

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 6, 2008

David R. Schanker
Clerk of Court of Appeals

NOTICE

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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. 2008AP368-CR

Cir. Ct. No. 2007CF132

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

PAUL M. TIEGS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Wood County:
EDWARD F. ZAPPEN, JR., Judge. *Affirmed.*

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

¶1 VERGERONT, J. Paul Tieggs appeals the judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, fifth offense (OWI). The dispositive issue is whether the state trooper's observation of automobile plates on Tieggs's pickup truck supported a reasonable suspicion that he

was violating a traffic statute. The State concedes the trooper was mistaken in believing there was a violation of WIS. STAT. § 341.04(2) (2005-06),¹ which relates to reregistration of a vehicle when its construction or use has been changed. However, the State asserts, the trooper's observation provided reasonable suspicion that the pickup truck violated WIS. STAT. § 341.61(2), which creates a forfeiture for displaying registration plates not issued for such vehicle.

¶2 We agree with the State that the state trooper's mistaken belief on the law does not require a reversal as long as the facts he observed support a reasonable suspicion that another statute was being or was about to be violated. We also conclude that the trooper's observation of automobile plates on Tiegs's truck provided reasonable suspicion that the vehicle displayed the wrong registration plates, in violation of WIS. STAT. § 341.61(2). We therefore affirm the judgment of conviction.

BACKGROUND

¶3 Tiegs was charged with OWI, fifth offense, and operating with a prohibited alcohol concentration, fifth offense, after he was arrested during a traffic stop. He filed a motion to suppress evidence on the ground that the state trooper who arrested him did not have reasonable suspicion to stop him. The only witness present at the hearing on the motion was Wisconsin State Patrol Trooper Chris Zawislan. He testified as follows.

¹ All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

¶4 He observed a “full-sized” red Chevrolet pickup truck, driven by Tiegs, travelling eastbound on County Road C in the Village of Rudolph, Wood County. He noticed that the truck had automobile license plates, which he believed was a violation of WIS. STAT. § 341.04(2). This statute provides:

(2) Unless application for reregistration has been made as required by s. 341.32, it is unlawful for any person to operate or for the owner to consent to being operated on any highway of this state any registered vehicle the construction or use of which has been changed so as to make the vehicle subject to a higher fee than the fee at which it currently is registered or which is carrying a greater load than that permitted under the current registration.

Trooper Zawislan pulled the truck over. During the stop, he smelled the “odor of intoxicants” on Tiegs’s breath and noticed that Tiegs had “bloodshot, glassy eyes.” Trooper Zawislan performed field sobriety tests and a preliminary breath test on Tiegs, which led the trooper to believe that Tiegs was under the influence of intoxicants. The trooper then arrested Tiegs for OWI.

¶5 The circuit court denied Tiegs’s motion to suppress evidence. The court concluded that, because Trooper Zawislan had observed that Tiegs had automobile license plates on his pickup truck, he had “an articulable reason to stop” Tiegs, even if the trooper was mistaken about the statute that was violated. Tiegs subsequently pleaded guilty to the OWI charge.²

² The charge for operating with a prohibited alcohol concentration was dismissed.

DISCUSSION

¶6 On appeal, Tieg's argues that the circuit court erred in finding that Trooper Zawislán had reasonable suspicion to justify the stop. He contends that there was not a reasonable suspicion that he was violating WIS. STAT. § 341.04(2).

¶7 The State concedes that the trooper was mistaken about the violation of WIS. STAT. § 341.04(2). However, the State contends, it is not the trooper's subjective reason for the stop, but rather the facts known to the trooper at the time, which must provide reasonable suspicion for the stop. The State contends that the trooper's observation of automobile license plates on Tieg's truck provided reasonable suspicion, if not probable cause, that Tieg's was violating WIS. STAT. § 341.61(2).³ The statute provides that it is illegal to:

³ The State makes the alternative argument that there was reasonable suspicion to believe Tieg's was violating WIS. STAT. § 341.04(1), which provides:

