**COURT OF APPEALS DECISION DATED AND FILED**

**September 1, 2010**

A. John Voelker
Acting 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. 2010AP622-CR** **Cir. Ct. No. 2009CT762**

**STATE OF WISCONSIN** **IN COURT OF APPEALS DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CHARLES G. JURY,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Winnebago County: KAREN L. SEIFERT, Judge. *Affirmed*.

¶1 BROWN, C.J.[1] Charles G. Jury pled to operating a vehicle while intoxicated, 4th offense, after he lost his motion challenging the stop. On appeal,

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

he again challenges the stop—asserting that it was made without reasonable suspicion. But the facts observed by the arresting officer, taken in totality, show reasonable suspicion that a crime was being committed. We affirm.

¶2 On April 3, 2009, at approximately 4:15 a.m., a City of Neenah police officer observed a vehicle traveling with its windshield wipers on, even though it was not raining or snowing. Because the officer thought it "odd," he decided to follow the vehicle. The officer noticed that, when the vehicle was braking or stopping for a flashing red light, the driver's side brake light appeared to be malfunctioning because it was dim compared to the passenger side's brake light. The officer also observed what appeared to be a necklace hanging from the rearview mirror. After proceeding through the intersection, the officer saw the vehicle "operate on the double yellow line." The officer then stopped the vehicle. Subsequently, Jury identified himself as the operator. The officer then noticed indicia of intoxication and he was eventually arrested.

¶3 Jury admits that our statutes and administrative code require all taillights to be maintained in proper working condition, but notes that the laws require the red light to be plainly visible from a distance of 500 feet. *See* WIS. ADMIN. CODE § Trans 305.16(2) (May 2004); WIS. STAT. § 347.13(1). Jury claims that the officer had no information from which he could conclude that the dim red light he saw failed to meet these tests. He argues that, at most, the officer only had a hunch that these laws had been violated.

¶4 We reject the argument. When the officer observed one dim light in comparison to the other, he had reasonable suspicion that the light was not in proper working condition. He could also reasonably suspect that the light might not be visible from more than 500 feet away. A reasonable police officer in his

position certainly had articulable facts from which to rationally infer that the law had been violated.

¶5 The determination of reasonableness is a commonsense test. ***State v. Post***, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. It comports with common sense that a reasonable police officer, in light of his or her training and experience, would know enough to suspect when a taillight is so dim as to cause a safety concern. We must remember that this was a ***Terry***[2] stop. As such, this officer did not have to know for certain that the taillight failed to meet legal specifications, or even that he had probable cause. Rather, if he had a reasonable suspicion that the taillight might be in violation of the law, he had the right to temporarily freeze the situation to investigate further, notwithstanding the existence of other inferences that could be drawn. *See* ***State v. Jackson***, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989).

¶6 Jury also discusses his sister's testimony at the motion hearing. There, Jury's sister stated that she had uninterrupted possession of her brother's vehicle following arrest. She further stated that she tested the taillight and found nothing was wrong with it. Jury asserts that his sister's testimony contradicts the officer such that the officer was not credible. But the trial court found that the officer's testimony was credible. We will uphold the trial court's findings of fact, including credibility determinations, unless they are clearly erroneous. *See* ***State v. Thiel***, 2003 WI 111, ¶ 23, 264 Wis.2d 571, 665 N.W.2d 305; WIS. STAT. § 805.17(2). Here, the trial court's choice to believe the officer's testimony over the sister's was a credibility choice that is not clearly erroneous.

[2] *See* ***Terry v. Ohio***, 392 U.S. 1 (1968).

¶7 Jury next takes issue with the necklace. Again, he admits there is a statute—this one being WIS. STAT. § 346.88(3)(b)—prohibiting a person from driving a car "with any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear view through the front of the windshield." Jury claims, however, that the officer did not have reasonable suspicion that his view was hampered or obstructed by the necklace. He contends that the necklace was "small" and therefore, the officer's belief as to obstruction was "incredible." We reject this argument as well. Again, for the reasons we explained while discussing the taillight violation, credibility is for the fact finder. *See* WIS. STAT. § 805.17(2). The trial court obviously believed that the officer was telling the truth when he said that, from a distance of 200 feet, he could see "something dangling from the rearview mirror" that could get "in [the operator's] way." The trial court could also conclude that these specific and articulable facts allowed the officer to reasonably suspect that the necklace would hinder a driver—enough so as to justify a stop to investigate the necklace further and make a definitive conclusion.

¶8 Finally, Jury argues that one instance of being on a double yellow line is not sufficient reasonable suspicion to stop a vehicle. He contends that this case compares with the admonition in ***Post***, 301 Wis. 2d 1, ¶2, where our supreme court held that weaving within a single traffic lane does not alone give rise to the reasonable suspicion necessary to conduct an investigatory stop of a vehicle. He asserts that one instance of being on the double yellow line is consistent with Post's cautionary statement. But, as Jury concedes, we cannot look at each fact in isolation but must consider the totality of the circumstances in determining whether the stop was justified. ***Id.***, ¶26. Here, since the officer already had reasonable suspicion that the vehicle being operated was in violation of equipment

and windshield hindrance laws, the fact that the officer saw the vehicle go onto the double yellow line was just one more reason to support the stop.

*By the Court.*—Judgment affirmed.

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