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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT II

Case No. 2013AP1581-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RICHARD E. HOUGHTON, JR.,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT OF
CONVICTION AND THE DECISION AND ORDER
DENYING SUPPRESSION ENTERED IN THE
WALWORTH COUNTY CIRCUIT COURT, THE
HONORABLE JOHN R. RACE PRESIDING

BRIEF AND APPENDIX OF THE PLAINTIFF-
RESPONDENT

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TABLE OF CONTENTS

	Page
STATEMENT ON ORAL ARGUMENT AND PUBLICATION.....	1
SUPPLEMENTAL STATEMENT OF THE CASE	2
ARGUMENT	2
THE STOP WAS VALID AS THE OFFICER OBSERVED THAT THE CLEAR VIEW THROUGH THE FRONT WINDSHIELD WAS OBSTRUCTED, A VIOLATION OF WIS. STAT. § 346.88(3)(B).	2
A. The standard of review.	3
B. The legal standards applicable to traffic stops.	3
C. The trial court correctly denied the suppression motion.	4
CONCLUSION.....	6

Cases

Liberty Trucking Co. v. DILHR, 57 Wis. 2d 331, 204 N.W.2d 457 (1973).....	3
State v. Earl, 2009 WI App 99, 320 Wis. 2d 639, 770 N.W.2d 755.....	2, 3

State v. Longcore,
 226 Wis. 2d 1,
 594 N.W.2d 412 (Ct. App. 1999),
aff'd by equally divided court,
 2000 WI 23, 233 Wis. 2d 278,
 607 N.W.2d 620.....2

State v. Popke,
 2009 WI 37, 317 Wis. 2d 118,
 765 N.W.2d 569.....3, 6

State v. Post,
 2007 WI 60, 301 Wis. 2d 1,
 733 N.W.2d 634.....3

State v. Sykes,
 2005 WI 48, 279 Wis. 2d 742,
 695 N.W.2d 277.....3

State v. Vorbürger,
 2002 WI 105, 255 Wis. 2d 537,
 648 N.W.2d 829.....3

Terry v. Ohio,
 392 U.S. 1 (1968).....3

Whren v. United States,
 517 U.S. 806 (1996).....3

Statutes

Wis. Stat. § 346.88(3)(a).....4

Wis. Stat. § 346.88(3)(b)2, 3, 4, 5, 6

Wis. Stat. § (Rule) 809.19(3)(a)2.2

Wis. Stat. § (Rule) 809.23(3)(b)5

Other Authorities

U.S. Const. amend. 4	3
Wis. Const. art. 1, § 11	3

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STATEMENT ON ORAL ARGUMENT AND
PUBLICATION

The State of Wisconsin does not request oral argument or publication. The case can be resolved by applying well-established legal principles to the facts of the case.

SUPPLEMENTAL STATEMENT OF THE CASE

As the plaintiff-respondent, the State exercises its option not to present a full statement of the case. Wis. Stat. § (Rule) 809.19(3)(a)2.¹

ARGUMENT

THE STOP WAS VALID AS THE OFFICER OBSERVED THAT THE CLEAR VIEW THROUGH THE FRONT WINDSHIELD WAS OBSTRUCTED, A VIOLATION OF WIS. STAT. § 346.88(3)(B).

This court should affirm the trial court's order denying the motion to suppress evidence. The State, however, is asking this Court to find the stop valid on alternative grounds. *See State v. Earl*, 2009 WI App 99, ¶ 18 n.8, 320 Wis. 2d 639, 770 N.W.2d 755 (“On appeal, we may affirm on different grounds than those relied on by the trial court.”).

The State concedes that the officer in this case made a mistake of law when he believed that Houghton was required to have a front license plate. It is well established that a mistake of law cannot be grounds for a valid traffic stop. *See State v. Longcore*, 226 Wis. 2d 1, 9, 594 N.W.2d 412 (Ct. App. 1999), *aff'd by an equally divided court*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620. The State, however, submits that the stop was constitutionally valid as the officer's decision to stop the vehicle was based, in part, on the officer's reasonable belief that Houghton had violated Wis. Stat. § 346.88(3)(b).

In affirming the suppression ruling on the grounds that the stop was supported by an observed violation of Wis. Stat. § 346.88(3)(b), this Court “need not discuss []

¹ All citations to Wisconsin Statutes are to the 2011-12 versions unless otherwise noted.

disagreement with the trial court's chosen grounds of reliance." *Earl*, 320 Wis. 2d 639, ¶ 18 n.8 (citing *Liberty Trucking Co. v. DILHR*, 57 Wis. 2d 331, 342, 204 N.W.2d 457 (1973)).

