

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**April 28, 2011**

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. 2010AP596-CR  
STATE OF WISCONSIN**

Cir. Ct. No. 2009CT333

**IN COURT OF APPEALS  
DISTRICT IV**

---

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**ANDREW R. REIERSON,**

**DEFENDANT-APPELLANT.**

---

APPEAL from a judgment and an order of the circuit court for Rock County: MICHAEL R. FITZPATRICK, Judge. *Affirmed.*

¶1 HIGGINBOTHAM, J.<sup>1</sup> Andrew Reiersen appeals his judgment of conviction for operating while intoxicated (OWI), third offense, and an order

---

<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.21(2)(d) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

denying his motion to suppress evidence. Reierson challenges the lawfulness of the traffic stop that led to his arrest, arguing the circuit court erred in concluding the officer had probable cause to stop him for operating a vehicle with an excessively noisy muffler, contrary to WIS. STAT. § 347.39(1). Regardless, whether probable cause existed to stop Reierson for a violation of § 347.39(1), we conclude the stop was lawful because the officer had probable cause to stop Reierson for operating with an expired registration, contrary to WIS. STAT. § 341.04(1), based on the officer's good-faith mistake of fact in misreading Reierson's license plate number. We therefore affirm the order denying Reierson's suppression motion, and the judgment of conviction.

### **BACKGROUND**

¶2 The following facts are taken from the criminal complaint and the hearing on Reierson's motion to suppress evidence. At 12:57 a.m. on February 17, 2009, Police Officer Steve Knox was parked in his squad car on South River Street in Janesville near the intersection with West Racine Street when he observed a vehicle moving westbound on West Racine. The officer pulled his squad car onto West Racine and began following the vehicle, and ran its license plate registration. As the vehicle approached the intersection of West Racine and South Franklin Street, it was positioned to make a left turn, but then turned right onto South Franklin. The officer continued to follow the vehicle and at some point noticed it had a loud exhaust system. Shortly thereafter, the vehicle's registration came back as expired, and the officer activated his emergency lights and made a traffic stop, pulling his squad car up behind the parked vehicle.

¶3 The officer got out of his car to make contact with the driver. Approaching the parked vehicle, the officer discovered that he had misread the last

numeral on the license plate. The officer testified a small screw or bolt going through the plate had obscured his view of the last numeral. Nonetheless, he officer continued toward to the vehicle to explain his reasons for making the stop. When the officer reached the driver's side window, a man later identified as Andrew Reiersen opened his car door to communicate with the officer because his window was stuck. The officer detected the odor of intoxicants on Reiersen's breath and noticed that his eyes were red. Reiersen performed field sobriety tests at the officer's request, and submitted to a preliminary breath test, which showed Reiersen had a blood alcohol content (BAC) of .16. Reiersen was subsequently charged with OWI, third offense.

¶4 Reiersen filed a motion to suppress evidence alleging that the stop was unlawful. At the motion hearing, Reiersen challenged the State's asserted bases for the stop, the officer's mistaken belief that Reiersen's registration was expired and the loudness of the muffler. Reiersen argued that once the officer discovered he had made a mistake in reading the plate number, the officer should have re-run the correct number before making contact with him. He also argued the bolt did not render the license plate number illegible. Reiersen further argued the State had failed to prove at the hearing that the muffler was excessively noisy in violation of WIS. STAT. § 347.39(1).<sup>2</sup> Following an evidentiary hearing, the circuit court found that the officer made a good faith mistake in making the stop based on an expired registration. The court then concluded that the stop was lawful because probable cause existed to believe Reiersen's vehicle was in

---

<sup>2</sup> WISCONSIN STAT. § 347.39 (1) states, in pertinent part: "No person shall operate on a highway any motor vehicle subject to registration unless such motor vehicle is equipped with an adequate muffler in constant operation and properly maintained to prevent any excessive or unusual noise or annoying smoke."

violation of the noisy muffler statute, § 347.39(1). Accordingly, the court denied the motion and Reiersen was found guilty of OWI, third offense, upon a plea of no contest.

## DISCUSSION

¶5 Reiersen contends the circuit court erred in denying his motion to suppress because the investigative stop that led to his arrest was not supported by either reasonable suspicion or probable cause to believe he had committed an offense. Whether an officer has reasonable suspicion or probable cause to conduct a traffic stop is a question of constitutional fact. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634; see *State v. Gaulrapp*, 207 Wis. 2d 600, 604-06, 558 N.W.2d 696 (Ct. App. 1996). We review the trial court's findings of historical fact under the clearly erroneous standard, but review de novo the application of those facts to constitutional principles. *Post*, 301 Wis. 2d 1, ¶18.

¶6 A traffic stop is a seizure within the meaning of the Fourth Amendment. *Id.*, ¶10. Both the United States Constitution and the Wisconsin Constitution prohibit unreasonable searches and seizures. U.S. CONST. amend. IV; WIS. CONST. art. 1, § 11. As a general rule, a traffic stop is a reasonable seizure if it is based on either probable cause or reasonable suspicion to believe that a violation has occurred. See *Gaulrapp*, 207 Wis. 2d at 605.

