

RECEIVED

11-17-2015

**CLERK OF COURT OF APPEALS
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 REPLY BRIEF

ALEXIS S. MCKINLEY
Assistant District Attorney
State Bar No. 1069737

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
alexis.mckinley@da.wi.gov

Attorney for Plaintiff-Appellant

TABLE OF CONTENTS

| | Page |
|---|------|
| TABLE OF AUTHORITIES | ii |
| ARGUMENT | 1 |
| OFFICER KASTENS HAD THE REQUISITE LEVEL OF JUSTIFICATION TO STOP HEMBEL’S VEHICLE WHEN HE OBSERVED HEMBEL COMMIT A TRAFFIC VIOLATION BY PARKING IN THE LANE OF TRAFFIC | 1 |
| CONCLUSION | 2 |
| CERTIFICATION AS TO FORM AND LENGTH | 3 |
| CERTIFICATE OF COMPLIANCE WITH RULE 809.12(13) | 4 |
| CERTIFICATE OF MAILING | 5 |

TABLE OF AUTHORITIES

| | Page |
|--|------|
| CASES: | |
| <u>State v. Anderson</u> , 155 Wis. 2d 77, 84, 454 N.W.2d 763, 766 (1990) | 1 |
| <u>State v. Post</u> , 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634..... | 1 |
| STATUTES: | |
| Wis. Stat. § 340.01 | 1 |
| Wis. Stat. § 346.54 | 1 |

ARGUMENT

OFFICER KASTENS HAD THE REQUISITE LEVEL OF JUSTIFICATION TO STOP HEMBEL'S VEHICLE WHEN HE OBSERVED HEMBEL COMMIT A TRAFFIC VIOLATION BY PARKING IN THE LANE OF TRAFFIC.

As asserted in the State's Brief-in-Chief, Officer Kastens had probable cause to stop Hembel based on a traffic violation for improper parking. Hembel essentially responds that he was not parked at the stop sign, but if he was, it was not a traffic violation, and if it was, he has an "actual innocent explanation": he was using Google Maps. (Resp't Br. 8).

Wisconsin Statute § 340.01(42m) defines parking as "the halting of a vehicle, whether occupied or not, except temporarily for the purpose of and while actually engaged in loading or unloading property or passengers." Hembel's vehicle was halted, or, parked, at the stop sign, and in the lane of traffic, as observed and described by Officer Kastens at 2:30 in the morning on June 21, 2014. Consequently, Officer Kastens had probable cause to believe Hembel committed a traffic violation of improper parking, contrary to Wis. Stat. § 346.54(1)(a). The reasonableness of a traffic stop is based on the totality of the circumstances surrounding the stop. State v. Post, 2007 WI 60, ¶ 13, 301 Wis. 2d 1, 733 N.W.2d 634. Officer Kastens' investigatory stop here was reasonable and permissible.

The circuit court's finding that the stop was impermissible, as there could be a logical explanation for perceived illegal behavior, is not supported by the law. As established by our Wisconsin Supreme Court, "police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop." State v. Anderson, 155 Wis. 2d 77, 84, 454 N.W.2d 763, 766 (1990) (citation omitted). Information gathered by Officer Kastens after initiating the traffic stop is irrelevant to the determination of whether the traffic stop was properly justified. The issue here is solely the propriety of the stop.

The circuit court found that the police stop was unlawful based on Hembel's apparent reasonable explanation for his illegal activity. (R. 10, 17:13-16). There is no case law requiring the police to consider possible mitigating reasons for observed unlawful behavior before making a stop based on either reasonable suspicion or probable cause. The circuit court imposed such a requirement. Accordingly, the State respectfully requests the trial court holding should be reversed.

CONCLUSION

For the reasons set forth above as well as those set forth in the State's Brief-In-Chief, the State respectfully requests that this Court reverse the circuit court's decision and remand for further proceedings.

Dated this ____ day of November, 2015.

Respectfully submitted,

ALEXIS S. MCKINLEY
Assistant District Attorney
State Bar No. 1069737

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
alexis.mckinley@da.wi.gov
Attorney for Plaintiff-Appellant

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 421 words.

Dated this ____ day of November, 2015.

Signed:

ALEXIS S. MCKINLEY
Assistant District Attorney
State Bar No. 1069737

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
alexis.mckinley@da.wi.gov

Attorney for Plaintiff-Appellant

**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 November, 2015.

Signed:

ALEXIS S. MCKINLEY
Assistant District Attorney
State Bar No. 1069737

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
alexis.mckinley@da.wi.gov

Attorney for Plaintiff-Appellant

CERTIFICATE OF MAILING

I certify that this brief was deposited into 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 expedition, on November 17, 2015.

I further certify that on November 17, 2015, I served three copies of this brief via United States Mail upon all opposing parties.

I further certify that the brief was correctly addressed and postage was pre-paid.

Dated this ____ day of November, 2015.

Signed:

ALEXIS S. MCKINLEY
Assistant District Attorney
State Bar No. 1069737

1101 Carmichael Road
Hudson, WI 54016
(715) 386-4658
alexis.mckinley@da.wi.gov

Attorney for Plaintiff-Appellant