STATE OF WISCONSIN

C O U R T   O F   A P P E A L S

DISTRICT I

Case No. 2011AP002907-CR

STATE OF WISCONSIN,

    Plaintiff-Respondent,

  v.

ANTONIO D. BROWN,

    Defendant-Appellant.

On Notice of Appeal From a Judgment of Conviction and a Order Denying Post Conviction Relief Entered in the Circuit Court for Milwaukee County, Honorable Rebecca F. Dallet, Presiding

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REPLY BRIEF OF
DEFENDANT-APPELLANT

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CASES CITED

STATUTES CITED

ARGUMENT

I.   Mr. Brown is Entitled to Sentence Credit from the Date of His Arrest to the Date He was Sentenced.

The state agrees that Mr. Brown is entitled to the 14 days of sentence credit between his revocation order in another case and the sentencing date on this case. *See* State's brief, pp. 3-7. Given this concession, Mr. Brown does not reply to the state's argument on this issue.

II.   The Police Lacked Reasonable Suspicion or Probable Cause to Stop the Vehicle for a Defective Tail Lamp and Therefore the Stop of the Vehicle Violated Mr. Brown's Constitutional Protections Against Unreasonable Seizures.

Contrary to the state's argument, a tail lamp with one of three bulbs unlit does not violate Wis. Stat. § 347.13(1). This is because the statute does not require that the tail lamp be in perfect working order, but rather "good working order". *See* Wis. Stat. § 347.13(1). If the legislature had wanted to require that each light bulb be in perfect working order at all times, it would have included language requiring all tail lamps to be fully functional whenever operated on Wisconsin roads and highways.

Moreover, having two of three tail lamp bulbs is sufficient to be in good working order given the definition and purpose of a tail lamp. As defined by Wisconsin Statute Section 340.01(66), a tail lamp is "a device to designate the rear of a vehicle by a warning light." Wis. Stat. § 340.01(66). Two illuminated light bulbs on one side of a vehicle is enough light to designate the rear of a vehicle to a vehicle

traveling behind it. Therefore, because two illuminated light bulbs were emitting a warning light designating the rear of the vehicle, its tail lamp was in good working order. The police thus lacked reasonable suspicion or probable cause to stop the vehicle for a violation of Wis. Stat. § 347.13(1).

Further, the case relied upon by the state to argue to the contrary is an unpublished court of appeals' decision which is not binding authority on this court. This court is bound only by its published opinions. *See Mount Horeb Community Alert v. Village Bd. Of Mt. Horeb*, 2002 WI App. 80, ¶ 6, 252 Wis. 2d 713, 643 N.W.2d 186 ("We are bound by …published opinions of the court of appeals.") (citing *Cook v. Cook*, 208 Wis. 2d 166, 189, 560 N.W.2d 246 (1997).

III.   Alternatively, Mr. Brown was Denied the Effective Assistance of Counsel When Counsel Failed to Argue that Wis. Stat. § 347.13(1) Does Not Require All Tail Lamp Bulbs Be Operational.

Mr. Brown relies on his argument in his brief-in-chief.

CONCLUSION

For all of the above reasons and the reasons stated in his brief-in-chief, Mr. Brown requests that this court reverse the circuit court's denial of his post conviction motion to suppress evidence and vacate his plea and sentencing and for 209 days of sentence credit and remand this case with an order to: 1) vacate the plea and sentencing; and 2) suppress the evidence obtained during the stop and search of the vehicle. Alternatively, he requests an order amending the judgment of conviction to include 209 days of sentence credit pursuant to Wis. Stats. § 973.155.

Dated this 13th day of July, 2012.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: 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 and maximum of 60 characters per line of body text. The length of the brief is 543 words.

CERTIFICATE OF COMPLIANCE
WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 13th day of July, 2012.

Respectfully submitted,

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