

**COURT OF APPEALS
DECISION
DATED AND FILED**

September 28, 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. 2006AP338-CR

Cir. Ct. No. 2005CF55

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES A. ENGEL,

DEFENDANT-APPELLANT.

APPEAL from judgment of the circuit court for Waushara County:
RICHARD O. WRIGHT, Judge. *Affirmed.*

Before Lundsten, P.J., Vergeront and Higginbotham, JJ.

¶1 PER CURIAM. James Engel appeals a judgment convicting him of seventh-offense operating while under the influence. Engel entered a no-contest plea to the charge after the trial court denied his motion to suppress the evidence

of his intoxication. The issue is whether the trial court should have suppressed the evidence as a product of an unlawful traffic stop. We affirm.

¶2 Motorcycle operators must wear eye protection unless the motorcycle is equipped with an adequate windshield. WIS. STAT. § 347.485(2)(a) and (c) (2003-04).¹ In this case, a police officer spotted Engel operating a motorcycle at night without eye protection, and stopped him. As the officer approached the stopped motorcycle he saw for the first time that the motorcycle was equipped with a windshield of the requisite legal height. The officer continued his approach to Engel to explain why he stopped Engel, and to ask Engel for identification. During the ensuing contact, the officer noticed the signs of intoxication that led to Engel's arrest and this prosecution. At the suppression hearing, the officer conceded that when he stopped Engel he was not sure whether the eye protection law contained a windshield exception.

¶3 Engel argued to the trial court that the officer premised his stop on his mistaken view that the law required eye protection for all motorcycles. However, the court determined that the officer's mistake was actually one of fact, because he did not see the windshield until after he initiated the stop. The court then held that a reasonable police officer would have had reasonable suspicion to stop Engel, even though the suspicion later turned out to be unfounded. Consequently, the trial court denied the suppression motion.

¶4 Engel first contends that the standard for testing the legality of a traffic stop for a statutory equipment violation is probable cause rather than the

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

reasonable suspicion test the trial court applied, citing *State v. Longcore*, 226 Wis. 2d 1, 8, 593 N.W.2d 412 (Ct. App. 1999) for this argument. However, Engel did not challenge the trial court's use of the lesser standard. He has therefore waived the issue on appeal. See *State v. Konrath*, 218 Wis. 2d 290, ¶7 n.8, 577 N.W.2d 601 (1998).

¶5 Engel next contends that had the officer known of the windshield exception he would have checked for and undoubtedly seen the windshield before he decided to stop Engel. Consequently, Engel contends, the mistake was not only one of fact but one of law as well, and a traffic stop cannot be premised on a mistake of law. *Longcore*, 226 Wis. 2d at 9. However, Engel can only speculate that the officer's misunderstanding of the law contributed to the stop. The officer testified that he did not see the windshield before the stop, and there was no testimony or evidence that the windshield would have been visible to him had he been looking for it. We will not find a constitutional violation based on speculation as to what an officer might have seen or done in hypothetical circumstances.

¶6 Engel finally contends that the officer should have terminated the stop immediately when he first realized that the motorcycle had a windshield. However, there is no constitutional requirement to immediately terminate a stop when the reasonable suspicion that prompted it has been resolved. Under those circumstances, a police officer may briefly continue with the stop if the officer's subsequent contact with the detained person is reasonably related to the circumstances justifying the initial stop. *State v. Gammons*, 2001 WI App, 36, ¶¶11-13, 241 Wis. 2d 296, 625 N.W.2d 623. Here, the officer testified that he continued the stop to ask for identification and to explain why he stopped Engel. His activities were reasonably related to the purpose of the stop, and justified

extending it beyond the point at which the officer saw the windshield. We have already established in *Gammons* that an officer's request for identification is reasonably related to a traffic stop even after the initial suspicions leading to the stop have been dispelled. *Id.*, ¶¶10-14. In addition, it is objectively reasonable for an officer to approach a person mistakenly stopped to explain that the officer made a mistake so that the person understands why he or she was stopped.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5 (2003-04).

