

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 29, 2007**

A. John Voelker  
Acting 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. 2006AP2748-CR**

**Cir. Ct. No. 2006CT129**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT IV**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**TZVETOMIR M. GORANOV,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Sauk County:  
GUY D. REYNOLDS, Judge. *Affirmed.*

¶1 VERGERONT, J.<sup>1</sup> Tzvetomir Goranov appeals his judgment of conviction for operating a vehicle after license revocation in violation of WIS. STAT. § 343.44(1)(b) (2005-06). He contends the circuit court erred in denying his

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

motions to suppress evidence and motion for reconsideration because, he asserts, the sheriff's deputy did not have probable cause to stop his vehicle. We conclude there was probable cause. Accordingly, we affirm.

## BACKGROUND

¶2 At the motion hearing, Deputy Bradley Stoddard testified that he observed Goranov's vehicle fail to stop at a stop sign and he therefore pulled over the vehicle. The deputy ran a check on Goranov through Sauk County dispatch and determined that Goranov had an occupational driver's license and was operating his vehicle outside the allowable hours for that date. The deputy arrested Goranov for operating his vehicle after his license had been revoked in violation of WIS. STAT. § 343.44(1)(b) and issued a citation for failing to wear a seatbelt. The deputy did not issue a citation for failing to stop at a stop sign.

¶3 The intersection at which Goranov failed to stop was located in a private apartment complex. Allen Moore, the property manager of the apartment complex, testified that the apartment complex's management had erected the stop sign at the intersection in question and that the stop sign met the size, shape, and contour specifications of official stop signs issued by the Department of Transportation.

¶4 The deputy testified that at the time of the incident, he believed he was on public streets. When questioned about his understanding of the law, the deputy stated that the applicable statute was WIS. STAT. § 346.46(1),<sup>2</sup> and

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<sup>2</sup> WISCONSIN STAT. § 346.46(1) provides:

(continued)

confirmed that his understanding of the law matched the words of the statute. In response to the question “do motorists have to stop at all stop signs?”, he answered “I would believe so, yes.”

¶5 Goranov argued that Wisconsin law requires drivers of vehicles to stop at only official stop signs, *see* WIS. STAT. §§ 346.46(1), 346.04(2),<sup>3</sup> and 340.01(38),<sup>4</sup> and because the stop sign was not official, he did not break the law. Goranov contended that the deputy had a mistaken view of the law because he testified that motorists should stop at all stop signs. He argued that under *State v. Longcore*, 226 Wis. 2d 1, 594 N.W. 412 (Ct. App. 1999), a lawful stop cannot be predicated on a mistake in the law. Thus, he asserted, there was no reasonable suspicion to stop his vehicle.

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**Vehicles to stop at stop signs and school crossings. (1)**

Except when directed to proceed by a traffic officer or traffic control signal, every operator of a vehicle approaching an official stop sign at an intersection shall cause such vehicle to stop before entering the intersection and shall yield the right-of-way to other vehicles which have entered or are approaching the intersection upon a highway which is not controlled by an official stop sign or traffic signal.

<sup>3</sup> WISCONSIN STAT. § 346.04(2) provides: “No operator of a vehicle shall disobey the instructions of any official traffic sign or signal unless otherwise directed by a traffic officer.”

<sup>4</sup> WISCONSIN STAT. § 340.01(38) provides:

**(38)** “Official traffic control device” means all signs, signals, markings and devices, not inconsistent with chs. 341 to 349, placed or erected by authority of a public body or official having jurisdiction for the purpose of regulating, warning or guiding traffic; and includes the terms “official traffic sign” and “official traffic signal.”

¶6 The circuit concluded that the deputy made a mistake of fact, not law, and he had reasonable suspicion to make the stop. The court therefore denied the motion.

¶7 Goranov filed a motion for reconsideration. Goranov argued that the circuit court should have conducted its analysis under the probable cause standard rather than the reasonable suspicion standard. He again argued that the deputy's mistaken view of the law precluded the lawfulness of the stop. The court again concluded that the deputy had made a mistake in fact, not a mistake in law, and there was reasonable suspicion to make the arrest. The court therefore denied the motion for reconsideration and Goranov appeals.

#### DISCUSSION

¶8 On appeal, Goranov renews his argument that the circuit court applied the wrong standard in assessing the validity of the stop and that under the probable cause analysis, an officer has no cause to make an arrest if no law is broken. Although we agree with Goranov that probable cause is the correct standard to evaluate the lawfulness of the stop, we uphold the circuit court's orders because we find there was no mistake in law, only a reasonable mistake in fact.

¶9 A challenge to the lawfulness of a police-initiated stop presents a question of law, which we review de novo. *State v. Harris*, 206 Wis. 2d 243, 250, 557 N.W.2d 245 (1996). Similarly, whether probable cause to arrest exists based on the facts of a given case is a question of law, which we review independently of the trial court. *State v. Kasian*, 207 Wis. 2d 611, 621, 558 N.W.2d 687 (Ct. App. 1996).

