

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2010AP001837 CR
Circuit Court Case No. 2009CT105

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

GEORGE C. GREENWOOD,
Defendant-Appellant.

APPEAL FROM THE CONVICTION AND ORDER
DENYING SUPPRESSION OF EVIDENCE
ENTERED IN IOWA COUNTY CIRCUIT COURT,
HON. WILLIAM D. DYKE PRESIDING

BRIEF OF DEFENDANT-APPELLANT

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ISSUES PRESENTED

- I. WHETHER REASONABLE SUSPICION EXISTED TO STOP A MOTORCYCLE WITH A HOBBYIST PLATE WHERE THE LAW ENFORCEMENT OFFICER'S REASON FOR CONDUCTING THE STOP WAS THAT HE DID NOT SEE A WHITE REGISTRATION PLATE.
- II. WHETHER THE TRIAL COURT FINDINGS WERE CLEARLY ERRONEOUS BECAUSE THEY WERE UNSUPPORTED BY THE EVIDENCE PRESENTED AT THE SUPPRESSION HEARING.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Defendant-Appellant, George Greenwood, does not request oral argument in that the briefs of the parties can adequately address the issue presented.

Publication is not requested.

STATEMENT OF THE CASE

The defendant was cited for not having an operating registration lamp. R.11 p.14, A-Ap. p.115. The defendant was charged with one count of Operating A Motor Vehicle While Intoxicated-2nd Offense contrary to §346.63(1)(a), Wis. Stats. and one count Operating A Motor Vehicle With Prohibited Alcohol Concentration-2nd Offense contrary to §346.63(1)(b) Wis. Stats. in Iowa County Circuit Court. R.1.

The defendant filed a motion to suppress based on an illegal stop made without reasonable suspicion.

R.3. A hearing was held on the motion. R.11. A-Ap. p.102. The court denied defendant's motion to suppress in a written decision. R.7, A-Ap. p.139. A reconsideration hearing was held, yet the court held to its ruling that the evidence of intoxication should not be suppressed. R.12, A-Ap-142. The defendant plead no contest to Count 1 and Count 2 was dismissed. R.1, A-Ap. p.101.

STATEMENT OF FACTS

On Saturday, June 27th, 2009, at approximately 12:25 a.m., Officer Jeremy Kass was traveling westbound on Highway 14 in the Village of Arena. He observed a motorcycle pass him eastbound. The officer made a u-turn and conducted a stop of the vehicle. R.11 p.4 A-Ap. p.105. Upon approaching the motorcycle on foot, Kass noticed it had a hobbyist license plate. R.11 p.8, A-Ap. p. 109. Kass testified he did not see a registration plate as the vehicle passed him eastbound. R.11 pp.10-12, A-Ap. pp.111-113. Kass then testified he did not see the registration plate because there was no "telltale white registration plate on it." The type of plate on the motorcycle confused him. R.11 pp.12-13, A-Ap. pp.113-114.

Kass then administered field sobriety tests to the driver and asked the driver to provide a Preliminary Breath Test. The driver complied and was subsequently arrested for Operating A Motor Vehicle While Intoxicated-2nd Offense and one count Operating A Motor Vehicle With Prohibited Alcohol Concentration- 2nd Offense. R.1.

At the hearing on the motion to suppress on December 1, 2009, the state introduced a video of the stop. R.11 p. 6, A-Ap. p.107, R.13. Kass testified he shined his flashlight on the motorcycle after the stop because it had an unusual registration plate. R.11 p.8., A-Ap. p.109.

It was unclear from the video whether the registration light was functioning. R.11 p.9, A-Ap. p.110.

The defendant testified he checked his lights before he got on the motorcycle and that all lights were working. R.11 pp. 15-16, 22, A-Ap. pp.116-117,123. He also testified that the bulb which illuminates the taillight, illuminates the registration lamp. R.11 pp.18, A-Ap. p.119. Thus, if the taillight was on, it automatically illuminates the license plate. R.11 pp.19-20, A-Ap. pp. 120-121.

On redirect examination the officer testified he did not see a registration plate on the vehicle which caused him to believe there was no registration lamp working and that it was only after he stopped the vehicle did he see the physical registration plate. R.11 p.28-29, A-Ap. pp.129-130. The officer then testified he observed the taillight functioning on the motorcycle. R.11 pp.31-32, A-Ap. pp.132-133.

The court concluded the issue was whether the taillight assembly reflected enough white light for the license plate to be seen at night. R.11 pp. 32-33, A-Ap. pp.133-134. No demonstration of such took place. The circuit court also recognized there was no dispute the taillight, (the red light,) was operating. R.11 p.34, A-Ap. p.135. The court also found that the motorcycle's original equipment included a single bulb illuminating the rear taillight as well the registration illumination. R.11 p.34, A-Ap. p.135. The court then allowed the parties to brief the issue of whether a mistaken traffic violation stop can provide the basis of reasonable suspicion to stop the motorcycle. R.11 pp.34-35, A-Ap. pp.135-136.

The court rendered its written decision on January 8, 2010. R.7, A-Ap. p.139. The court again focused its analysis on whether the light bulb was adequate to illuminate both taillight and the registration plate. It further held that there was reasonable suspicion to believe a violation was being committed because the license plate was unreadable. R.7 p.2, A-Ap. p.140. Although the court recognized the motorcycle was in "factory-equipped" condition, it also found "the motorcycle had a lighting unit which was not adequate to the task, and in light of the

unreadable registration plate, there was reasonable suspicion.” R.7 p.2, A-Ap. 140.

Later, in the reconsideration hearing the trial court stated:

“[t]here is no doubt in my mind that if the red light was visible the white light is casting its light upward.” R.12 p.11, A-Ap. p. 152. Then further on the trial court states: “[i]f the red light is on, the white light is on.” R.12 p.12, A-Ap. p.153. However, the court concluded: “[p]art of the problem is the configuration and the inadequacy, and I tried to address that. This man is getting stuck with the fact that the manufacturer had a light that was too feeble.” R.12 p.15, A-Ap. p.156.

STANDARD OF REVIEW

The Fourth Amendment to the United States Constitution and art. I, Sec. 11, of the Wisconsin Constitution prohibit the unreasonable seizure of a person without a warrant supported by probable cause. *State v. Longcore*, 226 Wis.2d 1, 6, 594 N.W.2d 412, citing *State v. Gaulrapp*, 207 Wis.2d 600, 605, 558 N.W. 696, 698 (Ct. App. 1996). Detaining a motorist for a routine traffic stop constitutes a “seizure” and, if the seizure was illegal, then evidence obtained as a result is inadmissible. *Longcore*, 226 Wis.2d 1, 6, 594 N.W.2d 412 (Ct. App. 1999). A seizure, especially in a traffic stop context, is a serious intrusion on an individual's liberty and must be objectively reasonable by Fourth Amendment standards. *State v. Olson*, 2001 WI App. 284, ¶. 15, 249 Wis.2d 391, 639 N.W.2d 207.

When reviewing an order on a motion to suppress, the court of appeals will uphold the circuit court's factual findings unless clearly erroneous. *State v. Drew*, 2007 WI App 213 ¶11, 305 Wis. 2d 641, 740 N.W.2d 404, *review denied*, 2008 WI 6, 306 Wis. 2d 48, 744 N.W.2d 297. The application of those facts to constitutional principles, however, is a question of law the court of appeals reviews independently. *Id.*

ARGUMENT

An investigatory stop is permissible if the law enforcement officer reasonably suspects, in light of the totality of circumstances, that an individual is committing, is about to commit, or has committed a crime or non-criminal traffic violation. *State v. Popke*, 3009 WI 37 ¶¶13-14, 23, 765 N.W.2d 569. Reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer suspect in light of his or her training and experience. *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997.)

a. **The Stop Was Illegal Because It Was Based On The Officer's Mistake Of Law About The Color Of Valid Registration Plates.**

Arguments that excuse an officer's reasonable but misguided conduct are inapplicable to suppression motions based on the state constitution. *Longcore*, 226 Wis. 2d 1, 594 N.W.2d 412.

As in *Longcore*, the issue here is whether an officer has probable cause to arrest when his interpretation of the law is incorrect. *Longcore*, 226 Wis. 2d at 8. Furthermore, when an officer relates facts to a specific offense, it must indeed *be* an offense; a lawful stop cannot be predicated upon a mistake of law. *Id.*

In the instant case, Officer Kass stopped the motorcycle because he did not see the "telltale" white of a registration plate and concluded that the vehicle did not have a registration plate. R.11 p.12, 28 A-Ap.p113, 129. He did, however, see the red taillight was functioning. R.11 p.30, A-Ap.131. Upon approaching the motorcycle, he shined his flashlight onto the back of the motorcycle and saw it did indeed have a license plate, albeit one he was not familiar with; a hobbyist plate. R.11 pp.10-11, A-Ap. 111-112. At this point, the motorcycle and its lights were switched off. R.11 p.10, A-Ap. 111.

It was the hobbyist plate that confused the officer. R.11 p.8, A-Ap. p.109. The officer was mistaken about the law, believing instead that all vehicles must display a “telltale” white registration plate. Thus, the stop was premised on a mistake of law and the evidence must be suppressed.

b. The Trial Court Made Findings Which Were Unsupported By The Evidence Produced At The Suppression Hearing.

Trial court findings of fact will be affirmed unless they are clearly erroneous. Wis. Stat. §805.17(2). Likewise findings of fact will not be reversed unless against the great weight and clear preponderance of the evidence. *Noll v. Dimiceli's, Inc.*, 115 Wis. 2d 641, 643, 340 N.W.2d 575 (Ct. App. 1983).

It is undisputed that the taillight was functioning properly, thus the registration light must have been functioning properly as well. R.12 pp.12, 14, A-Ap. pp.153, 155. No testimony was taken as to the measuring of the lamp illumination from a distance of 50 feet. Still, the trial court concluded it must have been inadequate to illuminate the registration plate. There simply is no evidence supporting this contention.

