

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 27, 2008

David R. Schanker
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. 2007AP2271-CR

Cir. Ct. No. 2006CT359

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

ROBERT K. BARTLETT,

DEFENDANT-APPELLANT.

APPEAL from judgment of the circuit court for Dodge County:
RICHARD REHM, Judge. *Affirmed.*

¶1 DYKMAN, J.¹ Robert Bartlett appeals from a judgment of conviction for operating a motor vehicle while intoxicated (OWI), fourth offense,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2005-06). All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

contrary to WIS. STAT. § 346.63(1)(a). Bartlett contends that the circuit court erred by denying his motion to suppress evidence, arguing that the officer did not have reasonable suspicion to stop his vehicle for failing to display a yearly renewal sticker. He also contends that his sticker, located to the left of the lower right-hand corner of his license plate, was not in violation of the law and that, therefore, his continued detention after the officer saw the sticker on his license plate was unlawful. The officer had sufficient grounds for an investigatory stop based on reasonable suspicion that Bartlett was violating WIS. STAT. § 341.15(1m)(a), and thus Bartlett's detention was lawful. We affirm.

Background

¶2 The following facts are undisputed. On June 18, 2006, Horicon Police Officer Jeremy Johnson was parked near the intersection of Vine Street and Mill Street in the City of Horicon when he observed a light colored van turn left in front of him. After glancing at the registration plate and following the vehicle for two blocks, he did not observe a yearly renewal sticker on it. Johnson stopped the van.

¶3 As Johnson approached the van, he saw the sticker on the lower part of the plate, towards the center. The sticker was located over a portion of the words "America's Dairy Land" from the "r" in "Dairy" to the "d" in "Land" and right below the "9" and "8" of the license plate number. He spoke with the driver and identified him as Robert Bartlett. Johnson notified Bartlett that he was unable to see the sticker and that this was the reason for the stop. Johnson advised Bartlett that the plate was currently registered and that once the new sticker arrived, Bartlett should apply it to the lower right-hand corner.

¶4 While speaking to Bartlett, Johnson noticed a strong odor of intoxicants coming from the vehicle. Johnson also observed that Bartlett's eyes looked red and glassy and that his speech was slurred and difficult to understand. Bartlett admitted he had been drinking, and he performed poorly on field sobriety tests Johnson administered. Johnson then administered a preliminary breath test, which yielded a 0.175 blood alcohol concentration. Johnson arrested Bartlett for operating a motor vehicle while intoxicated.

¶5 Bartlett moved to suppress the evidence of his intoxication, asserting that Johnson did not have reasonable suspicion to believe that a traffic offense was being committed. The State introduced Exhibit 1, a photocopy of the instructions the Department of Transportation (DOT) provides with each sticker issued on how to place the sticker on the registration plate. Bartlett introduced his license plate, as Exhibit 2, to show the actual location of his sticker.

¶6 The trial court found that, as shown in Exhibit 1, "the box on the right would give ... anyone the understanding that the sticker has to go in the bottom right-hand corner of the plate." It found that Bartlett's sticker was clearly not under the zero on the right, which is the last number on his license plate, and that the sticker was not in the correct place in violation of WIS. STAT. § 341.15(1m). It concluded that the officer had a right to stop Bartlett because the sticker was not where it was required to be. The trial court found the officer was reasonable in making the stop and denied Bartlett's motion. Bartlett pled no contest to OWI and was convicted. He appeals from his judgment of conviction.

Standard of Review

¶7 The temporary detention of individuals during a traffic stop constitutes a seizure of persons within the meaning of the Fourth Amendment. *See*

Whren v. United States, 517 U.S. 806, 809-10 (1996). An officer may perform an investigative stop if the officer reasonably suspects a person is violating a non-criminal traffic law. *County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999) (citation omitted). “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.” *State v. Longcore*, 226 Wis. 2d 1, 8, 594 N.W.2d 412 (Ct. App. 1999) (citing *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968) (emphasis added)). While reasonable suspicion is insufficient to support an arrest or search, it permits investigation. *Id.*

¶8 “[W]hether a traffic stop is reasonable is a question of constitutional fact.” *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. We defer to the trial court’s factual determinations unless they are clearly erroneous, but we review de novo whether those facts are sufficient to create reasonable suspicion. *Id.* The reasonableness is determined based on the totality of the facts and circumstances. *Id.*, ¶13.

Discussion

¶9 Bartlett argues that the trial court erred when it determined that the placement of his registration sticker gave Johnson probable cause to believe Bartlett was in violation of WIS. STAT. § 341.15. While § 341.15 deals with the display of registration plates, subsection (1m)(a) specifically requires a vehicle owner to place any sticker issued by the DOT on the plate in a manner directed by the DOT. The DOT directs that the sticker be affixed in the lower right-hand corner of the license plate.

¶10 Bartlett argues that Johnson made a mistake of law and did not have probable cause to detain Bartlett. *See State v. Longcore*, 226 Wis. 2d 1, 9, 594

N.W.2d 412, 416 (Ct. App. 1999) (holding in the context of an evaluation of probable cause that “when an officer relates the facts to a specific offense, it must indeed *be* an offense”). Bartlett contends there are three ways to violate the registration display requirement, as listed in WIS. STAT. § 341.15(3),² and that his license plate and sticker violated none.³ He contends that the DOT directs that the sticker be in a visible location on the lower right portion of the plate and that his sticker was in this location. He also argues that the legislative intent of the statute is to enable an outside observer to determine that a vehicle is validly registered and that his sticker satisfied this intent. He argues that once Johnson saw the sticker in the lower right portion of the plate, the continued detention was unreasonable.

² WISCONSIN STAT. § 341.15(3) states:

Any of the following may be required to forfeit not more than \$200:

(a) A person who operates a vehicle for which a current registration plate, insert tag, decal or other evidence of registration has been issued without such plate, tag, decal or other evidence of registration being attached to the vehicle, except when such vehicle is being operated pursuant to a temporary operation permit or plate;

(b) A person who operates a vehicle with a registration plate attached in a non-rigid or non-horizontal manner or in an inconspicuous place so as to make it difficult to see and read the plate;

(c) A person who operates a vehicle with a registration plate in an illegible condition due to the accumulation of dirt or other foreign matter.

³ Bartlett argues that if a visible and valid registration sticker is on the lower portion of the rear license plate and the plate is rigidly attached to the vehicle in a conspicuous location that is easily seen and read, there is no violation.

¶11 We do not accept Bartlett’s interpretation of the statute. While Bartlett’s sticker does not violate WIS. STAT. § 341.15(3), it does violate § 341.15(1m)(a), which states that “any registration decal or tag issued by the department shall be placed on the rear registration plate of the vehicle in the manner directed by the department.”⁴ The DOT directs the manner of placement by issuing every renewal sticker in an envelope with a diagram showing where to affix the sticker. The DOT’s diagram represents the yearly renewal sticker location as a box on the lower right-hand corner of the license plate, underneath the last digit of the license plate number. Bartlett’s sticker was to the left of the last digit of his license plate number, not underneath it. Because Bartlett’s sticker was not on the plate in the manner directed by the DOT, thus violating WIS. STAT. § 341.15(1m)(a), Johnson had reasonable suspicion to stop him.⁵ Accordingly, the investigatory traffic stop was justified.⁶

⁴ A violation of WIS. STAT. § 341.15(1m)(a) is punishable under WIS. STAT. § 939.61(1), which states: “If a person is convicted of an act or omission prohibited by statute and for which no penalty is expressed, the person shall be subject to a forfeiture not to exceed \$200.”

⁵ Because this ground alone upholds the stop, we need not discuss Bartlett’s argument that the trial court erred when it determined that Johnson had reasonable suspicion to detain Bartlett for failing to display a registration sticker as required by WIS. STAT. § 341.15.

⁶ Alternatively, Johnson may have had the right to stop Bartlett under WIS. STAT. § 341.15(2) which states:

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.*

(Emphasis added.) The registration sticker becomes part of the license plate because under WIS. STAT. § 341.15(1m)(a), the sticker is affixed onto the plate. Because the sticker was not properly

(continued)

¶12 Because the placement of his sticker violated the law, Bartlett's argument that it was unlawful for Johnson to continue to detain Bartlett after Johnson saw the sticker also fails.⁷ The scope of the officer's inquiry may be broadened beyond the purpose for which the person was justifiably stopped if additional particularized and objective factors come to the officer's attention. *See State v. Betow*, 226 Wis. 2d 90, 94, 593 N.W.2d 499 (Ct. App. 1999); *see also State v. Gammons*, 2001 WI App 36, ¶18, 241 Wis. 2d 296, 625 N.W.2d 623. "If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person has committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun." *Betow*, 226 Wis. 2d at 94. "The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop." *Id.* at 94-95.

¶13 Johnson had grounds to stop Bartlett based on his reasonable suspicion that Bartlett had failed to properly display his registration sticker.⁸ Once Johnson approached Bartlett, Johnson observed signs of intoxication. These

displayed, Johnson was justified to stop Bartlett and direct him to properly display his sticker, which is what Johnson did.

⁷ Bartlett argues that the suspicion dissipated when Johnson saw the sticker and that Johnson detained Bartlett in violation of the Fourth Amendment because the detention was unsupported by an objectively reasonable articulable suspicion of illegal activity. *But see United States v. McSwain*, 29 F.3d 558 (10th Cir. 1994) (state trooper satisfied reasonable suspicion when he saw that the vehicle was properly registered and then approached the driver, but he illegally detained the driver when he asked the driver questions about drugs).

⁸ Even if the sticker was in the proper place, it would be reasonable for Johnson to approach Bartlett and inform him of the reason for the stop. *See id.* at 562 (10th Cir. 1994) (citation omitted) (stating that the officer could approach the vehicle and explain to the driver the reason for the stop, even when a valid registration sticker is observed).

specific and articulable facts would provide an officer in Johnson's position reasonable suspicion to investigate for OWI.

¶14 We conclude that the stop and detention of Bartlett's vehicle did not violate Bartlett's Fourth Amendment rights because there was reasonable suspicion that Bartlett had violated WIS. STAT. § 341.15(1m)(a). Accordingly, we affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports. *See* WIS. STAT. RULE 809.23(1)(b)4.

