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DISTRICT III

June 25, 2024

To:

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Circuit Court Judge
Electronic Notice

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

2023AP1227-CR State of Wisconsin v. David Larry Pederson, Jr.
(L. C. No. 2020CF388)

Before Stark, P.J., Hruz and Gill, 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).

The State of Wisconsin appeals an order granting a suppression motion filed by David Larry Pederson, Jr. *See* WIS. STAT. § 974.05(1)(d) (2021-22) (permitting the State to appeal an order suppressing evidence).[1] Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. For the reasons explained below, we summarily reverse the order granting Pederson's suppression motion, and we remand for further proceedings.

[1] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Following a traffic stop, the State charged Pederson with operating a motor vehicle while intoxicated and operating a motor vehicle with a prohibited alcohol concentration, both as fifth offenses. Pederson moved to suppress all evidence obtained during and after the stop, arguing that the stop was not supported by reasonable suspicion.

The sole witness at the suppression hearing was Inspector Joshua Lintula of the Wisconsin State Patrol.[2] Lintula testified that on the date in question, he was "running laser" and "had a reading of 64 [miles per hour] … on a red pickup" truck in an area where the posted speed limit was fifty-five miles per hour. Lintula further testified that as the truck passed him, he "did not observe … that the driver was wearing a seat belt." Lintula then stopped the vehicle. When he approached the vehicle, the driver—who was later identified as Pederson—immediately said, "I know, speeding." Lintula then informed Pederson that he had not stopped him for speeding but for failing to wear a seat belt. Pederson responded that he "absolutely, 100 percent, had [a seat belt] on." In Lintula's report, which was admitted into evidence at the suppression hearing, Lintula stated, "I observed a red pickup truck going north bound on Hwy 27, laser showed 64 mph as the pickup went by, I could not see if the driver's not wearing his seat belt."

On cross-examination, Lintula reiterated that he "could not see a seat belt on" Pederson prior to the stop. Lintula conceded that when he approached the vehicle, Pederson's seat belt was on. Lintula also conceded that "[t]he reason for the stop was the seat belt" and that if he had

[2] A video clip from the dashboard camera video of the stop was also introduced into evidence during the suppression hearing. Although the appellate record does not contain the video itself, it does include a transcript of the relevant portion of the video.

observed a seat belt when Pederson's vehicle passed him, he "would have let [Pederson] go" without stopping him.

Following Lintula's testimony, the State argued that there was "more than sufficient reasonable, articulable suspicion for this stop … based upon the speeding" and "based upon the observation of [Lintula] that the defendant did not appear to be wearing a seat belt." The State specifically argued that "both of those reasons serve[d] as a proper basis for this stop." In response, Pederson argued that Lintula's testimony showed that he merely had a "hunch" that Pederson was not wearing a seat belt, which was not sufficient to give rise to reasonable suspicion. Pederson also emphasized Lintula's testimony that he had stopped Pederson because of a seat belt violation, not because Pederson was speeding.

The circuit court issued a written decision granting Pederson's suppression motion. The court found that Lintula had observed Pederson's vehicle traveling at sixty-four miles per hour in an area where the speed limit was fifty-five miles per hour. The court also found, however, that "[a]ccording to … Lintula, the basis for the stop of [Pederson's] motor vehicle was an alleged seat[ ]belt violation." The court then found that Lintula "was unable to reliably observe and determine whether [Pederson] was or was not wearing a seat[ ]belt." Consequently, the court determined that Lintula lacked reasonable suspicion for the stop because he could not "reliably point to specific and articulable facts that were actually in existence at the time of the traffic stop in order to establish that a seat[ ]belt violation was actually occurring."

A traffic stop is constitutionally permissible when the officer has reasonable suspicion to believe that a crime or traffic violation has been or will be committed. *See* ***State v. Popke***, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. "[T]he officer 'must be able to point to specific

and articulable facts which, taken together with rational inferences from those facts, reasonably warrant' the intrusion of the stop." ***State v. Post***, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (citation omitted). "The legal determination of reasonable suspicion is an objective test: 'What would a reasonable police officer reasonably suspect in light of his or her training and experience.'" ***State v. Anagnos***, 2012 WI 64, ¶60, 341 Wis. 2d 576, 815 N.W.2d 675 (citation omitted).

