STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Appellate Case No. 2014AP2369

COUNTY OF LANGLADE,

Plaintiff-Respondent,

-vs-

CASEY JOSEPH STEGALL,

Defendant-Appellant.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

Appealed from a Judgment of Conviction Entered in the Circuit Court for Langlade County, the Honorable Fred W. Kawalski Presiding
Trial Court Case Nos. 12 TR 641 and 12 TR 642

Respectfully Submitted:

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STATEMENT OF THE ISSUE

I. WAS THE OFFICER'S TESTIMONY THAT MR. STEGALL'S VEHICLE MADE AN "ABRUPT TURN … IN A MANNER THAT [THE OFFICER] CONSIDERED RECKLESS AND … TOO FAST" SUFFICIENT, WITHOUT FURTHER SPECIFIC AND ARTICULABLE FACTS, TO SUPPORT REASONABLE SUSPICION TO DETAIN AN INDIVIDUAL?

Trial Court Answered: **Yes.**

STATEMENT ON ORAL ARGUMENT

The Defendant-Appellant believes oral argument is unnecessary in this case. Pursuant to Rule 809.22(2)(b), stats., the briefs will fully develop and explain the issues. Therefore, oral argument would be of only marginal value and would not justify the expense of court time.

STATEMENT ON PUBLICATION

Defendant-Appellant recognizes that this appeal, as a one-judge appeal, does not qualify under this Court's operating procedures for publication. Hence, publication is not sought.

STATEMENT OF FACTS AND CASE

On August 7, 2012, the defendant, Mr. Stegall, was cited for Operating While Under the Influence – First Offense and Operating with a Prohibited Alcohol Concentration – First Offense. (R. 1-2) Mr. Stegall subsequently entered not guilty pleas and filed a Notice of Motion and Motion to Suppress Based Upon Lack of Reasonable Suspicion to Detain the Defendant. (R. 3, 5) Mr. Stegall filed an additional motion challenging his arrest, however, the decision to deny that motion is not being challenged on appeal. (R. 6) A motion hearing on both motions took place on May 7, 2013. (R. 20)

At the motion hearing, the County offered the testimony of Sergeant Andrew W. Tainter of the Langlade County Sheriff's Department. (R. 20, p. 4) Sergeant Tainter testified that at approximately 2:48 AM on August 7, 2012, he was checking the church at the corner of Fraley Road and Highway 64 when he observed "a vehicle traveling westbound on Highway 64, and the vehicle made an abrupt turn … northbound on Fraley Road in a manner that [he] considered reckless and certainly too fast and imprudent speed to be turning the corner at." (R. 20, pp. 4-5) On cross-examination, Sergeant Tainter was asked to objectively described what was reckless about the turn. (R. 20, p. 13) Sergeant Tainter could only reply that it was too fast. (R. 20, p. 13) Sergeant Tainter could not see whether the vehicle left its lane of travel. (R. 20, p. 13) He did not hear the vehicle squeal its tires. (R. 20, p. 13) He did not see it skid. (R. 20, p. 14) He did not see it cross the centerline of the road or disobey any traffic sign or signal. (R. 20, p. 14) Finally, Sergeant Tainter could not even estimate the vehicle's speed. (R. 20, p. 14)

Sergeant Tainter further testified that he pursued the

vehicle up Fraley Road and down Mr. Stegall's driveway. (R. 20, p. 5) The driveway is about 150 feet and leads to a single-family residence. (R. 20, p. 18) Sergeant Tainter could not recall whether he activated his squad emergency lights prior to turning into the driveway or in the driveway. (R. 20, p. 16) However, Sergeant Tainter did recall observing Mr. Stegall get out of his vehicle and begin to walk towards the house. (R. 20, p. 5) Sergeant Tainter continued down the driveway and honked his horn, although he could not recall how many times. (R. 20, pp. 5, 16) This is the only driveway to the home and "the only way for a person to go to that house." (R. 20, p. 9) Sergeant Tainter further testified that his intention in going down the driveway was to detain the driver for the behavior he observed and had Mr. Stegall continued on Fraley Road, he would have effected a traffic stop. (R. 20, pp. 16-17)

Mr. Stegall continued walking towards the house when Sergeant Tainter got out of his vehicle and said "something to get the driver's attention, but [Mr. Stegall] ignored [Sergeant Tainter] and continued walking towards the house." (R. 20, p. 5) Sergeant Tainter pursued Mr. Stegall to the doorstep and Mr. Stegall entered the house and shut the door. (R. 20, p. 5) Sergeant Tainter knocked on the door and Mr. Stegall opened the door. (R. 20, p. 6) According to Sergeant Tainter, he then conducted "a *Terry* stop" and Mr. Stegall came outside. (R. 20, pp. 6, 17) At this point, Sergeant Tainter detected an odor of intoxicants and a subsequent investigation led to Mr. Stegall being placed under arrest for Operating While Under the Influence – First Offense. (R. 20, pp. 6-8)

At the conclusion of the hearing, the issues were briefed by both parties. (R. 8, 9) On September 25, 2013, the trial court filed a written decision, denying both of defendant's motions. (R. 10)

Mr. Stegall was convicted after a court trial and the penalties were stayed pending the outcome of this appeal. (R. 12)

ARGUMENT

The right of citizens to be free from "unreasonable searches and seizures" is protected by both the Fourth Amendment to the United States Constitution and Article I, § 11 of the Wisconsin Constitution.

