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DISTRICT IV

September 1, 2022

To:

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Circuit Court Judge
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Clerk of Circuit Court
La Crosse County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2021AP1221-CR State of Wisconsin v. Antonio P. Shaw, Jr. (L.C. # 2017CF797)

Before Blanchard, P.J., Kloppenburg, and Fitzpatrick, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Antonio Shaw, Jr., appeals a judgment of conviction for possession of a firearm by a felon and possession of THC. Shaw also appeals the circuit court's order denying his postconviction motion. He contends that the circuit court erred in denying his motion to suppress, and more specifically that the court erred in concluding that the police had reasonable suspicion to stop him for a vehicle window tint violation. Based on our review of the briefs and the record, we conclude

at conference that this case is appropriate for summary disposition. See WIS. STAT. RULE 809.21(1) (2019-20).¹ We affirm.

As discussed further below, three police officers testified as to the circumstances of Shaw's stop. We review de novo whether a given set of circumstances constitutes reasonable suspicion. *State v. Sherry*, 2004 WI App 207, ¶4, 277 Wis. 2d 194, 690 N.W.2d 435.

Shaw contends that none of the three police officers provided testimony showing that the officers had reasonable suspicion to stop him for a window tint violation under the requirements set forth in *State v. Conaway*, 2010 WI App 7, 323 Wis. 2d 250, 779 N.W.2d 182 (2009). The State counters that the officers' testimony satisfied *Conaway*'s requirements. We agree with the State.

In *Conaway*, we concluded that the State cannot satisfy the reasonable suspicion standard unless the “the officer’s testimony provides a basis for a finding that the officer had the ability to judge whether a tinted [] window came close to or failed to meet the [legal] requirement.” *Id.*, ¶13. We stated in *Conaway* that “it would be enough, for example, if an officer testifies that he or she is familiar with how dark a minimally complying window appears and that the suspect window appeared similarly dark or darker, taking into account the circumstances of the viewing.” *Id.*, ¶7. We stated that “[o]fficers need not, and likely cannot, distinguish with the naked eye small variations in the amount of light that passes through suspect windows” but that “[r]easonable suspicion does not require such precision.” *Id.*

¹ All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

Applying these standards in *Conaway*, we concluded that reasonable suspicion was lacking when an officer testified that: (1) he had more than thirteen years of experience as a state trooper, which included training on use of a tint meter, a device that measures how much light is passing through a window; (2) he was aware of the percentage of tint permitted; (3) he had stopped between ten and one hundred vehicles for illegal window tint; and (4) he had stopped the suspect's vehicle because the rear window "appeared to [have] dark window tint." *Id.*, ¶8. We reasoned that "the officer made no connection between his longevity or his tint meter training and his ability to differentiate between legally and illegally tinted glass. He did not, for example, say that he had experience in correctly identifying windows that failed the tinting limitation." *Id.*, ¶9. We further reasoned that "the fact that the officer had stopped numerous other vehicles for suspected window tint violations adds nothing [because] the officer did not testify whether his prior suspicions were ever verified by subsequent testing." *Id.*, ¶11.

Shaw contends that the police officers' testimony here was lacking in ways similar to the officer's testimony in *Conaway*. We disagree and conclude that the officers' testimony here establishes, as required by *Conaway*, that the officers had a sufficient ability to judge whether window tinting violated the legal requirements. We now discuss each officer's testimony along with Shaw's more specific arguments.

One of the officers, Dakota Jelinski, testified that he had been a La Crosse police officer since 2013 and that he had received training on tint meters. Jelinski also testified that, based on his training, he was familiar with how a minimally complying window appears and that Shaw's window appeared darker than the law allows. He testified that he initiated the stop of Shaw based on excessive window tint. Jelinski also testified that he had personally conducted approximately fifteen to twenty traffic stops for window tint violations and that he had been involved in about

seventy-five to one-hundred such stops in total. He testified that on the previous occasions when he had conducted the stops, his suspicions were later proven to be accurate based on tint meter testing.