The relevant statute states that no 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. Such lamp may be incorporated as part of a tail lamp or may be a separate lamp. Wis. Stat. §347.13(3)

The trial court has now deemed all Kawasaki motorcycles with the same taillight apparatus as inadequate to illuminate the registration plate. The trial court, without evidence, has ruled that all Kawasaki motorcycles with the same taillight

assembly are violating the law. This is an erroneous finding of fact which must be reversed by the court of appeals.

CONCLUSION

The officer was mistaken about the requirements of registration plates and stopped a vehicle based on the assumption that all vehicles would display a white registration plate and if there was a valid plate, it had to be white.

Furthermore, the trial court's findings must be clearly erroneous because the trial court did not base its findings on the evidence presented at the suppression hearing. The trial court created its own version of the issue by concluding that the light was present but that the light was inadequate. Therefore, the trial court's decision was erroneous in that no evidence was taken in support thereof.

WHEREFORE, Defendant-Appellant George C. Greenwood respectfully requests the court of appeals reverse the order of the circuit court denying the motion to suppress and vacate the conviction.

Dated: September 17, 2010

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Attorney for
Defendant-Appellant

BRIEF CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c), Stats., for a brief produced using the following font:

Proportional serif font: Minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 1,779 words.

I further certify that the electronic copy is identical to the printed version.

Dated: September 17, 2010

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Attorney for
Defendant-Appellant

APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. §809.19(2)(a) and that contains:

- (1) a table of contents;
- (2) relevant circuit court record entries;
- (3) the findings or opinion of the circuit court; and
- (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

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CERTIFICATE OF MAILING

STATE OF WISCONSIN)
IOWA COUNTY)

I Gerald C. Opgenorth, a licensed Wisconsin attorney, hereby certify that copies Respondent-Appellant's Brief and Appendix in Appeal No 2010AP1837 were placed in the U.S. Mail, with proper postage affixed this 17th day of September, 2010, addressed to the following as indicated below:

Clerk of the Wisconsin Court of Appeals
PO BOX 1688
Madison WI 53701-1688

DA Larry Nelson
Iowa County Courthouse
222 N. Iowa St.
Dodgeville, WI 53533

Dated: September 17, 2010

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Attorney for
Defendant-Appellant

**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV**

**Appeal No. 2010AP001837 CR
Circuit Court Case No. 2009CT105**

**STATE OF WISCONSIN,
Plaintiff-Respondent,**

v.

**GEORGE C. GREENWOOD,
Defendant-Appellant.**

**APPEAL FROM THE CONVICTION AND ORDER
DENYING SUPPRESSION OF EVIDENCE
ENTERED IN IOWA COUNTY CIRCUIT COURT,
HON. WILLIAM D. DYKE PRESIDING**

APPENDIX OF DEFENDANT-APPELLANT

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State of Wisconsin vs. George C. Greenwood

Judgment of Conviction

and Sentence to the County Jail/Fine/Forfeiture

Date of Birth: 03-03-1964

Case No.: 2009CT000105

The defendant was found guilty of the following offense(s):

Ct.	Description	Violation	Plea	Severity	Date(s) Committed	Trial To	Date(s) Convicted
1	Operating While under Influence (2nd)	346.63(1)(a)	Not Guilty	Misd. U	06-27-2009		04-22-2010

The defendant is guilty as convicted and sentenced as follows:

Ct.	Sent. Date	Sentence	Length	Begin date	Begin time	Agency	Comments
1	04-22-2010	Forfeiture / Fine					
1	04-22-2010	Local Jail	30 DA				SENTENCE STAYED PENDING APPEAL
1	04-22-2010	DOT License Suspended	16 MO				SUSPENSION STAYED PENDING APPEAL
1	04-22-2010	Alcohol assessment					SENTENCE STAYED PENDING APPEAL

Obligation Detail:

Ct.	Schedule	Amount	Days to Pay	Due Date	Failure to Pay Action	Victim
1	Misd Driving Violations	1168.00				

Obligation Summary:

Ct.	Fine & Forfeiture	Court Costs	Attorney Fees	<input type="checkbox"/> Joint and Several Restitution	Other	Mandatory Victim/Wit. Surcharge	5% Rest. Surcharge	DNA Anal. Surcharge	Totals
1	715.00	385.00			8.00	60.00			1168.00

Total Obligations: 1168.00

It is adjudged that 0 days sentence credit are due pursuant to § 973.155, Wisconsin Statutes

It is ordered that the Sheriff shall deliver the defendant into the custody of the Department.

BY THE COURT:

Distribution:

William D. Dyke, Judge
Larry E. Nelson, District Attorney
Gerald C Opgenorth, Defense Attorney
County Sheriff

[Signature]
Circuit Court Judge/Clerk of Circuit Court/Deputy Clerk

June 22, 2010
Date

NOTE PRO TUNC 4-22-10

STATE OF WISCONSIN : CIRCUIT COURT : IOWA COUNTY

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STATE OF WISCONSIN,)
)
 Plaintiff,)
) 09 CT 105
 v.)
) December 1, 2009
 GEORGE C. GREENWOOD,)
) 10:35 a.m.
)
 Defendant.)

COPY

TRANSCRIPT OF MOTION HEARING
 BEFORE THE HONORABLE WILLIAM D. DYKE
 JUDGE PRESIDING

APPEARANCES:

FOR THE PLAINTIFF:

ATTORNEY LARRY E. NELSON
 District Attorney
 222 N. Iowa Street
 Dodgeville, Wisconsin

FOR THE DEFENDANT:

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 5805 Hewitt Lane
 Spring Green, Wisconsin

COURT REPORTER:

Denise Winder, RPR
 Iowa County Courthouse
 222 N. Iowa Street
 Dodgeville, Wisconsin
 608.935.0349

1 THE COURT: This is State versus Greenwood, and let's
2 note the appearances, please.

3 MR. NELSON: State by DA Nelson.

4 MR. OPGENORTH: George Greenwood present in court
5 with counsel Jerry Opgenorth.

6 THE COURT: Mr. Opgenorth, I trust this is your
7 motion?

8 MR. OPGENORTH: This is my motion, Your Honor.

9 THE COURT: Can we take evidence?

10 MR. OPGENORTH: Yes, we are.

11 THE COURT: Mr. Nelson?

12 MR. NELSON: Sure.

13 MR. OPGENORTH: I would like to call the police
14 officer here to explain what this is.

15 THE COURT: All right. Now --

16 MR. NELSON: Well, I have the burden of proof.

17 MR. OPGENORTH: Okay. Go ahead.

18 THE COURT: Now, is there to be a voice on the video?
19 Are we going to look at the video?

20 MR. NELSON: Eventually. I think we can turn the
21 lights on momentarily here.

22 THE COURT: Now, does the video have a voice track?

23 MR. NELSON: I believe it does.

24 THE COURT: Then we'll mark it as an exhibit, and she
25 won't have to copy it, right? She won't have to take the

1 language?

2 MR. NELSON: I'll mark it after it's been played.

3 THE COURT: Do you have a transcript?

4 MR. NELSON: No, I do not.

5 THE COURT: If it's to be used by the proponent we'll
6 have to have a transcript prepared of what's on the video.
7 In any event, if we're ready to proceed, Mr. Nelson.

8 MR. NELSON: Could you repeat that? I need a
9 transcript of what's on the video?

10 THE COURT: If you intend to offer it for purposes --
11 otherwise it comes in as an exhibit.

12 MR. NELSON: That's fine. I would like to call
13 Officer Jeremy Kass.

14 (Witness duly sworn.)

15 THE COURT: Please step over here and take the stand.
16 I'll ask you to tell us your name and spell your last name.

17 THE WITNESS: My name is Jeremy Kass. Last name is
18 K-a-s-s.

19 THE COURT: Thank you, sir. Your witness.

20 JEREMY KASS,

21 called as a witness on behalf of the plaintiff, being first
22 duly sworn, was examined and testified as follows:

23 DIRECT EXAMINATION

24 BY MR. MR. NELSON:

25 Q What is your occupation?

1 A I'm a police officer for the village of Arena.

2 Q Were you on duty in that capacity on June 27, 2009 at
3 approximately 12:25 a.m.?

4 A Yes, I was.

5 Q Where was your location on that date and time?

6 A I was in the village of Arena. I believe I was heading
7 westbound on Highway 14 near Willow Street.

8 Q And what, if anything, did you observe at that location
9 on that date and time?

10 A At that time I observed a motorcycle heading eastbound
11 on Highway 14 pass my position. The vehicle did not have a
12 registration lamp on the motorcycle. I executed a U-turn and
13 proceeded to conduct a traffic stop on the vehicle.

14 Q Would you repeat your location again?

15 A I was on Highway 14 in the village of Arena.

16 Q Is that in Iowa County, Wisconsin?

17 A Yes.

18 Q Did you stop the vehicle?

19 A Yes, sir, I did.

20 Q Did you identify the driver?

21 A Yes, sir, I did.

22 Q Who did you identify him to be?

23 A I identified Mr. Greenwood and his wife.

24 Q How did you identify him?

25 A He had a Wisconsin driver's license.

1 Q On the evening in question did your squad have a video
2 camera?

3 A Yes, sir, it did.

4 Q And do you have a video recording of this particular
5 stop?

6 A Yes, I do.

7 Q Did you provide that to my office?

8 A Yes, sir, I did.

9 MR. NELSON: I would like to play that now.

10 THE COURT: All right, sir. Counsel, as to the
11 display now of the video the Renz case recently came down
12 that related to the filing of transcripts and the use of
13 video materials. May the parties stipulate to the use of
14 this video and that I would offer it as an exhibit. If it
15 becomes necessary that it be prepared for purposes of appeal
16 then the person that is using this video as demonstrative
17 evidence will have the responsibility of having a transcript
18 prepared. Can we stipulate?

