

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 2005

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. 03-3526-CR

Cir. Ct. No. 01CF000225

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

JOHN A. LULLOFF,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Ozaukee County: PAUL V. MALLOY, Judge. *Affirmed.*

Before Anderson, P.J., Nettesheim and Snyder, JJ.

¶1 PER CURIAM. John A. Lulloff appeals pro se from a judgment convicting him of operating while intoxicated (fifth offense) and an order denying his postconviction motion seeking to suppress evidence. Lulloff moved the circuit court to suppress evidence from an allegedly unlawful stop. After a hearing, the circuit court denied the motion, and Lulloff entered a no contest plea.

Postconviction, Lulloff again sought suppression, which the circuit court denied. Lulloff appeals, and we affirm.

¶2 At the hearing on Lulloff's suppression motion, Officer Helm of the Ozaukee County Sheriff's Department, who has more than twenty-four years of experience as a traffic officer, testified that he was operating a vehicle with a certified speedometer and was trained in pacing a vehicle on the day he encountered Lulloff. Dispatch notified Helm that a local police department suspected an intoxicated driver on the highway. Helm had a description of the motorcycle, the driver and a license plate number. Helm encountered the motorcycle shortly thereafter and followed it. During that time, Helm observed the motorcycle move from one side of the lane to the other. Helm paced the motorcycle for approximately one mile and determined that the motorcycle was traveling at seventy-five miles per hour in a sixty-five mile per hour zone. When Helm pulled Lulloff's motorcycle over for a speeding violation, he discovered that Lulloff was intoxicated.

¶3 On cross-examination, Helm testified that the speedometer on his vehicle was certified. He could not say when the speedometer was last certified, but he testified that the department certifies the speedometer on a regular basis and he would have been told if his vehicle had a faulty speedometer. He also testified that he has experience pacing vehicles, although he did not recall any formal training in that area.

¶4 The court found that Helm had probable cause to stop Lulloff's vehicle because Lulloff was traveling in excess of the posted speed limit and the officer observed some erratic driving.

¶5 On appeal, Lulloff argues that the circuit court should not have believed Helm's inconsistent testimony regarding his training to pace vehicles and should not have found probable cause for the stop. On direct examination, Helm testified that he had training in vehicle pacing. On cross-examination, Helm stated that he did not recall any formal pacing training. The State counters that it was for the circuit court to determine Helm's credibility, and that the evidence at the hearing amounted to probable cause to stop Lulloff's vehicle.

¶6 We agree with the State that it was for the circuit court to assess the credibility of witnesses and weigh the evidence at the suppression hearing. *Micro-Managers, Inc. v. Gregory*, 147 Wis. 2d 500, 512, 434 N.W.2d 97 (Ct. App. 1988). The circuit court obviously found Helm was a credible witness, and accepted his description of the stop.

¶7 Lulloff also argues that the State did not present any evidence establishing when the speedometer in Helm's vehicle was last certified. Helm testified that he would have been advised if the vehicle had a faulty speedometer and that the department has a practice of certifying speedometers. Again, it was for the circuit court to weigh the evidence presented at the hearing.

¶8 When reviewing a circuit court's ruling on a motion to suppress, we will uphold the circuit court's findings of fact unless they are clearly erroneous. *State v. Eckert*, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, the application of constitutional and statutory principles to these facts is a question of law this court reviews de novo. *State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

¶9 A police officer may stop a vehicle when the officer reasonably believes that the driver is violating a traffic law, such as a speed limit. *State v.*

Betow, 226 Wis. 2d 90, 93, 593 N.W.2d 499 (Ct. App. 1999).¹ Reasonableness is measured against an objective standard taking into consideration the totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). This requires application of a commonsense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience. *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989).

¶10 The circuit court's findings of fact are not clearly erroneous based on the record. We conclude that these findings satisfy the requirements for a lawful stop. Helm, acting as a reasonable officer, paced Lulloff's motorcycle and determined that Lulloff was speeding. Additionally, Helm observed Lulloff driving erratically within the lane. Helm, in light of his training and experience, had specific facts suggesting a speeding violation. The stop was lawful.

By the Court.—Judgment and order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

¹ The circuit court and Lulloff refer to probable cause to stop. We analyze the validity of the stop under the reasonableness requirement.

