

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**March 20, 2002**

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. 01-2545-CR**

**Cir. Ct. No. 01-CT-498**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**v.**

**ROBERT J. KOSSOW,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Racine County:  
CHARLES H. CONSTANTINE, Judge. *Affirmed.*

¶1 SNYDER, J.<sup>1</sup> Robert J. Kossow appeals from a judgment of conviction for operating a motor vehicle with a prohibited blood alcohol concentration, second offense. Kossow argues that the deputy sheriff's

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All statutory references are to the 1999-2000 version unless otherwise noted.

unparticularized suspicion was insufficient to justify a traffic stop. We disagree with this contention and affirm the judgment of conviction.

## **FACTS**

¶2 On April 5, 2001, at approximately 2:00 a.m., Racine County Sheriff's Deputy Edward Drewitz was westbound on West Loomis Road in the Town of Norway. Drewitz observed a vehicle exit the driveway of the Sportsman's Bar at a fairly high rate of speed, heading west; this forced Drewitz to apply his brakes to avoid a collision. Drewitz followed the car until it turned into the Portsmouth subdivision; Drewitz then continued on West Loomis Road. As the car turned, Drewitz noted the license plate number and called it into dispatch. Dispatch informed Drewitz that the registered owner of the car did not live in the Portsmouth subdivision.

¶3 Based on his observations and this information, Drewitz decided to stop in a parking lot to see if the car would continue on West Loomis Road. A few minutes later the car passed Drewitz's position and he stopped the car for failure to yield the right-of-way. Drewitz identified the driver of the vehicle as Kossow and eventually placed him under arrest for a second offense OWI.

¶4 Kossow filed a motion challenging the lawfulness of the traffic stop. A hearing was held on June 18, 2001, after which the trial court denied Kossow's motion. Kossow eventually pled guilty to operating with a prohibited blood alcohol concentration, second offense, and now appeals.

## **DISCUSSION**

¶5 Kossow argues that Drewitz became suspicious after the address of the car's registered owner came back to another part of town and thus the stop was

based solely on a “feeling or hunch that the driver of the car may have been trying to elude him.” Kossow argues that this “unparticularized suspicion is insufficient to justify a traffic stop.” We disagree with Kossow’s characterization of the facts and his conclusion.

¶6 On review, we will uphold the trial court’s findings of historical fact unless they are against the great weight and clear preponderance of the evidence. *State v. Jackson*, 147 Wis. 2d 824, 829, 434 N.W.2d 386 (1989). However, whether those facts satisfy the constitutional requirement of reasonableness presents a question of law and we are not bound by the trial court’s decision on that issue. *Id.* In addition, the legality of a traffic stop is a question of law which we also review de novo. *State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987).

¶7 Detaining a motorist for a routine traffic stop constitutes a seizure. *State v. Longcore*, 226 Wis. 2d 1, 6, 594 N.W.2d 412 (Ct. App. 1999), *aff’d*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620. A brief detention, however, is not unreasonable if it is justified by a reasonable suspicion that the motorist has committed an offense. *Id.* Reasonable suspicion is based upon specific and articulable facts that together with reasonable inferences therefrom reasonably warrant a suspicion that an offense has occurred or will occur. *Id.* at 8. Reasonable suspicion is insufficient to support an arrest or search but permits further investigation. *Id.*

¶8 Drewitz testified that Kossow exited the driveway at the Sportsman’s Bar in a fast manner, failing to yield the right-of-way. Drewitz further testified that he was forced to apply his brakes to avoid a collision. He testified that he pulled Kossow over not only because he thought Kossow was

trying to elude him but also because Kossow failed to yield the right-of-way when he exited the driveway. Kossow's actions constituted a violation of WIS. STAT. § 346.18(4). Drewitz witnessed Kossow commit a traffic violation and thus had reasonable suspicion to stop him.

¶9 Furthermore, even if Drewitz had testified that the only reason he pulled Kossow over was because he thought Kossow was trying to elude him, as long as there is a proper legal basis to justify the stop, the officer's subjective motivation does not require dismissal of the charges. *Baudhuin*, 141 Wis. 2d at 651-52. As long as there are objective facts that support a correct legal theory and articulable facts fitting a traffic law violation, the officer's subjective intent is immaterial. *Id.* Kossow's actions constituted a traffic violation and Drewitz witnessed this traffic violation. Reasonable suspicion existed to justify the stop.

## CONCLUSION

¶10 Drewitz witnessed Kossow commit a traffic offense and thus had reasonable suspicion to effectuate a traffic stop. We therefore affirm the judgment of conviction.

*By the Court.*—Judgment affirmed.

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