19 MR. NELSON: Yes.

20 THE COURT: As to the technical qualities and so on
21 any problems with the use of the video?

22 MR. OPGENORTH: Well, the only problem I have with
23 the use of the video is this is the first time I have seen
24 it, and that may be my own fault or miscommunication between
25 Mr. Nelson and myself. He did phone me a week ago and say

1 was I aware that there was a video. It was left as a phone
2 mail message, and then I called back and said I am unaware of
3 it. Is there? I never heard back. So this is the first
4 time I am seeing it. But for the purposes that you are
5 talking about is this authentic. Authentication and
6 preparation for appeal I have no objection to that.

7 THE COURT: Okay. Thank you. We'll -- now, dim the
8 lights, and we'll let the video be shown. Mr. Nelson, I
9 trust then the video soundtrack will speak for itself. The
10 reporter will not have to take down what's on the video
11 soundtrack. It can be offered as an exhibit, and the officer
12 will not be narrating while we watch this, is that right?

13 MR. NELSON: That's correct.

14 THE COURT: All right. Let's go.

15 (At this time the videotape was played.)

16 MR. NELSON: Your Honor, I don't know that we have to
17 show any more. It's a motion on the stop, and the vehicle
18 has been stopped.

19 MR. OPGENORTH: I agree; however, I would ask --
20 well . . .

21 THE COURT: You can terminate the use then of the
22 DVD. Let's turn on the lights.

23 MR. NELSON: Do you want me to mark that now, or will
24 someone want to see it again?

25 MR. OPGENORTH: I may want to see it again.

1 THE COURT: Further direct.

2 MR. NELSON: Yes.

3 BY MR. NELSON:

4 Q I noted on the video there that you also had mentioned a
5 loud exhaust?

6 A Yes, sir, I did.

7 Q Is that one of the reasons for the stop?

8 A Yes. That was a secondary reason.

9 Q Could you describe the exhaust, the loudness that you
10 heard?

11 A The extent of the noise was such that I was
12 approximately two blocks behind the vehicle as I was
13 preparing to stop and with my windows rolled up and I could
14 clearly hear the exhaust. That's why I suspected it was a
15 Harley.

16 Q You were proceeding to follow the vehicle for the
17 registration light?

18 A Yes, sir, I was.

19 Q That's when you heard the loud exhaust?

20 A I heard the loud exhaust as it passed my vehicle, and as
21 I was trailing it I continued to hear loud exhaust to the
22 extent with my windows rolled up two blocks behind it was
23 clearly audible.

24 Q I need clarification. You were parked when you first
25 heard it?

1 A No, sir, I was not.

2 Q So you pulled out to stop the vehicle when you heard it?

3 A Yes, sir.

4 Q So you were going to stop it regardless because of the
5 defective tail lamp?

6 A Yes, sir.

7 Q Just for the record, that was a video of the stop of
8 this defendant that's being challenged this morning?

9 A Yes sir.

10 Q I noted that you shined your flashlight on the vehicle?

11 A Yes, sir.

12 Q Why did you do that?

13 A Because it had an unusual registration plate. I believe
14 it was a really dark blue with green highlights. Something I
15 hadn't seen before on a motorcycle. I found out later it
16 means a refurbished or rebuilt plate.

17 Q I noticed that you looked directly at the light itself
18 when you approached the defendant. Did the defendant look at
19 it too? I couldn't tell from the video.

20 A I don't believe he looked at it.

21 Q Did you tell him why you stopped him?

22 A Yes, sir, I did. I explained the reasons for the stop.

23 Q Did he dispute that at all?

24 A He didn't dispute it. In fact, he said that he had
25 rebuilt the motorcycle and gave that as a reason possibly for

1 the violation.

2 MR. NELSON: Nothing further.

3 THE COURT: Cross.

4 MR. OPGENORTH: I would ask that the video be played
5 just again.

6 THE COURT: The record shows that this video has a
7 legend on the lower right-hand portion indicating that it was
8 created on June 27, 2009 at approximately 12:27 and 36
9 seconds a.m., would that be correct?

10 THE WITNESS: Yes, Your Honor.

11 (At this time the videotape was replayed.)

12 MR. OPGENORTH: That's enough.

13 CROSS-EXAMINATION

14 BY MR. OPGENORTH:

15 Q Officer, we just viewed it a second time, did we not?

16 A Yes, sir.

17 Q And can you see -- put it back to its original. What is
18 that? Is there any way one can tell whether the registration
19 light is on there?

20 A From this video, no, because at this point I had my
21 squad lights activated. I had my take down lights trained on
22 the vehicle itself, and I also have my spotlight shined on
23 it.

24 Q Thank you, Officer. Now, you also noted as we moved
25 forward in this video the head lamp for the motorcycle was

1 on, was it not?

2 A I believe so.

3 Q And you also remember when he got off the motorcycle he
4 turned off the lights, did he not?

5 A Without reviewing my notes I believe so.

6 Q We just reviewed it a second time?

7 A I believe so.

8 Q So everything turned off, doesn't it? There is no
9 lights on at all?

10 A That's correct.

11 Q There was another officer who was present also?

12 A Yes, sir.

13 Q He is not here because I understand he is ill, right?

14 MR. NELSON: I don't know that he knows that.

15 MR. OPGENORTH: Well, he is not here.

16 A I believe . . .

17 Q Are you familiar with a Kawasaki motorcycle?

18 A I used to own one.

19 Q You used to own one?

20 A Yes, sir.

21 Q Are you familiar with how the taillight is manufactured?

22 A No, sir.

23 Q You have testified that you did see a registration plate
24 on the vehicle, right?

25 A No. At the stop I did observe it, but as I saw it

1 heading eastbound on Highway 14 I did not see any
2 registration on the vehicle.

3 Q Officer, would you come down here and indicate where you
4 were standing -- where you were stopped before you went on
5 Highway 14?

6 THE COURT: Do you mean a road map detail?

7 MR. OPGENORTH: Yes.

8 THE COURT: Officer.

9 A Without reviewing my notes --

10 THE COURT: Well, I think what counsel is requesting
11 is a grid pattern of the streets.

12 MR. OPGENORTH: That's correct.

13 THE COURT: Could you show that for him, please?

14 A Yes, sir. This is Highway 14. This is Willow Street
15 (indicating).

16 Q What's on the intersection there, sir?

17 A Stop sign here.

18 Q What would be businesses on either side there?

19 A This is a home. This is a parking area here with a
20 culvert. I believe I was positioned right here (indicating),
21 and as the vehicle turned on to Highway 14 it passed my
22 position.

23 Q You were parked on the side street?

24 A In this parking area here (indicating). This is an
25 elementary school parking area. I believe so. Without

1 reviewing my notes I believe that's where I was parked.

2 Q That's the elementary school. And when you first saw
3 the vehicle it was eastbound?

4 A Yes, sir.

5 Q And you were westbound?

6 A I believe so.

7 Q And you saw a registration in a fraction of a second
8 approaching the vehicle?

9 A No, sir. It passed my position, and I viewed no
10 registration on the vehicle.

11 MR. OPGENORTH: All right. Fine. Thank you. I have
12 no further questions of this officer.

13 THE COURT: We have concluded with the video?

14 MR. OPGENORTH: Yes.

15 THE COURT: For redirect is there going to be any
16 further use of the video?

17 MR. NELSON: Not for further redirect. I need
18 clarification on the last answer.

19 REDIRECT EXAMINATION

20 BY MR. NELSON:

21 Q You said you saw no registration. What do you mean?

22 A There was no light, and I didn't see a telltale white
23 registration plate on it. In fact, the video clearly shows
24 when I asked what is that, that's when I shined my lights on
25 the vehicle itself. I was confused by the type of plate on

1 it.

2 Q How long did you follow the vehicle before you stopped
3 it or before the vehicle was stopped?

4 A Well, I attempted to catch up to it. I believe it would
5 be a distance of a mile, mile and a half.

6 MR. NELSON: I don't think I have anything further.

7 MR. OPGENORTH: Your Honor, I do have redirect.

8 RE-CROSS-EXAMINATION

9 BY MR. OPGENORTH:

10 Q Does this look familiar?

11 A Yes, sir.

12 Q What is it?

13 A It looks like a motorcycle registration plate.

14 Q If I would tell you this was the registration plate that
15 was on that motorcycle that night would you disagree or not?

16 A Without reviewing my notes I would not disagree.

17 Q Would you expect to see a year plate thing on the plate?

18 A Yes, sir.

19 Q Are you sure?

20 A Yes, sir.

21 Q So you didn't see something that was on here which
22 should have said it was a current registration?

23 A No, I did not, sir.

24 Q And you didn't see it at all because the taillight
25 wasn't on, the registration lamp wasn't lit?

1 A That's correct, sir.

2 MR. OPGENORTH: Thank you.

3 REDIRECT EXAMINATION

4 BY MR. NELSON:

5 Q After you stopped the vehicle was there a registration
6 sticker on it?

7 A I don't recall a registration sticker, but I do recall
8 seeing the plate.

9 RECROSS-EXAMINATION

10 BY MR. OPGENORTH:

11 Q But your arrest was for a violation of a registration
12 lamp, was it not?

13 A That's correct.

14 MR. OPGENORTH: Thank you.

15 THE COURT: You stay step down, sir. Thank you,
16 Mr. Kass.

17 (Witness excused.)

18 MR. NELSON: I would like to call George Greenwood.

19 THE COURT: Step up.

20 (Witness duly sworn.)

21 THE COURT: Come on over here and sit down and be
22 comfortable and tell us your name and spell your last name.

23 THE WITNESS: My name is George Greenwood. Last name
24 G-r-e-e-n-w-o-o-d.

25 THE COURT: Mr. Nelson, your witness.

1 GEORGE GREENWOOD,

2 called as a witness on behalf of the plaintiff, being first
3 duly sworn, was examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. NELSON:

6 Q Mr. Greenwood, you were the driver of the vehicle
7 depicted in the video that we just saw?

8 A That's correct.

9 MR. NELSON: Could you play the video again? I'm
10 sorry.

11 Q What I'm going to be asking you, once the video is
12 played, can you tell us when you turned off your motorcycle?

13 (AT THIS TIME THE VIDEOTAPE WAS REPLAYED.)

