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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT 2

Appeal No. 14-AP-349-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PENNY S. ROSENDAHL,

Defendant-Appellant.

BRIEF OF APPELLANT

**APPEAL FROM THE JUDGMENT RENDERED
ON DECEMBER 13, 2013 IN THE
CIRCUIT COURT FOR WINNEBAGO COUNTY
The Honorable Thomas J. Gritton, Presiding
Trial Court Case No. 13-CT-1076**

Respectfully submitted:

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES 1

STATEMENT ON ORAL ARGUMENT AND PUBLICATION.....1

STATEMENT OF THE CASE1-2

ARGUMENT.....2-4

CONCLUSION..... 4

CERTIFICATION 5

CERTIFICATION OF BRIEF 6

TABLE OF AUTHORITIES CITED

Wisconsin Cases Cited

State v. Secrist 224 Wis. 2d 201, 208, 589 N.W. 2d 387 (1999). 3

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

State v. Nordness, 128 Wis. 2d 15, 35, 381, N.W. 2d 300 (1986).....3

COURT OF APPEALS OF WISCONSIN
DISTRICT 2

STATE OF WISCONSIN,

Plaintiff-Respondent

BRIEF OF
DEFENDANT-APPELLANT

vs.

Appeal No. 14-AP-349-CR

PENNY S. ROSENDAHL,

Defendant-Appellant.

Following is the defendant-appellant's brief on appeal from the Order rendered on December 13, 2013 in the Circuit Court for Winnebago County, the Hon. Thomas J. Gritton, presiding, Case No. 13-CT-1076 wherein the Court denied the defendant's motion to suppress evidence.

STATEMENT OF ISSUES

The defendant-appellant filed a motion for suppression of evidence alleging that the Sheriff's Deputy lacked probable cause to arrest her for operating while intoxicated. The Circuit Court denied the defendant-appellant's suppression motion.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The defendant-appellant is not requesting oral argument or publication.

STATEMENT OF THE CASE

This is a case where the defendant-appellant was stopped by a Winnebago County Sheriff's Deputy on suspicion of operating a motor vehicle while intoxicated. The defendant-appellant filed a suppression motion which was denied by the Circuit Court. The defendant-appellant then entered a plea of no contest to operating while intoxicated, second offense. The Circuit Court then sentenced the defendant but stayed the imposition of the sentence pending the outcome of the appeal.

On October 26, 2013 at about 11:36 P.M. a Winnebago County Sheriff's Deputy saw the defendant's vehicle exit a bar parking lot. The vehicle pulled out in front of the deputy while the deputy was turning around a corner, making a right-hand turn just before the location of the parking lot driveway. The deputy's impression was that the driver of the vehicle may not have seen him and pulled out in front of him so that he had to apply his brakes heavily to avoid a collision. (5:18-20; A-AP 101) The deputy testified that he thought perhaps the person did not see him. (5:24; A-AP 101)

The deputy then followed the defendant-appellant's vehicle for a period of time, alleging that the vehicle was deviating within its own lane of traffic. He further indicated that he observed the vehicle come over and make contact with the center line on a couple of occasions and make contact and slightly cross the centerline into the oncoming lane of traffic. The officer further testified that his dash video was in operation during this time. He further indicated that it was on the basis of these operations that he decided to stop the defendant-appellant's vehicle. (6:3-12; A-AP 102)

ARGUMENT

The Sheriff's Deputy, when testifying about his initial contact with Penny Rosendahl's vehicle, indicated that he did not choose to stop the vehicle after it exited the bar driveway. He felt that the person just didn't see him or there was a misunderstanding. (5:22-25; A-AP 101) He further indicated that he chose to turn around and just investigate further. This is the point at which Exhibit 1, the squad car video, becomes relevant. A review of Exhibit 1 reveals that Penny Rosendahl drove in a very controlled, straight path in her lane of traffic. She did not cross the center line. She may, and I stress "may", have touched the centerline with her vehicle as she chose the path within her own lane, closer to the centerline than to the fog line but there was no drifting or weaving. It appeared from the video that the speed of

Ms. Rosendahl's vehicle remained constant and it appears inconclusive as to whether the vehicle actually touched the centerline.

A review of Exhibit 1 reveals no weaving or drifting and only the very slightest of deviation from a straight line path of driving. Further review of the squad car video shows a vehicle approaching and passing from the opposite lane. The approaching vehicle did not, nor did it need to, take any evasive action as Ms. Rosendahl's vehicle was within her lane of traffic during the approach of the vehicle in the opposite lane of traffic.

The standard of review for the Court has been well-established in the case law. It is as follows: "Whether an arrest was supported by probable cause is a question of constitutional fact, State v. Secrist 224 Wis. 2d 201, 208, 589 N.W. 2d 387 (1999). Questions of constitutional fact present a mixed question of fact and law; we review the trial court's factual finding under the clearly erroneous standard, but review the application of those facts to constitutional principles independently. State v. Post. 2007 WI 60, 301 Wis. 2d 1, 733 N.W. 2d 634. Because the facts here are undisputed, we address only the question of law of whether the facts supported probable cause, which we review de novo."

When reviewing the facts, the issue here is whether the deputy had probable cause to stop Ms. Rosendahl's vehicle. Again, the principle probable cause under these circumstances has been well established and that is to "determine whether probable cause to arrest exists, the Court looks at the totality of the circumstances to determine whether the arresting officer's knowledge at the time of the arrest would lead a reasonable police officer to believe that the defendant was operating a motor vehicle under the influence of an intoxicant." State v. Nordness, 128 Wis. 2d 15, 35, 381, N.W. 2d 300 (1986).

In this particular case, the defendant-appellant submits that a review of Exhibit 1 did not present circumstances which would give the deputy reasonable cause to believe that Ms. Rosendahl was operating her vehicle while intoxicated, considering both Exhibit 1 and the testimony of the deputy at the time of the motion to suppress as it relates to the initial contact between the deputy and Ms. Rosendahl when she pulled out of the driveway of the bar.

CONCLUSION

The Circuit Court's Order denying the defendant-appellant's motion to suppress should be reversed.

Respectfully submitted this 9th day of April, 2014.

_____/s/_____
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COURT OF APPEALS OF WISCONSIN
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

CERTIFICATION OF BRIEF

-vs -

Appeal No. 14-AP-349-CR

PENNY S. ROSENDAHL,

Defendant-Appellant.

I hereby certify that this brief conforms to the rules contained in Sec. 809.19(8)(b) and (c) for a brief produced with a monospaced font. The length of this brief is four pages.

_____/s/_____

Earl J. Luaders

Attorney for Defendant-Appellant

COURT OF APPEALS OF WISCONSIN
DISTRICT II

STATE OF WISCONSIN,

Plaintiff-Respondent,

CERTIFICATION OF
COMPLIANCE WITH
RULE 809.12(12)

-vs -

Appeal No. 14-AP-349-CR

PENNY S. ROSENDAHL,

Defendant-Appellant.

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 9th day of April, 2014.

_____/s/_____
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