

RECEIVED

09-29-2014

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

September 25, 2014

BY U.S. MAIL AND ECF

Wisconsin Court of Appeals – District IV
Office of the Clerk
110 E. Main St., Suite 215
P.O. Box 1688
Madison, WI 53701-1688

RE: State of Wisconsin v. Daniel S. Iverson
Appeal No.: 14-AP-515-FT
La Crosse County Case Nos.: 13-TR-4032 and 4033

Dear Clerk:

Pursuant to the court's order requesting supplemental letter briefs, I am filing Respondent Daniel S. Iverson's Supplemental Letter Brief along with five (5) copies of same. A copy is also being served upon the La Crosse County District Attorney and filed with the La Crosse County Clerk of Courts.

ARGUMENT

**I. REASONABLE SUSPICION OF A VIOLATION OF A
NON-TRAFFIC FORFEITURE THAT HAS NO
PARALLEL CRIMINAL COUNTERPART IS
INSUFFICIENT JUSTIFICATION FOR AN
INVESTIGATORY TRAFFIC STOP.**

Seizure of a driver of a vehicle by the State Patrol due to reasonable suspicion of a violation by a passenger of a non-traffic ordinance that has no parallel statutory criminal counterpart is unjustified under Wisconsin law.

A. There Is No Statutory Authority For The State Patrol To Stop A Vehicle to Arrest Based Upon A Belief That A Passenger Has Violated A Non-traffic Ordinance That Has No Parallel Criminal Counterpart.

Section 345.22 of the Wisconsin statutes provides as follows:

A person may be arrested without a warrant for the violation of a traffic regulation if the traffic officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation.

Id. Section 345.22 expresses the legislature's intent that a person not be arrested without a warrant for a traffic regulation violation unless a traffic officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation. Authority is not given to arrest persons for violations of non-traffic regulations, forfeitures or other non-criminal offenses, which are civil in nature.

No other statute authorizes an arrest or traffic stop for a non-traffic ordinance without a statutory counterpart. Section 345.28, WIS. STAT., titled "Nonmoving violations" and which addresses parking violations does not give officers authority to arrest a person. Chapter 778, which governs forfeitures, also does not provide authority to law enforcement to arrest/detain for violations of either WIS. STAT. § 287.81 or the local littering ordinance cited by the State in its brief as an alternate justification for the stop.

The general ordinance procedures in WIS. STAT. § 66.0114, provide local law enforcement officers¹ with authority to arrest an ordinance violator by utilizing a warrant or summons under WIS. STAT. §

¹ The Wisconsin State Patrol is not even authorized under WIS. STAT. § 66.0113 to issue citations for violations of ordinances (apparently including those for which a statutory counterpart exists), as it provides that authority to local law enforcement:

Citations authorized by under this section may be issued by law enforcement officers of the county, town, city, village, town sanitary district or public inland lake protection and rehabilitation district.

968.04, or if applicable, a citation under WIS. STAT. § 778.25 or 26 (neither of which is applicable here).

Section 66.0114 also provides an officer with authority to “arrest the offender in all cases without warrant under s. 968.07.” However, WIS. STAT. § 968.07 only gives law enforcement authority to arrest in four circumstances: (1) with a warrant; (2) if the officer has reasonable grounds to believe a warrant has been issued in the state; (3) if the officer has reasonable grounds to believe that a felony warrant has been issued in another state; and (4) there are reasonable grounds to believe that the person is committing or has committed a crime. None of those circumstances is present here.

The State cites several cases in which forfeitures formed the bases for the stops at issue; however, they were all traffic forfeitures. (State’s Supplemental Brief at 2-3). They are not on point as this case involves the assertion of a non-traffic forfeiture with no criminal counterpart as the basis for the stop.

As noted by this court in the request for supplementary briefing, *State v. Krier*, 165 Wis. 2d 673, 478 N.W.2d 63 (Ct. App. 1991) held, “[W]hen a person’s activity can constitute either a civil forfeiture or a crime, a police officer may validly perform an investigatory stop pursuant to s. 968.24, Stats.” *Krier* clearly does not support the State’s position because a passenger in an automobile tossing a cigarette butt is not a crime.

The lack of authority for the stop in this case is buttressed by the fact that statutory authority to arrest for ordinance violations was removed when WIS. STAT. 968.07 was passed. In *City of Madison v. Two Crow*, 88 Wis. 2d 156, 276 N.W.2d 359, the defendant was arrested without a warrant for malicious destruction of property, a City of Madison ordinance violation. The defendant asserted that the authorizing statute, WIS. STAT. § 968.07 only gave law enforcement arrest powers absent a warrant (or reasonable belief thereof) if there were a reasonable grounds to believe that a crime was being or had been committed. *Id.* at 160. The defendant noted that a predecessor statute, WIS. STAT. § 954.03 (1967), had expressly provided law enforcement with authority to arrest upon reasonable grounds that an

ordinance violation had been committed, but that language had been excised from section 968.07 (and it still is). *Id.* at 161. Ultimately the court held that a warrantless arrest for the ordinance violation was authorized because the arresting officer had reasonable grounds to believe that the defendant had committed an ordinance that had an equivalent statutory criminal counterpart, and the officer was not obligated to charge the crime in order to have a valid arrest. *Id.*

The State's position that the stop here can be justified because there is a distinction between an investigatory stop and an arrest is unpersuasive given the legislature's determination that low level civil offenses that cannot be charged as crimes need not require arrest and civil (and even misdemeanor) citations can be mailed or issued later. The privacy interest outweighs the State's interest in that circumstance. Furthermore, *State v. Waldner* is inapposite as it involved a stop for a reasonable suspicion of what could have been a traffic offense or a traffic crime. 206 Wis. 2d 51, 58, 556 N.W.2d 681 (1996).

It is the State's public policy that good reason does not exist to stop a private vehicle for non-traffic ordinance violations that are not also crimes. If the legislature felt differently, the authorizing statute could have been amended following the *Krier* and *Two Crows* decisions.

CONCLUSION

For the reasons stated in the Respondent's Brief and this Supplemental Brief, the trial court's decision should be affirmed.

Respectfully submitted,

JOHNS, FLAHERTY & COLLINS, S.C.

Joe Veenstra

e-mail: joe@johnsflaherty.com

JGV:

cc: Daniel Iverson
A.D.A. John Kellis
Clerk of Circuit Court, La Crosse County

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 1,070 words.

Joseph G. Veenstra, SBN: 1028139

CERTIFICATION OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with Wis. STAT. § 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 September, 2014.

Joseph G. Veenstra, SBN: 1028139