

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 22, 2016

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. 2015AP1613-CR

Cir. Ct. No. 2015CM130

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

JAMES A. WEBB,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County:
JOHN SIEFERT, Judge. *Reversed and cause remanded.*

1 KESSLER, J.¹ The State of Wisconsin appeals an order of the circuit court granting James A. Webb's motion to suppress evidence. Because we

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

conclude that the arresting officer had reasonable suspicion to stop Webb's vehicle, we reverse and remand for proceedings consistent with this opinion.

BACKGROUND

¶2 On January 27, 2015, Webb was charged with one count of carrying a concealed weapon. Webb was taken into custody following a traffic stop, initiated because Milwaukee Police noticed a defective high-mount tail light on Webb's SUV. Upon stopping Webb, the arresting officer discovered a loaded firearm and a box of ammunition. Webb admitted that he did not have a concealed carry weapon permit. Webb filed a motion to suppress physical evidence of the firearm and all "paraphernalia" related to the firearm.

¶3 At the suppression hearing, the arresting officer, Joel Susler, testified. He stated that on January 25, 2015, at 5:15 p.m., he and his partners were on patrol on the north side of Milwaukee when they stopped behind a 2001 Ford Expedition SUV at a stop light. Susler noted that the high-mount tail light of the SUV was not working while the driver of the vehicle was braking. Susler conducted a traffic stop and asked Webb whether Webb had a firearm, a question Susler described as "common practice." Webb told Susler that his firearm was registered (*i.e.*, that he had a concealed carry weapon permit), but when asked to provide the permit, Webb instead handed Susler the purchase receipt. Webb then admitted that he did not have the requisite permit. Webb was taken into custody and ultimately charged with carrying a concealed weapon.

¶4 Susler stated that the stop was based on a violation of WIS. ADMIN. CODE § Trans. 305.15(5)(a),² which states, as relevant: “The high-mounted stop lamp of every motor vehicle originally manufactured with a high-mounted stop lamp shall be maintained in proper working condition and may not be covered or obscured by any object or material.” Susler stated that the provision requires vehicles manufactured after “a certain year” to come with high-mount tail lights that are “required to work.” Because the bulbs in Webb’s high-mount tail light were out, Susler considered them “defective,” necessitating a traffic stop.

¶5 The circuit court granted Webb’s motion to suppress. The court found that Susler lacked reasonable suspicion to stop Webb because WIS. ADMIN. CODE § Trans. 305.15(5)(a) was applicable only to commercial vehicles, not individual motor vehicles. This appeal follows.

DISCUSSION

¶6 The Fourth and Fourteenth Amendments of the United States Constitution and article I, section 11 of the Wisconsin Constitution protect citizens from unreasonable searches and seizures. Traffic stops are considered seizures, and if the seizure was unreasonable and consequently unconstitutional, any evidence obtained therefrom is inadmissible. *State v. Popke*, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569; *State v. Harris*, 206 Wis. 2d 243, 263, 557 N.W.2d 245 (1996). The burden falls on the State to prove that a stop meets the constitutional standards. *State v. Post*, 2007 WI 60, ¶12, 301 Wis. 2d 1, 733 N.W.2d 634; *Harris*, 206 Wis. 2d at 263.

² The transcript erroneously refers to this provision as WIS. ADMIN. CODE § Trans. 105.15(5)(8). No such provision exists. We assume that the court reporter simply misheard, or that the parties made a mistake. Nonetheless, the parties all agree that the relevant provision is WIS. ADMIN. CODE § Trans. 305.15(5)(a).

¶7 An officer must have reasonable suspicion that a traffic law has been or is being violated to justify a traffic stop. *State v. Houghton*, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143. Reasonable suspicion depends on an officer’s ability “to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry v. Ohio*, 392 U.S. 1, 21 (1968); *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). We focus on reasonableness, and examine whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that an individual is committing, is about to commit or has committed an offense. *See State v. Anderson*, 155 Wis. 2d 77, 83-84, 454 N.W.2d 763 (1990).

