COURT OF APPEALS
DECISION
DATED AND FILED

January 31, 2006

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. 2005AP1485-CR **Cir. Ct. No. 2003CM4635**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAYMOND LORD, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: MICHAEL B. BRENNAN, Judge. *Affirmed*.

¶1 WEDEMEYER, P.J.[1] Raymond Lord, Jr. appeals from a judgment entered after he pled guilty to two counts of carrying a concealed weapon, contrary

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2003-04).

to WIS. STAT. § 941.23 (2003-04).[2] He also appeals from an order denying his postconviction motion alleging ineffective assistance of counsel. Lord claims that his trial counsel provided ineffective assistance by failing to establish the authenticity of the temporary license plate on his car, which triggered the traffic stop. Because Lord has failed to establish that his trial counsel provided ineffective assistance, this court affirms.

BACKGROUND

¶2 On May 21, 2003, two Milwaukee County sheriff's deputies observed Lord's vehicle displaying a temporary Wisconsin license plate. The deputies performed a traffic stop and, as they approached the vehicle, they noticed a revolver in plain view behind the front seat. A search of the car turned up another handgun. Additional investigation revealed that the temporary license plate was valid. Based on the foregoing, Lord was arrested and charged with two counts of carrying a concealed weapon.

¶3 Lord pled not guilty and filed a motion seeking to suppress the evidence on the grounds that the deputies did not have sufficient basis to conduct the stop. He argued, through counsel, that stopping him solely on the display of a valid, state-issued temporary plate was improper. He cited ***State v. Griffin***, 183 Wis. 2d 327, 515 N.W.2d 535 (Ct. App. 1994) in support of his argument. The trial court denied the motion to suppress. In doing so, the trial court emphasized that the deputy who conducted the traffic stop could not verify that the temporary

[2] All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

plate was valid without stopping the vehicle to run the VIN number. Based on the trial court's suppression ruling, Lord pled guilty and judgment was entered.

¶4 Lord filed a postconviction motion alleging that he received ineffective assistance of counsel. He asserts that his counsel provided ineffective assistance by failing to establish that the temporary plate on his vehicle was the same type of plate referenced in the ***Griffin*** decision and authorized under WIS. STAT. § 341.09. Lord points out that the trial court, which denied his suppression motion, expressed some concern that his license plate was different from the one in ***Griffin***.

¶5 The trial court ruling on the postconviction motion agreed to supplement the record with the original temporary plate, but denied the claim of ineffective assistance of counsel. It was undisputed that Lord's temporary plate was legitimately issued by the Department of Transportation through a dealership.

¶6 The postconviction court reasoned that because law enforcement had legitimate cause to stop Lord's vehicle, trial counsel could not have been ineffective. The court ruled that the deputy could stop the car to verify the validity of the temporary plate. The court based its decision on the fact that a deputy can only make such verification by stopping the vehicle. The court entered an order denying the postconviction motion. Lord now appeals.

DISCUSSION

¶7 Lord claims his trial counsel provided ineffective assistance of counsel by failing to establish at the suppression hearing that his temporary license plate was state-issued under WIS. STAT. § 341.09 and therefore, did not provide sufficient grounds for the investigative traffic stop. We are not persuaded.

¶8 In order to succeed on an ineffective assistance claim, Lord must prove that counsel's performance constituted deficient conduct, and that such conduct prejudiced the outcome. *See* ***Strickland v. Washington***, 466 U.S. 668, 687 (1984). A court need not address both components of this inquiry if the defendant does not make a sufficient showing on one. ***Id.*** at 697.

¶9 Whether counsel's actions constitute ineffective assistance is a mixed question of law and fact. ***State v. Pitsch***, 124 Wis. 2d 628, 633-34, 369 N.W.2d 711 (1985). "'The trial court's determinations of what the attorney did, or did not do, and the basis for the challenged conduct are factual and will be upheld unless they are clearly erroneous.'" ***State v. Harvey***, 139 Wis. 2d 353, 376, 407 N.W.2d 235 (1987) (citation omitted). The ultimate conclusion, however, of whether the conduct resulted in a violation of defendant's right to effective assistance of counsel is a question of law for which no deference to the trial court need be given. ***Id.***

¶10 This court addresses only the prejudice prong because it is dispositive. In order to prove that Lord was prejudiced by his counsel's conduct, he must show that the conduct undermined the outcome of the proceedings and that if counsel had acted differently, there is a reasonable probability that the outcome of the proceeding would have been different. ***State v. Sanchez***, 201 Wis. 2d 219, 236, 548 N.W.2d 69 (1996). Lord has failed to make such a showing.

¶11 Lord's entire claim is based on his contention that the officers in this case could not conduct an investigative stop based solely on their observation that he was driving a vehicle with a temporary license plate. Lord is wrong. A vehicle which displays a temporary license plate, and the reasonable inferences that can be drawn from that fact, can be sufficient to justify the stop of a motor vehicle. An

officer can conduct an investigative stop provided he or she has "reasonable suspicion" that wrongful activity is afoot. ***Terry v. Ohio***, 392 U.S. 1, 27 (1968); ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990). Whether circumstances constitute a reasonable suspicion is a common sense test. ***State v. Jackson***, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). A temporary stop is permissible if the specific and articulable facts available to the officer at the moment of the seizure, taken together with rational inference from those facts, would objectively "'warrant a man of reasonable caution in the belief' that the action taken was appropriate." ***Terry***, 392 U.S. at 22 (citation omitted).

¶12 In this case, one of the deputies testified at the suppression hearing that his training and experience led him to pull Lord over. He indicated that temporary license plates are vulnerable to illegal activity for three specific reasons. First, the temporary plates create the possibility for people to drive vehicles that are not registered with the state. Second, the plates can be used to conceal potential vehicle theft. Third, the plates are often, and can easily be, modified for illegal purposes.

¶13 In the instant case, Lord's temporary plate contained only a partial listing of the VIN number of his car. Thus, the deputy could not verify whether Lord's car was legally registered based on the information on the temporary plate. Rather, the deputy needed to conduct an investigatory stop so that the entire VIN number could be obtained to check the registration.

¶14 In addition, temporary plates can easily be modified or moved from vehicle to vehicle. Thus, without stopping Lord's car, the deputy had no way to determine whether Lord's temporary plate was truly and legally registered with the Department of Transportation. The intrusion that occurs by stopping a person

with a temporary license plate to ensure that the plate and car are validly registered and not a stolen or illegally driven vehicle is very minimal, temporary and brief. It permits an officer to ask the occupant for the registration material and to verify that a crime is not being committed.

¶15 Based on the foregoing, this court concludes that the deputies in this case had reasonable suspicion to stop Lord's vehicle, and therefore the stop did not violate the Fourth Amendment. This was not a random stop; rather, the investigative stop was reasonable and grounded in specific, articulable facts, which demonstrate that the stop was legal. Consequently, the trial court was correct to deny the motion to suppress and there was no prejudice here regardless of what trial counsel did or did not do. Accordingly, this court affirms.

By the Court.—Judgment and order affirmed.

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