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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

Case No. 2015AP001220

STATE OF WISCONSIN,

Plaintiff-Appellant,

v.

JUSTIN CARL HERMAN HEMBEL,

Defendant-Respondent.

ON APPEAL FROM ORDERS OF
DISMISSAL AND SUPPRESSION,
BOTH ENTERED IN
ST. CROIX COUNTY CIRCUIT COURT,
THE HONORABLE ERIC J. LUNDELL,
CIRCUIT JUDGE, PRESIDING

PLAINTIFF-APPELLANT'S BRIEF

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STATEMENT OF THE ISSUE

Did Officer Kastens have probable cause to stop Hembel's vehicle after he observed the vehicle parked at a stop sign?

Ruling below: The circuit court concluded that Officer Kastens did not have probable cause to justify the stop of Hembel's vehicle.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The parties' briefs will adequately address the issue presented, and oral argument will not significantly assist the court in deciding this appeal.

The State takes no position on publication of this Court's decision and opinion.

STATEMENT OF THE CASE

The State of Wisconsin appeals a circuit court order granting Justin Carl Hembel's Motion to Dismiss and Motion to Suppress Evidence obtained as the result of a traffic stop. Hembel's vehicle was stopped on June 21, 2014. (R. 10, 5:7-10, 8:1-5). Hembel was issued citations for Operating a Motor Vehicle While Under the Influence of an Intoxicant, Second Offense, and Operating a Motor Vehicle with a Prohibited Alcohol Concentration, Second Offense. Hembel moved to suppress evidence obtained from the traffic stop. The Honorable Eric Lundell, St. Croix County Circuit Court, granted Hembel's motions to suppress and dismiss after a motion hearing on October 28, 2014. The court issued a written Order on May 18, 2015. (R. 11). The State appeals this Order.

On June 21, 2014, at approximately 2:30 a.m., Officer Joseph Kastens of the Roberts Police Department was parked in a fully marked squad car at the Park and Ride in Roberts, St. Croix County, Wisconsin. (R. 10, 5:7-10, 15-16). Around this time, a vehicle travelling westbound on 70th Avenue caught Officer Kastens's attention because it was the only vehicle driving on 70th Avenue. (R. 10, 5:17-22). The vehicle turned into the Flying J parking lot and later turned back onto 70th Avenue, driving eastbound. (R. 10, 5:18-19, 6:1-3). Officer Kastens observed the vehicle's headlights were not illuminated as it approached the intersection of 70th Avenue and Highway 65. (R. 10, 6:1-3). The vehicle stopped at the stoplight at the intersection. (R. 10, 6:10-11). The vehicle's headlights then turned on, and the vehicle continued on 70th Avenue. (R. 10, 6:10-14).

The vehicle then approached the intersection of 70th Avenue and 130th Street and stopped at the stop sign. (R. 10, 6:18-20). Officer Kastens observed the vehicle's reverse lights turn on as the vehicle stopped, indicating to Officer Kastens that the vehicle had shifted into park. (R. 10, 7:1-2). The vehicle's brake lights were not on after Officer Kastens observed the vehicle shift to park. (R. 10, 7:24-25). The vehicle was parked in the right lane of traffic, on the two-lane road. (R. 10, 12:12-13). Officer Kastens responded affirmatively when asked, "The vehicle was on the right side of the road, properly in traffic, correct?" (R. 10, 12:10-12). Officer Kastens testified that nothing obstructed his view of the vehicle as it approached the stop sign. (R. 10, 14:17-20). Officer Kastens drove toward the vehicle with his headlights illuminated to see if the driver needed assistance. (R. 10, 7:4-6, 18-19).

Officer Kastens sat in his squad car, behind the vehicle, at the stop sign for approximately ten seconds before the vehicle's reverse lights came on again; this indicated to Officer Kastens that the vehicle shifted back into drive. (R. 10, 7:12-13, 22-25). Officer Kastens estimated that the vehicle was parked at the stop sign for a total of approximately forty-five seconds. (R. 10, 13:8-9). Officer Kastens activated his emergency lights as the vehicle began driving from the stop sign. (R. 10, 7:13-14).

Officer Kastens identified the driver by his Wisconsin driver's license as Justin Hembel, and he issued Hembel a written warning for improper parking of a vehicle which is a violation of Wis. Stat. § 346.54 (1)(a). (R. 10, 8:8, 13-14). Hembel informed Officer Kastens that he had been using Google Maps on his cellular phone to find a friend's house. (R. 10, 12:1-5). Officer Kastens ultimately detected an odor of alcohol on Hembel, and the traffic stop resulted in Officer Kastens issuing Hembel two citations for Operating a Motor Vehicle While Under the Influence of an Intoxicant, Second Offense, and Operating a Motor Vehicle with a Prohibited Alcohol Concentration, Second Offense.

