

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 7, 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. 2010AP2505-CR

Cir. Ct. No. 2010CF9

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

STEVEN J. KIERSTEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Calumet County:
DONALD A. POPPY, Judge. *Affirmed.*

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. Steven J. Kiersten has appealed from a judgment convicting him of operating a motor vehicle while intoxicated, fifth offense. The sole issue on appeal is whether the trial court erred in denying Kiersten's motion to suppress evidence on the ground that the arresting officer lacked reasonable

suspicion to stop his vehicle. We conclude that reasonable suspicion existed, and affirm the judgment.

¶2 To justify an investigatory seizure, the police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is or was violating the law. *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394. The facts must be judged under an objective standard. *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). What constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable officer reasonably suspect in light of his or her training and experience. *Colstad*, 260 Wis. 2d 406, ¶8. Courts must look to the totality of the circumstances in determining whether reasonable suspicion existed. *See State v. Waldner*, 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996). An officer is not required to rule out the possibility of innocent behavior before initiating a brief stop. *Colstad*, 260 Wis. 2d 406, ¶8. An officer may conduct an investigatory stop of a vehicle based upon a reasonable suspicion of a non-criminal traffic violation. *Id.*, ¶¶11, ¶13.

¶3 Whether there was reasonable suspicion to conduct a traffic stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. In reviewing the trial court's ruling on a motion to suppress evidence, we will uphold the trial court's findings of historical fact unless they are clearly erroneous. *State v. Arias*, 2008 WI 84, ¶12, 311 Wis. 2d 358, 752 N.W.2d 748. Whether those facts satisfy the constitutional requirement of reasonableness is a question of law that we review de novo. *See Waldner*, 206 Wis. 2d at 54.

¶4 We conclude that the traffic stop that led to Kiersten's arrest was proper based on reasonable suspicion to believe that he was violating WIS. STAT.

§ 347.25(4) (2009-10).¹ Section 347.25(4) provides that “[n]o vehicle may be equipped with or display any blue colored light or lamp unless the vehicle is used in police work authorized by the state or a political subdivision of the state or is used by a fire department as authorized under sub. (1s).”

¶5 Based upon the undisputed evidence at the suppression hearing, we conclude that the arresting officer, Robert Baldwin, could reasonably suspect that Kiersten was violating WIS. STAT. § 347.25(4). Baldwin testified that he had been a City of New Holstein police officer for fourteen years. He testified that Kiersten’s pick-up truck drove past him while he was monitoring traffic at about 8:45 p.m. on January 27, 2010. Baldwin testified that he noticed blue lights along the side of the bed of the pick-up truck. He testified that he did not mistake the vehicle for a police vehicle, and stopped it because of the blue lights he observed.

¶6 Kiersten subsequently testified and admitted that he had installed blue lights along the top of the walls of the bed of his pick-up truck. Kiersten testified that the blue lights were connected to the lights of the vehicle, and came on with the headlights and taillights. In addition, three photographs of Kiersten’s truck were admitted into evidence, one of which depicted the blue lights along the exterior sides of the truck bed.

¶7 On appeal, Kiersten does not challenge the undisputed evidence that his truck was equipped with and displayed blue lights. However, he contends that because the prosecutor failed to present evidence that his truck was not a vehicle used by a fire department, the trial court erred in determining that there was

¹ All references to the Wisconsin Statutes are to the 2009-10 version.

reasonable suspicion for the traffic stop. Kiersten also contends that the trial court judge erred by considering his personal knowledge in determining that reasonable suspicion existed.

¶8 Based on the uncontroverted evidence presented at the suppression hearing, we conclude that there was reasonable suspicion to stop Kiersten's vehicle, regardless of any nonevidentiary personal knowledge commented on by the trial court when it denied Kiersten's suppression motion. It is undisputed that Kiersten's truck was equipped with and displayed blue lights. Baldwin testified that he did not mistake the truck for a police vehicle and, as is clear from the photographs introduced into evidence, the truck did not appear to be a police or fire vehicle.² Baldwin therefore could reasonably suspect that the owner of the truck was violating WIS. STAT. § 347.25(4).

¶9 In concluding that there was reasonable suspicion to stop Kiersten's truck to investigate whether a violation of WIS. STAT. § 347.25(4) was occurring, Baldwin did not have to first rule out the possibility that the truck was used by a volunteer fire department, and thus fell within one of the exceptions under § 347.25(4). An officer need not rule out an innocent explanation for a suspect's behavior where there are also reasonable inferences supporting reasonable suspicion to justify a stop. *See Waldner*, 206 Wis. 2d at 60 (suspicious conduct by its very nature is ambiguous, and if a reasonable inference of unlawful conduct can be objectively discerned, an officer is justified in investigating further, notwithstanding other innocent inferences).

² As discussed by the State, the photographs admitted into evidence depict a blue pick-up truck adorned with a custom design on the doors, an American flag decal over the back window, a decorative license plate frame, and blue lights along the sides of the truck's bed.

¶10 Based on the appearance of Kiersten’s truck and the blue lights displayed on it, Baldwin could reasonably suspect Kiersten was violating WIS. STAT. § 347.25(4). Because, viewed under an objective standard, the undisputed evidence provided reasonable suspicion to conduct a traffic stop, Kiersten’s motion to suppress was properly denied. Because reasonable suspicion was clearly established by the evidence at the suppression hearing, we need not consider whether the trial court judge erred by considering his personal knowledge in determining that reasonable suspicion existed.

By the Court.— Judgment affirmed.

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

