

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 10, 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. 00-2531-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

FRANK STARICH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: ROBERT C. CRAWFORD, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Frank Starich appeals from the judgment of conviction for operating a motor vehicle while under the influence of an

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

intoxicant – fourth offense, following his guilty plea. He presents several arguments raising three issues. This court rejects his arguments and affirms.

I. BACKGROUND

¶2 The factual background relevant to the issues on appeal is not in dispute. On January 4, 1999, in the midst of a blizzard, Starich left a bar and drove his car through Wisconsin State Fair Park. State Fair police stopped him and, after having him perform various field sobriety tests, arrested him for operating a motor vehicle while under the influence of an intoxicant.²

¶3 The State charged Starich with operating a motor vehicle while under the influence of an intoxicant – fourth offense. Starich filed pre-trial motions including one to “dismiss for lack of probable cause.” The motion stated that Starich was seeking:

an order dismissing the [charge] for the reason that *probable cause to justify the investigating officer to stop and detain the defendant did not exist*, rendering such action on the part of the investigating officer to be illegal and therefore any evidence obtained from the defendant, subsequent to the stop would have to be dismissed, because without such improperly received evidence, there would be no basis for conviction of the defendant upon a trial of this action.

(Emphasis added.)

¶4 The trial court held a hearing at which it considered the police report of the incident, newspaper articles and photographs establishing the severe weather conditions at the time of the stop, comments of both counsel summarizing

² In the usual manner, a charge of operating a motor vehicle with a blood alcohol concentration of .10 or above accompanied the primary charge in this case. It did not result in a separate conviction and it plays no part in the consideration of the issues on appeal.

the facts, and arguments of counsel. Although the police report referred to four possible bases for the stop—speeding, defective tail light cover, obstructed tail lamps, and obstructed registration plates—the trial court focused primarily on Starich’s contention that the police should not have stopped him for having his license plate covered with snow because that basis for the stop was unreasonable, given the blizzard conditions. Rejecting Starich’s contention, the court concluded, in part:

I do find that on January 4, 1999, the [C]ity of Milwaukee was experiencing the worst blizzard in 52 years. The city was virtually impassable. That is borne out by the photographs and comments in the popular newspapers in Exhibit 104 or Exhibit 105. The photographs of Mr. Starich’s car in Exhibit[s] 101, 102 and 103 demonstrate the depth of snow coverage in our city. I do find as a fact that when Officer Randy Kramer saw Mr. Starich’s car driven on the Wisconsin State Fair grounds on January 4, 1999 at about 10:45 in the evening, there was foreign matter covering the license plates of Mr. Starich. That foreign matter completely covered the plate, and Officer Kramer was unable to determine whether the vehicle had license plates attached.

I do find that the inability of Officer Kramer to determine whether the vehicle had license plates was a pretext, but a pretext that he was entitled to exercise under Section 341.15³ as strict and rigid requirements for the display of registration plates.

³ WISCONSIN STAT. § 341.15(2) states:

Registration plates shall be attached firmly and rigidly in a horizontal position and conspicuous place. The plates shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read. Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.

I do conclude that given the foreign matter on the license plates, the stop was reasonable under Section 345.22.⁴

(Footnotes added.)

¶5 Significantly, given the issues on appeal, the trial court, before announcing its decision denying Starich’s motion, also clarified:

THE COURT: ... I want to streamline this hearing, and it seems to me that I only need reach the question whether the license plate was completely covered with snow in order to justify the stop and ... to limit my consideration to that single traffic violation.

Do you have any challenge, [defense counsel] --

[DEFENSE COUNSEL]: No.

THE COURT: -- whether the license plate was covered with snow on January 4, 1999 at 10:45?

[DEFENSE COUNSEL]: No, my client really doesn’t--

Just as significantly, the trial court, before announcing its decision, asked, “Given that uncontested evidence regarding foreign matter on the license plates at the time of the stop, do you have any other evidence then on the question of foreign matter on the license plate, [defense counsel]?” Defense counsel responded, “No.”

II. DISCUSSION

¶6 The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution both guarantee the right to be free from unreasonable searches and seizures. *State v. Gaulrapp*, 207 Wis. 2d 598, 603 n.2, 558 N.W.2d 696 (Ct. App. 1996). Under the Fourth Amendment, the temporary detention of individuals during a traffic stop “constitutes a ‘seizure’

⁴ WISCONSIN STAT. § 345.22 states: “**Authority to arrest without a warrant.** A person may be arrested without a warrant for the violation of a traffic regulation if the traffic officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation.”