14 A This is where I reached down and turned off the key
15 which kills all the lights in the vehicle.

16 Q Did you have a license to drive that vehicle that night?

17 A I thought I did. I found out later that I am suspended
18 for lack of forfeiture to a fine in Juneau County.

19 Q And you were issued a citation for that?

20 A Yes.

21 Q When was the last time you inspected your vehicle?

22 A Before?

23 Q Before the stop.

24 A Oh, I check my lights every time. Every time I get on
25 it.

1 Q Did you check it before you left?

2 A Absolutely.

3 Q They were working?

4 A They were working perfectly.

5 Q Do you know if they might have become defective while
6 you were traveling?

7 A I noticed that they were working when I left less than
8 five minutes earlier.

9 Q But you are driving a motorcycle. You are not going to
10 notice if your lights go off while you were driving, right?

11 A Not unless it's a head lamp, then there is an indicator.

12 MR. NELSON: May I approach, Your Honor?

13 THE COURT: You may.

14 (Exhibit No. 2 marked for identification.)

15 Q I'm showing you a document marked as Exhibit 2. Do you
16 recognize this document?

17 A Yes, I do.

18 Q And what is the document?

19 A After I was pulled over and arrested I had Louie Brinks
20 (sp) from Sharer Cycle Center pick up my cycle and take it to
21 Sharer Cycle Center, and he checked all the lights, and there
22 is a description on what he had found. I directed him
23 towards the taillight to have him inspect it, and he found
24 that it worked perfect.

25 Q And just for the record, could you read what he wrote?

1 A "Tail light inspection. Found to work well. Check on
2 bulb watts. 1157, which is correct for application. Minimum
3 shop charge."

4 Q And what's it say down there?

5 A "Removed tail lamp lens. Gave to --" probably to me.
6 "Take pictures of working lamp."

7 Q Took picture of working lamp?

8 A Yes.

9 Q Did you receive a charge for that work?

10 A Yeah; 44.21.

11 Q So he checked the lights to see if it worked?

12 A Sure.

13 Q And then replaced the light?

14 A No. He took pictures before he removed the lamp?

15 Q He removed the lamp?

16 A The cover.

17 Q Did he replace the light?

18 A No.

19 Q Did he replace the lamp?

20 A No. The lamp was still off the motorcycle.

21 Q Is there another lamp on your motorcycle?

22 A No. It hasn't been driven since.

23 Q So he charged you \$44 to just look at it?

24 A Take pictures. Minimum charge. Take pictures and
25 remove the lamp, not the light bulb. The lamp cover.

1 Q Do you have the pictures?

2 MR. OPGENORTH: Yes. Here they are.

3 (Exhibit No. 3 marked for identification.)

4 BY MR. NELSON:

5 Q I'm showing you a document marked as Exhibit 3. Would
6 you identify that?

7 A This is a photograph taken at the Sharer Cycle Center of
8 the tail lamp. Illumination and the bulb is a split element,
9 1157. One is for brake, and one is for taillight. This is
10 the illumination with the taillight, and this is with the
11 brake applied.

12 Q Did you take the pictures?

13 A No. It was taken by Louie Brinks at Sharer's Cycle
14 Center.

15 Q Were you there when the pictures were taken?

16 A No, I was not.

17 Q Did you know when the pictures were taken?

18 A Approximately maybe a month after I was pulled over.

19 MR. NELSON: May I use this?

20 MR. OPGENORTH: Sure.

21 (Exhibit No. 4 marked for identification.)

22 BY MR. NELSON:

23 Q I'm showing you an item marked as Exhibit 4. Do you
24 recognize that?

25 A That's the tail lamp cover from my motorcycle.

1 Q And that was removed?

2 A That was what Louie had taken off the motorcycle for
3 this -- to show this is how the illumination shines up onto
4 the license plate, so if the tail lamp is on it automatically
5 illuminates the license plate.

6 Q You are saying that this mechanic or whatever took this
7 off your motorcycle?

8 A For evidence for this case.

9 Q He didn't take it off to replace the light on your
10 motorcycle, did he?

11 A No.

12 Q Why did he take it off then?

13 A Because I wanted it for evidence.

14 Q And what does that show?

15 A That shows that if the lamp is on that it lights up the
16 plate if it's put in correctly.

17 Q Did you have the light replaced?

18 A No.

19 Q Why not?

20 A Because it was working fine. It states it in Louie's
21 statement. He checked it, and it's the right lamp, and it
22 works fine. There is nothing wrong with it.

23 Q Why didn't you put that back on?

24 A I haven't been to court yet.

25 Q So you haven't driven your motorcycle since June 27,

1 2009?

2 A No. It's still sitting at Sharer Cycle Center.

3 Q Where is -- how do you pronounce the mechanic's name?

4 A Louie.

5 Q Last name?

6 A Brinks.

7 Q Where is he?

8 A He is near Verona.

9 Q Where is he today?

10 A I imagine he is at work at Sharer Cycle Center.

11 Q Did you ask him to come today?

12 A No.

13 Q Did you ask him to fill out an affidavit?

14 A No. I didn't know I had to. I could call him if you
15 would like to call him.

16 THE COURT: That's between you and your lawyer. I'm
17 sorry.

18 MR. NELSON: I have nothing further.

19 CROSS-EXAMINATION

20 BY MR. OPGENORTH:

21 Q Mr. Greenwood, does Exhibit 3 fairly represent the
22 taillight and the illumination to your motorcycle?

23 A Yeah.

24 Q And as explained, there is one bulb that illuminates the
25 taillight and the license plate, right?

1 A Yes. That's correct.

2 Q In Exhibit 3 is a lens, if you will, that stands in this
3 position (indicating), meaning that the white light is up,
4 and when the taillight is on the illumination is to the
5 license plate?

6 A Absolutely.

7 Q Which is exhibited in No. 3?

8 A Which is factory original equipment for a Kawasaki.

9 Q You asked that this be taken off and brought to me?

10 A Absolutely.

11 Q Nothing has changed. This is the element that was on
12 there that night, correct?

13 A No. That's the lamp that was removed from the
14 motorcycle.

15 MR. OPGENORTH: I ask that it be received.

16 THE COURT: No objection. It will be received.

17 MR. OPGENORTH: I'm showing you the license plate.

18 (Exhibit No. 4 marked for identification.)

19 BY MR. OPGENORTH:

20 Q That is your license plate?

21 A That's my license plate.

22 Q That is consistent with Exhibit 3, which shows that it
23 was on your motorcycle?

24 A That's correct.

25 Q And the complaint of the officer was that it wasn't

1 illuminated, but this is not a reflective license plate, is
2 it?

3 A No. That's what the DOT gives out for a hobbyist plate.

4 Q Apparently he didn't know that?

5 A Probably not.

6 Q He probably didn't know that there was one bulb in here,
7 did he?

8 A Probably not.

9 Q Now, would you come down here, please, and would you
10 indicate -- I'm going to put Highway 14 here. Tell me where
11 you started from. This is west.

12 A I was down this street traveling up to the highway. I
13 turned towards the east. The school is up one more block,
14 and I met the squad car was moving traveling east at a high
15 rate of speed as I was traveling west, and he spun around and
16 come after me at a high rate of speed.

17 Q You were stopped at the east --

18 A I was pulled over.

19 Q At the east side of Arena?

20 A Yeah. Just outside of town.

21 Q Mr. Greenwood, was your license plate illuminated and
22 your taillight illuminated to the best of your knowledge when
23 you got off of that vehicle and turned everything off?

24 A Absolutely.

25 Q You couldn't tell anything from here, can we?

1 A You could tell that the taillight is on. There is some
2 type of illumination there. I don't know if it's all from
3 the squad car or not, but I would feel that it would have
4 been darker. Perhaps not. I don't really know. I know that
5 it couldn't have automatically started working again at a
6 later date.

7 Q The officer testified that he also -- that you had a
8 loud muffler?

9 A Yeah.

10 Q Is your muffler stock?

11 A Yes. Stock exhaust.

12 Q Is Exhibit 3 and 4, are those stock items that are on
13 your -- not 3 and 4. 4, is that stock on your vehicle?

14 A Yes, it is.

15 THE COURT: That's 5. This is 4.

16 Q As far as you know that license registration is what is
17 provided to you by DOT, right?

18 A That's correct.

19 Q Have you ever been stopped before because it hasn't been
20 illuminated correctly?

21 A No.

22 Q Were you given a citation for a loud muffler?

23 A No. He dropped that. As soon as I said it was a stock
24 exhaust he went back towards the illumination issue?

25 Q Did you receive a citation for a nonilluminated

1 registration?

2 A I believe so.

3 MR. OPGENORTH: I have no further questions, Your
4 Honor.

5 THE COURT: Mr. Nelson, I believe you called him
6 adversely. Any redirect?

7 MR. NELSON: Yes.

8 REDIRECT EXAMINATION

9 BY MR. NELSON:

10 Q Now, you said that your light -- that you were certain
11 that your light was working that night, is that right?

12 A Well, it was when I left less than a block earlier. I
13 didn't get off and look at it before I turned the key off,
14 but I imagine that it was still lit when I turned the key
15 off.

16 Q Is there any reason why -- could I ask whether or not
17 your observations of your vehicle might have been impaired
18 that night?

19 A Not as far as I'm concerned. I looked at -- I always do
20 a walk around the motorcycle before I leave to make sure all
21 the lamps are working.

22 Q Where were you leaving from?

23 A I was leaving from a clubhouse down in Arena.

24 Q Had you been drinking?

25 A Earlier I had.

1 Q Mr. Greenwood, you were arrested for operating while
2 under the influence that night as well, weren't you?

3 MR. OPGENORTH: Objection.

4 MR. NELSON: Goes to his observation, state of mind,
5 memory, everything.

6 MR. OPGENORTH: Irrelevant.

7 THE COURT: Do you wish to be heard?

8 MR. OPGENORTH: If that were the case on a
9 suppression motion you would always bring that in. That's
10 simply not relevant for a suppression motion as to whether or
11 not the officer made an observation and had reasonable
12 suspicion to stop the vehicle.

