

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 21, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

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.

No. 00-0506-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JASON HALDA,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Manitowoc County: PATRICK L. WILLIS, Judge. *Affirmed.*

Before Brown, P.J., Anderson and Snyder, JJ.

¶1 PER CURIAM. Jason Halda appeals from the judgment convicting him of first-degree intentional homicide. The issue on appeal is whether Halda's Fourth Amendment rights were violated when the car in which he was riding was

stopped by a police officer for traffic violations. Because we conclude that the officer had probable cause to stop the car, we affirm.

¶2 Halda was convicted after trial of first-degree intentional homicide while using a dangerous weapon, as a party to a crime, for the shooting death of a police officer. The court sentenced Halda to life imprisonment without the possibility of parole. Before trial, Halda moved to suppress the evidence obtained when the car in which he was a passenger was stopped by police. The court denied the motion. On appeal, Halda argues that he is entitled to a new trial because the court improperly refused to suppress this evidence.

¶3 On the night of the shooting, a police officer in Sheboygan county received a call that an officer had been shot and killed in Manitowoc county. He learned identifying information about the two suspects, including how old they were and their hair color. It was believed that the suspects might be headed to a college in Sheboygan county. The officer subsequently staked out an area on a highway leading to the college. Shortly after he began the stake out, he saw a car with four young people. He thought it was unusual that four young people would be on the highway at that time (it was about 3:30 in the morning). He also noticed that the two people in the backseat had the same hair color as the suspects.

¶4 The officer decided to follow the car to get the license plate number. As he was following the car, he saw the driver make an improper turn. He paced the car and clocked it at sixty miles per hour in a zone with a posted speed limit of fifty-five miles per hour. He then turned on his flashing lights and stopped the car. He used the microphone in his car to ask the driver to walk back to his squad car. She did not have a driver's license with her but gave a name, which later proved to be false. He noticed that she appeared extremely nervous. He also thought it was

odd that none of the people in the stopped car turned around to observe his conversation with the driver. He then asked her the names of the passengers. She identified the two people in the backseat as “Jason and Michael.” These were the first names of the two suspects. The officer then called for back-up and all of the occupants of the car were eventually taken into custody.

¶5 Before trial, Halda moved to suppress the evidence obtained as a result of this stop. The court denied the motion, finding that the officer had probable cause to stop the car for the traffic violations. Halda argues on appeal that this was incorrect.

¶6 When a Fourth Amendment challenge is raised at the trial court level, the trial court considers the evidence, makes findings of evidentiary or historical fact, and then resolves the issue by applying constitutional principles to those historical facts. *State v. Griffith*, 2000 WI 72, ¶23, 236 Wis. 2d 48, 613 N.W.2d 72. This court will give deference to the trial court’s findings of fact, but independently determines the question of constitutional fact. *Id.*

¶7 Halda argues that the stop was unconstitutional because the officer used the traffic stop as a pretext to stop the car to check on the backseat passengers. In *Whren v. United States*, 517 U.S. 806 (1996), the United States Supreme Court addressed the issue of whether the constitutional reasonableness of a traffic stop depends upon the actual motivations of the officer making the stop. The Court concluded that the constitutional reasonableness of a stop does not depend on the actual motivations of the officer involved. *Id.* at 813. The Court went on to conclude that since the officers had probable cause to believe that the petitioners had violated the traffic code, the stop was reasonable under the Fourth Amendment, and the evidence was admissible. *Id.* at 819.

¶8 In this case, the officer observed the car in which Halda was riding commit two traffic violations. The officer, therefore, had probable cause to stop the car in which Halda was a passenger. Under these circumstances, it was a minimal intrusion, and not unreasonable, for the officer to have asked the driver who the passengers were. As in *Whren*, since the stop was reasonable, the evidence was admissible and Halda's conviction must be affirmed.

¶9 Halda raises two arguments in an attempt to avoid *Whren*'s holding. First, he argues that *Whren* does not apply to this case because the officer here was interested in the passengers and not the driver. We see no basis for this distinction. In *Whren*, both the driver and the passenger were arrested, both moved to suppress the evidence, and the Court found the stop to be reasonable as to both of them. *See id.* at 809, 819. The Court did not distinguish between the driver and the passenger.

¶10 Halda also argues that we should decide the matter by applying the Wisconsin Constitution. We agree with the State that Halda did not properly develop this argument. "When urged to interpret our state constitution differently from the United States Constitution, we expect the parties to develop an argument based on the Wisconsin Constitution. We expect a discussion of the history of the constitutional provision relied on, a discussion of the case law interpreting the provision, and a discussion of the purpose of the provision." *State v. Nicholson*, 148 Wis. 2d 353, 368, 435 N.W.2d 298 (Ct. App. 1988). Moreover, the Wisconsin Supreme Court consistently follows federal jurisprudence in deciding Fourth Amendment issues. *See State v. Pallone*, 2000 WI 77, ¶28, 236 Wis. 2d 162, 613 N.W.2d 568. "By interpreting these provisions in a manner that is consistent with the precedent established by the Supreme Court, we ensure consistency in the application of constitutional principles." *Id.* (citations omitted).

Therefore, we refuse Halda's request to decide this issue on state constitutional grounds.

¶11 For the reasons stated, we conclude that the officer had probable cause to stop the car in which Halda was riding. The evidence obtained as a result of this stop was, therefore, admissible, and Halda's conviction is affirmed.¹

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

¹ Because we conclude that the officer had probable cause to stop the car, we need not address the other issue raised by Halda.