(1) It is unlawful for any person to operate or for an owner to consent to being operated on any highway of this state any motor vehicle, recreational vehicle, trailer or semitrailer or any other vehicle for which a registration fee is specifically prescribed unless at the time of operation the vehicle in question either is registered in this state, or, except for registration under s. 341.30 or 341.305, a complete application for registration, including evidence of any inspection under s. 110.20 when required, accompanied by the required fee has been delivered to the department, submitted to a dealer under s. 341.09 (2m) for transmittal to the department or deposited in the mail properly addressed with postage prepaid and, if the vehicle is an automobile or motor truck having a registered weight of 8,000 pounds or less, the vehicle displays a temporary operation plate issued for the vehicle unless the operator or owner of the vehicle produces proof that operation of the vehicle is within 2 business days of the vehicle's sale or transfer, or the vehicle in question is exempt from registration.

It is unnecessary for us to address the alternative argument.

(2) Display ... upon a vehicle a registration plate, insert tag, decal or other evidence of registration not issued for such vehicle or not otherwise authorized by law to be used thereon.

¶8 An investigative stop violates the Fourth Amendment⁴ prohibition against unreasonable seizures unless it is supported by reasonable suspicion. *State v. Colstad*, 2003 WI App 25, ¶¶7-8, 260 Wis. 2d 406, 659 N.W.2d 394. An investigative traffic stop is lawful under the Fourth Amendment if the officer “reasonably suspects that a person is violating or is about to violate the civil traffic regulations.” *State v. Begicevic*, 2004 WI App 57, ¶5, 270 Wis. 2d 675, 678 N.W.2d 293.

¶9 In this case there are no factual disputes arising out of Trooper Zawislan’s testimony. Whether the facts constitute reasonable suspicion is a question of law, which we review de novo. *State v. Repenshek*, 2004 WI App 229, ¶28, 277 Wis. 2d 780, 691 N.W.2d 369.

¶10 Reasonable suspicion exists if the officer’s suspicion is “grounded in specific, articulable facts, and reasonable inferences from those facts,” that an individual is violating or about to violate a traffic regulation. *Begicevic*, 270 Wis. 2d 675, ¶3.

⁴ The Fourth Amendment to the United States Constitution provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

¶11 While it is unreasonable under the Fourth Amendment to stop a vehicle to check the registration in the absence of reasonable suspicion, if there is an articulable and reasonable suspicion that the vehicle registration laws are being violated, the stop is lawful. *See State v. Lord*, 2006 WI 122, ¶7, 297 Wis. 2d 592, 723 N.W.2d 425 (per curiam).⁵

¶12 Reasonable suspicion is an objective standard. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). Therefore, even if the officer acts on an incorrect legal theory, the stop is lawful if the facts observed by the officer provide reasonable suspicion to believe there is a violation of law under a correct legal theory. *See State v. Baudhuin*, 141 Wis. 2d 642, 651, 416 N.W.2d 60 (1987).

¶13 We accept the State's concession that the facts observed by Trooper Zawislan do not constitute reasonable suspicion to believe Tieg was violating WIS. STAT. § 341.04(2). We therefore turn to the State's argument that those facts provide a basis to reasonably suspect that Tieg was violating WIS. STAT. § 341.61(2).

⁵ In *State v. Lord*, the Wisconsin Supreme Court stated:

except in those situations in which there is at least articulable and reasonable suspicion that ... an automobile is not registered, or that either the vehicle or an occupant is otherwise subject to seizure for violation of law, stopping an automobile and detaining the driver in order to check ... the registration of the automobile [is] unreasonable under the Fourth Amendment.

2006 WI 122, ¶7, 297 Wis. 2d 592, 723 N.W.2d 425 (per curiam) (citing *Delaware v. Prouse*, 440 U.S. 648, 663 (1979)).

¶14 Before discussing WIS. STAT. § 341.61 in more detail, we provide background on the statutory framework for vehicle registration. WISCONSIN STAT. § 341.25⁶ specifies the required registration fees for different types of vehicles and makes a distinction between automobiles and motor trucks. Under § 341.25(1)(a), the registration fee for automobiles registered on or after September 1, 1947, is \$55, with a lower fee for those registered earlier. Under § 341.25(1)(c), the registration fee for “motor trucks” is determined according to the “maximum gross weight of the vehicle.”