13 MR. NELSON: I generally do bring this in on a
14 suppression motion.

15 THE COURT: Your premise.

16 MR. NELSON: His recollection. His ability to
17 observe.

18 THE COURT: Overruled.

19 (Exhibit No. 6 marked for identification.)

20 BY MR. NELSON:

21 Q Did you receive or do you have knowledge of a blood test
22 result that was taken from blood taken from you that night?

23 A There was, yes.

24 Q Did you receive the results?

25 A I received a copy.

1 Q Would this be a copy of your blood test results that
2 night?

3 A That could possibly be, yes.

4 Q And the result was 0.208. Would you dispute that
5 result?

6 A No, I wouldn't.

7 MR. NELSON: I move for admission of Exhibit 6.

8 THE COURT: Offered, and it will be received. 1
9 through 6 now have been received.

10 BY MR. NELSON:

11 Q Did you tell the officer at any time during the stop
12 that your tail lamp was working fine?

13 A How would I know? I got off my motorcycle and turned
14 the key off.

15 Q That's my point.

16 A I'm sure it was working fine.

17 Q But that's my point. You just said how would you know,
18 and before you were certain?

19 A Obviously I can see when I got off the motorcycle. I
20 can't see the back of my vehicle until I got off, and I
21 cannot walk behind it before I turned the key off.

22 MR. NELSON: Right. Nothing further.

23 THE COURT: Mr. Opgenorth?

24 MR. OPGENORTH: Nothing further.

25 THE COURT: Thank you, sir. You may step down.

(Witness excused.)

1 THE COURT: Anything further?

2 MR. OPGENORTH: No, sir.

3 THE COURT: Mr. Nelson?

4 MR. NELSON: Yes. I'm still in my case in chief. Do
5 you want me to mark the video now, or are you going to use
6 that?
7

8 MR. OPGENORTH: I'm done.

9 MR. NELSON: I think I'm done with it. I would like
10 to mark the video. Maybe we can leave it in and mark the
11 sleeve for now just in case.

12 (Exhibit No. 1 marked for identification.)

13 THE COURT: All right. This is Exhibit 1.

14 MR. NELSON: Move for admission of Exhibit 1.

15 THE COURT: Offered and received.

16 MR. NELSON: Also, I don't know if the exhibits
17 pertaining to the lamp and the mechanic receipt were offered.

18 THE COURT: 2 offered and received.

19 MR. NELSON: I object to its receipt obviously. I
20 mean, it's not even signed by the person. The person is not
21 here. There is no affidavit. This is meaningless. It's not
22 authenticated at all.

23 THE COURT: Do you wish to be heard?

24 MR. OPGENORTH: Testimony of my client is that he had
25 it checked out. He can testify as to what the results were.

1 The results were that it was in fine working order.

2 THE COURT: I'm going to allow its entry.

3 MR. NELSON: I would like to recall the officer.

4 THE COURT: Officer Kass, you have been sworn.

5 Please return to the stand. You are still under oath, sir.

6 REDIRECT EXAMINATION

7 BY MR. NELSON:

8 Q Officer, there was testimony with regard to a fact that
9 the plate itself is not reflective. What does that mean to
10 you in your training and experience concerning this stop?

11 A If it's not reflective the numbers themselves should be
12 reflective, but if there is no registration visible on the
13 vehicle then it's an offense, and I have to stop them.

14 Q Repeat that again.

15 A I did not observe any registration on the vehicle, which
16 caused me to believe that there was no registration lamp
17 working, and it wasn't until after I stopped that I was able
18 to see the physical registration.

19 Q The fact that it wasn't reflective, does that have any
20 impact on whether or not the light is working or not?

21 A No; because I looked specifically for a white light in
22 that area.

23 Q After the vehicle was stopped did you confirm whether or
24 not there was a light for the plate?

25 A Yes, I did confirm that there was no registration light.

1 Q Why don't you explain how you confirmed that?

2 A I confirmed it first as I was approaching the vehicle.
3 Again, I saw no registration lamp. I then confirmed it a
4 third time after I had the vehicle stopped and was looking
5 specifically for a white light in that area.

6 Q Let's go back to the second time you confirmed it. How
7 did you confirm it the first time actually?

8 A The first time after it passed my position I observed I
9 could not see the registration and I did not see a white
10 light in the area that a registration should be, so I then
11 proceeded to conduct a traffic stop of the vehicle. As I was
12 approaching the vehicle when I got closer I double checked to
13 make sure that I could not see a white light.

14 Q You were still in your squad at the time?

15 A Yes, sir.

16 Q Your lights are reflecting on the vehicle?

17 A Yes, sir.

18 Q Would you be able to tell whether or not there was a
19 license plate light at that point?

20 A At night sir, yes, it's very easy to tell whether or not
21 there is a white light.

22 Q When I look at the video itself there is a light on the
23 back of that motorcycle. What that light --

24 A That's the tail lamp.

25 Q That's the tail lamp?

1 A Yes.

2 Q And the tail lamp was working?

3 A Yes, sir.

4 Q You heard Attorney Opgenorth at least present the theory
5 that one light operates both.

6 A I did not see a white light on the vehicle, sir.

7 Q So the red light was working?

8 A Yes.

9 Q Could the light itself have just been dirty or obscured?

10 A That is a possibility.

11 Q Is that a violation?

12 A Yes.

13 Q You have to clear the lamp?

14 A Yes.

15 Q So the second time you confirmed it you were in the
16 vehicle. It's your testimony you could clearly see that it
17 wasn't working there?

18 A That is correct.

19 Q The third time?

20 A The third time I was out of the vehicle a few seconds
21 where you see on the video, and I could also again not see a
22 white light emanating from the position of the registration.

23 MR. NELSON: Nothing further.

24 THE COURT: Any recross?

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REXCROSS-EXAMINATION

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BY MR. OPGENORTH:

Q Officer, the registration plate itself were you looking for a '09 or '08 or '10?

A No, sir, at that point I was not.

Q So when you talk about the registration you are talking about the plate which is Exhibit 4?

A That is correct.

Q You didn't see it?

A No, sir, I did not.

MR. OPGENORTH: I have no further questions.

THE COURT: Mr. Nelson.

MR. NELSON: Nothing further.

THE COURT: There is no dispute that that plate was on the vehicle?

THE WITNESS: No.

THE COURT: And there is no dispute that there was a red tail lamp?

THE WITNESS: That's correct.

THE COURT: Did you ever see this configuration before in Exhibit 4 where it has a -- it appears to me that this is constructed, as was described by testimony, that it's constructed to show a red taillight and a white portion here that it appears to me for the purpose of reflecting upwards to illuminate the plate. Would that be fair to conclude?

1 THE WITNESS: Yes, sir.

2 THE COURT: Any further questions?

3 MR. NELSON: No. Well . . .

4 REDIRECT EXAMINATION

5 BY MR. NELSON:

6 Q The follow-up would be was it?

7 A I don't specifically recall the configuration.

8 Q No. The judge just explained to you that the exhibit
9 appears to indicate that a light would show red and a light
10 then would flush up and show white. Did it?

11 A I did not see any white light.

12 THE COURT: You saw the red light?

13 THE WITNESS: I did see red.

14 BY MR. NELSON:

15 Q Is it a possibility that the red light could have
16 obscured the white light?

17 A Possible, but not likely.

18 Q That's your answer?

19 A Yes.

20 Q If I asked you if the white light was working what would
21 your answer be?

22 A No.

23 MR. NELSON: Nothing further.

24 THE COURT: Officer Kass, you may again step down.

25 Thank you.

(Witness excused.)

1
2 THE COURT: Further testimony either party?

3 MR. OPGENORTH: None, Your Honor.

4 MR. NELSON: No, sir.

5 THE COURT: Then testimony is complete. Exhibits
6 have been offered and received. Argument.

7 MR. NELSON: Yes, Your Honor.

8 THE COURT: I have a question before we go to
9 argument. Defendant asserts that there was an error made by
10 the officer that does not thereupon justify a citation or a
11 stopping error to result in suppression. Do you want an
12 opportunity to brief that?

13 MR. NELSON: That was going to be my argument. Even
14 if you believe everything as true and the officer is
15 mistaken, the officer can be mistaken and it would not be
16 subject to suppression.

17 THE COURT: Do you have authority for that?

18 MR. NELSON: I don't have a case, but I can provide
19 the court with that.

20 THE COURT: I will need authority on the premise,
21 because it appears to me, absent argument at the moment, it
22 appears to me that there is no dispute that this vehicle had
23 an operating taillight. The dispute is whether or not that
24 reflected upward or gave enough light upward for this plate
25 to be observed. I'm holding it now in about the pattern it

1 would be on the vehicle (indicating). The testimony appears
2 that there is no dispute that the red light was operating.
3 The officer didn't see it reflecting upward to illuminate the
4 license assigned to this vehicle. The premise that defense
5 raised is that, as shown in the motion itself, Officer Kass
6 allegedly stopped the defendant for a traffic violation,
7 specific violation, not having a functioning registration
8 lamp. The motorcycles original equipment includes a single
9 bulb illuminating the rear taillight as well as the
10 registration illumination. The mistaken traffic violation
11 stop cannot provide the basis of reasonable suspicion to stop
12 the motorcycle. Certainly there is a credibility question,
13 and there is also the question that there is remedial work
14 done six months later. Well, that's all helpful, but I need
15 to have some authority as to the mistaken stop. If there is
16 a mistake in the stop I want some authority that allows that.
17 Okay.