of ‘persons’” and, consequently, must meet the constitutional requirement of reasonableness. *Whren v. United States*, 517 U.S. 806, 810 (1996). To determine whether a stop is reasonable, a court must review the totality of the circumstances. *State v. Griffin*, 183 Wis. 2d 327, 331, 515 N.W.2d 535 (Ct. App. 1994). As the Supreme Court noted in *Whren*, however, “[a]s a general matter, the decision to stop an automobile is reasonable where the police have probable cause to believe that a traffic violation has occurred.” *Whren*, 517 U.S. at 810. Observing a driver committing a traffic violation provides an officer with probable cause to execute a stop of the vehicle. *See id.*

¶7 In reviewing a trial court’s denial of a motion to suppress, this court will uphold the trial court’s findings of fact unless the findings are clearly erroneous. *State v. Harris*, 206 Wis. 2d 242, 249, 557 N.W.2d 245 (1996). Whether the facts meet the constitutional requirement of reasonableness is a question of law subject to de novo review. *Id.*

¶8 Starich argues that the trial court erred: (1) “by determining that under the totality of the circumstances the police had probable cause for stopping [him] when it was unreasonable to expect drivers to keep their vehicles completely clear of snow in the blizzard conditions that existed”; (2) “in determining that probable cause existed to stop and detain [him] when there was no testimony taken from the police who made the stop, and probable cause must be based on suspicion grounded in specific articulable facts and reasonable inferences from those facts”; and (3) “when it made findings of fact based upon a police report which was never admitted into evidence and made part of the record...” This court rejects his arguments for four reasons:

¶9 First, Starich’s arguments are based on two mistaken legal premises: that an officer’s *testimony* is required at a motion hearing to establish the basis for a traffic stop; and that the basis must be supported by *probable cause*. Evidence at a motion hearing, of course, can consist of exhibits and stipulations, as well as testimony. Here, after reviewing the police report and hearing from counsel, the court found that Officer Kramer observed Starich’s vehicle in violation of a traffic law—failing to maintain registration plates in legible condition—and that the violation was a reasonable basis for the stop. These findings are not clearly erroneous. Further, although traffic stops often are based on probable cause, they also may be based on *reasonable suspicion* of a violation. See *Gaulrapp*, 207 Wis. 2d 603; see also WIS. STAT. § 968.24

¶10 Second, on appeal, Starich has submitted a brief without a single citation to the record. Arguments in appellate briefs must be supported by authority and record references, WIS. STAT. RULE 809.19(1)(e) & (3)(a), and this court need not consider arguments that do not comply. *Murphy v. Droessler*, 188 Wis. 2d 420, 432, 525 N.W.2d 117 (Ct. App. 1994).⁵

¶11 Third, Starich waived any objection to the trial court’s method of basing its decision on the police report and other exhibits, and on the stipulated facts. The record establishes that the trial court considered Starich’s argument that the reasonableness of the police conduct should be measured, in part, with regard to the weather conditions. The record establishes that Starich *never* objected to the court’s considering the issue based on the exhibits and undisputed factual

⁵ This court notes, however, that Starich, with his brief, included an appendix containing the essential portions of the record. This court has examined the full record and certainly would not have denied Starich’s appeal based solely on counsel’s noncompliance with the rules of appellate procedure.

representations of the parties. The record establishes that Starich *never* objected to the court's considering the exhibits, even though they never were formally moved or received in evidence. The record establishes that Starich *never* sought to call a witness to testify, and *never* asked to submit any other evidence in any other manner.

¶12 And, on this issue, the record is additionally troubling given that the State, on appeal, has accepted Starich's argument and asked this court "to remand the matter to the successor trial court for a testimonial hearing." The State argues that Starich "was denied the opportunity to have that credibility [of the police officer] tested." Starich, however, never asked for that opportunity; he effectively stipulated to the fact that his license plate was covered with snow. The State, however, goes on to argue that "[w]hether or not defense counsel raised the issue, the court on its own should have required the presence and testimony of the reporting officer in order to evaluate his credibility."

¶13 This court disagrees. The State has offered no authority to support the rather astounding proposition that a trial court must evaluate a motion by 'going through the motions'—i.e., requiring testimony to establish facts on which the parties completely agree. Starich accepted the undisputed fact that his license plate was covered with snow. The State did, too. *Neither defense counsel nor the prosecutor ever asked the trial court to do anything that they now fault the trial court for failing to do.*

¶14 Fourth, Starich conceded in the trial court that he could offer nothing to establish an "act of God" exception to the requirements of WIS. STAT. § 341.15(2), such that a blizzard would relieve one of responsibility for properly displaying registration plates. Now, on appeal, he offers nothing more. This court

need not consider “amorphous and insufficiently developed arguments.” *Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995).

III. CONCLUSION

¶15 The record reflects that the trial court made an earnest effort to evaluate Starich’s primary challenge to the stop. The record reflects that the trial court and both counsel carried out a thoughtful and reasonably thorough discussion of the issue. The record reflects that the court allowed the parties to present all they sought to present. And the record reflects that the trial court rendered a reasonable decision, consistent with the factual record and the governing legal standards.

By the Court.—Judgment affirmed.

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