Any time an individual is seized—either in an arrest situation or during the course of an investigative detention—the fourth amendment is implicated and either probable cause or reasonable suspicion must exist for the seizure of the person to be constitutional. *See Terry v. Ohio,* 392 U.S. 1 (1968); *Wong Sun v. United States,* 371 U.S. 471 (1963); *Henry v. United States,* 361 U.S. 98 (1959).

The County has the burden of proving that a warrantless search or seizure was reasonable and in conformity with the Fourth Amendment. *See State v. Quartana*, 213 Wis. 2d 440, 445, 570 N.W.2d 618 (Ct. App. 1997). To conduct a lawful traffic stop, an officer needs to have reasonable suspicion that a crime or traffic violation has been or will be committed. *State v. Popke*, 2009 WI 37, ¶¶ 13, 23, 317 Wis. 2d 118, 765 N.W.2d 569. Reasonable suspicion exists when, under the totality of the circumstances, "the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime." *State v. Post*, 2007 WI 60, ¶ 13, 301 Wis. 2d 1, 733 N.W.2d 634 (citation omitted). "Such a stop must be based on more than an officer's inchoate and unparticularized suspicion or hunch." *Id.* at ¶ 10 (citation omitted). Instead, the officer "must be able to point to

specific and articulable facts which, taken together with rational inferences from those facts, reasonable warrant the intrusion of the stop." *Id*. (citation omitted). The test is an objective one, and entails consideration of the "totality of the facts and circumstances" present at the time of the detention. *State v. Guzy*, 139 Wis. 2d 663, 679-80, 407 N.W.2d 548 (1987); *United States v. Arvizu*, 534 U.S. 266 (2002).

On appeal, the applicable standard of review is as follows:

> Whether there is probable cause or a reasonable suspicion to stop a vehicle is a question of constitutional fact. A finding of constitutional fact consists of the circuit court's findings of historical fact, which we review under the "clearly erroneous standard," and the application of these historical facts to constitutional principles, which we review de novo.

Popke, 317 Wis. 2d at 126 (citations omitted).

Whether and at what point Mr. Stegall was seized was not ruled upon by the trial court. "A seizure occurs 'when an officer, by means of physical force or a show of authority, restrains a person's liberty.'" *State v. Kelsey C.R.*, 2001 WI 54, ¶ 30, 243 Wis. 2d 422, 626 N.W.2d 777 (quoting *State v. Harris*, 206 Wis. 2d 243, 253, 557 N.W.2d 245 (1996)); *see also Terry v. Ohio*, 392 U.S. 1, 16 (1968) ("It must be recognized that whenever a police officer accosts an individual and restrains his freedom to walk away, he has 'seized' that person."). The United States Supreme Court has indicated that a stop occurs where an officer maneuvers the police car to block the defendant or control his movement. *Michigan v. Chesternut*, 486 U.S. 567, 575 (1988) (concluding that a police officer had not made a sufficient showing of authority when he slowly followed the defendant in his police car but did not activate a siren or flashers, order

the defendant to stop, display weapons, or maneuver the police car to block the defendant or control his movement). Other courts have held that an officer's act of parking his or her vehicle in such a manner as to restrict a defendant's potential movement constitutes an investigatory stop and limited seizure within the meaning of *Terry*, 392 U.S. 1. *See, e.g., United States v. Packer*, 15 F.3d 654, 657 (7th Cir. 1994).

As noted above, Sergeant Tainter could not recall whether he had activated his squad's emergency lights prior to entering Mr. Stegall's driveway or whether he activated his emergency lights in the driveway. (R. 20, p. 16) Rather, the trial court and both parties seem to agree that there was at least a seizure when Mr. Stegall opened his front door. (R. 8, 9, 10)

In the present case, Sergeant Tainter pursued Mr. Stegall's vehicle up Fraley Road and down his 150 foot driveway, while honking his horn. (R. 20, pp. 5, 16, 18) This is the only driveway to the home and "the only way for a person to go to that house." (R. 20, p. 9) Sergeant Tainter further testified that his intention in going down the driveway was to detain the driver for the behavior he observed and had Mr. Stegall continued on Fraley Road, he would have effected a traffic stop. (R. 20, pp. 16-17) Finally, Sergeant Tainter's own words were that he conducted "a *Terry* stop" when Mr. Stegall opened his door. (R. 20, pp. 6, 17)

Given the circumstances, at a minimum, a *Terry* stop occurred when Mr. Stegall opened his front door and he was detained within the meaning of the Fourth Amendment.

