgment affirmed.

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

