

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 17, 2017

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. 2016AP2383

Cir. Ct. No. 2016CV121

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

CITY OF PEWAUKEE,

PLAINTIFF-RESPONDENT,

V.

JOHN JAY KENNEDY,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County:
MICHAEL P. MAXWELL, Judge. *Affirmed.*

¶1 NEUBAUER, C.J.¹ John Jay Kennedy appeals from an order denying his motion to suppress evidence. The deputy sheriff who stopped

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

Kennedy did so after checking his squad car's computer and discovering that there was an outstanding warrant for Kennedy's arrest for failing to pay a fine. Kennedy contends that the deputy sheriff lacked reasonable suspicion to stop his vehicle until he confirmed the validity of the warrant, which he did not do until after the traffic stop. We disagree and affirm the order.

¶2 Kennedy was charged with operating a motor vehicle while intoxicated and operating a motor vehicle with a prohibited alcohol content.

¶3 The sole witness called at a hearing on Kennedy's motion to suppress evidence, Deputy William Becker, of the Waukesha County Sheriff's Department, testified that on June 21, 2015, at approximately 2:30 a.m., he was at a gas station in the City of Pewaukee when a white sport utility vehicle passed by him along the road. Becker decided to conduct a "random check" of the vehicle's registration on his squad car's computer and discovered that there was only one registered owner of the vehicle, Kennedy. Becker then checked the Wisconsin Department of Transportation (DOT) records, which revealed that the registered owner, Kennedy, had an outstanding warrant in Waukesha County. Becker did not see the physical characteristics of the driver but did see that there were several people inside the vehicle. Becker then conducted a traffic stop of the vehicle.

¶4 On cross-examination, Becker confirmed that the stop was based on the information he received from the DOT. He acknowledged that he "confirmed that the warrant was valid" after he stopped Kennedy's vehicle. In other words, the warrant was "active." The warrant was for failing to pay an outstanding fine.

¶5 Counsel argued that the motion to suppress should be granted because the warrant was not confirmed until after the traffic stop.

¶6 The circuit court disagreed and denied the motion.

¶7 The matter proceeded to a jury trial, and the jury found Kennedy guilty of operating a motor vehicle with a prohibited alcohol content. Kennedy now appeals.

¶8 Kennedy argues that the stop of his vehicle was unsupported by reasonable suspicion because Becker did not confirm the validity of the outstanding warrant for Kennedy's arrest until after Becker stopped him.

¶9 Whether reasonable suspicion exists is a question of constitutional fact, *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569, which, on appeal, presents a mixed question of fact and law. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. The circuit court's findings of historical fact will be upheld unless clearly erroneous, while the question of the application of those facts to constitutional principles is reviewed independently of the circuit court. *Id.*

¶10 Under the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution, an investigatory traffic stop is a seizure and must be supported by reasonable suspicion. *Id.*, ¶¶10-11 & n.2. The police must have reasonable suspicion, based on specific articulable facts and reasonable inferences therefrom, that the defendant is violating or has violated the law. *Delaware v. Prouse*, 440 U.S. 648, 663 (1979); *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394. Reasonable suspicion is a commonsense, nontechnical standard consisting of "the factual and practical considerations of everyday life on which reasonable and prudent [persons], not legal technicians, act." *State v. Eason*, 2001 WI 98, ¶19, 245 Wis. 2d 206, 629 N.W.2d 625 (citation omitted). The information necessary to meet the reasonable

suspicion standard can be less in both content and reliability than that needed to establish probable cause. *Id.* In other words, reasonable suspicion is a “low” standard. *Id.*

¶11 Here, the undisputed testimony was that Becker conducted a random check of Kennedy’s car registration and determined that there was only one registered owner. Then, Becker checked the DOT records, presumably again through his squad car’s computer, and discovered that Kennedy had an outstanding warrant in Waukesha County for failing to pay a fine. Becker’s use of his squad car’s computer system was sufficient to meet the reasonable suspicion standard. *See United States v. Williams*, 796 F.3d 951, 955, 957 (8th Cir. 2015) (holding that where license plate recognition (LPR) system alerted police to a nearby car that was associated with a person wanted for assault and led to the police justifiably stopping the car, the LPR system was no different than inputting a license plate number into a patrol car’s computer); *State v. Whitford*, No. 2009AP1412-CR, unpublished slip op ¶¶2, 8 (WI App Dec. 1, 2009) (holding that where computer check from officer’s squad car revealed that car owner’s license was revoked, officer had reasonable suspicion to stop the vehicle); *see also United States v. Cortez-Galaviz*, 495 F.3d 1203, 1204, 1206 (10th Cir. 2007) (holding that where state database maintained for the purpose of recording vehicle insurance information contained no information suggesting that the owner of the car had insured it, which the officer accessed from his squad car computer, officer had reasonable suspicion to stop the vehicle for a traffic violation).

¶12 Kennedy argues that Becker had to confirm the validity of the warrant before stopping him, but reasonable suspicion does not require absolute

certainty. *State v. Newer*, 2007 WI App 236, ¶7, 306 Wis. 2d 193, 742 N.W.2d 923.² Becker was not required to double-check or, as he testified, “confirm” that the warrant was valid. It was reasonable for him to rely on the DOT records he accessed from his squad car computer. See *United States v. Stephens*, 350 F.3d 778, 780 (8th Cir. 2003); see also *Arizona v. Evans*, 514 U.S. 1, 3-4 (1995) (declining to suppress evidence under exclusionary rule where officer reasonably relied on an erroneous police record indicating that there was an outstanding arrest warrant for the defendant). Kennedy’s entire argument is premised on the suggestion that the DOT records Becker accessed from his squad car were unreliable, but he offers absolutely nothing to suggest that is the case. Indeed, Becker’s confirmation of the outstanding warrant after the traffic stop indicates otherwise. Therefore, the circuit court properly denied Kennedy’s motion to suppress the evidence recovered from the stop of his vehicle.

By the Court.—Order affirmed.

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

² Both parties discuss *State v. Newer*, 2007 WI App 236, ¶1, 306 Wis. 2d 193, 742 N.W.2d 923, at length, but *Newer* does not address the reasonableness of an officer’s reliance on the DOT records regarding an outstanding warrant. The issue there was whether it was reasonable for an officer to assume that the owner of the vehicle, who had a revoked license, was the driver of the vehicle when the officer had no information about the driver. The court held that it was reasonable, as long as the officer was unaware of any facts that would suggest the owner was not driving. Here, the stop was not for driving with a revoked license. Rather, the warrant was issued for failure to pay a fine. Kennedy does not argue that Becker lacked reasonable suspicion to believe Kennedy was in his own vehicle. In any event, an assumption that he was present is reasonable. Beyond that, the *Newer* court did not directly address whether there was reasonable suspicion to believe that the owner’s license was revoked based on the information the officer had obtained.

