

**COURT OF APPEALS
DECISION
DATED AND FILED**

June 25, 2002

Cornelia G. Clark
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 Nos. 02-0222 & 02-0223

Cir. Ct. No. 01TR29097 & 01TR37375

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

No. 02-0222

MILWAUKEE COUNTY,

PLAINTIFF-RESPONDENT,

v.

SYLVIA'S EAGLE EXPRESS, INC.,

DEFENDANT-APPELLANT.

No. 02-0223

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

v.

SYLVIA'S EAGLE EXPRESS, INC.,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Milwaukee County:
RAYMOND E. GIERINGER, Reserve Judge. *Affirmed.*

¶1 CURLEY, J.¹ Sylvia's Eagle Express, Inc. (Sylvia's) appeals from two judgments of the trial court convicting Sylvia's of operating a motor vehicle in violation of weight limits, contrary to WIS. STAT. § 348.15(3)(c) (1999-2000),² and operating a motor vehicle while having a cracked frame, contrary to WIS. ADMIN. CODE § TRANS 327.03(5). Sylvia's contends that the trial court erred in denying its motion to suppress because, it contends, the vehicles were unreasonably seized, in violation of the Fourth Amendment to the United States Constitution and art. I, § 11, of the Wisconsin Constitution. This court disagrees and affirms.

I. BACKGROUND.

¶2 On June 2, 2001, Milwaukee County Sheriff's Department Deputy Gregory Ollman observed a vehicle traveling southbound on the I-43/94 expressway near the Marquette Interchange. The deputy observed that the tires on the vehicle were bulging, that the vehicle was struggling up an incline, and that the vehicle was traveling slower than the normal expressway speed. The deputy suspected that the vehicle was overloaded. He stopped the vehicle and submitted it to a weighing. After confirming that the vehicle was overloaded, the deputy

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2).

² All references to the Wisconsin Statutes and the Administrative Code are to the 1999-2000 version unless otherwise noted.

issued the driver a citation for exceeding weight limitations, in violation of WIS. STAT. § 348.15(3)(c).

¶3 On August 13, 2001, Deputy Ollman stopped another vehicle operated by Sylvia's. The deputy stopped this vehicle because he observed that an identification lamp was missing. When the deputy stopped the vehicle, he conducted an inspection and discovered that the vehicle frame was rusted and cracked. He issued the driver a citation for this violation of ADMIN. CODE § TRANS 327.03(5).

¶4 At trial, Sylvia's argued that the deputy did not have a reasonable suspicion to stop the vehicles in question.³ Accordingly, Sylvia's moved the trial court to suppress all evidence obtained from the stops and dismiss the cases. The trial court denied the motion and convicted Sylvia's on both counts.

II. ANALYSIS.

¶5 On review of a trial court's denial of a motion to suppress, we will uphold the trial court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); *State v. Williamson*, 113 Wis. 2d 389, 401, 335 N.W.2d 814 (1983). Whether a search is valid, however, is a question of constitutional law which we review *de novo*. *State v. Guzman*, 166 Wis. 2d 577, 586, 480 N.W.2d 446 (1992).

¶6 “The Fourth Amendment to the United States Constitution and art. I, § 11, of the Wisconsin Constitution both protect against unreasonable searches and seizures.” *State v. Phillips*, 218 Wis. 2d 180, 195, 577 N.W.2d 794 (1998).

³ For purposes of briefing and disposition, the two separate cases, numbers 01TR29097 and 01TR37375, were consolidated by this court in an order dated March 7, 2002.

Stopping an automobile and detaining its occupants constitutes a “seizure” within the meaning of the Fourth Amendment, even if the purpose of the stop is limited and the resulting detention quite brief. *Berkemer v. McCarty*, 468 U.S. 420, 436-37 (1984). Therefore, under the Fourth Amendment, an officer who lacks probable cause but whose observations lead him reasonably to suspect that a particular person has committed, is committing, or is about to commit a crime, may detain that person briefly in order to investigate the circumstances that provoke suspicion. *Id.* at 439. An investigatory stop is also permissible if the suspect’s conduct would merely constitute a civil forfeiture. *See State v. Krier*, 165 Wis. 2d 673, 678, 478 N.W.2d 63 (Ct. App. 1991).⁴

¶7 Consequently, a constitutional traffic stop may be based on reasonable suspicion:

Such reasonable suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” These facts must be judged against an “objective standard: would the facts available to the officer at the moment of the seizure ... ‘warrant a [person] of reasonable caution in the belief’ that the action taken was appropriate?” This test applies to the stopping of a vehicle and detention of its occupants.

The focus of an investigatory stop is on reasonableness, and the determination of reasonableness depends on the totality of circumstances....

State v. Richardson, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (citations omitted).

⁴ Both parties vacillate between the terms “reasonable suspicion” and “probable cause” in terms of the standard used to measure the reasonableness of a traffic stop. Although traffic stops often are based on probable cause, they also may be based on reasonable suspicion of a traffic violation. *See State v. Gaulrapp*, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996); *see also* Wis. STAT. § 968.24.

¶8 Here, under the totality of the circumstances, Deputy Ollman had reasonable suspicion to conduct investigative stops of the vehicles. With respect to the first vehicle, Deputy Ollman testified that he observed that the vehicle's tires were bulging as it struggled up an incline at a reduced speed. Deputy Ollman further testified that, based on his training and experience, this led him to believe that the vehicle was overloaded. This court concludes that those specific facts, taken together with rational inferences from those facts, reasonably warrant the stop in question.

¶9 With respect to the second vehicle, Deputy Ollman testified: "I noticed the vehicle going past me. After he passed, I noticed that one of his ID lamps in the back was missing. There was [sic] three of them in the center of the vehicle, and one was missing." This observation was sufficient to justify the investigative stop of the second vehicle. Therefore, this court concludes that the investigative stops of the vehicles were justified.

¶10 Finally, once the vehicles were stopped, this court concludes that Deputy Ollman was authorized to conduct the subsequent searches pursuant to statute, namely WIS. STAT. §§ 348.19(1)(a) and 110.075(2), respectively.⁵

⁵ WISCONSIN STAT. § 348.19(1)(a) states:

Any traffic officer having reason to believe that the gross weight of a vehicle is unlawful or in excess of the gross weight for which the vehicle is registered may require the operator of such vehicle to stop and submit the vehicle and any load it may be carrying to a weighing by means of either portable or certified stationary scales and may require that such vehicle be driven to the nearest usable portable or certified stationary scale....

WISCONSIN STAT. § 110.075(2) states:

(continued)

Sylvia's has not challenged the constitutionality of these statutes and, therefore, we decline to address the issue. *See Waushara County v. Graf*, 166 Wis. 2d 442, 451, 480 N.W.2d 16 (1992) (stating that appellate courts need not and ordinarily will not consider or decide issues that are not specifically raised on appeal).

¶11 Accordingly, based upon the forgoing reasons, the trial court is affirmed.

By the Court.—Judgments affirmed.

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

When directed by any traffic officer or motor vehicle inspector, the operator of any motor vehicle shall stop and submit such motor vehicle to an inspection and such tests as are necessary to determine whether it meets the requirements of this section, or that its equipment is not in proper adjustment or repair, or in violation of the equipment provisions of ss. 110.05, 110.06, 110.063 and 110.064, ch. 347, or rules issued pursuant thereto. Such inspection shall be made with respect to the brakes, lights, turn signals, steering, horns and warning devices, glass, mirrors, exhaust system, windshield wipers, tires, and other items of equipment designated by the secretary.