The existence of reasonable suspicion for a traffic stop presents a question of constitutional fact. ***State v. Williams***, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. We will uphold the circuit court's findings of historical fact unless they are clearly erroneous, but "we review the determination of reasonable suspicion de novo." ***Id.***

Here, we agree with the State that the facts found by the circuit court show that Lintula had the requisite reasonable suspicion to stop Pederson's vehicle. In its decision, the court found that Lintula observed Pederson's vehicle traveling at sixty-four miles per hour in an area where the speed limit was fifty-five miles per hour. Given the evidence summarized above, that finding is not clearly erroneous—i.e., it is not against the great weight and clear preponderance of the evidence. *See* ***Phelps v. Physicians Ins. Co. of Wis.***, 2009 WI 74, ¶39, 319 Wis. 2d 1, 768 N.W.2d 615. Under these circumstances, Lintula had reasonable suspicion to believe that a

traffic violation had occurred—namely, speeding—and therefore had reasonable suspicion to stop Pederson's vehicle.[3] *See* ***Popke***, 317 Wis. 2d 118, ¶23.

In arguing that the speeding violation did not provide reasonable suspicion for the stop, Pederson focuses on Lintula's testimony that he would not have stopped Pederson's vehicle absent the alleged seat belt violation. Similarly, the circuit court found that "[a]ccording to … Lintula, the basis for the stop of [Pederson's] motor vehicle was an alleged seat[ ]belt violation." The court then analyzed only whether there was reasonable suspicion to stop Pederson's vehicle for a seat belt violation, and it did not address whether the observed speeding violation, in and of itself, provided reasonable suspicion for the stop.

The circuit court erred in that regard. As noted above, reasonable suspicion is an objective test. *See* ***Anagnos***, 341 Wis. 2d 576, ¶60. "As long as there was a proper legal basis to justify the intrusion, the officer's subjective motivation does not require suppression of the evidence or dismissal." ***State v. Baudhuin***, 141 Wis. 2d 642, 651, 416 N.W.2d 60 (1987). Stated differently, an officer's subjective intent to stop a vehicle for one reason "does not alone render [the stop] illegal, as long as there were objective facts that would have supported a correct legal theory to be applied and as long as there existed articulable facts fitting the traffic law violation." ***Id.*** Here, there were articulable facts supporting a reasonable suspicion that Pederson was speeding. As such, under the correct, objective standard, reasonable suspicion existed for Lintula's stop of Pederson's vehicle.

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[3] On appeal, the State does not argue that Lintula had reasonable suspicion to stop Pederson's vehicle based on the alleged seat belt violation. Because we conclude that Lintula's observation of Pederson's speeding provided reasonable suspicion for the stop, we need not address whether the seat belt violation also provided reasonable suspicion. *See* ***Mudrovich v. Soto***, 2000 WI App 174, ¶16 n.5, 238 Wis. 2d 162, 617 N.W.2d 242 ("[O]nly dispositive issues need be addressed.").

Pederson also asserts that the circuit court "properly rejected the State's argument regarding speed due to … Lintula's lack of credibility." (Formatting altered.) In essence, Pederson argues that because Lintula provided "inconsistent testimony" as to whether he observed Pederson wearing a seat belt, the court made an implicit determination that Lintula's testimony, in its entirety, was not credible.

The record contains no support for this argument. Pederson points to nothing in the circuit court's decision indicating that the court found Lintula's testimony about his observation of Pederson's speed to be incredible. To the contrary, in the "Facts" section of its decision, the court stated, "According to Lintula, [Pederson's] truck was travelling 64 m.p.h. in a 55 m.p.h. speed zone as the vehicle passed by Lintula." Then, in the "Analysis" section of its decision, the court expressly stated that Pederson's vehicle "was travelling 64 m.p.h." Thus, the court made a factual finding—based on Lintula's testimony and report—that Pederson's vehicle was traveling at sixty-four miles per hour prior to the stop.

That finding is plainly inconsistent with Pederson's claim that the circuit court found Lintula's testimony about Pederson's speed to be incredible and rejected the State's reasonable suspicion argument regarding the speeding violation on that basis. Instead, as the State correctly observes, the court "found that Pederson was speeding but agreed with Pederson's plainly incorrect legal argument that the stop could not be justified by reasonable suspicion of speeding" because Lintula "testified that he stopped Pederson's truck for a seat belt violation, not for speeding." As already explained, under the correct, objective standard, the speeding violation provided reasonable suspicion for the stop of Pederson's vehicle. Consequently, the court erred by granting Pederson's suppression motion.

Therefore,

IT IS ORDERED that the order is summarily reversed and the cause is remanded for further proceedings.

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

Samuel A. Christensen
Clerk of Court of Appeals