¶10 The temporary detention of individuals during the stop of an automobile by the police constitutes a “seizure” of “persons” within the meaning of the Fourth Amendment.<sup>5</sup> *Whren v. United States*, 517 U.S. 806, 809-10 (1996). An automobile stop is thus subject to the constitutional imperative that it not be “unreasonable” under the circumstances. *Id.* at 810. A traffic stop is generally reasonable if the officers have probable cause to believe that a traffic violation has occurred, *id.*, or have grounds to reasonably suspect a violation has been or will be committed. *See Berkemer v. McCarty*, 468 U.S. 420, 439 (1984) (citing *Terry v. Ohio*, 392 U.S. 1 (1968)).

¶11 Probable cause exists when, under the circumstances, the arresting officer’s knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant probably committed a crime. *State v. Woods*, 117 Wis. 2d 701, 710, 345 N.W.2d 457 (1984). “When an officer observes unlawful conduct[,] ... the observation of unlawful conduct itself gives the officer probable cause for a lawful seizure.” *State v. Waldner*, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996). It is well established, however, that

[i]n dealing with probable cause, as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent [people], not legal technicians, act. Probable cause exists where the facts and circumstances within the arresting officers’ knowledge and of which they had reasonably trustworthy information are sufficient in themselves to warrant a [person] of reasonable

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<sup>5</sup> Both the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution guarantee the right of citizens to be free from unreasonable searches and seizures. In general, the Wisconsin Supreme Court follows the United States Supreme Court’s interpretation of the search and seizure provision of the Fourth Amendment in construing the same provision of the state constitution. *State v. Fry*, 131 Wis. 2d 153, 171-72, 388 N.W.2d 565 (1986).

caution in the belief that an offense has been or is being committed.

*Draper v. United States*, 358 U.S. 307, 313 (1959) (citations omitted).<sup>6</sup>

¶12 Failure to stop at “an official stop sign” is an offense under WIS. STAT. § 346.46(1). The deputy observed Goranov failing to stop at a sign that, according to the undisputed testimony, resembled an official sign issued by DOT. Nothing indicated that the sign bearing all the markings of an official stop sign was not in fact a sign erected by an authority of a public body as required by WIS. STAT. § 340.01(38). The fact that the sign was erected by a private party was a fact not known by the officer at the time of his initial observation. Under the circumstances a reasonable officer could infer that the sign’s presence was the result of the action of a public body; thus, when observing a car fail to stop at the sign, an officer could reasonably believe that a violation of the law had occurred. The deputy therefore had probable cause to make the stop.

¶13 Because a reasonable officer could believe that the stop sign was an official stop sign, and because the law requires that a person stop at an official stop sign, this officer’s belief on the law regarding unofficial stop signs is irrelevant to the probable cause analysis. Nonetheless, we observe that the officer’s answer of

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<sup>6</sup> The State does not dispute that the probable cause standard is the correct framework to conduct the analysis of the constitutionality of the stop. For clarity, we point out how the reasonable suspicion rationale differs. Under the reasonable suspicion standard, the law does not require an officer to observe criminal conduct; rather, under the totality of the circumstances, the officer must consider all the facts together and “as they accumulate,” draw “reasonable inferences about [their] cumulative effect.” *State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996). So long as there are specific and articulable facts which yield reasonable inferences, which, in turn, reasonably warrant a suspicion that an offense has occurred or will occur, there is reasonable suspicion. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968); *State v. Chambers*, 55 Wis. 2d 289, 294, 198 N.W.2d 377 (1972). Reasonable suspicion is not sufficient to support an arrest or search, but it permits an officer to conduct a stop for further investigation. See *Brown v. Texas*, 443 U.S. 47, 51 (1979).

“I would believe so, yes” to the question “do motorists have to stop at all stop signs?” does not clearly indicate he believes motorists have to stop at unofficial stop signs.

¶14 Goranov argues that *Longcore*'s holding that there “must indeed be an offense [and] a lawful stop cannot be predicated on a mistake of law” governs this case. *Longcore*, 226 Wis. 2d at 9. We disagree. In *Longcore*, the officer observed a makeshift plastic window covering and believed it to be an equipment violation under the traffic code because it was not safety glass. *Id.* at 4. We rejected the circuit court's conclusion that, because the statute was ambiguous and the officer's view of the law was reasonable, his suspicion that a law was being violated was reasonable. *Id.* at 5, 9. We remanded the case for the circuit court to construe the statute and decided if the facts that had been proved violated the statute as properly construed. *Id.* at 9-10. At issue in *Longcore* was what facts the statute, properly construed, required, not what the officer reasonably perceived the facts to be. That is, it was not the case in *Longcore* that the officer thought there was plastic covering the window when, in fact, there was a glass covering.

¶15 We conclude that, although the deputy's belief that the stop sign was official was mistaken, it was reasonable under the circumstances, and he therefore had probable cause to believe Goranov had violated WIS. STAT. § 346.46(1).<sup>7</sup> Accordingly, we affirm.

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<sup>7</sup> Because we conclude that the stop was constitutional, we do not address the parties' arguments regarding lawfulness of the stop under the village ordinance.

*By the Court.*—Judgment affirmed.

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