18 MR. OPGENORTH: Fine.

19 MR. NELSON: So the court is concluding that
20 credibility just washes at this point?

21 THE COURT: I'm sorry.

22 MR. NELSON: You are concluding that credibility is a
23 wash at this point?

24 THE COURT: No, I'm not. I do want to know whether
25 or not there is a citation -- if there is case law on

1 mistaken stop?

2 MR. OPGENORTH: I believe there is, Your Honor.

3 THE COURT: We need to hear it.

4 MR. NELSON: Sure.

5 THE COURT: Do you want a date? Each submit a brief
6 within 15 days and we'll go from there.

7 MR. NELSON: My concern is appellate review. I
8 believe there is authority out there. We have all been doing
9 this long enough to know that there is authority out there.
10 If the court determines that -- if the court relies that even
11 if mistaken it's not suppressible, does the court believe it
12 doesn't have to make any type of factual or credibility
13 determination?

14 THE COURT: No. That's not what I said and isn't
15 what I intended to say. What I would like to know is
16 consideration of the decision here whether there is authority
17 and what the strength of that authority is for mistaken stop.

18 MR. NELSON: Understood.

19 THE COURT: Let's give us a follow-up court date
20 about three weeks out for status. We'll determine where we
21 go from there. We may come back for argument.

22 THE CLERK: December 22 at 3.

23 THE COURT: The only thing that would remain is
24 scheduling, if you have your briefs in, and scheduling any
25 argument because we have yet to have argument. We have the

1 factual basis. We simply don't have the argument. It would
2 be in the determination thereupon as to the strength of
3 credibility.

4 MR. OPGENORTH: December 22, 3:00 status, fine.

5 MR. NELSON: Thank you, Your Honor.

6 (The hearing came to a close at 11:21 a.m.)
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C E R T I F I C A T E

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STATE OF WISCONSIN)
)
COUNTY OF IOWA) ss

I, Denise Winder, Official Court Reporter, in and for the State of Wisconsin, Iowa County, do hereby certify that the foregoing is a true and accurate transcription of the proceedings held on December 1, 2009, in the above-captioned case, before Honorable William D. Dyke, Circuit Judge, Iowa County, State of Wisconsin, in accordance with my stenographic notes made at said time and place.

Dated this 3rd day of February, 2010.

Denise Winder
Denise Winder, RPR
Official Court Reporter
Iowa County Courthouse
222 N. Iowa Street
Dodgeville, WI 53533

STATE OF WISCONSIN,

Circuit Court, Iowa County, WI
FILED

Plaintiff,

JAN 08 2010

Case No. 09 CT 105

v

CAROLYN K. OLSON, CLERK

GEORGE C. GREENWOOD,

Defendant.

DECISION

As testimony began to take shape at an evidentiary hearing, it became apparent that the motorcycle's rear lamp had a dual purpose and was configured for that dual purpose. The first was to provide the required red rear lamp and the other was to provide lighting for the display of the required registration plate.

The officer testified he could not see the registration plate because it was not lit. He testified he saw the red lamp, but could not see the required display of registration information.

Two relatively recent unpublished decisions bear upon the required display and although they may not be cited as authority, they are examined by this Court for analysis in the context of the required display.

In Ulrich (cited by Defendant) the plate was obscured by snow. The trial court order for suppression was overturned. In Tiegs, the arresting officer's mistaken belief of the law did not require a reversal as long as the facts observed by the officer support a reasonable suspicion that another statute was being or was about to be violated. The Court of Appeals stated that the officer's observation of the automobile plates on the

defendant's truck provided reasonable suspicion that the vehicle displayed the wrong registration plates.

Critical to our fact situation is the officer's inability to see any illuminated registration plate which pursuant to Sec. 347.13(3) WI Stats must be clearly legible from a distance of 50 feet to the rear. The testimony does not show the configuration of the rear lighting device was altered or changed by defendant. The Court accepts the premise that the motorcycle was in a factory-equipped condition, but the testimony was credible when offered that the officer could see an operating tail light but could not see the registration. One tiny bulb was asked to provide both the red tail light and the white illumination of the plates, and it was apparently unequal to the task. Thus, the failure to provide illumination at 50 feet gave rise to reasonable suspicion.

Defendant offers State v. Longcore, 226 Wis.2d 1 (CA 1999) in support of his argument and in its thoughtful analysis of the distinctions in "probable cause" and "reasonable suspicion" holds "if an officer erroneously applies the law to the facts, he does not have probable cause to believe the law was violated". The case involved questions of statutory ambiguity in relation to use of plexiglass rather than safety glass and while Longcore is helpful it is not persuasive.

This Court holds the officer had reasonable suspicion to believe a violation was being committed because the license plate was unreadable. The motorcycle had a lighting unit which was not adequate to the task, and in light of the unreadable registration plate, there was reasonable suspicion.

Motion to Suppress is denied.

DATED: 1-8-10

BY THE COURT:



William D. Dyke
Circuit Court Judge

STATE OF WISCONSIN : CIRCUIT COURT : IOWA COUNTY

STATE OF WISCONSIN,)	
)	
Plaintiff,)	
)	09 CT 105
v.)	
)	March 23, 2010
GEORGE C. GREENWOOD,)	3:45 p.m.
)	
Defendant.)	

TRANSCRIPT OF HEARING ON MOTION TO RECONSIDER
 BEFORE THE HONORABLE WILLIAM D. DYKE
 JUDGE PRESIDING

APPEARANCES:

FOR THE PLAINTIFF:

ATTORNEY LARRY E. NELSON
 District Attorney
 222 N. Iowa Street
 Dodgeville, Wisconsin

FOR THE DEFENDANT:

ATTORNEY GERALD C. OPGENORTH
 5805 Hewitt Lane
 Spring Green, Wisconsin

COURT REPORTER:

Denise Winder, RPR
 Iowa County Courthouse
 222 N. Iowa Street
 Dodgeville, Wisconsin
 608.935.0349

1 THE COURT: State versus George Greenwood.

2 MR. NELSON: State by DA Nelson.

3 MR. OPGENORTH: George Greenwood present in court
4 with counsel Jerry Opgenorth.

5 THE COURT: Gentlemen.

6 MR. OPGENORTH: Your Honor, this was my motion for
7 reconsideration after Your Honor issued an opinion on
8 January 8, 2010 denying the motion to suppress. After
9 reading the decision and having come into my office via the
10 Internet some cases that are relevant, a relevant case came
11 in which was dated December 23, 2009. That case essentially
12 it's Phillip Conaway versus -- the State of Wisconsin versus
13 Phillip Conaway, and it indicated in the case by Judge Dykman
14 that the officer did not provide any specific articulable
15 facts supporting reasonable suspicion for the violation. On
16 that basis I reread my brief to the court. I reread the
17 decision, and I thought long and hard about what was said
18 prior to looking at the transcript, and I don't recall
19 anything in the testimony which spoke of the officer's
20 observations regarding the statutory requirement. I then
21 moved for reconsideration, and Mr. Nelson decided we ought to
22 get the transcript and take a look at it. I have spent some
23 time with the transcript and many of the things that I said
24 in my brief regarding the taillight configuration, the
25 hobbyist license plate and the no sticker all resonated with

1 me to some extent in terms of what did he see, and I remember
2 the testimony, and it's confirmed in the transcript that the
3 officer was going westbound on Highway 14 and my client was
4 going eastbound on Highway 14 and both vehicles were going at
5 a reasonable rate of speed, and he turned a U-turn and
6 followed my client for a mile to a mile and a half, but he
7 made the decision based on the inability to see a lighted
8 license plate. I thought about that myself and thought if I
9 were going 40 miles per hour, 45 is what the speed limit is
10 there, and I pass a vehicle, and I have to look in my rear
11 view mirror to see if there is a license plate lit in three
12 car lengths I would be hard pressed to do that, Your Honor.

13 The testimony further was that he heard the
14 motorcycle. We all know that there is a lodge in Arena, and
15 we all know, and I think this court has many cases wherein
16 there has been some concern about the motorcycles in Arena,
17 and I think this officer was following the sound, and when
18 the motorcycle came his way he had the thought that he
19 couldn't see the license plate. Well, aside from explaining
20 that this was a unit that required one bulb, that it flashed
21 up onto the license plate, this officer said that light was
22 not on. He said it on three occasions in his testimony. The
23 white light was not on. He also said that he couldn't see
24 the sticker. There is no sticker requirement for a hobbyist
25 motorcycle. I have a hobbyist car that you see from time to

1 time, and it doesn't have a white sticker year to year
2 because it's a lifetime license plate. This is a hobbyist
3 plate that doesn't have reflective things. Now that's not my
4 client's concern. If the officer can't see the plate perhaps
5 that's a concern of the state government to say wait a
6 minute. I don't care if it's a hobbyist or a regular plate,
7 if it can't be seen then their ought to be stickers or some
8 reflective things on it. What Your Honor did then is to help
9 the police officer by saying the light was inadequate and he
10 stated he never saw a light. Never saw a light. We know it
11 was on.

12 MR. NELSON: I have to object to that. There was no
13 proof that it was on.

14 MR. OPGENORTH: We watched the tape.

15 THE COURT: What was this?

16 MR. NELSON: He said -- what did you say? There was
17 no proof that it was working?

18 MR. OPGENORTH: The light was not on.

19 MR. NELSON: The light was not on is the evidence.

20 MR. OPGENORTH: That the light was not on.

21 MR. NELSON: You said the light was working.

22 MR. OPGENORTH: He said the taillight was working --

23 THE COURT: If the taillight was working the clear
24 portion of -- well, I'm getting ahead of myself. Go ahead,
25 sir.

1 MR. OPGENORTH: Allow me a moment, Your Honor.
2 Page 32 Mr. Nelson is asking the questions. "The follow-up
3 would be was it? Answer: I don't specifically recall the
4 configuration. Question: No. The judge just explained to
5 you that the exhibit appears to indicate that a light would
6 show red and a light then would flush up and show white. Did
7 it? Answer: I did not see any white light. Court: You saw
8 the red light? I did see red. Question: Is it a
9 possibility that the red light could have obscured the white
10 light? Answer: Possible, but not likely. That's your
11 answer? Yes. If I asked you if the white light was working
12 what would your answer be? No."

