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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT IV

Case No. 2014 AP 301-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

DEBORAH K. SALZWEDEL,

Defendant-Appellant.

ON APPEAL FROM THE JUDGMENT OF
CONVICTION ENTERED IN THE JUNEAU COUNTY
CIRCUIT COURT, THE HONORABLE PAUL S.
CURRAN PRESIDING

BRIEF AND APPENDIX PLAINTIFF-RESPONDENT

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BRIEF OF THE PLAINTIFF-RESPONDENT

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

On July 12, 2012, the State of Wisconsin filed a two-count criminal complaint charging Ms. Deborah Salzwedel with operation of a motor vehicle under the influence of an intoxicant, third offense, and also with operating a motor vehicle with a prohibited alcohol content, third offense. (R 1). On January 22, 2013, trial counsel filed a Motion to Suppress alleging that the officer who stopped Ms. Salzwedel had neither reasonable suspicion nor probable cause to stop Ms. Salzwedel in her vehicle on the day of the crime. (R 7). A hearing was held on the Motion to Suppress on February 7, 2013. (R 23). The circuit court denied the suppression motion. (R 23, 26:20-21). On October 23, 2013 Ms. Salzwedel entered a ***GUILTY PLEA*** (bold and italics added for emphasis) to count 2, and was sentenced to 50 days in the county jail, and the sentence was stayed pending appeal.

ARGUMENT

THE SUPPRESSION MOTION WAS PROPERLY DENIED AS THE INVESTIGATORY STOP WAS SUPPORTED BY REASONABLE SUSPICION.

- A. The legal standards applicable to seizure for the purpose of further investigation.

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, *id.* 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 a law enforcement 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). In other words, the seizure is reasonable if the officer can point to specific and articulable facts that would lead the officer, in light of the officer’s training and experience, to reasonably suspect that the individual committed, or was about to commit a crime. *State v. Walli*, 2011 WI App 86, ¶ 8, 334 Wis. 2d 402, 799 N.W.2d 898.

Reasonable suspicion must be more than a hunch, but the officer does not have to rule out all innocent explanations for an individual’s behavior before performing an investigatory stop. *State v. Washington*, 2005 WI App 123, ¶ 16, 284 Wis. 2d 456, 700 N.W.2d 305. When an officer encounters a situation in which an individual’s behavior leads to reasonable inferences of both lawful and unlawful behavior, it is not unreasonable for the officer to perform a brief stop. *See State v. Begicevic*, 2004 WI App 57, ¶ 7, 270 Wis. 2d 675, 678 N.W.2d 293 (citing *State v. Waldner*, 206 Wis. 2d 51, 61, 556 N.W.2d 681 (1996)). *See also State v. Jackson*, 147 Wis. 2d 824, 835, 434 N.W.2d 386 (1989). In fact, it is considered “the essence of good police work [] to freeze the situation until [the officer can] sort out the ambiguity.” *Begicevic*, 270 Wis. 2d 675, ¶ 7.

The question of whether an officer had reasonable suspicion to perform an investigatory stop is a question of constitutional fact. *Walli*, 334 Wis. 2d 402, ¶ 10 (citing *State v. Powers*, 2004 WI App 143, ¶ 6, 275 Wis. 2d 456, 685 N.W.2d 869). A two-step standard of review is applied to questions of constitutional fact. *Walli*, 334 Wis. 2d 402, ¶ 10. The trial court’s findings of historical fact are upheld unless clearly erroneous, and, based on the historical facts, whether a reasonable suspicion justified the stop is reviewed *de novo*. *Id.* In this review, courts employ a commonsense approach. *State v. Rutzinski*, 2001 WI 22, ¶ 15, 241 Wis. 2d 729, 623 N.W.2d 516 (citations omitted).

No person may: Turn a vehicle at an intersection unless the vehicle is in proper position upon the roadway as required in s. [346.31](#) so as to comply with § 346.34(1)(a)(1) of the Wisconsin Statutes. In the event any other traffic may be affected by the movement, no person may turn any vehicle without giving an appropriate signal in the manner provided in s. [346.35](#) to comply with § 346.34 (1)(a)(3) of the Wisconsin Statutes.

