

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2006

Cornelia G. Clark
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. 2005AP2625-FT

Cir. Ct. No. 2005TR60

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

IN THE MATTER OF THE REFUSAL OF ANDREW I. TURK

COUNTY OF CALUMET,

PLAINTIFF-RESPONDENT,

v.

ANDREW I. TURK,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Calumet County:
DONALD A. POPPY, Judge. *Affirmed.*

¶1 SNYDER, P.J.¹ Andrew I. Turk appeals from an order revoking his driving privilege for one year. The revocation stems from his refusal to submit to a chemical test contrary to WIS. STAT. § 343.305. He challenges the trial court’s ruling that the arresting officer possessed the reasonable suspicion necessary to conduct the traffic stop of his vehicle. We hold that the officer had sufficient grounds for an investigative stop and affirm.

FACTS

¶2 On December 31, 2004, Calumet County Sheriff’s Deputy Joseph Tenor observed a vehicle traveling southbound on East Chestnut Street in the city of Chilton. Tenor noticed an excessively loud and unusual noise coming from the vehicle. He followed the vehicle as it turned onto Highway 151 and accelerated up to highway speed. Tenor then noticed white lights, which he also referred to as “reverse lights,” come on twice while the vehicle was moving forward. Tenor decided to make a routine traffic stop of the vehicle.

¶3 Tenor identified the driver of the vehicle as Turk, and asked about the white rear lights on the vehicle. Turk explained that the reverse lights had come on because he was having trouble finding fourth gear. During this conversation, Tenor observed an odor of intoxicants. Tenor asked Turk to perform field sobriety tests, including the one-leg stand, the horizontal gaze nystagmus, and the walk-and-turn. Turk admitted to drinking “somewhere around six” beers, and registered a .10 on a preliminary breath test (PBT). Based on Turk’s performance on the field sobriety tests, his statement that he had been drinking

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2003-04). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise stated.

alcohol, and his PBT result, Tenor arrested him for operating a motor vehicle while intoxicated.

¶4 Following his arrest, Turk was taken to the Calumet County Jail and read the Informing the Accused Form. After a prolonged interaction regarding breath tests, which were “deficient” despite six attempts, Tenor asked Turk to submit to a blood test. After an “active dialogue” about the blood test, Tenor determined that Turk was refusing the test and marked the Informing the Accused Form accordingly. On appeal, Turk does not contest the refusal, but limits his appeal to the issue of whether Tenor had a reasonable suspicion upon which to base the original traffic stop.

DISCUSSION

¶5 To execute a valid investigatory stop consistent with the Fourth Amendment prohibition against unreasonable searches and seizures, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of illegal activity has taken or is taking place. *State v. Fields*, 2000 WI App 218, ¶10, 239 Wis. 2d 38, 619 N.W.2d 279. The question of whether the officer’s suspicion was reasonable is a commonsense test: was the suspicion grounded in specific, articulable facts and reasonable inferences from those facts. *Id.* An inchoate and unparticularized suspicion or hunch will not suffice. *Id.*

¶6 Whether reasonable suspicion existed for an investigatory stop is a question of constitutional fact. *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. We will uphold the trial court’s findings of fact unless clearly erroneous, but whether those facts pass constitutional muster is a question of law subject to our de novo review. *Id.* Here, Tenor articulated two grounds for the investigatory stop. First, he noticed an unusually loud and excessive noise,

which he also described as a “loud muffler,” coming from Turk’s vehicle. Second, he saw white lights, which he determined were reverse lights, illuminating twice while Turk’s vehicle was going forward.

¶7 Turk argues that the stop was unreasonable because Tenor did not provide “specific and articulable facts which establish that it is more likely than not that Mr. Turk’s loud muffler ‘affected’ other traffic on the road at the time” or disturbed the peace. Turk calls for further articulation about “how loud the muffler was; relative to what; how far away the officer was when he heard the muffler; whether the loudness of the muffler changed during acceleration/deceleration,” and so forth.

¶8 Turk’s position demands more than the law requires. A police officer may make an investigative stop if he or she reasonably suspects that a person is violating or is about to violate civil traffic regulations. *State v. Colstad*, 2003 WI App 25, ¶¶11,13, 260 Wis. 2d 406, 659 N.W.2d 394. Pursuant to WIS. STAT. § 347.39(1), “No person shall operate on a highway any motor vehicle ... unless such motor vehicle is equipped with an adequate muffler in constant operation and properly maintained to prevent any excessive or unusual noise or annoying smoke.” Thus, a law enforcement officer has reasonable suspicion to stop a vehicle for a violation under this statute if the officer hears excessive or unusual noise that appears to be caused by an inadequate muffler. The statute does not require that the noise affect other drivers or otherwise disturb the local peace. Tenor testified that, based on his experience as a patrol officer, Turk’s muffler was excessively or unusually loud. Such testimony is sufficient to demonstrate a reasonable suspicion that Turk was violating a civil traffic regulation.

¶9 Turk also argues that his reverse lights illuminating while he was traveling forward at highway speed are not a basis for reasonable suspicion to make a traffic stop. We are not persuaded. In assessing whether reasonable suspicion exists for a traffic stop, we must consider all of the specific and articulable facts, taken together with the rational inferences from those facts. *Fields*, 239 Wis. 2d 38, ¶10. Here, it is reasonable to infer that reverse lights that repeatedly illuminate on a vehicle traveling forward are malfunctioning. Under WIS. STAT. § 347.06(3), an “operator of a vehicle shall keep all lamps and reflectors with which such vehicle is required to be equipped ... in proper working condition at all times.” Thus, the reverse lights provided additional justification for the investigative stop. *See Colstad*, 260 Wis. 2d 406, ¶¶11,13.

CONCLUSION

¶10 Tenor’s testimony that Turk’s vehicle had an excessively and unusually loud muffler supports his investigatory stop of Turk’s vehicle. Further, reverse lights that twice illuminated while Turk’s vehicle was moving forward enhanced the circumstances giving rise to a reasonable suspicion that Turk was violating civil traffic regulations. Accordingly, we affirm the order of the circuit court.

By the Court.—Order affirmed.

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

