

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 19, 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. 2011AP322-CR

Cir. Ct. No. 2009CT246

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

CATHY ANN CURRIE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Douglas County:
KELLY J. THIMM, Judge. *Affirmed.*

¶1 HOOVER, P.J.¹ Cathy Ann Currie appeals a judgment of conviction for operating while intoxicated, third offense. She argues the officer

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

lacked probable cause to stop her vehicle because he “mistakenly believed that [she] had violated a traffic law.” We affirm.

BACKGROUND

¶2 Currie was charged with operating while intoxicated, third offense. Currie brought a pretrial motion contesting the validity of the stop. At the motion hearing, officer William Lear testified that on September 18, 2009, an anonymous caller reported an individual driving with an open intoxicant in the vehicle. The caller provided the make, model, color, license plate number, and approximate location of the vehicle. When Lear encountered a vehicle matching the description, he noticed the vehicle had “a very large air freshener hanging below the rearview mirror,” contrary to WIS. STAT. § 346.88(3)(b).² Lear stopped the vehicle for this traffic violation, and subsequently arrested the driver, identified as Currie, for operating while intoxicated.

¶3 Currie testified she had a pair of felt hockey skates hanging from her rearview mirror, not an air freshener. She explained the skates did not obstruct her view through the front windshield.

¶4 The court found Lear’s testimony credible. It determined that although an air freshener hanging from a rearview mirror does not obstruct the entire view, it “obstructs a clear view.” The court found when Lear observed the air freshener, he had probable cause to believe Currie committed a traffic violation; therefore, the stop was valid.

² WISCONSIN STAT. § 346.88(3)(b) provides: “No person shall drive any motor vehicle upon a highway with any object so placed or suspended in or upon the vehicle so as to obstruct the driver’s clear view through the front windshield.”

DISCUSSION

¶5 On appeal, Currie argues that Lear did not have probable cause to believe she committed a traffic violation. She asserts Lear only testified about the size of the air freshener and there was no evidence “about why this air freshener obstructed Currie’s ‘clear view.’”

¶6 An officer may conduct a traffic stop when he or she has probable cause to believe a traffic violation occurred. *State v. Popke*, 2009 WI 37, ¶13, 317 Wis. 2d 118, 765 N.W.2d 569. Whether there is probable cause to conduct a traffic stop is a question of constitutional fact. *Id.*, ¶10. “A finding of constitutional fact consists of the circuit court’s findings of historical fact, which we review under the ‘clearly erroneous standard,’ and the application of these historical facts to constitutional principles, which we review de novo.” *Id.*

¶7 Lear testified he stopped Currie because he observed “a very large air freshener” hanging from her rearview mirror. The court determined that any object hanging from a rearview mirror would obstruct a driver’s clear view through the front of the windshield. The court also found Lear’s testimony about his observations credible. *See State v. McCallum*, 208 Wis. 2d 463, 488, 561 N.W.2d 707 (1997) (Credibility determinations are for the trial court.).

¶8 We determine “a very large air freshener” hanging from the rearview mirror obstructs a driver’s clear view through the front windshield. We conclude when Lear observed the air freshener, he had probable cause to believe Currie had violated WIS. STAT. § 346.88(3)(b). Lear conducted a valid traffic stop on Currie’s vehicle.

By the Court.—Judgment affirmed.

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