Shaw argues that Jelinski's testimony was insufficient because Jelinski admitted elsewhere in his testimony that: (1) he did not determine that Shaw's windows were too darkly tinted until the end of the stop; and (2) he was not able to gauge the tint level without the aid of a tint meter. Shaw points to the following testimony:

Q ... and as far as the windows, you, um, also felt that the windows were so dark that you needed to ... shine several flashlights into the vehicle to see inside, correct?

A Correct.

Q And you noted that towards the end of the stop?

A Correct.

Q Okay. (Pause.) When, um (pause)—how are—how were you, um, able to tell the specific tinting on the windows?

A Um, using a tint meter.

Q Before that you didn't know the percentage, correct?

A No.

We disagree with Shaw's characterization of this testimony as showing that either: (1) Jelinski did not determine that Shaw's windows were too darkly tinted until the end of the stop; or (2) Jelinski was not able to gauge the tint level without the aid of a tint meter. Rather, the testimony shows that: (1) Jelinski noted toward the end of the stop that Shaw's windows were so dark that he needed multiple flashlights to see inside; and (2) Jelinski was unable to determine the exact percentage of light penetration without a tint meter. An exact percentage is not required for reasonable suspicion. See *Conaway*, 323 Wis. 2d 250, ¶7.

The second officer involved in Jelinski's stop, James Mancuso, testified that he had been a police officer for twelve years and a police investigator for over four years. Mancuso testified that when he initially observed Shaw's vehicle, it was around 8:20 p.m. in August and still light outside. He testified that he had been trained on the use of a tint meter and that he could make a "fairly educated guess" as to whether a window was illegally tinted. Mancuso testified that, based on his training and experience, Shaw's vehicle appeared to have window tint that was similarly dark or darker than the law allows. He also testified that he had conducted hundreds of traffic stops for window tint violations, and that his suspicions were confirmed the "[t]he majority of the time" when the windows were tested using a tint meter.

Shaw argues that Mancuso's testimony was insufficient because Mancuso testified that he could only make a "fairly educated guess" that was correct "the majority of the time." We disagree and conclude that Mancuso's testimony as a whole, especially when combined with Officer Jelinski's testimony, establishes that the officers had a sufficient ability to judge window tint violations consistent with *Conaway*.

Shaw also argues that Mancuso's testimony was insufficient because Mancuso admitted that he could not determine whether window tinting met the legal requirement for visible light transmission without a tint meter. Shaw points to the following testimony:

Q Can you tell how dark the tint is on your unmarked squad ... windows just from looking at them?

A Are you asking for a percentage if I put the tint meter on there?

Q No. Can you tell just looking at them?

A If they're illegal or not?

Q Can you tell what the percentage is just looking at them?

A No, you'd have to put the exact tint meter on there to see if it was over 50 percent.

Q Okay.

A (Pause.) Or a rear window would be 35 percent.

Shaw's argument regarding this testimony, like his argument regarding Jelinski's testimony, is not persuasive because it misconstrues the testimony. Reading this portion of Mancuso's testimony in the context of the rest of his testimony, it is clear that Mancuso was admitting only that he could not confirm the exact percentage of window tint without a tint meter.

Turning finally to the third officer involved in Shaw's stop, Andrew Adey, Shaw asserts that Adey did not testify about his experience in identifying illegal window tint, much less about his accuracy. Shaw's assertion is contradicted by the record. During Adey's testimony, he estimated that he had stopped vehicles for excessive window tint about two dozen times, and he stated that subsequent tint meter testing confirmed that he had never been incorrect.

In sum, we conclude that the police officers' testimony in Shaw's case established reasonable suspicion of a window tint violation under the requirements set forth in *Conaway*.

Therefore,

IT IS ORDERED that the circuit court's judgment and order are summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals