

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 11, 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. 02-0258-CR
STATE OF WISCONSIN**

Cir. Ct. No. 99-CT-162

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CHRISTOPHER E. MAAS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: STEVEN W. WEINKE, Judge. *Affirmed.*

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. Christopher E. Maas has appealed from a judgment convicting him upon a guilty plea of operating a motor vehicle while intoxicated,

third offense, in violation of WIS. STAT. § 346.63(1)(a) (1999-2000).¹ The sole issue on appeal is whether the trial court erroneously denied Maas' motion to suppress evidence and dismiss. Maas sought relief on the ground that the arresting officer lacked reasonable suspicion to stop his vehicle. We conclude that the trial court properly denied the motion and affirm the judgment of conviction.

¶2 In reviewing a trial court's ruling on a suppression motion, we will uphold its findings of fact unless they are clearly erroneous. *State v. Roberts*, 196 Wis. 2d 445, 452, 538 N.W.2d 825 (Ct. App. 1995). However, whether a stop meets constitutional and statutory standards is a question of law which we review de novo. *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

¶3 To execute a valid investigatory stop, a law enforcement officer must reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). Such suspicion must be based on specific and articulable facts, together with reasonable inferences from those facts. *Id.* The determination of reasonableness depends on the totality of the circumstances existing at the time of the stop. *Id.* The facts must be judged against an objective standard: would the facts available to the officer at the time of the stop warrant a person of reasonable caution in the belief that the action taken was appropriate. *Id.* An inchoate or unparticularized suspicion or hunch will not suffice. *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987).

¹ All references to the Wisconsin Statutes are to the 1999-2000 version.

¶4 At the motion hearing, police officer Thomas King testified that, while stationary, he was monitoring traffic in the town of Auburn at approximately 7:45 p.m. on March 27, 1999. He testified that he heard Maas' vehicle approaching from the west. He testified that the vehicle was very loud, and that the engine appeared to be racing. King testified that he observed Maas' vehicle come around a nearly ninety-degree curve, and that the vehicle was bouncing around on the road, with its lights jumping around on a nearby field. He testified that "[a]s the vehicle came into clear sight, I did get a reading on the vehicle at 63 miles per hour," which was at least eight miles over the posted speed limit.² King testified that he first started to track the vehicle at fifty-four miles per hour, and that the speed rapidly increased to sixty-three miles per hour.

¶5 King testified that his concern at this point was that the vehicle was being driven in a "reckless manner or an unreasonable or imprudent-type manner." He testified that as the vehicle passed him it came to a stop sign at a railroad crossing, and stopped abruptly. King testified that there was no gradual decrease in speed, and described the stop as "a drastic abrupt movement to come to a complete stop."

¶6 At this point, King executed a traffic stop. Upon detecting an odor of intoxicants on Maas, he commenced an investigation which ultimately resulted in Maas' arrest for operating a motor vehicle while intoxicated.

¶7 Initially, Maas challenges the trial court's finding that King did a "stationary radar reading," which produced an un rebutted presumption that Maas'

² According to King's testimony, there is some dispute as to whether the speed limit in this area is thirty-five miles per hour or fifty-five miles per hour.

vehicle was going sixty-three miles per hour. Maas contends that this finding of fact should be disregarded because nothing in the record indicates that King employed stationary radar, as opposed to some other less reliable method of estimating or determining speed.

¶8 We disagree. King testified that he was monitoring traffic “while stationary” when his attention was drawn to Maas’ vehicle. He further testified that when he first started to track the vehicle, it was going fifty-four miles per hour, and that its speed rapidly increased to sixty-three miles per hour. These two pieces of evidence permit a reasonable inference that a speed measuring device which took a constant reading was used. Because King also testified that he was stationary, a further reasonable inference is that the device used was stationary radar.

¶9 Most importantly, even without a finding or evidence as to Maas’ precise speed, the conduct observed and relied on by King permitted him to reasonably suspect that Maas was driving in a reckless manner or at an imprudent speed, and to stop him in order to investigate the matter. King testified that the vehicle was loud and sounded like its engine was racing, and that it was bouncing on the road as it came around a nearly ninety-degree curve, causing its lights to jump around on a nearby field. He also testified that the vehicle came to a sudden and abrupt stop at the railroad crossing, rather than approaching the stop sign with a gradual decrease in speed. Because a reasonable person could conclude that Maas navigated the curve and approached the stop sign recklessly and at an imprudent speed, and that a traffic violation had occurred, King was entitled to

stop the vehicle to further investigate the matter.³ The trial court therefore properly denied Maas' motion.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

³ Operating a motor vehicle at an unreasonable or imprudent speed, or in a negligent or reckless manner, is prohibited by WIS. STAT. §§ 346.57(2) and 346.62.

