

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 11, 2003

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. 02-2286
STATE OF WISCONSIN**

Cir. Ct. No. 02 TR 6676

**IN COURT OF APPEALS
DISTRICT I**

MILWAUKEE COUNTY,

PLAINTIFF-RESPONDENT,

v.

SYLVIA'S EAGLE EXPRESS, INC.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: PATRICIA D. McMAHON, Judge. *Affirmed.*

¶1 SCHUDSON, J.¹ Sylvia's Eagle Express, Inc., appeals from the judgment, following a bench trial, imposing a forfeiture of \$5,023.64 plus costs for its violation of weight limits under WIS. STAT. § 348.15(3)(c). Sylvia's argues

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c). All references to the Wisconsin Statutes are to the 2001-02 version.

that the trial court erred in denying its motion to dismiss or suppress because, it contends, “there [was] not a scintilla that the Deputy suspected a vehicle of being overweight.” This court affirms.

¶2 The facts are undisputed. On January 16, 2002, Milwaukee County Deputy Sheriff Greg Hollman stopped a Sylvia’s truck and, after weighing it and checking its permit, issued a citation to the driver for a 32,300 pound overweight violation. Further, as Deputy Hollman testified, he “informed the driver ... about how to get that permit, what type of permit he needed.”

¶3 Nine days later, on January 25, 2002, seeing the same truck being driven by the same driver, Deputy Hollman stopped it “to see if they got the proper permit ... for hauling the material they were hauling,” and “[t]o check to see if they had the proper permit yet for being overweight.” Deputy Hollman conceded, however, that when he stopped the truck, “he did not know what it weighed.” Deputy Hollman discovered that the truck did not have the required permit for hauling its load of recyclable scrap and, after weighing the truck, he issued Sylvia’s a citation “for being 38,860 pounds over legal gross weight, which is 80,000 pounds.”

¶4 Sylvia’s moved to dismiss or suppress the citation contending, in relevant part, that “[t]he arresting officer did not have a reason to stop or detain the defendant’s vehicle” and the evidence was “obtained as a result of the unlawful arrest.” Denying Sylvia’s motion, the trial court concluded that “the same vehicle, same driver, the same company without a valid permit” provided “a basis for questioning further to ensure that the same driver, the same truck, and the same business ha[d] obtained the necessary permit.”

¶5 WISCONSIN STAT. § 348.19(1)(a) provides, in part: “Any traffic officer *having reason to believe that the gross weight of a vehicle is unlawful or in excess of the gross weight for which the vehicle is registered* may require the operator of such vehicle to stop and submit the vehicle and any load it may be carrying to a weighing....” (Emphasis added.) Reviewing a trial court’s denial of a suppression motion, this court will uphold the factual findings unless they are clearly erroneous. *State v. Williamson*, 113 Wis. 2d 389, 401, 335 N.W.2d 814 (1983). Whether a search and seizure of evidence is lawful, however, is an issue of law subject to this court’s *de novo* review. *State v. Guzman*, 166 Wis. 2d 577, 586, 480 N.W.2d 446 (1992).

¶6 Sylvia’s argument is somewhat confusing. Although Sylvia’s trial court motion, as noted, alleged that Deputy Hollman “did not have a reason to stop or detain” the truck, Sylvia’s brief to this court claims that its trial court motion “requested that the court dismiss or suppress all evidence on the grounds that the officer lacked *probable cause to stop and detain* the vehicles [sic] of the defendant.” Then, in its brief, Sylvia’s headlines its appellate argument: “A police office [sic] must have probale [sic] cause to stop a [sic] detain a truck or violate the fourth amendement [sic] to the United States Constitution and Article I Section 11 of the Wisconsin Constitution.”

¶7 Certainly, however, if Deputy Hollman’s stop of the truck was lawful, his determination of its permit-status and weight provided *probable cause* for the citation. And if, therefore, only the stop is at issue, “probable cause” is not the proper standard. Instead, “reason to believe,” *see* WIS. STAT. § 348.19(1)(a), or perhaps “reasonable suspicion,” *see* WIS. STAT. § 968.24, sets the standard for determining the lawfulness of the stop.

¶8 Not only has Sylvia’s anchored its appellate argument in shifting standards, but, just as problematically, Sylvia’s has fashioned its argument with a careless characterization of the trial court’s conclusion. Sylvia’s claims that the trial court “ignored the requirements of the constitution holding that *any and all loaded trucks could be stopped and weighed.*” (Emphasis added.) The record, however, establishes that the trial court’s ruling, like Deputy Hollman’s stop, was specifically linked to the fact that the same driver and same truck had violated the law nine days earlier.

¶9 Thus, slipping on the legal standards and mischaracterizing the trial court’s conclusion, Sylvia’s has failed to develop any substantial argument on what might have been two intriguing questions: (1) Is the “reason to believe” standard of WIS. STAT. § 348.19(1)(a) equivalent to the “reasonable suspicion” standard of WIS. STAT. § 968.24? (2) Does an officer’s citation of the same driver and truck nine days earlier, standing alone, provide “reason to believe” or “reasonable suspicion” justifying a stop to determine permit compliance? This court will await another day when a more detailed record and properly developed arguments may allow for consideration of these and what may be interesting related questions. *See* WIS. STAT. RULE 809.19(1)(e) & (3)(a)1. (appellate arguments must be supported by authority and references to the record); *see also Barakat v. DHSS*, 191 Wis. 2d 769, 786, 530 N.W.2d 392 (Ct. App. 1995) (appellate court need not address “amorphous and insufficiently developed” arguments).

¶10 Thus, Sylvia’s has provided no basis on which this court could reject the trial court’s conclusion that Deputy Hollman’s knowledge of the driver, truck, and violation from nine days earlier established “a basis for questioning further to ensure that the same driver, the same truck, and the same business ha[d] obtained

the necessary permit,” and that the information gained through that further questioning, and through the weighing of the truck, established probable cause for the citation.

By the Court.—Judgment affirmed.

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

