

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 8, 2014

Diane M. Fremgen
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. 2014AP141-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2012CT238

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JERAMY J. QUALLS,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Kenosha County:
S. MICHAEL WILK, Judge. *Affirmed.*

¶1 NEUBAUER, P.J.¹ Jeramy Qualls appeals from a judgment convicting him of operating a motor vehicle while intoxicated (OWI), second

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

offense. An officer pulled Qualls over because the officer was following Qualls when a cigarette butt hit the officer's windshield. Qualls moved to suppress the evidence, arguing that the officer did not have probable cause to stop him because the officer was mistaken about the law regarding whether ash is litter under the municipal ordinance. The officer's testimony supports probable cause to pull Qualls over for littering, and we affirm.

¶2 Officer Derrick Andrews of the Pleasant Prairie Police Department testified to the following facts at the hearing on Qualls' motion to suppress. Andrews was on patrol on February 21, 2012, at about 2:15 a.m., when a cigarette butt came out of a silver Jeep in front of him and hit his windshield. Andrews "could tell it was a fresh cigarette because of the sparks and ash that splashed around on the front of my windshield when it hit." Andrews activated his flashing emergency lights and stopped Qualls' vehicle for violation of Village of Pleasant Prairie Ordinance § 250-10 prohibiting littering. When questioned on cross-examination about whether the debris that hit his windshield could have been just ash, Andrews was unequivocal that he "could see that it was a cigarette butt itself." "[I]t was lit at one end when it hit the windshield.... [F]rom the ... force of it hitting the windshield, it did not appear to be ash."

¶3 Qualls' passenger at the time, Laura Berzin, also testified at the hearing. Berzin recalled ashing her cigarette out the window on the night in question and said she believed the lit portion flew out the window as well. Berzin says she put out the cigarette in the ashtray in the vehicle when Qualls was pulled over.

¶4 The circuit court found that Andrews believed that a cigarette butt hit his windshield and that a reasonable officer under the circumstances would

have probable cause to believe that a civil violation of the littering ordinance had occurred and therefore could stop the vehicle.

¶5 Qualls argues that the officer did not have reasonable suspicion or probable cause to stop him because the debris that hit the officer's windshield may have been ash, ash does not constitute litter under the ordinance, and the stop was predicated on a mistake of law because Andrews thought ash was litter. The State responds that the officer had both reasonable suspicion and probable cause to stop Qualls because throwing the debris out the window was littering, whether it was ash or an entire cigarette butt.

¶6 We do not reach the issue of whether ash constitutes litter under the ordinance because the officer's testimony is clear that he believed a cigarette butt hit his windshield. The officer's reasonable belief that someone in the Qualls vehicle had littered provided probable cause for the stop. We affirm.

¶7 “The temporary detention of individuals during the stop of an automobile by the police ... constitutes a ‘seizure’ of ‘persons’ within the meaning of the Fourth Amendment.” *State v. Popke*, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569 (citation omitted). When an officer acts upon an observation of a violation committed in his or her presence and not upon a suspicion warranting further investigation, the appropriate test is whether the officer had probable cause to believe that the law had been broken.² *State v. Longcore*, 226 Wis. 2d 1, 8-9, 594 N.W.2d 412 (Ct. App. 1999), *aff'd by an equally divided court*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620; *State v. Colstad*, 2003 WI App 25, ¶11, 260

² The parties briefed both reasonable suspicion and probable cause.

Wis. 2d 406, 659 N.W.2d 394 (reasonable suspicion enough to justify stop for civil violation). Whether an officer has probable cause to make a stop presents a question of constitutional fact. *Popke*, 317 Wis. 2d 118, ¶10. We uphold the circuit court’s findings of historical fact unless clearly erroneous; however, we review de novo the application of constitutional principles to these facts. *Id.*

¶8 “An officer may conduct a traffic stop when he or she has probable cause to believe a violation has occurred.” *Id.*, ¶13.

Probable cause refers to the “quantum of evidence which would lead a reasonable police officer to believe” that a traffic violation has occurred. The evidence need not establish proof beyond a reasonable doubt or even that guilt is more probable than not, but rather, probable cause requires that “the information lead a reasonable officer to believe that guilt is more than a possibility.” In other words, probable cause exists when the officer has “reasonable grounds to believe that the person is committing or has committed a crime.”

Id., ¶14 (citations omitted). Here, Andrews stopped Qualls based on his belief that someone in Qualls’ vehicle had violated Village of Pleasant Prairie’s Ordinance § 250-10. The question is whether the facts observed by Andrews provided probable cause for the stop for littering.

¶9 As indicated above, the observation that prompted the stop was the cigarette butt hitting Andrews’ windshield. When the debris hit the windshield, Qualls’ vehicle was several car lengths in front of Andrews’ vehicle, both traveling southbound on the same road. The ordinance provides that “[n]o person shall throw any glass, refuse, waste, filth or other litter upon the streets, alleys, highways, public parks or other property of the Village or upon any private property ... within the Village.”

¶10 Qualls argues that Andrews’ stop was not based on probable cause because he was operating under a misinterpretation of the law. *See Longcore*, 226 Wis. 2d at 9. According to Qualls, Andrews’ testimony was equivocal with respect to whether the debris that hit the windshield was ash or a cigarette butt, and thus “[t]he officer could not articulate which part of the statute was violated.” Furthermore, when asked if the ordinance permits ashing out of a vehicle, Andrews answered, “I would say probably not.” According to Qualls, this shows that Andrews’ understanding of the law was mistaken.

¶11 Regarding the debris that hit the windshield, Andrews testified that he “could see that it was a cigarette butt.” On cross-examination, when asked if the debris could have been ash, Andrews said, “I don’t believe ... from the ... force of it hitting the windshield, it did not appear to be ash.” As stated above, probable cause does not require proof of guilt beyond a reasonable doubt. Rather, “[p]robable cause refers to the ‘quantum of evidence which would lead a reasonable police officer to believe’” that a violation had occurred. *Popke*, 317 Wis. 2d 118, ¶13 (citation omitted). Andrews’ testimony demonstrates his reasonable belief that the item that hit his windshield was a cigarette butt and that someone in Qualls’ vehicle had violated the litter law. We need not reach the question whether ash constitutes litter under the ordinance; Andrews testified that what hit his windshield was a cigarette butt.

By the Court.—Judgment affirmed.

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

