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WISCONSIN COURT OF APPEALS

110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

February 28, 2018

To:

Hon. Michael J. Piontek
Circuit Court Judge
730 Wisconsin Avenue
Racine, WI 53403

Samuel A. Christensen
Clerk of Circuit Court
Racine County Courthouse
730 Wisconsin Avenue
Racine, WI 53403

Patricia J. Hanson
District Attorney
730 Wisconsin Avenue
Racine, WI 53403

Scott E. Rosenow
Assistant Attorney General
P.O. Box 7857
Madison, WI 53707-7857

Trisha R. Stewart Martin
Stewart Law Offices
P.O. Box 18243
Milwaukee, WI 53218-0243

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

2017AP593-CR

State of Wisconsin v. Melvin A. Clark (L.C. #2013CF1408)

Before Reilly, P.J., Gundrum and Hagedorn, 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).

Melvin A. Clark appeals from a judgment convicting him of possession of THC with the intent to deliver and possession of a firearm as a convicted felon and an order denying his motion for postconviction relief. He maintains that the circuit court should have granted his motion to suppress evidence obtained during a traffic stop because the officers lacked reasonable suspicion to conduct the stop. 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 (2015-16).¹ We affirm the judgment and order.

On October 7, 2013, Clark was stopped for an illegible rear license plate.² A search conducted after the stop revealed marijuana and a firearm. Clark filed a motion to suppress any evidence obtained after the stop on the basis that the officers lacked reasonable suspicion that he committed a traffic violation. The suppression hearing yielded the following testimony.

Officer Michael Seeger testified that he and Officer Juan Garcia were driving in a police vehicle in the City of Racine on October 7, 2013. Seeger observed what turned out to be Clark's vehicle at approximately 4:45 p.m. While traveling behind Clark's vehicle, Seeger noticed that "the rear license plates were illegible" and "could not be read." Seeger moved his police vehicle to "[a]pproximately two car lengths" from Clark's vehicle, but still could not read the plates. As a result, Seeger stopped the vehicle for illegible plates. After exiting the police vehicle and approaching Clark's vehicle, Seeger was finally able to read the rear plate once he was "right up next to the vehicle," about "[t]wo to three feet" away. As it turned out, Clark's rear plate was a special sesquicentennial plate with red lettering on a white background. The red lettering had faded, rendering the plates unreadable from Seeger's vehicle.

Garcia similarly testified that Clark's rear plate was "illegible" when he and Seeger first observed the vehicle approximately "80 to 100 feet" away. Garcia had no difficulty reading

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

² The officers had also received a tip that Clark would be in possession of marijuana, driving an Impala with "different type of plates attached to it." Whether this tip, either alone or in conjunction with other available information, created reasonable suspicion or probable cause is not before us.

other plates at that distance. Even after Seeger moved the police vehicle closer (about twenty-five feet behind Clark's vehicle according to Garcia) to see if the plate could be read, Garcia testified that the plate was still illegible. Like Seeger, Garcia was not able to read any letters or numbers on Clark's rear plate until he exited the police vehicle after the stop. Garcia testified he was finally able to read the plate once he was approximately ten feet away.

The circuit court concluded that the officers had reasonable suspicion to stop Clark based on displaying illegible plates under Wis. STAT. § 341.15(2) and denied the suppression motion. Clark pled guilty to possession of THC with intent to deliver and possession of a firearm by a convicted felon and was sentenced.³ Clark then filed a motion for postconviction relief. Among other things, Clark renewed his argument that the officers lacked reasonable suspicion to stop his vehicle for illegible plates. The postconviction court disagreed and denied Clark's motion. Clark appeals.

On appeal, Clark's sole argument is that the officers lacked reasonable suspicion to stop him for a traffic violation.⁴ Consistent with the United States and Wisconsin Constitutions, an officer may stop a vehicle if he or she has "reasonable suspicion that a traffic law has been or is being violated." *State v. Houghton*, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143. Reasonable suspicion is more than an "inchoate and unparticularized suspicion or 'hunch.'" *Terry v. Ohio*, 392 U.S. 1, 27 (1968). Rather, "the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably

³ Three other counts were dismissed and read in as part of Clark's plea agreement.

⁴ Clark does not raise any of the additional arguments brought in his postconviction motion.

warrant that intrusion.” *Houghton*, 364 Wis. 2d 234, ¶21 (quoting *Terry*, 392 U.S. at 21). Whether reasonable suspicion exists is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. “A finding of constitutional fact consists of the circuit court’s findings of historical fact, which we review under the ‘clearly erroneous standard,’ and the application of these historical facts to constitutional principles, which we review de novo.” *Id.* (citation omitted).

WISCONSIN STAT. § 341.15(2) provides in relevant part:

Registration plates shall be attached firmly and rigidly in a horizontal position and conspicuous place. The plates shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read. Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.

Thus, the plain language of the statute requires motorists to maintain registration plates “in a legible condition” and display them so “that they can be readily and distinctly seen and read.”

Id. The statute further authorizes law enforcement to require operators to comply with these requirements. *Id.*

Clark insists that his faded plates were perfectly legal under WIS. STAT. § 341.15, and therefore the officers did not have reasonable suspicion that he was violating the provision. He directs our attention to § 341.15(3) of the statute, which describes the circumstances in which a motorist may be subject to a forfeiture. *See* § 341.15(3)(a)-(c). Relevant here, the statute provides that “[a] person who operates a vehicle with a registration plate in an illegible condition due to the accumulation of dirt or other foreign matter” is subject to a \$200 forfeiture.

Sec. 341.15(3)(c) (emphasis added).⁵ Clark argues that § 341.15(2) must be read in light of the forfeiture provisions in subsec. (3). That is, he argues that subsec. (2) only prohibits displaying “illegible” plates if they are unreadable due to an offense subject to a forfeiture under subsec. (3)—here, the only possible option being the plates are unreadable due to “dirt or other foreign matter.” The upshot of Clark’s position is that despite the clear command in subsec. (2) that he maintain legible plates, he is in fact free to drive with plates that are illegible due to faded lettering, and the police are powerless to do anything about it. This interpretation does not comport with the plain language of the statute.

“Legible” means “capable of being read or deciphered.” *Legible*, WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY (1993); *see also Legible*, THE AMERICAN HERITAGE DICTIONARY (2d ed. 1982) (same). Contrary to Clark’s insistence otherwise, legibility is not solely determined by whether plates are obscured by debris. Rather, illegibility covers any condition that would prevent the plates from being “read or deciphered,” including obfuscation due to faded lettering. And we are unconvinced that the separate subsection describing under what circumstances a motorist may be subject to a forfeiture changes the basic directive of WIS. STAT. § 341.15(2). Subsection (2) specifically requires a motorist to maintain “legible” plates, not merely keep his or her plates free from debris, and it specifically authorizes police to require compliance with that mandate.

⁵ A motorist may also be subject to a forfeiture for operating a properly registered vehicle without plates or attaching registration plates in a nonrigid or nonhorizontal manner or in an inconspicuous place. WIS. STAT. § 341.15(3)(a)-(b).

Because the officers could not read Clark's plate, they had reasonable suspicion that he was in violation of WIS. STAT. § 341.15(2). Both officers testified that they could not read Clark's plates and moved closer but still could not read the plates. In other words, the officers observed a rear plate that they reasonably believed was illegible. Clark criticizes the officers for failing to move within ten feet of Clark's vehicle (two to three for Seeger's eyes) to see whether his plate could be read at that closer distance.⁶ We agree with the circuit court that such a move would have been risky. And the United States and Wisconsin Constitutions do not require officers to tailgate suspects and risk an accident in order to potentially dispel reasonable suspicion of a traffic violation prior to stopping a vehicle.⁷ The officers' inability to read the plates after moving closer gave them reasonable suspicion that Clark was violating this directive by failing to maintain legible, readable plates that could be "readily and distinctly seen and read." ***Id.*** Accordingly, the stop was constitutional.

Upon the foregoing reasons,

IT IS ORDERED that the judgment and order of the circuit court are summarily affirmed, pursuant to WIS. STAT. RULE 809.21.

⁶ Clark's argument assumes that his plates would have been legal by the mere fact that they were readable once the officers exited the police vehicle. Though we need not decide the specific contours of what constitutes "legible" under WIS. STAT. § 341.15, we do note that the statute additionally requires plates to be "so displayed that they can be *readily and distinctly seen and read.*" Sec. 341.15(2) (emphasis added).

⁷ Despite Clark's protestations otherwise, we are untroubled that the circuit court relied on common sense and common experience to conclude that the officers were not required to pull within ten feet prior to stopping Clark's vehicle because such action would risk colliding with Clark's vehicle should he stop suddenly.

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

*Sheila T. Reiff
Clerk of Court of Appeals*