A. The standard of review.

Upon review of a denial of a motion to suppress, findings of historical fact are upheld unless found to be clearly erroneous. *State v. Sykes*, 2005 WI 48, ¶ 12, 279 Wis. 2d 742, 695 N.W.2d 277 (citing *State v. Vorburger*, 2002 WI 105, ¶ 32, 255 Wis. 2d 537, 648 N.W.2d 829). The application of constitutional principles to those facts is reviewed *de novo*. *Id.*

B. The legal standards applicable to traffic stops.

When a police officer performs a traffic stop, the individual subjected to the stop is seized. *Whren v. United States*, 517 U.S. 806, 809-10 (1996). Therefore, an automobile stop must be reasonable under the circumstances to comply with the Fourth Amendment of the United States Constitution, *Whren*, 517 U.S. at 810, and article 1, § 11 of the Wisconsin Constitution. *State v. Post*, 2007 WI 60, ¶ 10 n.2, 301 Wis. 2d 1, 733 N.W.2d 634.

A traffic stop is reasonable if the officer has "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." *Terry v. Ohio*, 392 U.S. 1, 21 (1968). An officer may conduct a traffic stop on probable cause that a traffic violation has occurred or on a reasonable suspicion the person is violating a non-criminal traffic law. *See State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 765 N.W.2d 569 (citations omitted).

C. The trial court correctly denied the suppression motion.

The officer testified at the suppression hearing that he observed a blue sedan approaching his location (24:6). As the vehicle approached the officer observed an air freshener suspended from the rearview mirror and a GPS unit attached to the windshield (*id.*). The officer believed the items to be obstructing the driver's view (*id.*). It is a traffic violation to have any item obstructing the clear view of the driver through the front windshield. Wis. Stat. § 346.88(3)(b). The language of § 346.88(3)(b) is clear, unambiguous, and reads:

No person shall drive any motor vehicle upon a highway with any object so placed or suspended in or upon the vehicle so as to obstruct the driver's clear view through the front windshield.

The area of view that an object cannot obstruct is the clear view through the windshield, not just the driver's immediate field of vision.

Reading Wis. Stat § 346.88(3)(b) as including the entire windshield is consistent with the rest of the statute and specifically with § 346.88(3)(a) which reads in part:

No person shall drive any motor vehicle with any sign, poster or other nontransparent material upon the front windshield, front side wings, side windows in the driver's compartment or rear window of such vehicle other than a certificate or other sticker issued by order of a governmental agency.

Like § 346.88(3)(b), § 346.88(3)(a) encompasses the entire window. All glass space is encompassed. Therefore § 346.88(3)(b) prohibits any object from obstructing the view through any section of the front windshield.

In this case it is undisputed that Houghton had an air freshener hanging from his rear-view mirror and it is undisputed that Houghton had a GPS device affixed to his

windshield. Both objects would obstruct the clear view through the windshield. Upon observing these objects, the officer had probable cause to believe a traffic violation had occurred and it was reasonable for the officer to stop Houghton's vehicle.

In addressing the air freshener and GPS device, the court found that officers have better things to do than to stop vehicles with views obstructed to the degree of Houghton's (24:25). That, however, does not mean that an officer cannot make a valid stop for an observed violation of Wis. Stat. § 346.88(3)(b). In fact, the court of appeals has previously upheld a stop based upon an observed violation of Wis. Stat. § 346.88(3)(b), in which the driver's view was obstructed to a lesser degree than the case here. *See State v. Currie*, No. 2011AP322-CR (Ct. App. July 19, 2011) (R-Ap. 101-104).² A traffic violation is a traffic violation. There is no distinction in the law between violations that support a valid stop and violations that do not. To have such a distinction would be absurd as it would effectively prevent enforcement.

That statute provides that no person shall drive a motor vehicle with any object so placed or suspended as to obstruct the driver's clear view through the front windshield. The officer's testimony was not contradicted. Houghton's vehicle had an air freshener extending six inches below the rearview mirror in the center of the windshield, and a GPS device that was approximately five inches by three inches in the left-hand portion of the windshield, both within the driver's view (24:10-11, 13-15).

The officer was mistaken in the belief that the law required Houghton's vehicle to have a front license plate. That mistaken belief, however, does not invalidate all other grounds for the stop. The officer was clear in his testimony that the calculus to perform the stop included

² Cited for persuasive authority only. *See* Wis. Stat. § (Rule) 809.23(3)(b).

his observation of a clear violation of Wis. Stat. § 346.88(3)(b) (24:6). That observation alone was probable cause to believe a traffic violation had occurred, and therefore, the stop was valid. *Popke*, 317 Wis. 2d 118, ¶ 11.

CONCLUSION

For the reasons stated above, the State respectfully requests that this Court affirm the judgment of conviction and order denying suppression.

Dated this 19th day of December, 2013.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,211 words.

Dated this 19th day of December, 2013.

Tiffany M. Winter
Assistant Attorney General

CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (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 Wis. Stat. § (Rule) 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 19th day of December, 2013.

Tiffany M. Winter
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