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DISTRICT IV

July 24, 2025

To:

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Circuit Court Judge
Electronic Notice

Donald C. Dudley
Electronic Notice

Laura Endres
Clerk of Circuit Court
Monroe County Courthouse
Electronic Notice

Jacob J. Wittwer
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You are hereby notified that the Court has entered the following opinion and order:

2024AP59-CR

State of Wisconsin v. Tommy D. Orange (L.C. # 2020CF346)

Before Kloppenburg, P.J., Blanchard, 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).

Tommy Orange appeals a judgment of conviction for possession of methamphetamine, based on evidence obtained following a traffic stop. Orange argues that the circuit court erred in denying his suppression motion. More specifically, Orange argues that the court correctly concluded that the officer who stopped Orange lacked reasonable suspicion that Orange had violated certain traffic laws, but that the court erred in concluding that the officer nonetheless had reasonable suspicion to stop Orange based on an objectively reasonable mistake of law that Orange had violated those traffic laws by operating his vehicle during hours of darkness when his tail lamps were not illuminated. 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 conclude that the officer had reasonable suspicion to conduct the traffic stop, and, therefore, we need not reach the objectively reasonable mistake concept. Accordingly, we affirm.

The circuit court held a hearing on Orange’s motion to suppress at which the Tomah police officer who stopped Orange testified as follows. At approximately 10:00 p.m. on May 5, 2020, the officer was running radar when he observed a vehicle traveling eastbound and began following the vehicle. The vehicle’s tail lamps were illuminated at this time. The vehicle turned around to travel westbound, and in the officer’s sideview mirror, the officer saw that the vehicle’s tail lamps were not illuminated for “[p]robably a matter of a couple seconds.” The officer turned around to continue following the vehicle. When the vehicle pulled in to the parking lot of a hotel, at which time the tail lamps were again illuminated, the officer activated his emergency lights and conducted a traffic stop.

At the hearing, the State argued that the officer had reasonable suspicion that Orange had violated WIS. STAT. § 347.13(1), which prohibits operating a vehicle during hours of darkness unless the vehicle’s tail lamps are “in good working order” (the “good working order” requirement), and WIS. STAT. § 347.06(1), which prohibits operating a vehicle during hours of darkness unless all tail lamps “are lighted” (the “are lighted” requirement).

Orange argued that the officer did not have reasonable suspicion to conduct the traffic stop. Emphasizing the officer’s testimony that he observed the tail lamps to not be illuminated for only “a couple seconds,” Orange argued that the statutes were not “intended to address a

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

potential glitch that could happen to anybody,” and that “once the officer turned around to stop the vehicle and the lights were already back in good working order that the issue was rectified and that there was no reason to stop the vehicle after ... that point.”

Referencing the testimony, the circuit court stated that “[t]his is not a situation where the officer’s acting on a hunch or acting on something that he can’t identify. He identified the tail lamp not working.”

Turning to the legal standards, the circuit court relied on *State v. Brown*, 2014 WI 69, 355 Wis. 2d 668, 850 N.W.2d 66, *overruled on other grounds by State v. Houghton*, 2015 WI 79, 364 Wis. 2d 234, 868 N.W.2d 143, to take the position that WIS. STAT. § 347.13(1) requires only that during hours of darkness vehicle tail lamps be in “good or suitable,” as opposed to “perfect,” order. Accordingly, the court concluded that the tail lamps not being illuminated for a matter of seconds was not a violation of the “good working order” requirement in § 347.13(1). The court also concluded that the tail lamps not being illuminated for a matter of seconds was not a violation of the “are lighted” requirement in WIS. STAT. § 347.06(1) because, as the court put it, “what it means to be lighted” is undefined. For those reasons, the court concluded that the officer lacked reasonable suspicion to stop Orange. Nonetheless, the court denied the motion to suppress on the ground that the officer reasonably believed that what he observed constituted a violation of the statutes. *See Houghton*, 364 Wis. 2d 234, ¶52 (holding that “an objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop”).

