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STATE OF WISCONSIN

COURT OF APPEALS

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

DISTRICT III

Appeal No. 2013AP001401-CR
Trial Court Case No.: 2012CT12

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DAVID LAWRENCE EASTMAN,

Defendant-Appellant.

ON APPEAL FROM THE CIRCUIT COURT FOR
BAYFIELD COUNTY THE HONORABLE JOHN P.
ANDERSON, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

Frederick I. Bourg, SBN: 1000705
District Attorney Bayfield County
Attorney for Plaintiff-Respondent

Bayfield County District Attorney
P.O. Box 487
Washburn, WI 54891-0487
(715) 373-6111

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STATEMENT ON ORAL ARGUMENT AND
PUBLICATION

Plaintiff-Respondent does not request oral argument and believes this case can be decided based on settled case law applied to the facts of this case.

STATEMENT OF ISSUES ON APPEAL

While it is the Appellant's duty to frame the issues sought to be reviewed on Appeal, Respondent believes the questions posed are:

1. Whether all of the facts and circumstances known to the arresting officer prior to his having contact with the Defendant-Appellant in this case, and as set forth in the police report submitted to the trial Court for review, constitute reasonable suspicion that a law or laws had been violated or were about to be violated by the Defendant Appellant, Mr. Eastman.
2. Whether the Circuit Court's findings are grounded from the stipulated facts presented by the parties (as in the police reports and comments of counsel presented and made to the Court at the Defendant-Appellant's suppression motion) and the reasonable

inferences that could be drawn from such facts.

STATEMENT OF THE CASE AND FACTS

Plaintiff-Respondent agrees with Appellant's description of the nature of the case, procedural status and disposition in the trial court, but would add the following:

Town of Iron River Police Officer Will Stoychoff was on traffic patrol and reported observing "A CAR IN THE DITCH ON CTH A AND IRON LAKE ROAD". This report was issued January 15, 2012, at 19:07:13 (7:07 P.M) o'clock. According to Officer Stoychoff's report submitted to the Court by stipulation of the parties, he also reported observing "A GROUP OF PEOPLE TRYING TO PULL THE CAR OUT OF THE DITCH". This report was made January 15, 2012, at 19:58: 24 (7:58 P.M) o'clock. He also noted in his report that he observed the vehicle back on the road and wrote "...the vehicle was driving away as it appeared as if it had just been pulled onto the roadway by another vehicle."

ARGUMENT

I. STANDARD OF REVIEW

On review of an order relating to the suppression of evidence, the trial court's findings of fact will be sustained unless they are against the great weight and clear preponderance of the evidence. *Bies v. State*, 76 Wis.2d 457, 469, 251 N.W.2d 461 (1977). The credibility of police officers and others testifying at the suppression hearing outside the presence of a jury is a determination left to the trial court. *State v. Pires*, 55 Wis.2d 597, 602-03, 201 N.W.2d 153 (1972).

On appeal of a determination of reasonable suspicion for an investigatory stop and subsequent protective search, which presents a question of constitutional fact, the Supreme Court applies a two-step standard of review: first, it reviews the circuit court's findings of historical fact, and upholds them unless they are clearly erroneous, and second, it reviews the determination of reasonable suspicion de novo. (Per Crooks, J., with two

Justices concurring and one Justice concurring separately).

State v. Williams, 2001 WI 21, ¶ 18, 241 Wis.2d 642, 623 N.W.2d 106. The Court of Review will uphold a trial court's findings of historical fact unless they are clearly erroneous. (*Id.*) Whether those facts constitute reasonable suspicion such that the stop was constitutional is a question the Court reviews *de novo*. (*Id.*)

For an investigatory stop to be constitutional, a law enforcement officer must reasonably suspect “that a crime has been committed, is being committed, or is about to be committed.” *State v. Young*, 2006 WI 98, ¶ 20, 294 Wis.2d 1, 717 N.W.2d 729 (citing *State v. Waldner*, 206 Wis.2d 51, 56, 556 N.W.2d 681 (1996) (footnote omitted)); *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). This court must consider whether all the specific and articulable facts, known to the officer at the time of the encounter, together with the rational inferences from those facts, amount to reasonable suspicion. *State v. Dunn*, 158 Wis.2d 138, 146, 462 N.W.2d 538 (Ct. App. 1990). “If any reasonable

inference of wrongful conduct can be objectively discerned . . . officers have the right to temporarily detain the individual for the purpose of inquiry.” *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763 (1990).

