

**COURT OF APPEALS
DECISION
DATED AND FILED**

November 27, 2001

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. 01-1763-CR

Cir. Ct. No. 00 CT 156

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SCOTT T. BASKIN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dunn County:
ROD W. SMELTZER, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Scott Baskin appeals a judgment of conviction for operating a motor vehicle while under the influence of an intoxicant, second offense, contrary to WIS. STAT. § 346.63(1)(a). He argues that the circuit court

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

erred by denying his motion to suppress evidence based upon a lack of reasonable suspicion to stop him for a traffic violation. We disagree and affirm the judgment.

BACKGROUND

¶2 At 12:15 a.m.² on August 6, 2000, City of Menomonie police officer Paul Anderson was driving southbound on South Broadway approaching an intersection controlled by red and yellow flashing stoplights. The red flashing lights controlled Broadway traffic. Anderson observed a vehicle in the intersection traveling northbound on Broadway. The posted speed limit was twenty-five miles per hour. Anderson estimated the vehicle was traveling thirty to thirty-five miles per hour. Because of its speed in the middle of the intersection, he suspected the vehicle had not stopped for the red light.

¶3 Anderson activated his emergency lights and made a u-turn to follow the vehicle. He noticed that the vehicle continued to accelerate and appeared to have a loud exhaust system. Eventually, the vehicle slowed and came to a stop.

¶4 Baskin moved to suppress evidence based on an illegal stop. The circuit court denied the motion, concluding Anderson had reasonable suspicion based on the vehicle's speed and loud muffler. The court did not base its decision on a failure to stop for the flashing red light, apparently not satisfied that Anderson had clearly seen from which street the vehicle had entered the intersection. Baskin then entered a plea of no contest and was found guilty.

² The traffic citations states the violations occurred at 12:15 a.m. The criminal complaint indicates the violations occurred at 2:15 a.m., and officer Paul Anderson's testimony was "approximately 2:00 a.m."

STANDARD OF REVIEW

¶5 The determination of reasonable suspicion for an investigatory stop is a question of constitutional fact. *State v. Martwick*, 2000 WI 5, ¶19, 231 Wis.2d 801, 604 N.W.2d 552. We apply a two-step standard of review to questions of constitutional fact. First, we review the circuit court's findings of historical fact and uphold them unless they are clearly erroneous. Second, we review the determination of reasonable suspicion independently. *Id.*

DISCUSSION

¶6 Although a traffic stop is a seizure within the meaning of the Fourth Amendment, it is permissible if the officer has grounds to reasonably suspect a traffic violation has been committed. *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996). The test of reasonable suspicion is an objective one and must be a suspicion "grounded in specific, articulable facts and reasonable inferences from those facts" *State v. Waldner*, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996) (citation omitted). "Under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience" *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989).

¶7 Anderson testified that he stopped the vehicle because of the red light and the loud muffler. The circuit court based its decision on the speed and the loud muffler, not the red light. Baskin argues that the circuit erred by basing part of its decision on speed because Anderson did not use speed as a reason for the stop. As to Anderson's reasons, Baskin contends that Anderson did not know what the law was regarding the noise level of exhaust systems. Baskin further

contends that Anderson based the stop on a hunch that Baskin had failed to stop at the stoplights.

¶8 Reasonable suspicion is evaluated under an objective, not a subjective test. *Waldner*, 206 Wis. 2d at 55-56. The inquiry is whether there are articulable facts that would give an officer—not the particular officer—reasonable suspicion. *See id.* The particular officer’s subjective reasons are irrelevant. *State v. Kiekhefer*, 212 Wis. 2d 460, 484, 569 N.W.2d 316 (Ct. App. 1997). Here, Anderson initially observed Baskin traveling five to ten miles per hour over the posted speed limit. The vehicle accelerated further when Anderson turned around to follow it. Anderson used his training and experience to determine that Baskin was violating the speed limit. That alone was a sufficient basis for the stop.

¶9 As to the muffler, Baskin cites *State v. Longcore*, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), to argue that Anderson could not have reasonable suspicion because he did not personally know the specifics of the regulations for mufflers. However, *Longcore* held that “when an officer relates the facts to a specific offense, it must indeed be an offense; a lawful stop cannot be predicated upon a mistake of law.” *Id.* at 9.

¶10 Here, the facts observed by Anderson show a reasonable suspicion of a violation. Once again, the standard is objective, not subjective. It makes no difference if Anderson understood the regulations. The focus is the facts known to the officer, not the law known to the officer. The question is whether the facts known to Anderson give rise to a reasonable suspicion that the law was being violated. WISCONSIN STAT. § 347.39(1) requires motor vehicles to have mufflers that prevent “any excessive or unusual noise” Anderson testified that the

muffler sounded unusually loud. That is a sufficient basis for a reasonable suspicion that the exhaust system violated the statute.

¶11 Finally, Baskin argues that Anderson based the traffic stop on a hunch that Baskin did not stop at the flashing red lights on Broadway. While we do not necessarily agree with Baskin, we note that the circuit court did not base its decision on the red lights. We agree with the circuit court that, even without the red light violation, Anderson had reasonable suspicion to stop Baskin's vehicle. Therefore, we do not address this argument further.

¶12 We are satisfied that the circuit court applied the correct legal standard to the facts and correctly analyzed the facts in light of that standard. Under the totality of circumstances at the time of the stop, specific and articulable facts permitted a police officer to reasonably suspect that Baskin was violating the traffic laws. Therefore, Anderson validly stopped Baskin's vehicle.

By the Court.—Judgment affirmed.

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