¶15 There are also different types of license plates issued for automobiles and motor trucks. Under WIS. STAT. § 341.12(3), all license plates must display the registration number assigned to the vehicle or owner, the name “Wisconsin” or the abbreviation “Wis.,” and an indication of the period for which

⁶ WISCONSIN STAT. § 341.25 provides in relevant part:

Annual registration fees; biennial motorcycle fees. (1) Unless a different fee is prescribed for a particular vehicle by par. (b) or ss. 341.26 to 341.268, the following registration fees shall be paid to the department for the annual registration of each motor vehicle, recreational vehicle, trailer or semitrailer not exempted by s. 341.05 from registration in this state:

(a) For each automobile, a fee of \$55, except that an automobile registered in this state prior to September 1, 1947, at a fee of less than \$18 shall be registered at such lesser fee plus an additional fee of \$2.

....

(c) For each motor truck or dual purpose motor home, a fee to be determined in accordance with sub. (2) on the basis of the maximum gross weight of the vehicle. Maximum gross weight shall be determined by adding together the weight in pounds of the vehicle when equipped to carry a load as a motor truck and the maximum load in pounds which the applicant proposes to carry on the vehicle when used as a motor truck.

the vehicle is registered or an expiration date. However, in addition to meeting the requirements of § 341.12(3), license plates for vehicles “registered on the basis of gross weight” must “indicate the weight class into which the vehicle falls.”⁷ WIS. STAT. § 341.13(2). There is no such requirement for automobile license plates. Thus, license plates issued for automobiles and motor trucks are different in that motor truck plates will indicate the vehicle’s weight class and automobile plates will not. Consequently, the display of license plates on a motor truck that do not indicate the vehicle’s weight class would provide an “articulable and reasonable suspicion” that the plates were not authorized to be used on that vehicle, in violation of WIS. STAT. § 341.61(2).

¶16 The key to determining whether the display of automobile license plates on Tieg’s vehicle provided reasonable suspicion that he violated WIS. STAT. § 341.61(2) is whether he was driving an “automobile” or a “motor truck” as defined in WIS. STAT. § 340.01(4) and (34). This presents an issue of statutory construction, which we review de novo. *State v. Longcore*, 2001 WI App 15, ¶5, 240 Wis. 2d 429, 623 N.W.2d 201. In construing a statute, we begin with the language of the statute, and, if the meaning is plain, we apply the plain language to the facts. *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, ¶45, 271 Wis. 2d 633, 681 N.W.2d 110. We interpret statutory language “in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related [sic] statutes; and reasonably, to avoid absurd or

⁷ There are exceptions to this requirement for dual purpose motor homes and trucks for which special or personalized plates have been issued under WIS. STAT. §§ 341.14 and 341.145, but they are not applicable to the facts on this appeal.

unreasonable results.” *Id.*, ¶46. We also interpret statutory language so as to “give reasonable effect to every word, in order to avoid surplusage.” *Id.*

¶17 WISCONSIN STAT. § 340.01 defines the terms “automobile” and “motor truck” as they are used in WIS. STAT. ch. 341. The portion of § 340.01(4) that is relevant here defines “automobile” as “a motor vehicle designed *and* used primarily for carrying persons.”⁸ (Emphasis added.) Section 340.01(34) defines “motor truck” as “every motor vehicle designed, used *or* maintained primarily for the transportation of property.” (Emphasis added.) The use of the words “and” and “or” are significant. The definition of “motor truck” uses the disjunctive, “or,” which means that a vehicle is classified as a motor truck if it meets any of the criteria of being designed *or* used *or* maintained primarily for the transportation of property. In contrast, the definition of “automobile” uses the conjunctive, “and,” which means that a vehicle is classified as an automobile only if it meets *both* the criterion of being designed primarily for carrying persons *and* the criterion of being used primarily for carrying persons.

