COURT OF APPEALS
DECISION
DATED AND FILED

May 23, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 01-0246-FT

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

WAUKESHA COUNTY,

PLAINTIFF-RESPONDENT,

V.

MARKUS MEINHARDT,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Waukesha County: PATRICK C. HAUGHNEY, Judge. *Reversed and cause remanded.*

¶1 SNYDER, J.[1] Markus Meinhardt appeals from an order of the circuit court denying his motion to dismiss an operating while intoxicated citation against him. Meinhardt argues that the deputy sheriff had no probable cause to

[1] This decision is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (1999-2000). All statutory references are to the 1999-2000 version unless otherwise noted.

stop him and thus the trial court erred in denying his motion to dismiss. We agree and reverse the order of the trial court.

FACTS

¶2 On February 27, 2000, Meinhardt was driving in the Town of Lisbon when Waukesha County Deputy Sheriff Lloyd Smith approached Meinhardt driving in the opposite direction. Meinhardt twice flashed his high-beam headlights, presumably to indicate that Smith should reduce his own headlights to normal illumination. However, Smith's high-beam headlights were not in operation at the time.

¶3 Smith turned his marked squad car around and stopped Meinhardt because Smith believed that Meinhardt's flashing of his high-beam headlights constituted a traffic violation. Meinhardt was taken into custody and cited for operating while intoxicated.

¶4 Meinhardt moved to dismiss the charge, arguing that Smith had no probable cause to stop him. At a hearing on the motion to dismiss, Smith testified that the only reason he stopped Meinhardt was the flashing of his high-beam headlights; Smith testified that he believed the flashing of high-beam headlights constituted a violation of WIS. STAT. § 347.12(1)(a) (1997-98).

¶5 The trial court denied Meinhardt's motion to dismiss; the court stated that Meinhardt's flashing of his high-beam headlights constituted a violation of WIS. STAT. § 347.12 (1997-98). In addition, the trial court held that under the community caretaker exception to the Fourth Amendment of the United States Constitution, Smith's stop of Meinhardt was justified. Meinhardt appeals the denial of this motion.

DISCUSSION

¶6 On review, we will uphold the trial court's findings of historical fact unless they are against the great weight and clear preponderance of the evidence. ***State v. Jackson***, 147 Wis. 2d 824, 829, 434 N.W.2d 386 (1989). This is the equivalent of the "clearly erroneous" test set forth at WIS. STAT. § 805.17(2). However, whether those facts satisfy the constitutional requirement of reasonableness presents a question of law, and we are not bound by the trial court's decision on that issue. ***Id***. In addition, the legality of a traffic stop is a question of law which we also review de novo. ***State v. Baudhuin***, 141 Wis. 2d 642, 648-49, 416 N.W.2d 60 (1987).

¶7 Detaining a motorist for a routine traffic stop constitutes a seizure. ***State v. Longcore***, 226 Wis. 2d 1, 6, 593 N.W.2d 412 (Ct. App. 1999). A brief detention, however, is not unreasonable if it is justified by a reasonable suspicion that the motorist has committed an offense. ***Id***. Reasonable suspicion is based upon specific and articulable facts that together with reasonable inferences therefrom reasonably warrant a suspicion that an offense has occurred or will occur. ***Id***. at 8. Reasonable suspicion is insufficient to support an arrest or search, but permits further investigation. ***Id***.

¶8 Meinhardt makes two arguments: (1) that his flashing of his high-beam headlights was not a violation of WIS. STAT. § 347.12(1) (1997-98); and (2) that the traffic stop was not based upon the deputy's community caretaker function. Thus, according to Meinhardt, there was no legal basis for the traffic stop. We agree that the traffic stop was without legal basis.

¶9 WISCONSIN STAT. § 347.12(1) (1997-98) addresses the use of multiple-beam headlamps; the statute in effect at the time of Meinhardt's citation reads as follows:

> **(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.

Contrary to Waukesha County's assertions, this statute does not prohibit the quick flashing of one's high-beam headlights. The statute mandates that a motor vehicle use sufficient light to reveal a person or vehicle at a safe distance, except that the operator must dim, depress or tilt the vehicle's headlights within 500 feet of an oncoming vehicle or approaching a vehicle. When we interpret a statute, we examine the plain language of the statute. ***Hanson v. Prudential Prop. & Cas. Ins. Co.***, 224 Wis. 2d 356, 366, 591 N.W.2d 619 (Ct. App. 1999), *review denied*, 225 Wis. 2d 490, 594 N.W.2d 384 (Wis. Apr. 27, 1999) (No. 98-0692). The plain language of the statute does not prohibit the flashing of one's high-beam headlights.

¶10 Recent legislative amendments to WIS. STAT. § 347.12(1) (1997-98) validate this holding. As of April 25, 2000, § 347.12(1) now reads:

> **(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. *This paragraph does not prohibit an operator from intermittently flashing the vehicle's high-beam headlamps at an oncoming vehicle whose high-beam headlamps are lit*.
>
> (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. *This paragraph does not prohibit an operator from intermittently flashing the vehicle's high-beam headlamps as provided under par. (a).* (Emphasis added.)

