

**COURT OF APPEALS
DECISION
DATED AND FILED**

December 16, 2010

A. John Voelker
Acting 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. 2010AP1837-CR

Cir. Ct. No. 2009CT105

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GEORGE C. GREENWOOD,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Iowa County:
WILLIAM D. DYKE, Judge. *Affirmed.*

¶1 LUNDSTEN, J.¹ George Greenwood appeals his conviction for operating a motor vehicle while under the influence of an intoxicant as a second

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2007-08). All references to the Wisconsin Statutes are to the 2007-08 version unless otherwise noted.

offense. He challenges the denial of his motion to suppress evidence obtained as the result of a traffic stop. He argues that the stop was invalid because it was based on a mistake of law. He also asserts that the circuit court made clearly erroneous findings of fact. I disagree and affirm.

¶2 On June 27, 2009, at approximately 12:25 a.m., a police officer was traveling westbound on a road in Iowa County. The officer observed an eastbound motorcycle, driven by George Greenwood. The officer testified that, as he observed the motorcycle, he did not see a white lamp illuminating its registration plate, contrary to WIS. STAT. § 347.13(3). The officer did a U-turn, followed the motorcycle, and still did not see a lamp illuminating the motorcycle's registration plate. The officer initiated a traffic stop.

¶3 The stop led to evidence of intoxication, Greenwood's arrest, and a charge of operating a motor vehicle while under the influence of an intoxicant as a second offense. Greenwood moved to suppress, and the circuit court denied this motion and Greenwood's motion for reconsideration. Greenwood then entered a plea of no contest.

¶4 Greenwood makes two arguments, both directed at the circuit court's denial of his motion to suppress. As the following explains, I reject both arguments.

¶5 Greenwood argues that the evidence of his intoxication should be suppressed because the traffic stop was based on the officer's mistaken understanding of the law. Greenwood points to testimony where the officer indicated that he was not familiar with the type of registration plate on Greenwood's motorcycle, which was "dark blue with green highlights," and Greenwood suggests that what led to the stop was the officer's mistaken belief that

this type of plate was not legal. For support, Greenwood cites *State v. Longcore*, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999). See *id.* at 9 (stating that “a lawful stop cannot be predicated upon a mistake of law”).

¶6 I reject Greenwood’s argument because it relies on the flawed premise that the officer stopped him because his motorcycle did not have the proper registration plate. The record does not support this view.

¶7 Greenwood appears to be focused on several statements by the officer at the suppression hearing relating to the type of registration plate that was on Greenwood’s motorcycle. The officer’s statements suggested that he was unfamiliar with the type of plate on Greenwood’s motorcycle and did not know at the time of the stop that legal registration plates came in its color. It is undisputed that Greenwood’s registration plate was legal. Greenwood, however, does not explain why the officer’s possible mistake about the color of the plate matters.

¶8 The officer testified that the reason for the stop was his belief that Greenwood was violating an *illumination* requirement found in WIS. STAT. § 347.13(3). Section § 347.13(3) states that “[n]o person shall operate on a highway during hours of darkness any motor vehicle upon the rear of which a registration plate is required to be displayed unless such motor vehicle is equipped with a lamp so constructed and placed as to illuminate with a white light the rear registration plate and render it clearly legible from a distance of 50 feet to the rear.” The circuit court credited the officer’s testimony that a § 347.13(3) violation was the reason for the stop, and Greenwood offers no basis for setting aside that finding.

¶9 Thus, I reject Greenwood’s mistake of law argument.

¶10 Greenwood also points to the circuit court's finding that his motorcycle's illumination of the registration plate was inadequate, as it failed "to provide illumination at 50 feet." He asserts that this finding was clearly erroneous and "must be reversed" because there was no evidence supporting it. I disagree.

¶11 A review of the circuit court's findings of fact is highly deferential and the findings will not be set aside unless they are clearly erroneous. *See Royster-Clark, Inc. v. Olsen's Mill, Inc.*, 2006 WI 46, ¶11, 290 Wis. 2d 264, 714 N.W.2d 530. "[T]his court defers to the circuit court's findings of fact unless they are unsupported by the record and are, therefore, clearly erroneous." *Id.*

¶12 Greenwood asserts that the circuit court erroneously determined that the motorcycle's illumination was inadequate. He asserts that there is "no evidence" supporting the inadequate illumination finding because "[n]o testimony was taken as to the measuring of the lamp illumination from a distance of 50 feet." The problem with this argument is that Greenwood does not explain why any "measuring" is required where, as here, the officer gave testimony supporting a finding that there was inadequate illumination. For example, the officer testified to seeing no light when the motorcycle "passed [the officer's] position," again after making a U-turn when the officer "approach[ed] the vehicle," and finally after the officer had stopped the motorcycle. It was reasonable for the circuit court to infer from this testimony that the illumination, if any, was inadequate.

¶13 Greenwood asserts that the circuit court's finding has effectively "deemed all Kawasaki motorcycles with the same taillight apparatus as inadequate to illuminate the registration plate," and he suggests that such a finding is erroneous. Greenwood does not, however, point to such a finding, but rather apparently gleans it from the court's findings that the same bulb provided

illumination for both the taillight and registration plate, that the taillight illumination was functioning, and that the lighting apparatus was a factory original. I simply note that, even assuming for the sake of argument that this broad implied finding was made, Greenwood points to no evidence in the record contradicting it and, similarly, provides no basis for setting it aside as clearly erroneous.

By the Court.—Judgment affirmed.

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

