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STATE OF WISCONSIN  
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**CLERK OF COURT OF APPEALS  
OF WISCONSIN**

DISTRICT IV

Case No. 2014AP000515-FT

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STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

DANIEL S. IVERSON,

DEFENDANT-RESPONDENT.

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APPEAL FROM AN ORDER GRANTING MOTION TO  
SUPPRESS AND FOR DISMISSAL ENTERED IN THE  
CIRCUIT COURT FOR LA CROSSE COUNTY, THE  
HONORABLE RAMONA A. GONZALEZ, PRESIDING

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SUPPLEMENTAL BRIEF OF THE  
PLAINTIFF-APPELLANT

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**ARGUMENT**

Trooper Larsen's stop of Iverson's vehicle was supported by probable cause and reasonable suspicion that an occupant committed a non-traffic forfeiture offense. The State offers the following additional argument in response to this Court's recent order.

A. Police may conduct an  
investigatory traffic stop  
based upon reasonable  
suspicion of an offense  
which always constitutes a  
forfeiture

In its order requiring supplemental briefing, the parties were directed to the holding in *State v. Krier* that “when a person’s activity can constitute either a civil forfeiture or a crime, a police officer may validly perform an investigative stop ....” 165 Wis.2d 673, 678, 478 N.W.2d 63, 65 (Ct. App. 1991). In connection with its holding, the Court further emphasized the offenses which serve the basis for Trooper Larsen’s traffic stop cannot constitute a crime.

Authority decided after *Krier* has established a significantly less restrictive standard concerning which offenses may serve as the basis of a traffic stop. In *State v. Griffin*, 183 Wis.2d 327, 515 N.W.2d 535 (Ct. App. 1994), a decision decided only three years after *Krier*, this Court upheld an officer’s investigatory stop of a vehicle for a perceived violation of Wis. Stat. § 341.15 which prohibits operation of a vehicle that is either unregistered or for which a registration application has not been filed. 183 Wis.2d at 333-34.

The alleged violation, like littering, Wis. Stat. § 287.81(2), could not constitute a crime. WIS. STAT. § 341.15(3)(a). Nevertheless, the Court concluded that specific and articulable facts justified a temporary traffic stop and did not violate Griffin’s right to be free from unreasonable search and seizure. *Griffin* at 333-34.

Following *Griffin*, the Wisconsin Supreme Court has similarly held, without discussion concerning whether the perceived forfeiture could also constitute a crime under certain circumstances, that an officer may make an investigatory stop if the officer reasonably suspects that a person is violating a noncriminal traffic law. *County of Jefferson v. Renz*, 231 Wis.2d 293, 310, 603 N.W.2d 541, 549 (1999) (citing *Griffin* at 333-34).

Numerous cases decided after *Griffin* and *Renz* have also upheld traffic stops based upon similar “forfeiture-only” offenses. *See e.g. State v. Gammons*, 2001 WI App 36, ¶¶ 7-9, 241 Wis.2d 296, 301-02, 625 N.W.2d 623, 626-27 (reasonable suspicion of vehicle registration violation), *State v. Colstad*, 2003 WI App 25, ¶¶ 13, 260 Wis.2d 406, 417, 659 N.W.2d 394, 399 (reasonable suspicion of inattentive driving).

Accordingly, the State maintains that whether Trooper Larsen’s stop of Iverson’s vehicle was predicated upon reasonable suspicion of an offense which can never constitute a crime does not affect the constitutionality of the traffic stop.

**B. Law enforcement may initiate an investigatory stop based upon reasonable suspicion of a non-traffic forfeiture offense**

The State next turns to whether the articulable suspicion justifying an investigatory stop may be based upon a violation of a *non-traffic* forfeiture. To be precise, does the mere fact that the basis for a traffic stop involves reasonable suspicion of an

offense other than a “traffic regulation” as defined in Wis. Stat. § 345.20(1)(b) render the seizure of that automobile unconstitutional?

The State concedes it is unaware of authority directly addressing the legality of traffic stops based upon non-traffic forfeiture offenses. The court correctly acknowledges that Wis. Stat. § 345.22 authorizes a traffic officer with reasonable grounds to believe that a person has violated a traffic regulation to *arrest* that person, but the same statute is silent as to legality of an *investigative stop* based upon reasonable suspicion of a forfeiture which is not a “traffic regulation.”

However, the State respectfully maintains no rational reason exists for this Court to adopt a rule in which the constitutionality of a traffic stop hinges upon whether the observed violation involves a forfeiture referenced by Wis. Stat. § 345.20(1)(b).

To establish such a distinction would essentially transform an automobile to a sanctuary, affording its occupants immunity from non-traffic forfeitures not enjoyed by those committing the same offense elsewhere and leaving police without recourse to properly enforce numerous state statutes and municipal ordinances.

Further illustrating the potential rule’s shortcomings, an officer may possess only reasonable suspicion to believe a litterbug is disposing of garbage on city streets, Wis. Stat. § 287.81(2)(a), a young adolescent is smoking a cigarette, Wis. Stat. § 254.92(2), or a hunter is discharging a firearm from a vehicle, Wis. Stat. §

167.31(2)(c). Despite being otherwise lawfully permitted to temporarily detain the individual and investigate the perceived violation, the same officer would be forced to stand by idly if the above-referenced perpetrators were located within a moving vehicle. Only upon observing that same vehicle engage in an unsafe lane deviation, follow another vehicle too closely, or commit any other traffic offense would the officer then gain the lawful authority to further investigate the above-referenced offenses.

As demonstrated by the above hypothetical, instead of preserving constitutional safeguards, prohibiting investigatory stops based upon a reasonable suspicion of a forfeiture other than a “traffic regulation” would create an arbitrarily elevated level of protection for vehicle occupants. Even worse, the rationale for doing so would stem not from essential constitutional considerations but simply because Wis. Stat. chapters 340-351 do not encompass prohibitions against all unlawful activity one could commit while in a motor vehicle, including conduct already prohibited by other statutes.

Accordingly, the State respectfully requests that this Court make the sound determination that reasonable suspicion of a forfeiture offense, regardless of whether it satisfies the statutory definition of a “traffic regulation” pursuant to Wis. Stat. § 345.20(1)(b), is a sufficient basis to temporarily seize a vehicle for further investigation of that offense.

The State also maintains that Trooper Larsen’s stop of Iverson’s vehicle was nevertheless supported by probable cause to believe a violation

of Wis. Stat. §§ 287.81(2)(a)-(b) had occurred. *See* State's Initial Brief at 9. "When an officer observes unlawful conduct there is no need for an investigative stop: the observation of unlawful conduct gives the officer probable cause for a lawful seizure." *State v. Waldner*, 206 Wis.2d 51, 59, 556 N.W.2d 681, 685 (1996).

## CONCLUSION

For the reasons offered in the State's principal brief, its reply brief, and this supplemental brief, the State respectfully requests that this court reverse the order of the circuit court granting Iverson's motion to suppress evidence.

Dated this 10th day of September, 2014.

## **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 1,046 words.

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John W. Kellis  
Assistant District Attorney

## **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 at La Crosse, Wisconsin, this 10th day of September, 2014.

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John W. Kellis  
Assistant District Attorney



## **CERTIFICATION OF MAILING**

I hereby certify in accordance with Wis. Stat. 809.80(4), on September 10, 2014, I deposited in the United States mail for delivery to the clerk by first-class mail, the original and five copies of the plaintiff-appellant's brief and appendix.

Dated this 10th day of September, 2014.

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John W. Kellis  
Assistant District Attorney