See also 1999 Wis. Act 66. We agree with Meinhardt that this revision does not amount to a change in § 347.12 (1997-98), but instead clarifies it. Thus, Meinhardt did not commit a traffic violation when he flashed his high-beam headlights.

¶11 If an officer erroneously applies the law to the facts, he or she does not have cause to believe the law was violated. ***Longcore***, 226 Wis. 2d at 3-4. When an officer relates the facts to a specific offense, "it must indeed *be* an offense; a lawful stop cannot be predicated upon a mistake of law." ***Id***.

¶12 The County simply asserts that Smith had probable cause to believe that Meinhardt had committed a violation, merely assuming that flashing one's high-beam headlights within 500 feet "was a violation of the statute as written and in effect on the date [Meinhardt] was cited for Operating While Intoxicated." This

is a legal conclusion, not an analysis. Under WIS. STAT. RULE 809.19(1)(d), appellate argument requires, among other things, argument containing the contention of the party *and* the reasons therefor.[2] ***Longcore***, 226 Wis. 2d at 9-10. If an officer erroneously applies the law to the facts, he or she does not have cause to believe the law was violated. ***Id.*** at 3-4.

¶13 However, as long as there is a proper legal basis to justify the stop, the officer's subjective motivation does not require dismissal. ***Baudhuin***, 141 Wis. 2d at 648. The officer's subjective intent does not alone render a search or seizure illegal, as long as there are 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***. at 651.

> [T]he fact that the officer does not have the state of mind which is hypothecated by the reasons which provide the legal justification for the officer's action does not invalidate the action taken as long as the circumstances, viewed objectively, justify that action.… The Courts of Appeals which have considered the matter have likewise generally followed these principles, first examining the challenged searches under a standard of objective reasonableness without regard to the underlying intent or motivation of the officers involved.

Id. (citing ***Scott v. U.S.***, 436 U.S. 128, 138 (1978)).

¶14 Here, the trial court acknowledged that it was "not limited to the reasons given by the officer for the stop, but can refer to any reasonable justification for stopping the car." The trial court then held that the flashing of

[2] Under WIS. STAT. RULE 809.19(1)(e), appellate argument also requires citations to the portions of the record relied upon. *See* ***State v. Shaffer***, 96 Wis. 2d 531, 546 n.3, 292 N.W.2d 370 (Ct. App. 1980). Neither brief complies with this requirement when recounting the facts of this case.

headlights "becomes a question of the officer's caretaker function," thus justifying the stop under the police community caretaker responsibilities.

¶15 The police community caretaker function was addressed by the United States Supreme Court in ***Cady v. Dombrowski***, 413 U.S. 433 (1973), where a warrantless search of a vehicle was permitted because the police were engaged in community caretaking functions, totally divorced from the detection, investigation or acquisition of evidence. ***Id.*** at 441. A community caretaker action is not an investigative stop and thus does not have to be based on a reasonable suspicion of criminal activity. ***State v. Ellenbecker***, 159 Wis. 2d 91, 96, 464 N.W.2d 427 (Ct. App. 1990). When a community caretaker function is asserted as justification for the seizure of the person, the trial court must determine: (1) that a seizure within the meaning of the Fourth Amendment has occurred; (2) if so, whether the police conduct was a bona fide community caretaker activity; and (3) if so, whether the public need and interest outweigh the intrusion upon the privacy of the individual. ***State v. Anderson***, 142 Wis. 2d 162, 169, 417 N.W.2d 411 (Ct. App. 1987*)*, *affirmed after remand*, 149 Wis. 2d 663, 439 N.W.2d 840 (Ct. App. 1989), *rev'd on other grounds*, 155 Wis. 2d 77, 454 N.W.2d 763 (1990).

¶16 While the trial court was obligated to exercise its judgment on the underlying issue presented by the facts of the case, it was not free to disregard the facts. ***Cady***, 413 U.S. at 443. The trial court could only justify the traffic stop under the community caretaker exception so long as there were objective facts supporting the theory that Smith was conducting a community caretaker activity. ***Baudhuin***, 141 Wis. 2d at 651.

¶17 There are no objective facts here to support a community caretaker stop, as there is no evidence that Meinhardt was in need of assistance. The only

facts presented were that Meinhardt twice flashed his high-beam headlights at Smith, and that Smith stopped Meinhardt for that reason and that reason only. A community caretaker action must be "totally divorced from the detection, investigation or acquisition of evidence" relating to a traffic or criminal violation. ***Ellenbecker***, 159 Wis. 2d at 96. Smith's stop of Meinhardt was not totally divorced from the detection, investigation or acquisition of evidence relating to a traffic violation, nor was it objectively reasonable to assume that someone quickly flashing his or her brights is in need of assistance. A community caretaker stop is not objectively supported by the facts of the record, as there are no facts whatsoever which indicate that Meinhardt was in need of assistance.

CONCLUSION

¶18 Meinhardt did not commit a traffic violation under WIS. STAT. § 347.12(1) (1997-98), and Smith was not conducting a community caretaker activity in stopping Meinhardt. Thus, there was no legal basis for the traffic stop. We therefore reverse the trial court's order and remand for proceedings consistent with this opinion.

By the Court.—Order reversed and cause remanded.

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