



OFFICE OF THE CLERK
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 IV

May 29, 2026

To:

Hon. Matthew C. Allen
Circuit Court Judge
Electronic Notice

Kara Lynn Janson
Electronic Notice

Lia Leahy
Clerk of Circuit Court
Iowa County Courthouse
Electronic Notice

Teuta Jonuzi
Electronic Notice

Tracey A. Wood
Electronic Notice

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

2024AP1819-CR State of Wisconsin v. Gary L. Hogan (L.C. # 2023CF72)

Before Graham, P.J., Kloppenburg, and Taylor, 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).

Gary L. Hogan appeals a judgment of conviction for operating while intoxicated (OWI) as a fourth offense. Hogan contends that the circuit court erroneously denied his motion to suppress evidence because police lacked reasonable suspicion to stop his vehicle. Based on 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 (2023-24).¹ We summarily affirm.

¹ All references to the Wisconsin Statutes are to the 2023-24 version.

According to the criminal complaint, police initiated a traffic stop because Hogan was driving a vehicle without the headlights on. Two other individuals were in the vehicle with Hogan. The stop turned into an OWI investigation and ultimately led to Hogan's arrest. Hogan was charged with one count of OWI as a fourth offense and one count of operating with a prohibited alcohol concentration as a fourth offense. Hogan was also cited for operating a motor vehicle without two headlights. Hogan moved the circuit court to suppress evidence gathered as a result of the traffic stop, arguing that the stop was not supported by reasonable suspicion that Hogan had violated a law.

The police officer who stopped Hogan testified at an evidentiary hearing on the motion as follows. Based on the officer's years of experience in law enforcement, the officer can tell whether a driver has a car's headlights on when it is dark outside. On the night in question, the officer observed a pickup truck travelling along a street with no headlights on. The officer followed the truck to another street, pulled the truck over, and identified that Hogan was driving the truck. Hogan told the officer that the truck did not belong to Hogan and that Hogan could not find the truck's headlight switch.

Another police officer who assisted with the traffic stop testified that he asked Hogan about the reason for his stop, and Hogan said that he had been driving without the headlights on and had been drinking at a local bar. The two individuals who were in the vehicle when Hogan was pulled over also testified. The individuals both testified that they are friends with Hogan, that they had been drinking with Hogan on the night that Hogan was pulled over, and that when Hogan was pulled over, the truck's headlights were on.

The circuit court acknowledged that there were competing versions of the events underlying the stop, and that the inconsistencies “go more towards credibility issues than anything.” The court added that “ultimately, it’s the jury that is the arbiter of fact. I don’t think it’s my role to adopt one version of the facts versus the other.” The court nevertheless credited the officers’ testimony as “sufficient to survive the Motion to Suppress.” Specifically, the court found that, based on the testimony from the “experience[d]” police officer who had pulled Hogan over, the officer had reasonable suspicion to believe that Hogan had violated a traffic law and that there was therefore a reasonable basis for the stop. The court also found that the testimony of the officer assisting with the stop corroborated that the traffic stop was initiated on reasonable suspicion that Hogan’s headlights were not on. The court denied the suppression motion.

Pursuant to a plea agreement, Hogan subsequently pled no contest to OWI as a fourth offense, and the charge of operating with a prohibited alcohol concentration was dismissed.² The circuit court also dismissed the traffic citation. Hogan was sentenced to 185 days in jail. Hogan appeals, arguing that the court erred in denying the suppression motion.

² There appears to be a clerical error in the judgment of conviction. The judgment erroneously lists Hogan’s plea as “Not Guilty” for the charge of OWI as a fourth offense. However, the transcript of the plea hearing clearly and unambiguously reflects that Hogan pled no contest to that charge. *See State v. Prihoda*, 2000 WI 123, ¶24, 239 Wis.2d 244, 618 N.W.2d 857 (“[A]n unambiguous oral pronouncement controls when a conflict exists between a court’s oral pronouncement of sentence and a written judgment.”).

“Correcting a clerical error in a judgment does not constitute a modification of that judgment; rather, it is simply a correction of the record to reflect the judgment the circuit court actually rendered.” *State v. Schwind*, 2019 WI 48, ¶30 n.5, 386 Wis. 2d 526, 926 N.W.2d 742. Accordingly, the defect in the judgment of conviction may be corrected at any time at the direction of the circuit court, and no remand by this court is necessary. *See Prihoda*, 239 Wis. 2d 244, ¶¶5, 17, 51. Upon remittitur, the circuit court shall enter an amended judgment of conviction stating that Hogan pled “no contest” to the charge.

