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DISTRICT III

August 11, 2026

To:

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Circuit Court Judge
Electronic Notice

Michael C. Sanders
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Brenda Behrle
Clerk of Circuit Court
Oneida County Courthouse
Electronic Notice

Sarvan Singh
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You are hereby notified that the Court has entered the following opinion and order:

2025AP454-CR

State of Wisconsin v. Nicholas A. Plouff (L. C. No. 2023CF375)

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).

Nicholas A. Plouff appeals from a judgment of conviction, entered upon his no-contest plea, for one count of operating a motor vehicle while intoxicated (OWI), as a fifth offense. Plouff argues that the circuit court erred by denying his motion to suppress 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

¹ WISCONSIN STAT. § 971.31(10) (2023-24) authorizes review of a suppression ruling notwithstanding a defendant's subsequent no-contest plea. All references to the Wisconsin Statutes are to the 2023-24 version.

conclude that the court properly denied Plouff's suppression motion, and we therefore summarily affirm.

In his suppression motion, Plouff argued that the sheriff's deputy who stopped his vehicle lacked reasonable suspicion for the stop. At Plouff's suggestion, the circuit court decided the motion based on the deputy's testimony at Plouff's preliminary hearing and the court's review of a squad car camera video of the stop. At the preliminary hearing, the deputy testified that at around 2:00 a.m. on November 7, 2023, he stopped Plouff's vehicle after seeing it "cross a center line on multiple occasions" and observing that its exhaust was "making an unusual noise which was rather loud." On cross-examination, the deputy conceded that there was no "painted center line" on the road where he observed Plouff driving, but he maintained that Plouff's vehicle "crossed into the opposite lane of travel."

Based on the deputy's testimony, the circuit court found that before the deputy's squad car camera was activated, the deputy saw Plouff "operating his motor vehicle where he swerved over to the center line." With respect to the video, the court stated:

And quite honestly, it is difficult watching that video with the glare of the lights and the headlamps and [brake] lights. There isn't a clear demarcation of a center line as we would see on a highway, *but certainly you can tell on the road where Mr. Plouff does on one occasion he deviates*. Again, it's not an egregious erratic behavior, *but it looks to me like the left side of his vehicle would have drifted across at 1:56:38*, at two minutes before the next violation would have occurred. Again, that is hard to see, but that's what the testimony of law enforcement is for some of these videos. It's just hard to tell looking at it from—looking at it on a TV screen rather than in real life.

(Emphasis added.)

The circuit court then stated that, for purposes of its reasonable suspicion analysis, the “overriding concern ... was the loud exhaust.” The court noted that it could hear the exhaust on the squad car camera video. The court also observed that although “it was difficult to understand the conversation” between Plouff and the deputy, “all parties agree that Mr. Plouff did say obviously it was a little loud.”

“[B]ased upon all of those observations”—i.e., the deputy’s observations of Plouff’s driving and the loud exhaust—the circuit court concluded that the deputy had reasonable suspicion to stop Plouff’s vehicle. However, the court stated that the loud exhaust was “the most important fact” in its reasonable suspicion analysis. Accordingly, the court denied Plouff’s suppression motion. Plouff subsequently entered a no-contest plea to OWI, as a fifth offense, and this appeal follows.

“[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops,” including those for “observed violation[s].” *State v. Houghton*, 2015 WI 79, ¶¶28, 30, 364 Wis. 2d 234, 868 N.W.2d 143. For a stop to be justified by reasonable suspicion, “the 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 existence of reasonable suspicion is determined using 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, to which we apply a two-step standard of review. *Post*, 301 Wis. 2d 1, ¶8.

“We review the circuit court’s findings of historical fact under the clearly erroneous standard, and we review independently the application of those facts to constitutional principles.” *Id.*

In his brief-in-chief on appeal, Plouff’s sole basis for challenging the circuit court’s reasonable suspicion determination is that the deputy lacked reasonable suspicion to stop him for operating a vehicle with an excessively loud muffler, contrary to WIS. STAT. § 347.39(1).² We need not address this argument, however, because the record shows that the deputy had reasonable suspicion to stop Plouff’s vehicle for a different, observed traffic violation—i.e., operating left of center, contrary to WIS. STAT. § 346.05(1). See *Turner v. Taylor*, 2003 WI App 256, ¶1 n.1, 268 Wis. 2d 628, 673 N.W.2d 716 (explaining that the court of appeals need not address all issues raised by the parties if one is dispositive).