The ultimate question then becomes whether the Sergeant's testimony was sufficient for the County to meet its burden to show reasonable suspicion.

The power to conduct a detention of a driver for an alleged traffic offense is an objective test. A law enforcement officer may not infringe on a individual's right to be free from a stop and detention unless that officer has a suspicion grounded in "specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime." *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548, 554 (1987). This test is a balance of the "nature and quality of the intrusion on personal security against the importance of governmental interests alleged to justify the intrusion." *Id.* at 677, 407 N.W.2d 554 (*citing United States v. Hensley*, 469 U.S. 221, 228 (1985)). A significant factor in determining the nature and quality of the intrusion is the ability of the officer to articulate objective facts indicating criminal activity. *United States v. Pavelski*, 789 F.2d 485, 489 (7th Cir. 1986).

Objective is defined as follows: "Of, relating to, or based on externally verifiable phenomena, as opposed to an individual's perceptions, feelings, or intentions." Black's Law Dictionary, 1103 (8th Ed. 2004). The objective test articulated by the court follows this definition by demanding that an officer rely on something more than an "inchoate and unparticularized suspicion or 'hunch'" . . . . *Guzy* at 663, 407 N.W.2d at 554. (*citing Terry v. Ohio*, 392 U.S. 1, 27 (1968)). A belief that is not supported by objective factual observations will not be tolerated. *Id.*

In the present set of facts, Sergeant Tainter could not give any specific or articulable facts which contributed to his belief that the turn made by Mr. Stegall was too fast and reckless. When specifically questioned about factual observations that would have supported his opinion, Sergeant Tainter could not provide even one. For example, when asked whether the car squealed its tires the officer answered

no, not that he could hear. (R. 20, p. 13) When asked if the car jerked, vibrated or skidded, the officer said he did not observe any of that. (R. 20, p. 14) When asked if the vehicle crossed the centerline of the road as it was turning, the officer said he did not see it do so. (R. 20, p. 14) When asked if the vehicle disobeyed any stop signal at the intersection the officer said no it did not. (R. 20, p. 14) When asked if the officer knew the speed of the car he answered that he did not. (R. 20, p. 14) Sergeant Tainter could not even estimate a possible range of speed. (R. 20, p. 14) In fact, the officer was unable to articulate any specific objective fact or facts to corroborate his assertion that the vehicle turned the corner too fast. When repeatedly asked to clarify and flesh out his opinion with facts, the only testimony Sergeant Tainter was able to provide was the entirely circular offering that, in his judgment, the vehicle turned a corner "in a way that was too fast, and in his opinion . . . was reckless." (R. 20, p. 13) In short, Sergeant Tainter offered nothing more than a series of repetitive conclusory statements unsupported by factual observations.

The statement that Tainter believed the vehicle went around the corner too fast and reckless was nothing more than a conclusion that is unsupported by objective particularized observations. Had Tainter testified that he believed the vehicle was driving too fast and reckless *because he observed an inability of the vehicle to maintain a proper turning radius; or because he heard tires squealing; or because the defendant had to slam on his brakes to make the turn; or because he got a radar reading on the defendant that was over the speed limit; or because another vehicle had to take evasive action; or because he saw the vehicle fishtail; or because he heard the vehicle's engine revving loudly; or any number of other factual observations,* then his conclusion that the vehicle was driving too fast and reckless would be supported by objective facts. That is simply not the case here.

Instead of offering objective observations based upon articulable facts, Sergeant Tainter was only able to provide the court with an unparticularized hunch and factually unsupported conclusion that the car was going "too fast." This statement by Sergeant Tainter is nothing more than a belief based upon unverifiable evidence and is precisely the type of subjective law enforcement detention the constitution forbids. The Court has set a higher standard than this in its objective test before an officer may exercise his police powers in a traffic stop context.

CONCLUSION

For these reasons, Mr. Stegall respectfully requests that this Court reverse the denial of his motion to suppress, vacate the judgment of conviction, and remand for further proceedings.

Dated this ____ day of February, 2015.

Respectfully submitted,

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APPENDIX

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I hereby certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is proportional serif font. The text is 13 point type and the length of the brief is 2,366 words.

I also certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a) and that contains:

(1) a table of contents;
(2) relevant trial court record entries;
(3) the findings or opinion of the trial court; and
(4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Finally, I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, which complies with the requirements of Wis. Stat. § 809.19(12). The electronic brief is identical in content and format to the printed form of the brief. Additionally, this brief and appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on February 3, 2015. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

A copy of this certificate is included in the paper copies of this brief filed with the court and served on all opposing parties.

Dated this ____ day of February, 2015.

Respectfully submitted,

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