

**RECEIVED**

**08-13-2013**

**CLERK OF COURT OF APPEALS  
OF WISCONSIN**

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

---

**Appellate Case No. 2013AP538-CR**

---

**CITY OF STEVENS POINT,**

Plaintiff-Respondent,

v.

**KATRINA L. SHURPIT,**

Defendant-Appellant.

---

**REPLY BRIEF OF DEFENDANT-APPELLANT**

---

**Appealed from a Judgment of Conviction Entered in the Circuit Court for  
Portage County, the Honorable Thomas B. Eagon Presiding  
Trial Court Case Nos. 12 TR 2459 and 12 TR 2460**

---

Respectfully Submitted:

MELOWSKI & ASSOCIATES, L.L.C.  
524 South Pier Drive  
Sheboygan, WI 53081  
Telephone: (920) 208-3800  
Facsimile: (920) 395-2443

By: **Matthew M. Murray**  
State Bar No. 1070827  
Attorneys for Defendant-Appellant

## **TABLE OF CONTENTS**

TABLE OF AUTHORITIES .....	ii
REPLY TO STATE’S ARGUMENT.....	1-3
CONCLUSION .....	3

## TABLE OF AUTHORITIES

*State v. Hughes*

200 WI 24, ¶ 23, 233 Wis. 2d 280, 607 N.W.2d 621 . . . . . 1

*Honda CR-V*, Wikimedia Foundation, Inc.,  
[http://en.wikipedia.org/wiki/Honda\\_CR-V](http://en.wikipedia.org/wiki/Honda_CR-V) (last visited  
August 12, 2013) . . . . . 3-4

*Toyota RAV4 Review*, Edmunds.com Inc.,  
<http://www.edmunds.com/toyota/rav4/> (last visited August  
12, 2013) . . . . . 3-4

## **ARGUMENT**

### **I. THE TRIAL COURT ERRED WHEN IT DETERMINED THAT OFFICER TROCHINSKI HAD REASONABLE SUSPICION TO STOP AND DETAIN MS. SHURPIT.**

#### **A. Even Without The Collateral Knowledge Doctrine, There Are Simply Not Enough Building Blocks Of Facts To Find That There Is Reasonable Suspicion In This Case.**

The arguments previously raised will not be rehashed here; however, there are a few points worth making. First, it can be deducted from general observations and logic that vehicles in any city commonly have minor paint smudges or scratches to the bumper. In the present case, the amount of damage was never discussed. A court can use its common sense in determining whether police have probable cause or reasonable suspicion. *See e.g., State v. Hughes*, 200 WI 24, ¶ 23, 233 Wis. 2d 280, 607 N.W.2d 621 (when the strong smell of marijuana is in the air, there is a “fair probability” that marijuana is present. This is common sense.) In the present case, allowing an officer to pull over any vehicle with any damage to the bumper would cast too wide a net on innocent citizens.

Second, the Officer’s assertion that the damage was “fresh” should be looked upon with skepticism. Given the record before the court, it is incomprehensible what “fresh” damage means. At no time during the motion hearing did Officer Trochinski ever describe what she meant by

“fresh” damage, or on what basis such an opinion could be drawn. Furthermore, no foundation was laid to authorize such an opinion. Officer Trochinski was not an automotive expert, no information was provided as to how many accidents she had viewed in the past, and no explanation how she can distinguish between fresh versus dated damage.

Third, the City notes that “[h]ad [the officer] paused to further investigate before activating her emergency lights and commencing the stop, she reasonably believed the suspect vehicle might flee and the opportunity for further investigation would be lost.” City’s Brief p. 7. This argument is ridiculous. Officer Trochinski did not need to “stop” Shurpit in order to continue investigating the alleged incident. She could have simply parked and approached Shurpit. There was absolutely no need for Officer Trochinski to activate her emergency lights and seize the defendant based on the limited knowledge she had.

**B. With The Collateral Knowledge Doctrine, There Was Not Reasonable Suspicion To Stop Shurpit.**

While the City points out that there is no authority to extend the Collective Knowledge Doctrine, the City also provides no authority limiting the doctrine to situations where that knowledge supports a finding of reasonable suspicion. Instead, the City presents a cringe-worthy hypothetical where an officer fails to mention the suspect vehicle had a

spoiler. *City's Brief* pp. 8-9. The City completely misses the point. The omission of the spoiler does not change the make, model, nor color of the original vehicle. It is still the same vehicle. The issue here is completely different: we have a completely different type of vehicle. Here, officers were looking for a car and the police were notified that the vehicle they were looking for was an SUV. (R. 19, pp. 13, 17, 29, 42 and 45.)

Finally, the City cites wikipedia.com, which says a Honda CR-V is a compact *SUV*, and edmunds.com, which says it “hits that sweet spot between *car-based station wagons* and *truck-based SUVs*.” *City's Brief* p. 10. The City then argues this means these models straddle the line between a car and a full-sized SUV, and therefore Officer Trochinski could believe the witness was in error when they described the vehicle as an SUV. *Id.* at 10-11. The fact is, however, that these sources still note throughout their articles that both models are SUVs. *See Honda CR-V*, Wikimedia Foundation, Inc., [http://en.wikipedia.org/wiki/Honda\\_CR-V](http://en.wikipedia.org/wiki/Honda_CR-V) (last visited August 12, 2013), *Toyota RAV4 Review*, Edmunds.com Inc., <http://www.edmunds.com/toyota/rav4/> (last visited August 12, 2013). It could be posited that the vast majority of people know the difference between a car and an SUV. If not, a simple look at the pictures in the articles cited by the City make it clear that there is a clear distinction

between SUVs and cars. *See Honda CR-V*, Wikimedia Foundation, Inc., [http://en.wikipedia.org/wiki/Honda\\_CR-V](http://en.wikipedia.org/wiki/Honda_CR-V) (last visited August 12, 2013), *Toyota RAV4 Review*, Edmunds.com Inc., <http://www.edmunds.com/toyota/rav4/> (last visited August 12, 2013). The fact remains, a Honda CRV and Toyota RAV-4 are still SUVs.

### **CONCLUSION**

Ms. Shurpit respectfully requests this Court reverse the decision of the circuit court denying her motion to suppress and remand this matter for further proceedings.

Dated this \_\_\_\_\_ day of August, 2013.

Respectfully submitted,

**MELOWSKI & ASSOCIATES, L.L.C.**

By: \_\_\_\_\_  
**Matthew M. Murray**  
State Bar No. 1070827  
Attorneys for Defendant-Appellant

## **CERTIFICATIONS**

I hereby 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. The text is 13 point type and the length of the brief is 747 words.

Further, I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wis. Stat. § 809.19(12). The electronic brief is identical in content and format to the printed form of the brief.

Finally, I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on August 13, 2013. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Dated this \_\_\_\_\_ day of August, 2013

Respectfully submitted,

**MELOWSKI & ASSOCIATES L.L.C.**

By: \_\_\_\_\_

**Matthew M. Murray**

State Bar No. 1070827

Attorneys for Defendant-Appellant