

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 5, 2007

David R. Schanker
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. 2006AP2932-CR

Cir. Ct. No. 2005CT173

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

WILLIAM C. HOGOBOOM,

DEFENDANT-APPELLANT.

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

¶1 BRIDGE, J.¹ William C. Hogoboom appeals an order denying a motion to suppress the evidence gathered following a stop of his motor vehicle for following a vehicle with his high beam headlights on in violation of WIS. STAT.

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

§ 347.12(1)(b), and a subsequent judgment convicting him of operating a motor vehicle while intoxicated in violation of WIS. STAT. § 346.63(1)(a). Hogoboom claims that the circuit court erred in denying his motion to suppress because the officer lacked the proper basis to stop his vehicle. We reject Hogoboom's argument and affirm his conviction.

BACKGROUND

¶2 At approximately 9:15 p.m. on March 6, 2005, Sergeant Sherman, a seven-year veteran of the Sauk Prairie Police Department, was on patrol in his squad car in the Village of Sauk City. The patrol officer's vehicle was facing east on Phillips Boulevard, also known as Highway 12, at its intersection with Water Street. At this location, the officer observed a truck traveling west on Phillips Boulevard towards his location. The truck was being operated by William Hogoboom. The officer first observed the truck from a distance of a few hundred feet away following another vehicle at a distance of approximately four car lengths. As the truck approached his position, the officer believed that Hogoboom was driving with his vehicle's high beam headlights on. The officer testified that he did not believe that Hogoboom was speeding, weaving, or otherwise driving erratically.

¶3 The officer made a u-turn on Phillips Boulevard, turned on his squad car's lights and proceeded to pull over Hogoboom for failing to dim or redirect his headlights as required by WIS. STAT. § 347.12(1)(b).² The officer informed

² WIS. STAT. § 347.12. Use of multiple-beam headlamps.

(continued)

Hogoboom of the reason for the stop, and Hogoboom told the officer that he was unaware that the vehicle's headlights were on high beam. While speaking with Hogoboom regarding the headlights, the officer noticed the odor of intoxicants on Hogoboom's breath. The officer also observed that Hogoboom's eyes were bloodshot and glassy. When asked by the officer if he had been drinking alcohol, Hogoboom told the officer that he had a few drinks. The officer asked Hogoboom to perform field sobriety tests. Hogoboom failed to successfully complete the tests and the officer placed him under arrest. Hogoboom's blood test revealed that he had a 0.17% blood alcohol concentration.

DISCUSSION

¶4 The temporary detention of individuals during the stop of an automobile by police, even if for a brief period and for a limited purpose, constitutes a "seizure" of "persons" within the meaning of the Fourth Amendment. *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996). A traffic stop is generally reasonable under the Fourth Amendment when an officer

(1) Whenever a motor vehicle is being operated on a highway during hours of darkness, the operator shall use a distribution of light or composite beam directed high enough and of sufficient intensity to reveal a person or vehicle at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

....

(b) Whenever the operator of a vehicle equipped with multiple-beam headlamps approaches or follows another vehicle within 500 feet to the rear, the operator shall dim, depress, or tilt the vehicle's headlights so that the glaring rays are not reflected into the eyes of the operator of the other vehicle. This paragraph does not prohibit an operator from intermittently flashing the vehicle's high-beam headlamps as provided under par. (a).

has reasonable suspicion that a traffic violation has been or will be committed. *Id.* When we review a motion to suppress evidence, we will uphold a circuit court's findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). The validity of a police officer's stop for a traffic violation is a question of law which we review de novo. *State v. Baudhuin*, 141 Wis. 2d 642, 648-49, 416 N.W.2d 60 (1987).

¶5 Pursuant to WIS. STAT. § 345.22, an officer may arrest an individual for the violation of a traffic regulation without a warrant if the officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation. *Baudhuin*, 141 Wis. 2d at 648. Implicit in this is the authority to stop the vehicle when the officer has reasonable grounds to believe that a violation has occurred. *Id.*

¶6 We have reviewed the record and conclude that articulable facts existed which provided the patrol officer with reasonable suspicion that Hogoboom was operating his vehicle in violation of WIS. STAT. § 347.12(1)(b).

¶7 The officer testified that he first observed Hogoboom's truck at a distance of approximately two hundred feet as it approached his location, and that the truck passed by him. While observing the truck, the officer determined that Hogoboom was driving with his high beam headlights illuminated while traveling directly behind another vehicle. Further, the officer testified that after advising Hogoboom of the reason for the stop, Hogoboom told him that "he was unaware his high beams were on and that he was on the telephone." The officer's account of the stop was contradicted by the testimony of Hogoboom and his wife, Nadine Connor. Hogoboom and Connor, who was not in the truck at the time but overheard the events in question over the hands-free car phone installed in the

truck, testified that Hogoboom informed the patrol officer that he was not using the vehicle's high beam headlights. However, the circuit court was free to believe the officer's account of this exchange rather than that of Hogoboom and Connor. It is for the trier of fact and not this court to assess witness credibility and the weight to be accorded conflicting testimony. *Rohl v. State*, 65 Wis. 2d 683, 695, 223 N.W.2d 567 (1974).

¶8 Hogoboom argues that the officer did not have a reasonable suspicion based on objective facts that Hogoboom's headlights were on high beam. The court noted that the officer was experienced in traffic regulation, and the court found credible his testimony that in the officer's experienced opinion, Hogoboom's lights had not been dimmed or redirected. The determination of witness credibility is for the trier of fact. *Id.*

¶9 Hogoboom complains that the officer did not verify whether Hogoboom's headlights were actually on high beam after stopping him. The officer was not required to do so. The question is whether, at the time he made the stop, the officer had reasonable grounds to believe that Hogoboom was following another vehicle with his high beam headlights on. We have concluded that he did. Once a justifiable stop is made, the scope of the officer's inquiry may be broadened beyond the purpose for which the person was stopped if additional particularized and objective factors come to the officer's attention. *State v. Betow*, 226 Wis. 2d 90, 94, 593 N.W.2d 499 (Ct. App. 1999). Here, the officer noticed the odor of intoxicants on Hogoboom's breath while the officer was speaking with him about the headlights and observed that Hogoboom's eyes were bloodshot and glassy. These facts are sufficiently objective and particularized to support the officer's determination to broaden the inquiry into whether Hogoboom was driving while intoxicated.

CONCLUSION

¶10 For the above reasons, we conclude that the circuit court properly denied Hogoboom's motion to suppress and affirm his conviction.

By the Court.—Judgment affirmed.

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