Hembel subsequently filed a Motion to Suppress Evidence obtained as a result of the stop and a Motion to Dismiss. At the hearing, the court granted both of Hembel's

motions and dismissed the case. (R. 10, 18:2). The court focused on Hembel's use of Google Maps, stating, "[W]e are discouraging people from driving and texting and using data ... So I can't see what this young man did wrong." (R. 10, 17:13-16). The court did not make additional findings. The court filed a written Order granting both the Motion to Suppress and Motion to Dismiss on May 18, 2015. (R. 11). The State appeals the circuit court's decision to grant both the Motion to Suppress and the Motion to Dismiss.

ARGUMENT

The State may appeal an order which results in suppressing evidence. Wis. Stat. § 974.05(1)(d)(2). The State may also appeal a final order or judgment that is adverse to the State. Wis. Stat. § 974.05(1)(a). In the present case, the circuit court's order suppressed the evidence and constituted a final order adverse to the State because the order dismissed the case. The State, therefore, is within its authority to appeal the circuit court's order.

OFFICER KASTENS HAD PROBABLE CAUSE TO STOP HEMBEL'S VEHICLE BASED ON HIS OBSERVATION THAT A TRAFFIC VIOLATION HAD OCCURRED.

A. STANDARD OF REVIEW.

A court erroneously exercises its discretion when the court misapplies the correct law. State v. Gary M.B., 2004 WI 33, ¶ 19, 270 Wis. 2d 62, 76, 676 N.W.2d 475, 483. This Court reviews the circuit court's decision to determine whether the circuit court applied the correct standard and also whether the circuit court used a "rational process to reach a reasonable conclusion." Gary M.B., 270 Wis. 2d 62, ¶ 19; *citing State v. Kruzycki*, 192 Wis. 2d 509, 525, 531 N.W.2d 429 (Ct. App. 1995).

The Record indicates that the circuit court's decision was primarily based on testimony that Hembel was using Google Maps when he parked his vehicle in the lane of traffic and that, essentially, the use of Google Maps is an exception to a traffic violation. (R. 10, 17:12-16). Thus, the proper

standard of review here is whether the circuit court erroneously exercised its discretion.

B. OFFICER KASTENS HAD PROBABLE CAUSE¹ TO STOP HEMBEL'S VEHICLE BECAUSE HE OBSERVED HEMBEL IMPROPERLY PARK ON THE STREET.

The circuit court granted Hembel's Motions to Suppress and Dismiss based on lack of probable cause. However, Officer Kastens observed Hembel commit a traffic violation when Hembel improperly parked in the lane of traffic. Hembel therefore violated Wis. Stat. § 346.54(1)(a), giving Officer Kastens probable cause to conduct a traffic stop.

A traffic stop is a seizure within the meaning of the Fourth Amendment. State v. Post, 2007 WI 60, ¶ 10, 301 Wis. 2d 1, 733 N.W.2d 634. A traffic stop is reasonable where an officer has probable cause to believe a traffic violation has occurred. State v. Gaulrapp, 207 Wis. 2d 600, 605, 558 N.W.2d 696 (Ct. App. 1996). "Probable cause refers to the quantum of evidence which would lead a reasonable police officer to believe that a traffic violation has occurred." State v. Popke, 2009 WI 37, ¶ 14, 317 Wis. 2d 118, 765 N.W.2d 569; citing Johnson v. State, 75 Wis. 2d 344, 348, 249 N.W.2d 593 (1977) (internal quotation marks omitted).

Wisconsin Statute § 346.54 sets forth the rules for parking and stopping on streets. The relevant provisions of the statute state:

(1) Upon streets where stopping or parking is authorized or permitted, a vehicle is not lawfully stopped or parked

¹ The Wisconsin Supreme Court released an opinion on July 14, 2015 holding, in part, "that reasonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops." State v. Houghton, 2015 WI 79, ¶ 30, No. 2013AP1581-CR, slip op. *6 (July 14, 2015). The standard at the time of this motion hearing was probable cause which is a higher standard than reasonable suspicion.

unless it complies with the following requirements:

(a) Upon a street where traffic is permitted to move in both directions simultaneously and where angle parking is not clearly designated by official traffic signs or markers, a vehicle must be parked parallel to the edge of the street, headed in the direction of traffic on the right side of the street.

(2) No person shall stop or leave a vehicle standing in violation of this section.

Thus, anyone who parks in a traffic lane on a street where traffic travels in both directions is in violation of Wis. Stat. § 346.54(1)(a). This Court and the Wisconsin Supreme Court have repeatedly held that a traffic stop is constitutional where an officer has probable cause to believe that a person committed a traffic violation. See e.g., Popke, 317 Wis. 2d 118 (holding that an officer had probable cause to believe a traffic violation had occurred after the officer observed a vehicle cross the center line); State v. Puchacz, 2010 WI App. 30, 323 Wis. 2d 741, 780 N.W.2d 536 (holding that an officer had probable cause to believe a traffic violation had occurred after the officer observed a “left-of-center violation”).

