

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 3, 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. 02-0483-CR

Cir. Ct. No. 01-CT-394

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

DONALD R. RIDDLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Waukesha County: JAMES R. KIEFFER, Judge. *Affirmed.*

¶1 SNYDER, J.¹ Donald R. Riddle appeals from a judgment of conviction for operating a motor vehicle while intoxicated and an order denying his motion for reconsideration. Riddle argues that the trial court erred in denying

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

his motion to suppress because the police officer did not have reasonable suspicion to stop his car and detain him when his sole transgression was failure to proceed after a traffic light had turned green. We disagree and affirm the judgment and postconviction order.

FACTS

¶2 At approximately 2:20 a.m. on February 13, 2001, City of Oconomowoc police officer Brad Timm was traveling west on Highway 16 approaching Main Street in the city of Oconomowoc; Timm was waiting at this controlled intersection for the light to turn green. Riddle was in the car in front of Timm. After the light turned green, Riddle did not immediately proceed; the driver of the car behind Timm honked her horn and a few seconds later, Riddle proceeded through the intersection, after a delay of about ten seconds.

¶3 Timm did not see any impaired driving, swerving or weaving. However, Timm “assumed something was wrong” and felt that Riddle’s behavior was “suspicious” because traffic was light, it was 2:20 a.m. on a Tuesday and Riddle failed to follow the rules of the road by impeding traffic and driving inattentively. Based upon this information, Timm initiated a traffic stop of Riddle’s car. Riddle admitted that he had not been paying attention and had been talking with his passenger. Timm noticed that Riddle had bloodshot eyes, slightly slurred speech and a distinct odor of intoxicants on his breath; Riddle also admitted to drinking “a couple of beers.” After a series of field sobriety tests, Riddle was arrested for operating a motor vehicle while under the influence of an intoxicant (OWI).

¶4 On March 12, 2001, Riddle was charged with OWI and with having a prohibited blood alcohol concentration (PAC). On March 13, 2001, Riddle filed

a motion to suppress the blood test results, arguing that Timm did not have reasonable suspicion to effectuate a traffic stop. On June 1, 2001, the trial court denied this motion; the trial court disagreed that Timm had reasonable suspicion because Riddle was impeding traffic but found that Riddle had been driving inattentively, in violation of WIS. STAT. § 346.89(1). Riddle pled guilty to the OWI charge.² He brought a postconviction motion that was denied on December 13, 2001. Riddle appeals.

DISCUSSION

¶5 Riddle argues that a ten-second pause before proceeding at a traffic signal after the light turns green does not constitute reasonable suspicion.

¶6 When we review a motion to suppress evidence, we will uphold a circuit court's findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). This is the equivalent of the "clearly erroneous" test set forth in WIS. STAT. § 805.17(2). However, the application of constitutional principles to those facts is a question of law that we decide de novo. *State v. Patricia A.P.*, 195 Wis. 2d 855, 862, 537 N.W.2d 47 (Ct. App. 1995). In addition, the legality of a traffic stop is a question of law that 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

² While the record does not reflect the disposition of the PAC charge, we assume that this charge was dismissed.

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. 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, 56, 556 N.W.2d 681 (1996) (citation omitted).

¶8 The trial court found that while Riddle was not impeding traffic pursuant to WIS. STAT. § 346.59, he was driving inattentively pursuant to WIS. STAT. § 346.89. Section 346.89 states, in relevant part:

(1) No person while driving a motor vehicle shall be so engaged or occupied as to interfere with the safe driving of such vehicle.

Riddle sat at a green light for approximately ten seconds, long enough for the driver of one of the vehicles behind him to become sufficiently annoyed and frustrated that she honked her horn in order to get him moving. These cars could not proceed forward because Riddle did not proceed forward. While this is admittedly a close call, here it constitutes inattentive driving.

¶9 Riddle also failed to obey a traffic signal, in violation of WIS. STAT. § 346.04(2).³ As long as there is proper legal basis to justify the stop, an officer’s subjective motivation does not require dismissal. *Baudhuin*, 141 Wis. 2d at 651. So long as there are objective facts that would have supported a correct legal

³ WISCONSIN STAT. § 346.04(2) states, “No operator of a vehicle shall disobey the instructions of any official traffic sign or signal unless otherwise directed by a traffic officer.”

theory to be applied and as long as there existed articulable facts fitting the traffic law violation, the search or seizure is legal. *See id.*

CONCLUSION

¶10 We conclude that the officer had reasonable suspicion to stop Riddle's car. We therefore uphold the trial court's order denying Riddle's motion to suppress and affirm the judgment of conviction and postconviction order denying his motion for reconsideration.

By the Court.—Judgment and order affirmed.

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