In the event any other traffic may be affected by the movement, no person may turn any vehicle without giving an appropriate signal in the manner provided in s. [346.35](#) as provided in § 346.34(1)(b) of the Wisconsin Statutes.

No person may stop or suddenly decrease the speed of a vehicle without first giving an appropriate signal in the manner provided in s. [346.35](#) to the operator of any vehicle immediately to the rear when there is opportunity to give such signal to comply with § 346.34(2) of the Wisconsin Statutes.

This court should affirm the trial court's order denying the motion to suppress evidence and subsequent conviction as the State established specific and articulable facts that, in totality, led to the reasonable inference that Salzwedel was violating the rules of the road and probable cause was present for the stop and subsequent arrest.

B. The trial court correctly denied the suppression motion.

Salzwedel argued in her suppression motion, and now on appeal, that the traffic stop was a violation of her constitutional rights because the officer lacked reasonable suspicion to make the investigatory stop. Specifically, Salzwedel argues that Deputy Miltimore never testified that he did, in fact suspect a crime.

An officer does not have to rule out all innocent explanations before performing an investigatory stop. *Washington*, 284 Wis. 2d 456, ¶ 16. Even when an officer

does not observe anything illegal, an officer “cannot ignore the reasonable inference that [an individual’s actions] might also stem from unlawful behavior.” *Waldner*, 206 Wis. 2d at 61. Reasonableness does not need to be found and each specific and articulated fact, rather, “[t]he building blocks of fact accumulate. And as they accumulate, reasonable inferences about the cumulative effect can be drawn.” *Post*, 301 Wis. 2d 1, ¶ 16 (citation omitted).

Deputy Miltimore testified at roughly 8:58 p.m. he observed Ms. Salzwedel’s vehicle in front of him with no lights on. (Page 5, Exhibit B, Appellant Brief) It was getting dark. (Page 5, Exhibit B, Appellant Brief) The street lights turned on but Ms. Salzwedel’s vehicle lights were not. (Page 6, Exhibit B, Appellant Brief) There were other vehicles on the road and they had their lights on. (Page 6, Exhibit B, Appellant Brief)

The first time Ms. Salzwedel turns left without a turn signal she does so from a turn lane with a green arrow. (Page 7, Exhibit B, Appellant Brief) Deputy Miltimore states that while there was other traffic he was probably the only one affected because he was right behind her. (Page 7, Exhibit B, Appellant Brief)

Deputy Miltimore continued to follow Ms. Salzwedel on North Union Street. (Page 8, Exhibit B, Appellant Brief) While he was running her plate, her vehicle made a quick left turn in front of him without using its turn signal now a second time. (Page 9, Exhibit B, Appellant Brief) That is when he decided to make the stop. (Page 9, Exhibit B, Appellant Brief)

This second turn was not onto a street. Rather, it was into a parking lot. (Page 9, Exhibit B, Appellant Brief) Deputy Miltimore testified that there were other cars around when Ms. Salzwedel made this quick left turn. (Page 9, Exhibit B, Appellant Brief) Deputy Miltimore had to brake his vehicle because she broke her vehicle as she made the turn. (Page 9, Exhibit B, Appellant Brief)

CONCLUSION

In essence, he was affected by her turn without her using her turn signal thus triggering a reasonable articulate suspicion for making the stop.

When viewing the totality of the circumstances, Ms. Salzwedel being the only vehicle on the road without her lights on and her turning left twice without using her signal causing Deputy Miltimore to be affected and to brake, it is clear that Deputy Miltimore had every reason to stop Ms. Salzwedel.

Finally, this Court should deny this appeal based on Ms. Salzwedel entering a plea of guilty to the underlying charge of operation of a motor vehicle under the influence of an intoxicant, third offense. Entry of a plea of guilty as opposed to no contest should bar any challenge to the stop as it shows an admission to the facts alleged in the complaint.

For the reasons above, this court should affirm the decision and order denying the suppression motion and the judgment of conviction.

Dated this 16th day of June, 2014.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

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 1,932 words.

Dated this 16th day of June, 2014.

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**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 § 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 16th day of June, 2014.

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