Subject to certain exceptions, none of which are applicable here, WIS. STAT. § 346.05(1) provides that “[u]pon all roadways of sufficient width the operator of a vehicle shall drive on the right half of the roadway.”³ Driving left of center even “momentarily” is a violation of § 346.05(1). See *State v. Popke*, 2009 WI 37, ¶18, 317 Wis. 2d 118, 765 N.W.2d 569.

² We note that, in support of this argument, Plouff cites as persuasive authority two authored, unpublished opinions that were issued before July 1, 2009, in violation of WIS. STAT. RULE 809.23(3). We admonish Plouff’s counsel that future violations of the Rules of Appellate Procedure may result in sanctions. See WIS. STAT. RULE 809.83(2).

³ The State asserts that “[t]here is no dispute that none of the exceptions to WIS. STAT. § 346.05(1) apply in this case.” (Footnote omitted.) Plouff does not challenge that assertion in his reply brief, and we therefore deem it conceded. See *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (explaining that unrefuted arguments are deemed conceded). Additionally, we note that we see no facts in the record suggesting that any of the exceptions in § 346.05(1) are applicable here.

Here, the deputy testified that he saw Plouff's vehicle "cross a center line on multiple occasions," and he confirmed on cross-examination that Plouff's vehicle "crossed into the opposite lane of travel." The circuit court credited the deputy's testimony in that regard and also found, based on its review of the squad car camera video, that "certainly you can tell on the road where Mr. Plouff does on one occasion ... deviate[]" and that "the left side of his vehicle would have drifted across at 1:56:38." Plouff does not develop any argument on appeal that the court's finding that his vehicle crossed the center line was clearly erroneous. Furthermore, we see no basis to conclude that the court's finding was clearly erroneous based on our own review of the squad car camera video. See **State v. Walli**, 2011 WI App 86, ¶17, 334 Wis.2d 402, 799 N.W.2d 898 (holding that when "evidence in the record consists of disputed testimony and a video recording, we will apply the clearly erroneous standard of review when we are reviewing the [circuit] court's findings of fact based on that recording"). Given the court's finding that Plouff's vehicle crossed the center line, the deputy had reasonable suspicion to stop Plouff for violating WIS. STAT. § 346.05(1).

In his reply brief on appeal, Plouff argues that "in order for this Court [to] find that the lane deviation was the basis for reasonable suspicion for the stop, this Court would also have to conclude that the circuit court's finding that muffler noise was the basis for reasonable suspicion for the stop was clearly erroneous," which Plouff contends would "be a baseless usurpation of the circuit court's role as finder of fact." This argument is misplaced. The circuit court did not make a *factual finding* that the muffler noise was the basis for reasonable suspicion for the stop. Rather, the court stated that the muffler noise was "the most important fact" in its own determination of whether the facts fulfilled the legal standard for reasonable suspicion.

On appeal, we independently review whether the facts found by the circuit court satisfy the reasonable suspicion standard. See *Post*, 301 Wis. 2d 1, ¶8. “Moreover, we may affirm on grounds different than those relied on by the [circuit] court.” *Vanstone v. Town of Delafield*, 191 Wis. 2d 586, 595, 530 N.W.2d 16 (Ct. App. 1995). Here, although the court relied in part on the muffler noise to support its reasonable suspicion analysis, the court also made a factual finding that Plouff’s vehicle crossed the center line. As explained above, that finding is not clearly erroneous. Accordingly, based on that factual finding, we independently conclude that the deputy had reasonable suspicion to stop Plouff’s vehicle for violating WIS. STAT. § 346.05(1).

Plouff also argues—for the first time on appeal—that the circuit court should have granted his suppression motion because the deputy lacked reasonable suspicion to expand the scope of the stop to conduct an OWI investigation. We agree with the State that Plouff forfeited this argument by failing to raise it in the circuit court. See *Tatera v. FMC Corp.*, 2010 WI 90, ¶19 n.16, 328 Wis. 2d 320, 786 N.W.2d 810 (“Arguments raised for the first time on appeal are generally deemed forfeited.”). In his reply brief, Plouff asks us to disregard the forfeiture and address the merits of his unpreserved argument. We refuse to do so. Had Plouff raised this argument in the circuit court, the court would have made factual findings regarding the circumstances leading up to the expansion of the stop, including findings regarding the deputy’s credibility. We cannot make those findings in the first instance on appeal. See *Kovalic v. DEC Int’l*, 186 Wis. 2d 162, 172, 519 N.W.2d 351 (Ct. App. 1994) (“The court of appeals cannot find facts.”). As such, we decline to address Plouff’s argument that the deputy lacked reasonable suspicion to expand the scope of the stop.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals