

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 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. 02-0783-CR
STATE OF WISCONSIN**

Cir. Ct. No. 01-CT-227

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JAMES G. HALVERSON,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Columbia County: RICHARD REHM, Judge. *Affirmed.*

¶1 ROGGENSACK, J.¹ James Halverson appeals his conviction for operating a motor vehicle while intoxicated (OMVWI), third offense, in violation

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

of WIS. STAT. § 346.63(1)(a). Halverson contends that the circuit court erred in denying his motion to suppress evidence obtained as a result of a police officer's investigative stop of his vehicle. We conclude that the traffic stop was supported by reasonable suspicion that Halverson had violated the law and that the scope of the seizure was reasonable. Accordingly, we affirm the circuit court's order denying the motion to suppress and the judgment of conviction.

BACKGROUND

¶2 Village of Fall River Police Officer Alex Bol observed Halverson's vehicle, which was towing a trailer, traveling on a state highway. As the vehicle passed Bol's stationary observation point, he did not see whether it had a front license plate. Bol pulled onto the highway directly behind Halverson. As he followed Halverson, Bol's view of the vehicle was obstructed by the trailer, and he was unable to see whether Halverson had a rear license plate or registration stickers.² Accordingly, Bol stopped Halverson for failure to properly display vehicle license plates and to verify the vehicle's registration.

¶3 As Bol walked toward Halverson's vehicle, he saw that the vehicle did in fact have a rear license plate. Bol informed Halverson that the reason for the stop was that he could not see the rear license plate. As he spoke with Halverson, Bol detected an odor of intoxicants coming from the vehicle, and Halverson admitted that he had been drinking. Bol then returned to his squad car to verify Halverson's identification information. After returning to Halverson's vehicle, he again noticed the odor of intoxicants, and he asked Halverson to

² It is undisputed that the trailer Halverson was towing from his vehicle was not required to be registered.

perform field sobriety tests. Halverson did not pass the tests, and he also failed a preliminary breath test, at which point Bol arrested him for OMVWI.

¶4 Halverson pled no contest to the charges following the circuit court's denial of his motion to suppress evidence obtained as a result of Bol's traffic stop. He now appeals.

DISCUSSION

Standard of Review.

¶5 Whether police conduct violates the constitutional protections against unreasonable searches and seizures is a question of constitutional fact. *State v. Griffith*, 2000 WI 72, ¶23, 236 Wis. 2d 48, 613 N.W.2d 72. On review of a fourth amendment challenge that was raised before the circuit court, we review the circuit court's findings of evidentiary or historical fact under the clearly erroneous standard. *State v. Matejka*, 2001 WI 5, ¶16, 241 Wis. 2d 52, 621 N.W.2d 891. We then independently evaluate those facts against a constitutional standard to determine whether the officer's conduct was lawful. *Id.*

Traffic Stop.

¶6 Halverson contends that Bol did not have a legally sufficient reason for making the traffic stop. A police officer may initiate a traffic stop and detain a person for purposes of investigating a possible violation of the law if he has reasonable suspicion that a law has been violated. See *State v. Waldner*, 206 Wis. 2d 51, 54-55, 556 N.W.2d 681, 683-84 (1996) (citing *Terry v. Ohio*, 392 U.S. 1, 22 (1968)). The question of what constitutes reasonableness is an objective, common sense test. *Waldner*, 206 Wis. 2d at 55-56, 556 N.W.2d at 684. To be reasonable, the officer's suspicion must be grounded in specific,

articulable facts which, taken together with rational inferences from those facts, are sufficient to lead a reasonable officer to believe that the person has committed an offense. *Id.*

¶7 Bol's decision to stop Halverson was based on his inability to see the registration plates on the vehicle that Halverson was driving. Wisconsin law mandates the proper registration of motor vehicles and further requires that:

Registration plates shall be attached firmly and rigidly in a horizontal position and conspicuous place. The plates shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read. Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.

WIS. STAT. § 341.15(2). A person who operates a vehicle without a registration plate or with a registration plate in an inconspicuous place so as to make it difficult to see and read is subject to a forfeiture of not more than \$200. *See* § 341.15(3). Under the undisputed facts recited above, we conclude that Bol's inability to see Halverson's registration plates while traveling directly behind Halverson's vehicle gave rise to a reasonable suspicion that Halverson was in violation of § 341.15 and/or the vehicle registration laws, and accordingly, the investigatory traffic stop was warranted. *See State v. Griffin*, 183 Wis. 2d 327, 333-34, 515 N.W.2d 535, 538 (Ct. App. 1994) (holding that the absence of a registration plate, the display of a sign reading "license applied for" and the reasonable inferences that can be drawn from those facts constitute reasonable suspicion sufficient to justify an investigatory stop of a motor vehicle).

¶8 Halverson argues that we should distinguish *Griffin* and reach a different result in this case for two reasons: (1) Bol should have realized that the most likely explanation for his inability to see a registration plate was that the

trailer was obstructing his view of the area in which plates are normally displayed; and (2) Bol could have taken steps short of stopping the vehicle to verify that the vehicle did have a rear registration plate, such as changing lanes and viewing the rear of the vehicle from a different angle. We disagree with Halverson's attempt to distinguish *Griffin*. First, the detaining officer is not required to rule out the possibility of innocent behavior before initiating an investigatory stop. See *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763, 766 (1990). Second, the detaining officer is not required to first evaluate and attempt other potentially less-intrusive methods of investigation, so long as the selected method is reasonable under the circumstances. See *State v. Sokolow*, 490 U.S. 1, 10-11 (1989). In addition, we note that there is no evidence in the record concerning the feasibility of "changing the angle" at which the officer was viewing the vehicle.

¶9 Halverson next contends that Bol's decision to stop his vehicle was predicated upon a mistake of law, and therefore violated the rule of *State v. Longcore*, 226 Wis. 2d 1, 9, 594 N.W.2d 412, 416 (Ct. App. 1999) (holding in the context of an evaluation of probable cause that "[w]hen an officer relates the facts to a specific offense, it must indeed *be* an offense"), *aff'd by an equally divided court*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620 (per curiam). In support of this assertion, Halverson seizes on Bol's testimony that he believes he has authority to stop a vehicle when he is unable to see the license plate or registration stickers. According to Halverson, Bol's interpretation of the law would allow an officer to stop a vehicle even when the sole cause of the officer's inability to see the registration plates and stickers was the distance between the two vehicles. Assuming *arguendo* that *Longcore* applies to an investigatory stop, we agree with the State that when Bol's testimony is read in context, Halverson's interpretation

of that testimony is unreasonable. Bol's testimony was directed to the facts of this case, not to the hypothetical posed in Halverson's brief.

¶10 Halverson's final contention is that even if the officer's decision to stop the vehicle was justified at its inception, the officer should have terminated the stop after seeing the vehicle's rear registration plate as he approached the driver. Although it is true that "[t]he scope of the detention must be carefully tailored to its underlying justification," *Florida v. Royer*, 460 U.S. 491, 500 (1983), we conclude that contacting the driver of the vehicle for the purpose of identifying the driver and explaining the purpose of the stop is conduct that is reasonably related in scope to a traffic stop premised on a failure to comply with WIS. STAT. § 341.15 and/or the vehicle registration laws. *See Griffith*, 2000 WI 72 at ¶¶26, 45, 53, 65.

CONCLUSION

¶11 We conclude that the traffic stop was supported by a reasonable suspicion that Halverson had violated the law and that the scope of the seizure was reasonable. Accordingly, we affirm the circuit court's order denying the motion to suppress and the judgment of conviction.

By the Court.—Judgment and order affirmed.

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