13 Well, he didn't see any light at all. Now, what is
14 the evidence to indicate to this court that this officer had
15 reasonable suspicion that the light was out or that it was
16 not visible? There is no testimony, Your Honor. He was
17 driving westbound. He didn't say one thing about what he
18 observed. Whether he observed the taillight. Whether he saw
19 anything. He didn't talk about his experience. He didn't
20 talk about his knowledge of a Kawasaki. In fact, in the
21 transcript he referred to it as a Harley. It was a Harley to
22 him because that's what the people down at the lodge mostly
23 drive. So when I look at this case and I see four items
24 where the officer testified as to his experience and training
25 in use of a tint meter, that he was aware of windows

1 requiring 35 percent tint or no more than 35, and that he had
2 stopped 10 to 100 vehicles with illegal window tint, he
3 stopped the vehicles because the tint appeared to have dark
4 window tint, and Judge Dykman said that is not sufficient to
5 support reasonable suspicion, there is nothing in this
6 transcript to indicate that this officer had a clue what was
7 going on. He didn't know about the vehicle. He didn't
8 understand the configuration of the light, and he didn't see
9 the light. I think that, Your Honor, in all due respect
10 saying that he could not see the light is giving him a break.
11 He never was looking for the light. He didn't see the light.
12 This was not a light, as you pointed out, which was not
13 adequate for the task. He never saw the light. So as I
14 indicated in my brief to you earlier, this has all the
15 earmarks of a pretext stop, and there is voluminous evidence
16 of this officer's testimony that he had no clue what he was
17 doing. I think you have to ask for what are the articulable
18 facts that he testified to, and there are none. He said I
19 didn't see the license plate. Not enough. It's hardly
20 anything. Based on this case I think, Your Honor, you have
21 to reconsider, and I would appreciate it if you would.

22 THE COURT: Mistake of fact or mistake of law?

23 MR. NELSON: That's what I would say. You seem to be
24 arguing the original motion. That has nothing to do with
25 Conaway. Conaway says that there was no evidence that the

1 officer saw facts sufficient enough to stop the vehicle, so
2 we're not talking about mistake of fact or law. What
3 Mr. Opgenorth is stating is that I didn't present facts that
4 there was a violation. There is nothing in the record that
5 he observed that the light wasn't illuminated within 50 feet,
6 right?

7 MR. OPGENORTH: That's right.

8 MR. NELSON: That's why I ordered the transcript.

9 THE COURT: Go back to that for me again, so I hear
10 you right.

11 MR. NELSON: We're not -- the original motion was
12 decided on whether or not a mistake of fact as opposed to a
13 mistake of law would be found to be a reason why the officer
14 couldn't stop the vehicle. If the officer made a mistake of
15 law and he stopped a vehicle based on that mistake of law,
16 even though honest, the evidence would have to be suppressed.
17 If it was a mistake of fact then the evidence wouldn't be
18 suppressed, and the court has already said -- I know you
19 think the court said it was a mistake of fact. The argument
20 was that either the light was off or on, and if it was on it
21 was a mistake of fact, and if it was a mistake of fact you
22 can't suppress. We're done with that motion.

23 Attorney Opgenorth finds the case that says with
24 regard to a stop on tinted windows that the officer during
25 his testimony didn't establish enough facts of a window tint

1 violation, so Attorney Opgenorth is basically stating that
2 during the officer's testimony in our motion there was
3 nothing that the court could find, no facts the court could
4 find to sustain a stop based on the fact that there was no
5 light that would illuminate for 50 feet is what he is saying,
6 and I would argue that -- and that's why I ordered the
7 transcript. There was numerous references to that. Page 4
8 of the transcript line 6, "Where was your location on that
9 date and time? I was in the village of Arena. I believe I
10 was heading westbound on Highway 14 near Willow Street." I
11 asked what did you observe at that location? "Answer: At
12 that time I observed a motorcycle heading eastbound on
13 Highway 14 pass my location. The vehicle did not have a
14 registration lamp on the motorcycle." The court can make
15 reasonable inferences whether pass by my location is within
16 50 feet. Passed right by his location.

17 MR. OPGENORTH: That's not a fair representation of
18 what the officer said.

19 MR. NELSON: You can argue that in rebuttal. Page 10
20 it says -- I asked a question, "You have testified that you
21 did not see a registration plate on the vehicle, right?
22 Answer: No. At the stop I did observe it, but as I saw it
23 heading eastbound on Highway 14 I did not see any
24 registration on the vehicle." What's the reasonable
25 inference there again?

1 Page 12, "And you saw a registration in a fraction of
2 a second approaching the vehicle? Answer: No, sir. It
3 passed my position, and I viewed no registration on the
4 vehicle."

5 Page 13, "How long did you follow the vehicle before
6 you stopped it or before the vehicle was stopped?" I
7 attempted to catch up to it. I believe at a distance of a
8 mile, mile and a half he is following it.

9 Lastly page 28. "After the vehicle was stopped did
10 you confirm whether or not there was a light for the plate?
11 Answer: Yes, I did confirm that there was no registration
12 light. Question: Why don't you explain how you confirmed
13 that? Answer: I confirmed it first as I was approaching the
14 vehicle. Again, I saw no registration lamp. I then
15 confirmed it a third time after I had the vehicle stopped and
16 was looking specifically for a white light in that area." I
17 then say, "Let's go back to the second time you confirmed it.
18 How did you confirm it the first time actually? Answer: The
19 first time after it passed my location I observed I could not
20 see the registration, and I did not see a white light in the
21 area that a registration should be, so I then proceeded to
22 conduct a traffic stop of the vehicle. As I was approaching
23 the vehicle when I got closer I double checked to make sure
24 that I could not see a white light." So you have three times
25 is what he is saying. Once when he passed by him, second as

1 he was following, third as he stopped his squad he walked up
2 and confirmed that it wasn't on, so I don't know what else
3 you need.

4 THE COURT: Mr. Nelson, again the question if it's a
5 mistake of fact or mistake of law what is the result in
6 contrast with them, or is there a contra --

7 MR. NELSON: There is. If it's a mistake of law, if
8 the officer is wrong in the law --

9 THE COURT: That was the window tint case?

10 MR. NELSON: Yeah.

11 THE COURT: I think at that time there was a
12 statutory interpretation.

13 MR. NELSON: Right. If it's a mistake of law then
14 the evidence would be suppressed. If it's a mistake of fact
15 then it's not. This court has already found that --

16 THE COURT: You wish to be heard?

17 MR. NELSON: Either it wasn't working or it was a
18 mistake of fact.

19 MR. OPGENORTH: That's not true. If it's a mistake
20 of fact it requires articulable facts in which to get to the
21 question of -- the question that the court has to answer, and
22 that's whether or not there is reasonable suspicion. There
23 is a stage in it. It's not automatic. Now, what Mr. Nelson
24 is pointing out to the court is that when he passed my
25 position -- well, in his testimony he was parked prior to

1 this vehicle even being in his location. He pulled out and
2 was westbound. The first time he saw this vehicle he was in
3 his car going westbound. To pass my position, what does that
4 mean, as though he is parked there looking at that vehicle?
5 He is not parked there. He is going in the opposite
6 direction at 40 to 45 miles per hour, and he is making an
7 observation that that license plate is not lit. Now, what I
8 would like to point out is, first of all, that's a pretty
9 far-out understanding of what he can observe, but secondly,
10 in his further testimony the light was not on in his mind.
11 Is that a mistake of fact? I think it is. I don't think he
12 had a reason to stop that vehicle, period. He has now come
13 up with the fact that that light was out, and that tells this
14 court that he was clearly wrong.

15 THE COURT: Anything else?

16 MR. OPGENORTH: No.

17 THE COURT: There is no doubt in my mind that if the
18 red light was visible the white light is casting its light
19 upward.

20 MR. OPGENORTH: Exactly.

21 THE COURT: There isn't any question about it.
22 That's the way this thing is built. That's the reason I kept
23 asking this afternoon about mistake of fact or mistake of
24 law, because it's clearly a mistake of fact if the red light
25 is on, and I believe there was testimony the red light was

1 on.

2 MR. OPGENORTH: Yes.

3 THE COURT: If the red light is on, the white light
4 is on.

5 MR. OPGENORTH: Correct.

6 THE COURT: What I determined was that it was not
7 visible for the requisite distance. That's my concern. It
8 was not visible for the required distance. That's what I
9 believe led to the confusion. Now, I don't have any doubt at
10 all that the combination that you argued to that the officer
11 probably heard the sound -- he thought it was a Harley.
12 Kawasaki sound. I don't really have any difficulty in
13 accepting that, but what I have and what I'm stuck with is
14 that if this red light was on the white light was not
15 adequate for the required distance.

16 MR. OPGENORTH: Your Honor, with all due respect, how
17 do you reconcile the fact that he stated on two or three
18 occasions that there was no white light? That is --

19 THE COURT: Clearly error, but does it throw the case
20 out?

21 MR. OPGENORTH: I believe it does.

22 THE COURT: Well, I concur I think I hear you saying
23 that. The problem that I have with that is that as I
24 understand the law, if an officer has a mistake of fact it
25 still does not lead to suppression. He is there on the

1 scene. He may be there in error, but if you can -- I'll
2 invite you to interpret the case for me that says the mistake
3 of fact is still not sufficient to throw out -- to allow
4 suppression. He may be on the scene. He may be on the scene
5 in error, but he is on the scene in error. It still does not
6 result in the suppression. If you can find something that
7 says that, I'll grant your motion. I haven't got that.

8 MR. OPGENORTH: Well, I thought Mr. Dykman's case
9 gave you that, Your Honor. I thought Mr. Dykman in affirming
10 the circuit court suppression motion said there is not
11 sufficient evidence to meet the standard of the reasonable
12 suspicion, and --

13 MR. NELSON: That's because there wasn't enough
14 testimony elicited, not because there was a mistake of law
15 versus a mistake of fact. Judge Dykman determined that there
16 wasn't sufficient evidence elicited, and I have already
17 recited on multiple pages of the transcript that there was.
18 That's totally different from your case.