II. A REASONABLE POLICE OFFICER, UNDER THE TOTALITY OF THE CIRCUMSTANCES, WOULD HAVE HAD A REASONABLE SUSPICION THAT THE DEFENDANT-APPELLANT, MR. DAVID L. EASTMAN HAD VIOLATED, OR WAS ABOUT TO VIOLATE A RULE OF THE ROAD OR CRIMINAL LAW

Officer Stoychoff observed a vehicle off the road and in the ditch while on traffic patrol. The vehicle was unoccupied. The State asserts that a reasonable police officer is aware of a number of Statutes that come into play under such circumstances that would cause such an officer to reasonably suspect that a law was being violated or was about to be violated. Section 346.62(2) Wis. Stats. sets forth that “No person may endanger the safety of any person or property by the negligent operation of a vehicle.” An unoccupied vehicle observed off of the road and in the ditch clearly indicated a certain degree of reckless driving, or a reasonable suspicion of such negligence. Section 346.89 (1) Wis. Stats. sets forth that “No person while driving a motor vehicle shall be so

engaged or occupied as to interfere with the safe driving of such vehicle.” A reasonable police officer in the position of officer Stoychoff on the night of this accident could reasonably conclude that under the conditions he observed, no good reason existed for a vehicle to be driven off the road and into a ditch unless the driver was so engaged or engrossed so as to interfere with the safe operation of such vehicle. One might well ask- is it unreasonable to believe that a vehicle driven off the driving portion of the road, into a ditch, to the extent that the vehicle became inoperable (even for an hour), requiring help from a number of people to be extracted, would have sustained \$200.00 in damage, or that someone may have been injured? Section 346.70 (1) Wis. Stats. sets forth that “The operator or occupant of a vehicle involved in an accident resulting in injury to or death of any person, any damage to state or other government-owned property, except a state or other government-owned vehicle, to an apparent extent of \$200 or more... shall immediately by the quickest means of communication give notice of such accident to the police department, the sheriff's department or the traffic department of the county or municipality in which the accident occurred or to a state traffic patrol officer. Subsection 2 (b) of the same statute sets forth that “**(b)** No person may knowingly assist an

operator or occupant of a motor vehicle involved in an accident as described in sub. [\(1\)](#) to flee the scene of the accident unless the accident has, or the person is advised that the accident has, first been reported to a law enforcement agency, except to provide medical assistance”. Officer Stoychoff reported that he observed no one in the vicinity of the vehicle as he drove by at just after 7 P.M. that evening. Approximately 50 minutes latter he observes a group of people trying to get the vehicle out of the ditch. He had received no call from anyone reporting the accident. A reasonable officer knows that vehicles driving off the road are often out of control and injuries often occur, as well as property damage. The State argues that there existed a compelling state interest in Officer Stoychoff investigating the circumstances of the apparent accident prior to the operator of the vehicle driving away from the scene of the accident. Mr. Eastman was about to leave the scene as Officer Stoychoff approached for the second time. The State asks the Court to consider the totality of the circumstances, to determine the reasonableness of the officers' actions in this case. “The essential question is whether the action of the law enforcement officer was reasonable under all the facts and circumstances present.” [State v. Richardson, 156 Wis.2d 128, 139–40, 456 N.W.2d 830 \(1990\)](#).

The Defendant-Appellant may very well claim that there is an innocent explanation for all of the activities observed by Officer Stoychoff that evening. However, “[P]olice officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.... [I]f any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry.” *State v. Griffin*, 183 Wis.2d 327, 333, 515 N.W.2d 535 (Ct.App.1994) (quoting ****119** *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763 (1990)).

The State asserts that the ruling in *Anderson, id.*, supports the trial Court’s decision in this case. “If any reasonable inference of wrongful conduct can be objectively discerned . . . officers have the right to temporarily detain the individual for the purpose of inquiry.” *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763 (1990).

CONCLUSION

Based upon the above, it is respectfully requested that the defendant’s appeal be denied. There is simply no

basis to assume the information provided by Officer Stoychoff's report was anything but accurate and reliable. Indeed, the Court had inquired of Attorney Gondik at the hearing on this matter that he stipulated to the report, including but not limited to the portion of the report in which Officer Stoychoff reports to the Bayfield County dispatcher his observations at the scene.

Dated this 25th day of October, 2011.

Respectfully submitted,

Frederick I. Bourg
Bayfield County District Attorney
Attorney for Plaintiff-Respondent

Post Office Box 487
Washburn, WI 54891
715/373-6111

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Section 809.19(8)(b) and (c) for a Brief and Appendix produced with a proportional serif font. The length of this brief is 2014 words.

Dated this 25th day of October, 2013.

Frederick I. Bourg
Bayfield County District Attorney
Attorney for Plaintiff-Respondent

CERTIFICATION 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 Sec. 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of 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 25th day of October, 2013.

Frederick I. Bourg
Bayfield County District Attorney
Attorney for Plaintiff-Respondent

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, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; and (3) 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 this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

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.

Dated this 25th day of October, 2013

Frederick I. Bourg
Bayfield County District Attorney
Attorney for Plaintiff-Respondent