¶8 Whether evidence should be suppressed is a question of constitutional fact. *State v. Knapp*, 2005 WI 127, ¶19, 285 Wis. 2d 86, 700 N.W.2d 899. We will uphold a circuit court’s findings of fact unless they are clearly erroneous, but we independently review whether those facts meet the constitutional standard. *See State v. Johnson*, 2007 WI 32, ¶13, 299 Wis. 2d 675, 729 N.W.2d 182.

¶9 Here, the circuit court stated that the provision of the administrative code relied upon by the State was inapplicable. Webb agrees, arguing that WIS. ADMIN. CODE § Trans. 305.15(5)(a) exceeds the scope of WIS. STAT. § 347.14(1), which only requires motor vehicles to maintain one to two working stop lamps.³

³ WISCONSIN STAT. § 347.14(1) states:

No person shall operate a motor vehicle, lightweight utility vehicle as defined in s. 346.94(21)(a)2., mobile home, or trailer or semitrailer upon a highway unless such motor vehicle, lightweight utility vehicle, mobile home, or trailer or semitrailer is equipped with at least one stop lamp mounted on the rear and meeting the specifications set forth in this section.

We decline to decide the issue of which regulation trumps the other, but rather conclude that Susler had sufficient reasonable suspicion to stop Webb based upon his belief that Webb violated the mandates of WIS. ADMIN. CODE § Trans. 305.15(5)(a).

¶10 Susler’s stop was based on the good-faith belief that WIS. ADMIN. CODE § Trans. 305.15(5)(a) required high-mount tail lights on all motor vehicles to be in good, working order. The provision states:

The high-mounted stop lamp of *every motor vehicle originally manufactured with a high-mounted stop lamp* shall be maintained in proper working condition and may not be covered or obscured by any object or material. This paragraph does not apply to the temporary covering or obscuring of a high mounted stop lamp by property carried on or in the motor vehicle or in a trailer towed by the motor vehicle.

(Emphasis added.) Contrary to the circuit court’s reasoning, we see nothing in § Trans 305.15(5)(a) that limits its scope to commercial vehicles. Indeed, WIS. ADMIN. CODE § Trans 305.01, describing the scope of the chapter pertaining to standards for vehicle equipment, states that all of ch. Trans. 305 applies to “equipment requirements for *manufactured*, homemade, street modified, replica and reconstructed vehicles and *motor vehicles, including automobiles*, light trucks, heavy trucks, motorcycles, motor homes, trailers and semi-trailers.” (Emphasis added.)

The stop lamp on a mobile home or trailer or semitrailer shall be controlled and operated from the driver’s seat of the propelling vehicle. A stop lamp may be incorporated with a tail lamp. No vehicle originally equipped at the time of manufacture and sale with 2 stop lamps shall be operated upon a highway unless both such lamps are in good working order.

¶11 When Susler pulled up behind Webb, he noticed that all of the bulbs on the high-mount tail light were burned out. Susler referred to this as “Trans .05 violation.” Susler was clearly aware of the mandates of WIS. ADMIN. CODE § Trans. 305.15(5)(a) and, based on his training, had a reasonable belief that this provision allowed for a traffic stop. The provision clearly states that high-mount tail lights on all motor vehicles, including automobiles, must be in working order. All of the bulbs being burned out is not working order. Susler pointed to specific and articulable facts to support his belief that Webb was committing an offense. *See State v. Colstad*, 2003 WI App 25, ¶11, 260 Wis. 2d 406, 659 N.W.2d 394 (“an officer may perform an investigatory stop of a vehicle based on a reasonable suspicion of a non-criminal traffic violation”). Accordingly, Susler had reasonable suspicion to conduct a traffic stop of Webb’s vehicle.

By the Court.—Order reversed and cause remanded.

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