19 THE COURT: Let him finish.

20 MR. OPGENORTH: Well, I believe that this case says
21 that when you have an observation by a police officer to a
22 violation that he has to have reasonable suspicion that that
23 violation took place and that reasonable suspicion is based
24 on a series of events that he testifies to as to his
25 knowledge, as to his experience, as to his understanding of

1 the vehicle, a lot of different things, and there is nothing
2 in this report except to say that I did not see a license
3 plate light when he passed me or coming towards me at 45
4 miles per hour, and in three car lengths he made a decision
5 that there was no light there, and you know, Your Honor, he
6 stuck with it. He stuck with it right to the very end. He
7 didn't see a light there when he had it parked. He testified
8 there was no light.

9 THE COURT: Clearly it's an error. There is a light,
10 and it was lit.

11 MR. OPGENORTH: Then, Your Honor, I don't understand
12 at that point then that you can assume, for whatever reason,
13 that this guy has met the standard of reasonable suspicion.

14 MR. NELSON: If I may.

15 THE COURT: You may.

16 MR. NELSON: The last paragraph. In short, nothing
17 in the officer's -- of the case you cited -- nothing in the
18 officer's testimony provides a basis for a finding that the
19 officer had the ability to judge whether a tinted rear window
20 came close to or failed to meet the 35 percent light passing
21 through requirement. That's what that case is saying. That
22 has nothing do with mistake of law or fact. It's whether
23 this officer had the ability to judge whether 35 percent of
24 light can pass through that window. That's all it says.

25 MR. OPGENORTH: To meet the standard of reasonable

1 suspicion.

2 MR. NELSON: Right. I have just read questions and
3 answers from the transcript indicating that if he were not
4 mistaken this would have been a violation. There is no
5 dispute of that. If there was no light on his license plate
6 that's a violation. That can be determined by visual
7 observation.

8 MR. OPGENORTH: He was clearly wrong.

9 MR. NELSON: That's two different issues.

10 THE COURT: Part of the problem is the configuration
11 and the inadequacy, and I tried to address that. This man is
12 getting stuck with the fact that the manufacturer had a light
13 that was too feeble. I don't have any -- I clearly
14 understand that. I think you are relying on Longcore, the
15 case you relied upon.

16 MR. OPGENORTH: I'm relying on -- you know, I believe
17 that this case says that you have a standard to make when you
18 stop a vehicle, and that is reasonable suspicion, and there
19 is testimony as to what that reasonable suspicion is, and it
20 has to meet certain standards, and I believe that Judge
21 Dykman in this case said wait a minute, it hasn't met that
22 standard.

23 MR. NELSON: That's exactly what he said. He said
24 the officer couldn't tell whether or not 35 percent of light
25 could go through that tinted window.

1 MR. OPGENORTH: What I'm telling you, Your Honor,
2 is --

3 MR. NELSON: That doesn't pertain to this case.

4 MR. OPGENORTH: This police officer from Arena stops
5 this man saying I didn't see a license plate light and he
6 stuck with that story.

7 MR. NELSON: He is, and that's the story.

8 MR. OPGENORTH: He didn't see it; therefore, he had
9 no reason to have reasonable suspicion to stop this vehicle.
10 If you take it from when he turned around and went down the
11 road and he pulled up behind it when he saw that that light
12 was on, the ballgame was over. He never saw it.

13 MR. NELSON: Right.

14 MR. OPGENORTH: Consequently it's okay for him to say
15 oh, Your Honor, I'm sorry. I didn't see it.

16 MR. NELSON: He will testify today that he didn't see
17 it. Why didn't he see it? It was probably working if the
18 red light was working, but we don't know if it was obscured
19 by debris, dust, something like that. That's not the issue.
20 You are arguing two different things. They are not the same
21 thing. That's a mistake of fact. It's not suppressible.
22 That's been decided. Whether there was a light on or a light
23 off it was a mistake of fact, and that's not suppressible.

24 The issue you have brought up now is was there facts
25 in the testimony sufficient to stop the vehicle, and there

1 were. There wasn't in the case that you have cited, because
2 there is no way in the case that you cited that an officer no
3 matter how trained with the naked eye can tell whether 35
4 percent light can go through a window. That's all that case
5 says. That's all it says.

6 THE COURT: Anything else, sir? You are going to
7 displace that Arizona tan.

8 MR. OPGENORTH: I may very well. The issue in the
9 Conaway case was did he have reasonable suspicion, and the
10 judge was looking for evidence to indicate how this police
11 officer came to that conclusion. I am saying the same thing.
12 How did this police officer come to that conclusion, and by
13 your own comments, Your Honor, he was wrong. He didn't come
14 to that conclusion at all. You are saying you are not saying
15 that. Mr. Nelson is saying that oh, he made a mistake. It's
16 okay. You can make mistakes like this, and we look the other
17 way.

18 MR. NELSON: That's what the law is, yeah.

19 MR. OPGENORTH: That's not what the law is.

20 THE COURT: Well, I have language that I'm relying on
21 in the state's brief. An officer's mistake of fact cannot
22 serve as a basis for suppression. The law is well settled
23 once the state establishes that the police acted lawfully in
24 stopping a vehicle suppression is not warranted. Critical is
25 the distinction between a mistake of law and a mistake of

1 fact. The state doesn't think he was wrong in either
2 instance. I am satisfied that the law offers an excuse for
3 officer's mistake of fact. The fourth amendment does not
4 require that the decisions of law enforcement officers always
5 be correct. In some cases a search or seizure can be
6 reasonable under the fourth amendment even if mistakes were
7 made by the officer involved. What I'm saying as clearly as
8 I can say it is I believe you, sir. I think the officer was
9 mistaken. I think this proves to me it was mistaken because
10 one little feeble light in here wasn't enough to make that
11 visible from the requisite distance. It was a mistake of
12 fact. I grant you that. What I'm stuck with here is that
13 there is language that says an officer's mistake of fact he
14 can be excused. I have no hesitancy also in believing that
15 the officer was doing some boot strapping here, but he cited
16 the reason and the taillight problem. He cited a reason in
17 the failure to see the registration. It's similar to the
18 case I cited where snow obscured the registration plate, and
19 so I'm sorry, but I have to stick with the decision and I do.

20 MR. OPGENORTH: My intention would be to appeal this
21 prior to taking any plea.

22 THE COURT: Sure.

23 MR. NELSON: Are you going to do an interlocutory
24 appeal?

25 MR. OPGENORTH: Yes.

1 MR. NELSON: We need a date so this doesn't sit. I
2 don't know that you can get an interlocutory appeal on an
3 issue like this, but I'll let you see.

4 THE COURT: Do you want to get a status date?

5 MR. OPGENORTH: Let's do a status so it keeps on
6 track.

7 THE CLERK: April 22 at 9.

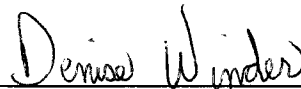
8 (The hearing came to a close at 4:17 p.m.)
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C E R T I F I C A T E

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4 STATE OF WISCONSIN)
5) ss
6 COUNTY OF IOWA)
7

8 I, Denise Winder, Official Court Reporter, in and for
9 the State of Wisconsin, Iowa County, do hereby certify that
10 the foregoing is a true and accurate transcription of the
11 proceedings held on March 23, 2010, in the above-captioned
12 case, before Honorable William D. Dyke, Circuit Judge, Iowa
13 County, State of Wisconsin, in accordance with my
14 stenographic notes made at said time and place.
15

16 Dated this 28th day of July, 2010.
17

18 

19 _____
20 Denise Winder, RPR
21 Official Court Reporter
22 Iowa County Courthouse
23 222 N. Iowa Street
24 Dodgeville, WI 53533
25

State Of Wisconsin)

))

(party designation) Plaintiff)

-vs-)

George C. Greenwood)

))

(party designation) Defendant)

Notice of Appeal

Case No. 2009 CT 105

Circuit Court, Iowa County WI
FILED

JUL 23 2010

CAROLYN K. OLSON, CLERK

Notice is hereby given that (name of party filing appeal) George C. Greenwood appeals to the Court of Appeals, District IV from [choose one] the whole a part of the final judgment or order, entered on (date) June 22, 2010 in the circuit court for IOWA County, the Honorable (name of Judge) William D. Dyke, presiding, in favor of (name of party opposing appeal) State of Wisconsin, and against (name of party filing appeal) George C. Greenwood, wherein the court (describe judgment or order) conviction for operating while under influence

NOTE: If this is an appeal under §809.30 or §809.32, also include the following (see §809.10(1)):

- If a postconviction motion was not filed, state the date of service of the last transcript or service of a copy of the circuit court case record.

If a postconviction motion was filed, state the date of the order deciding the postconviction motion(s).

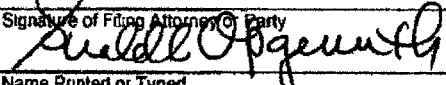
- If the Court of Appeals established any other filing deadline, state it.

If counsel is appointed under ch. 977, a copy of the order appointing counsel should be attached to the notice of appeal.

This [choose one] is is not an appeal within Wisconsin Statutes §752.31(2).

This [choose one] is is not an appeal to be given preference in the circuit court or court of appeals pursuant to statute.

Date: JULY 20, 2010

Signature of Filing Attorney or Party 	Telephone Number 608-935-0532
Name Printed or Typed Gerald C. Oppenorth	State Bar Number (if applicable) 1009747
Address 5805 Hewitt Lane Spring Green, WI 53588	

This completed form must be filed with the clerk of the circuit court in which the judgment or order appealed from was entered. In addition, copies of this completed form must be served upon the following:

1. the Clerk of the Court of Appeals;
2. opposing counsel; and
3. any other party.