In Popke, the Wisconsin Supreme Court determined that an officer had probable cause to believe a traffic violation had occurred when he observed a vehicle swerve into the left lane of the road and then almost into the curb. Popke, 317 Wis. 2d 118, ¶ 3. The defendant was stopped by the officer and arrested for operating a motor vehicle while intoxicated. Id. ¶ 5. The defendant moved to suppress the evidence obtained as a result of the traffic stop. Id. ¶ 7. The Wisconsin Supreme Court held that the traffic stop was constitutional because the defendant had committed a traffic violation by crossing over the center of the road. Id. ¶¶ 9, 12. The officer observed the defendant’s vehicle cross over the center line of the road. Id. ¶ 16. None of the statutory exceptions applied,

and the officer thus had probable cause to believe a traffic violation had occurred. Id. ¶¶ 17, 21.

At the suppression hearing here, Hembel argued that the present case is directly analogous to State v. Fields, 2000 WI App. 218, ¶¶ 2-3, 239 Wis. 2d 38, 40, 619 N.W.2d 279 (R. 10, 15:4-6). However, Hembel's reliance on Fields is misplaced. In Fields, a police officer in a fully marked squad car approached an intersection where he noticed a vehicle stopped at a stop sign. Fields, 239 Wis. 2d 38, ¶¶ 2-3. The officer observed the vehicle remain stopped at the intersection for approximately five to ten seconds before driving away. Id. ¶ 4. The officer then conducted a traffic stop of the vehicle. Id. The officer testified that he found the vehicle to be suspicious because, among other factors, the length of time the vehicle was stopped was a few seconds longer than a normal stop. Id. ¶ 5. The circuit court found that the stop was justified under the community caretaker doctrine and that the circumstances justified the officer's suspicion that the driver may be committing a crime. Id. ¶ 8.

This Court reversed the circuit court's decision and held that the circumstances did not rise to the level of reasonable suspicion that the defendant had committed or was committing an unlawful act. Id. ¶ 23. This Court noted that the State had only pointed to the fact that the defendant was stopped at the stop sign for "slightly longer than normal." Id. This fact was not enough for the officer to make an inference that the defendant was engaged in illegal activity or attempting to evade the officer. Id.

The present case is readily distinguishable from Fields. First, the length of time Hembel was parked at the stop sign is significantly longer than the amount of time in Fields. Further, Hembel actually placed his vehicle in park at the stop sign. In Fields, the defendant's vehicle was stopped at a stop sign for merely five to ten seconds. Whereas here, Hembel parked his vehicle at a stop sign for forty-five seconds. (R. 10, 6:23-24, 13:8-9). Ten of the forty-five seconds included Officer Kastens driving up to the vehicle and subsequently sitting behind the vehicle. Finally, Hembel committed a traffic violation by parking at the stop sign in the lane of traffic.

Like in Popke, the officer here directly observed a traffic violation. Here, Hembel was parked in the right lane of a street. (R. 10, 12:12-13). Officer Kastens observed the vehicle remain parked at the stop sign for a significant period of time. (R. 10, 13:8-9). Officer Kastens had a relatively unobstructed view of the vehicle. (R. 10, 14:17-20). Moreover, Officer Kastens observed the vehicle's reverse lights illuminate as the vehicle shifted from drive to park. (R. 10, 7:1-2). The vehicle's brake lights were not on as the vehicle remained parked at the stop sign. (R. 10, 7:24-25). Officer Kastens subsequently observed the vehicle's brake lights and reverse lights again turn on as the vehicle shifted from park back into drive. (R. 10, 7:24-25). These specific observations indicated to the officer that Hembel was parked at a stop sign, which is a traffic violation.

When it comes to probable cause to stop here, it is irrelevant whether or not Hembel was using Google Maps while parked at the stop sign. Wisconsin Statute § 346.54 does not provide an exception to parking laws if a person is using Google Maps or an electronic device. By declaring this as an exception, the circuit court disturbed well-settled law. Because the circuit court relied on a non-existent exception to Wis. Stat. §346.54(1)(a), the circuit court erroneously exercised its discretion in granting Hembel's Motions to Suppress and to Dismiss.

Officer Kastens had probable cause to believe that a traffic violation had occurred. Officer Kastens observed Hembel commit a traffic violation by improperly parking in the street. Therefore, the stop was properly justified and is constitutional.

CONCLUSION

For the reasons stated above, the State respectfully requests that this Court reverse the decision of the circuit court and remand for further proceedings.

Dated this ____ day of September, 2015.

Respectfully submitted,

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CERTIFICATION AS TO FORM AND LENGTH

I 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, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 2,305 words.

Dated this ____ day of September, 2015.

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**CERTIFICATE 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 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 this ____ day of September, 2015.

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