COURT OF APPEALS
DECISION
DATED AND RELEASED

December 12, 1995

No. 95-1637-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

CAMARA TYLER,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed.*

SCHUDSON, J.[1] Camara Tyler appeals from the judgment of conviction, following a jury trial, for carrying a concealed weapon. He argues that the trial court erred in denying his motion to suppress the handgun found in the glove box of his car. He contends that the police had no lawful basis to stop him. This court affirms.

[1] This appeal is decided by one judge pursuant to § 752.31(2), STATS.

The essential facts are undisputed. According to Milwaukee Police Officer Richard Aztlan, the only witness who testified at the suppression hearing, Tyler was driving a car with its high beams on at about the 1300 block of North Sixth Street in the City of Milwaukee, just after 10:00 p.m. on December 31, 1993. Aztlan and his partner decided to stop Tyler for what they believed to be the traffic violation of driving with the high beams on. Tyler immediately made a U-turn, turned down a dead-end street, and stopped. The police then found that Tyler was driving without a license and that he had an outstanding municipal warrant. They arrested him and recovered a gun from the glove box. Tyler challenges only the stop. He argues that the stop was unlawful because it was based solely on having the high beams on and, he contends, nothing in the record established that driving with the high beams on was unlawful.

Police may stop a driver if they reasonably suspect that he or she has committed a traffic violation. *See* § 968.24, STATS.; ***State v. Krier***, 165 Wis.2d 673, 678, 478 N.W.2d 63, 65-66 (Ct. App. 1991). Whether undisputed facts satisfy the constitutional requirement of reasonableness for a stop presents a question of law that this court decides *de novo*. ***State v. Griffin***, 183 Wis.2d 327, 331, 515 N.W.2d 535, 537 (Ct. App. 1994), *cert. denied*, 115 S. Ct. 363 (1994). A stop is permissible if the police possess specific and articulable facts that, taken together with rational inferences from those facts, support a reasonable belief that a person has committed, is committing, or is about to commit an offense. ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968). The facts necessary to support a stop must be judged by an objective standard: would the facts available to the police at the time of the stop warrant a person of reasonable caution to believe that a stop was appropriate. ***Id.***

Tyler points to § 347.12(1), STATS., which provides:

> **Use of multiple-beam headlamps.** (1) Whenever a motor vehicle is being operated on a highway during hours of darkness, the operator shall use a distribution of light or composite beam directed high enough and of sufficient intensity to reveal a person or vehicle at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

> (a) Whenever the operator of a vehicle equipped with multiple-beam headlamps approaches an oncoming vehicle within 500 feet, the operator shall dim, depress or tilt the vehicle's headlights so that the glaring rays are not directed into the eyes of the operator of the other vehicle.
>
> (b) Whenever the operator of a vehicle equipped with multiple-beam headlamps approaches or follows another vehicle within 500 feet to the rear, the operator shall dim, depress, or tilt the vehicle's headlights so that the glaring rays are not reflected into the eyes of the operator of the other vehicle.

Tyler argues that because Officer Aztlan offered no testimony at the suppression hearing to establish that other vehicles were within five-hundred feet, there was no evidence to establish any headlamp violation. The State counters that at Tyler's subsequent trial, Officer Aztlan did testify that "there was other traffic flowing both ways." In reply, Tyler maintains that this court shall not consider trial testimony to support a decision that was based only on the evidence at the suppression hearing.

When evaluating a challenge to whether evidence satisfies the constitutional standard of reasonableness, this court may consider evidence adduced at the subsequent trial in support of the trial court's decision at a suppression hearing. *See* ***State v. Truax***, 151 Wis.2d 354, 360, 444 N.W.2d 432, 435 (Ct. App. 1989). When Officer Aztlan's trial testimony that "there was other traffic flowing both ways" is added to his suppression hearing testimony, Tyler's challenge evaporates.

Moreover, even Aztlan's testimony at the suppression hearing, standing alone, was sufficient to form the basis for the trial court's denial of Tyler's motion to suppress. It is revealing that Tyler, in both his brief-in-chief and reply brief to this court, contends that Aztlan's testimony was inadequate to establish "probable cause" for the stop. That is not the standard; only reasonable suspicion is required. Aztlan testified that he observed Tyler driving with the high beams on at a downtown location shortly after 10:00 p.m. He also testified that he and his partner decided to pull over Tyler for this "violation."

It is logical to infer that the police reasonably suspected that Tyler was driving in violation of § 347.12(1), STATS. Even if the police suspicion had ultimately proved to be incorrect or perhaps based on lack of knowledge of the five-hundred foot requirement, there was nothing unreasonable about the suspicion that driving with high beams on is a traffic violation at the time and location present in this case.

By the Court. – Judgment affirmed.

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