“The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution protect people from unreasonable searches and seizures.” *State v. Young*, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729 (footnotes omitted). However, a police officer may perform an investigative stop if the officer reasonably suspects that a person is, or was, violating a noncriminal traffic law. *County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999); *see also State v. Colstad*, 2003 WI App 25, ¶¶8, 11, 260 Wis. 2d 406, 659 N.W.2d 394 (investigatory stop was proper if there was reasonable suspicion to believe defendant had violated a traffic ordinance). The officer’s reasonable suspicion must be “grounded in specific articulable facts and reasonable inferences from those facts.” *Colstad*, 260 Wis. 2d 406, ¶8 (quoted source omitted). “The question of what constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of [the officer’s] training and experience.” *Id.* (quoted source omitted). Reasonable suspicion is not a high bar; “the level of suspicion the standard requires is considerably less than proof of wrongdoing by a preponderance of the evidence, and obviously less than is necessary for probable cause.” *State v. Nimmer*, 2022 WI 47, ¶25, 402 Wis. 2d 416, 975 N.W.2d 598 (quoted source omitted).

Our review of a decision denying a motion to suppress is a question of constitutional fact. *State v. Coffee*, 2020 WI 53, ¶19, 391 Wis. 2d 831, 943 N.W.2d 845. We will uphold a circuit court’s factual findings unless clearly erroneous and independently apply constitutional principles to those facts. *Id.*, ¶20. We also apply a deferential, clearly erroneous standard of review to a court’s credibility determinations. *State v. Jenkins*, 2007 WI 96, ¶33, 303 Wis. 2d 157, 736 N.W.2d 24.

Hogan argues that the information presented at the suppression hearing does not establish a “reasonable inference” that Hogan drove without headlights on, and that law enforcement therefore did not have sufficient reasonable suspicion to conduct the traffic stop. Specifically, Hogan asserts that the testimony from law enforcement that Hogan was driving without headlights on was not more persuasive than the competing testimony of Hogan’s friends, who testified that Hogan was driving with headlights on, especially since, Hogan asserts, the circuit court “expressly rejected its role in making any credibility determinations.” We construe this argument as one that the court erred in determining that law enforcement had sufficient reasonable suspicion to stop Hogan’s vehicle.

Hogan argues that it is not reasonable to infer from the facts that law enforcement had reasonable suspicion to conduct a traffic stop because Hogan’s friends testified that the headlights were on at the time that Hogan was stopped. We construe this as an argument that the circuit court erroneously credited the testimony of law enforcement over the testimony of Hogan’s friends. We reject this argument. Hogan fails to show that the officers’ testimony, or the court’s credibility determinations based on that testimony, were clearly erroneous. *See Coffee*, 391 Wis. 2d 831, ¶20 (we uphold a circuit court’s factual findings unless clearly erroneous); *Jenkins*, 303 Wis. 2d 157, ¶33 (we apply the clearly erroneous standard of review to a court’s credibility determinations). Here, the court was not resolving the factual inconsistencies between the officers’ testimony and Hogan’s friends’ testimony. Rather, the court was only crediting the officers’ testimony as sufficient to establish that the officers had reasonable suspicion, at the time that the officers conducted the traffic stop, that Hogan had committed a traffic violation.

Hogan also appears to argue that the circuit court itself acknowledged that it could not make credibility determinations, because that was the jury's role. The record does show that the court at one point stated that it did not want to supplant the role of any future jury, presumably in a potential trial on the traffic citation for driving without headlights. However, the court implicitly distinguished fact-finding by a jury at trial from the fact-finding by the court at the suppression hearing. The court made it clear that it was crediting the testimony from law enforcement solely as a basis for its conclusion that law enforcement had sufficient reasonable suspicion to conduct the traffic stop: "based on the testimony of an experience[d] law enforcement officer ... I do find that there was a reasonable basis for the stop" and that the other officer assisting with the stop "confirmed that the original basis for the stop was the lights issue."

In sum, the totality of the circumstances, including testimony credited by the court from experienced law enforcement officers that Hogan had been driving without headlights on, supports the circuit court's determination that the officer had reasonable suspicion that Hogan had committed a traffic violation, and therefore justified the traffic stop.

Accordingly,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed. *See* WIS. STAT. RULE 809.21.

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

Samuel A. Christensen
Clerk of Court of Appeals