“This court analyzes the grant or denial of a suppression motion under a two-part standard of review.” *State v. Adell*, 2021 WI App 72, ¶14, 399 Wis. 2d 399, 966 N.W.2d 115.

“[W]e uphold the circuit court’s findings of fact unless they are clearly erroneous.” *Id.* However, we “review de novo the ultimate question of ‘whether the facts as found by the [circuit] court meet the constitutional standard.’” *Id.* (quoted source omitted).

The parties do not dispute the facts as presented above. However, the parties disagree on whether the undisputed facts—that Orange’s tail lamps were not illuminated for “a couple seconds” during hours of darkness—established reasonable suspicion that Orange committed one or more traffic offenses. See *Houghton*, 364 Wis. 2d 234, ¶30 (“reasonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops”).

“‘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.’” *State v. Colstad*, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (quoted source omitted). The test is objective and must be “grounded in specific, articulable facts and reasonable inferences from those facts.” *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). An officer’s “inchoate and unparticularized suspicion or ‘hunch’” will not suffice. *Terry v. Ohio*, 392 U.S. 1, 27 (1968).

On appeal, the State renews its argument that the officer had reasonable suspicion to believe that Orange had violated the “are lighted” requirement in WIS. STAT. § 347.06(1). Orange does not address the “are lighted” requirement in his opening brief or, in response to the State’s argument addressing this requirement, in his reply brief. We may deem Orange to have conceded that the State’s arguments on this issue are correct. See *United Coop. v. Frontier FS Coop.*, 2007 WI App 197, ¶39, 304 Wis. 2d 750, 738 N.W.2d 578 (appellant’s failure to respond in reply brief to an argument made in response brief may be taken as a concession). However,

we proceed to explain why we agree with the State regarding the application of the “are lighted” requirement on these facts.

To repeat, the evidence at the suppression hearing included the officer’s testimony that the officer observed the tail lamps to not be illuminated for “a couple seconds” after 10:00 p.m. in May. WISCONSIN STAT. § 347.06(1) does not contain an exception for tail lamps that are temporarily unilluminated. Rather, as stated, § 347.06(1) prohibits operating a vehicle during hours of darkness unless all tail lamps “are lighted,” without exception. Accordingly, the officer’s undisputed visual observation—that the tail lamps on the vehicle that Orange was operating “during hours of darkness” were not “lighted,” even for a brief period of time—was a sufficient articulable basis for the officer’s belief that Orange had violated the statute. For this reason, we conclude that the State has carried its burden to show that the officer did not violate the constitution in stopping Orange’s vehicle based on the officer’s reasonable suspicion that Orange had “operate[d] a vehicle ... during hours of darkness ... [without] all ... tail lamps ... lighted,” contrary to § 347.06(1).²

² Because we conclude that the officer had reasonable suspicion that Orange had violated the “are lighted” requirement in WIS. STAT. § 347.06(1), we do not address the parties’ arguments regarding the “good working order” requirement in WIS. STAT. § 347.13(1), or the parties’ alternative arguments regarding whether the officer had reasonable suspicion based on an objectively reasonable mistake of law in interpreting those requirements.

In his appellate briefing, Orange also cites case law addressing whether the extension of a constitutionally valid stop or a search following a constitutionally valid stop may be unconstitutional. However, he did not make an argument regarding the extension of the stop or the search in the circuit court, nor does he develop such an argument on appeal. Accordingly, we do not consider it. *See Village of Trempealeau v. Mikrut*, 2004 WI 79, ¶15, 273 Wis. 2d 76, 681 N.W.2d 190 (“Issues that are not preserved at the circuit court ... generally will not be considered on appeal.” (quoted source omitted)); *Fritz v. McGrath*, 146 Wis. 2d 681, 686, 431 N.W.2d 751 (Ct. App. 1988) (appellate court generally will not consider arguments “broadly stated but never specifically argued”).

Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed pursuant to
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