⁸ WISCONSIN STAT. § 340.01(4) provides in its entirety:

(4) “Automobile” means any of the following:

(a) Type 1 is a motor vehicle designed and used primarily for carrying persons but which does not come within the definition of a motor bus, motorcycle, moped or motor bicycle.

(b) Type 2 is a motor vehicle capable of speeds in excess of 30 miles per hour on a dry, level, hard surface with no wind, designed and built to have at least 3 wheels in contact with the ground, a power source as an integral part of the vehicle, a curb weight of at least 1,500 pounds, and a passenger and operator area with sides permanently enclosed with rigid construction and a top which may be convertible.

¶18 Tieg's argues that, even though a full-bed⁹ pickup truck is designed for carrying property, it may be used by a particular owner primarily for transporting persons rather than primarily for transporting property. If the use of a full-bed pickup truck is primarily for transporting persons, he asserts, then it may properly be registered as an automobile. Thus, in Tieg's view, the trooper did not have reasonable suspicion to believe that the display of automobile plates on his truck was a violation of WIS. STAT. § 341.61(2).

¶19 We conclude Tieg's argument is inconsistent with the plain language of WIS. STAT. § 340.01(4) and (34). Tieg's argument disregards the fact that the definition of "motor truck," unlike that of "automobile," is disjunctive. A vehicle is a "motor truck" if it is either designed *or* used *or* maintained primarily for the transport of property. *See* § 340.01(34). Therefore, if a vehicle is "designed primarily for the transportation of property," it comes within the definition of "motor truck," regardless of how it is used; and it does not come within the definition of "automobile."

¶20 The State contends that a full-bed pickup truck is designed primarily for transporting property and Tieg does not dispute this proposition in his reply brief. We therefore take this as a concession that a full-bed pickup truck is

⁹ Trooper Zawislan used the term "full-sized" in his testimony. In the State's brief it describes Tieg's truck as having "a full bed," citing to the trooper's report, which was marked as an exhibit during the evidentiary hearing and subject to questioning on another point, but was not admitted into evidence. The State asserts we may properly consider this because it is in the record and we are not limited to the record before the circuit court at the time of the suppression hearing. The State contends that "[o]ther information produced before or after the suppression hearing may be used to support the circuit court's decision," citing *State v. Begicevic*, 2004 WI App 57, ¶3 n.2, 270 Wis. 2d 675, 678 N.W.2d 293. Tieg does not dispute this legal proposition in his reply brief and uses the term "full-bed" in his reply brief. We view this as an implicit concession that Tieg considers the terms "full-sized" and "full-bed" to be interchangeable, and we use the term "full-bed," as do both parties. We find it unnecessary to address *Begicevic*.

designed primarily for transporting property. *See Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994) (propositions asserted in a responsive brief and not disputed in a reply brief may be taken as conceded). Accordingly, Tieg's truck is a "motor truck" under WIS. STAT. § 340.01(34).

¶21 We conclude that the facts observed by Trooper Zawislan provided a reasonable basis to suspect that Tieg's truck was displaying registration plates that were not issued for his vehicle or were not authorized by law to be on his vehicle. The undisputed facts are that the trooper observed Tieg's truck displaying automobile plates, and we have concluded that his truck is a motor truck under WIS. STAT. § 340.01(34). Therefore, there is at least reasonable suspicion, if not probable cause, to conclude that the plates were either "not issued for such vehicle or not otherwise authorized by law to be used thereon." WIS. STAT. § 341.61(2).

CONCLUSION

¶22 Because the facts observed by Trooper Zawislan provided a reasonable suspicion that the display of automobile license plates on Tieg's truck was in violation of WIS. STAT. § 341.61(2), the stop was lawful under the Fourth Amendment. Accordingly, the circuit court properly denied Tieg's motion to suppress. We therefore affirm the judgment of conviction.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