¶7 An officer may conduct an investigative stop when the officer has grounds to reasonably suspect, under the totality of the circumstances, that a traffic violation has been or will be committed. *State v. Colstad*, 2003 WI App 25, ¶¶8-9, 260 Wis. 2d 406, 659 N.W.2d 394. The officer “must be able to point to specific and articulable facts which, taken together with rational inferences from

those facts, reasonably warrant the intrusion of the stop.” *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

¶8 On appeal, Reierson focuses on the court’s conclusion that the officer had probable cause to believe Reierson’s muffler was excessively loud, in violation of WIS. STAT. § 347.39(1). Reierson notes that, at the suppression hearing, Wallace Reierson, the vehicle’s owner and the defendant’s father, testified that the muffler was well maintained and in proper working order. Reierson further observes that the only evidence supporting the trial court’s conclusion was the officer’s testimony that the muffler was “loud” and “defective.” He contends this evidence was insufficient to support the court’s conclusion that probable cause existed to believe a violation of § 347.39(1) occurred. However, even assuming that the officer lacked a sufficient factual basis to reasonably suspect Reierson of violating the noisy muffler statute, we conclude the court properly denied the motion to suppress because the traffic stop was the product of the officer’s reasonable belief, which was based on a good-faith mistake of fact, that Reierson was operating a vehicle with an expired registration, contrary to WIS. STAT. § 341.04(1).

¶9 We have found no published Wisconsin case addressing the present situation, where the lawfulness of an investigatory traffic stop turns on an officer’s good-faith mistake of fact. However, as a general rule, courts decline to apply the exclusionary rule where an officer makes a reasonable, good-faith factual mistake. *See United States v. Cashman*, 216 F.3d 582, 587 (7th Cir. 2000) (where officer reasonably believed crack in windshield was long enough to violate statute, but it was not in fact, officer had probable cause to stop for traffic violation); *see United States v. Miguel*, 368 F.3d 1150, 1153-54 (9th Cir. 2004) (citing *United States v. King*, 244 F.3d 736, 739 (9th Cir. 2001) (“An officer’s correct understanding of

the law, together with a good-faith error regarding the facts, can establish reasonable suspicion.”)); *see also* John Kaplan, *The Limits of the Exclusionary Rule*, 26 STAN. L. REV. 1027, 1044 (1974); Wayne R. LaFare, *The Fourth Amendment in an Imperfect World: On Drawing “Bright Lines” and “Good Faith,”* 43 U. PITT. L. REV. 307, 348 (1982).

¶10 By contrast, “[s]tops premised on a mistake of law, even a reasonable, good-faith mistake, are generally held to be unconstitutional.” *United States v. Coplin*, 463 F.3d 96, 101 (1st Cir. 2006) (surveying federal circuit decisions), *cert. denied*, 549 U.S. 1237 (2007); *State v. Longcore*, 226 Wis. 2d 1, 8-9, 594 N.W.2d 412 (Ct. App. 1999), *aff’d by equally divided court*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620 (officer’s erroneous application of law to the facts does not give probable cause for a traffic stop); *United States v. McDonald*, 453 F.3d 958, 961 (7th Cir. 2006) (stop held to be invalid where officer mistakenly believed that Illinois statutes prohibited defendant’s use of a turn signal while rounding a bend); *but see United States v. Martin*, 411 F.3d 998, 1001 (8th Cir. 2005) (objectively reasonable mistakes of either fact or law can support probable cause).

¶11 We conclude the circuit court properly denied the motion to suppress because the officer had probable cause to stop Reiersen for operating with an expired registration, contrary to WIS. STAT. § 341.04(1), based on the officer’s reasonable, good-faith mistake of fact in misreading Reiersen’s license plate number. The officer testified he misread the last numeral on the plate (mistaking an “8” for a “6”) because the numeral was obscured by a small screw or bolt going through the plate. Regardless whether the number was actually obscured—the

court made no explicit finding in this regard<sup>3</sup>—the court did explicitly find the officer’s misreading of the plate was made in good faith. Thus, at the time of the stop, the officer had a reasonable, if mistaken, belief that Reierson was operating a vehicle with an expired registration, contrary to WIS. STAT. § 341.04 (1). Because the stop was predicated on the officer’s reasonable, good-faith mistake of fact, we conclude the motion to suppress evidence was properly denied.<sup>4</sup> Accordingly, we affirm the order denying the motion to suppress and the judgment of conviction.

*By the Court.*—Judgment and order affirmed.

---

<sup>3</sup> However, we note the court explicitly relied on other portions of the officer’s testimony in making its ruling, demonstrating it viewed the officer to be a credible witness. See *Jacobson v. American Tool Cos., Inc.*, 222 Wis. 2d 384, 390, 588 N.W.2d 67 (Ct. App. 1998) (“If a circuit court does not expressly make a finding about the credibility of a witness, we assume it made implicit findings on a witness’ credibility when analyzing the evidence.”).

<sup>4</sup> At the suppression hearing, Reierson argued that, once the officer discovered that he had misread the license plate number while walking toward Reierson’s vehicle, he should have walked back to his squad car and re-run the number and ended the stop if the new check failed to uncover a basis for the detention. However, the circuit court concluded, and we agree, that it would have been unreasonable under these circumstances for the officer to have returned to his vehicle and simply driven off without making contact with Reierson to explain to him the reason for the stop. As the circuit court explained:

[A] reasonable officer under th[ese] circumstances would not simply get back in the car and drive away. That would not be the way we would want a[n] ... officer to act. [The officer] would then approach the ... stopped [driver], and, if nothing else, apologize and explain what in the world is going on ... and why [the driver] w[as] stopped instead of [the officer] just going away.

Once the officer made contact with Reierson, he *immediately* smelled alcohol on Reierson’s breath. This fact, combined with the time of night and the observed right turn Reierson’s vehicle made when it was positioned to turn left, gave rise to a reasonable suspicion that Reierson had been operating a motor vehicle while intoxicated. At this point, the officer was justified in extending the stop to pursue a new investigation. See *State v. Colstad*, 2003 WI App 25, ¶19, 260 Wis. 2d 406, 659 N.W.2d 394 (officer may extend a traffic stop based on awareness of additional facts giving rise to reasonable suspicion that suspect has committed a separate offense different from the offense for which the suspect was stopped).

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



