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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT III

Appellate Case Nos. 15AP1571 CR & 15AP1572 CR  
Trial Court Case Nos. 14CT885 & 14CM1250

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STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

Thomas M. Ort,  
Defendant-Appellant.

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ON APPEAL FROM JUDGMENT OF CONVICTION ENTERED IN CIRCUIT  
COURT BRANCH 2 FOR OUTAGAMIE COUNTY

The Honorable Nancy J. Krueger, Presiding

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BRIEF OF PLAINTIFF-RESPONDENT

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**POSITION ON ORAL ARGUMENT AND PUBLICATION**

The Plaintiff-Respondent, State of Wisconsin, requests neither oral argument nor publication because resolution of this case requires only the application of well-established precedent to the facts of the case.

**STATEMENT OF THE CASE AND STATEMENT OF THE ISSUES**

As respondent, the State exercises its option not to present a statement of the issues and statement of the case. *See* Wis. Stat. § (Rule) 809.19(3)(a)2. Instead, the State will outline the issues and present additional facts in the “Argument” portion of its brief.

## ARGUMENT

### **THE CIRCUIT COURT PROPERLY DENIED ORT'S MOTION TO SUPPRESS EVIDENCE BECAUSE OFFICER VOSTERS REASONABLY SUSPECTED THAT ORT COMMITTED A NON-CRIMINAL TRAFFIC VIOLATION**

An officer “may perform an investigatory stop of a vehicle based upon a reasonable suspicion” that the operator of the vehicle is committing, has committed, or is about to commit a crime or non-criminal traffic violation. *State v. Colstad*, 2003 WI App 25, ¶ 8, 260 Wis. 2d 406, 659 N.W.2d 394. The question of reasonable suspicion “is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience[?]” *Id.* (quoting *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997)). An officer’s training and experience may be used in a court’s determination of reasonableness. *State v. Post*, 2007 WI 60, ¶ 13, 301 Wis. 2d 1, 733 N.W.2d 634.

“Reasonable suspicion” requires specific, articulable facts and reasonable inferences drawn from those facts, that an individual violated the law. *State v. Gammons*, 2001 WI App 36, ¶ 6, 241 Wis. 2d 296, 625 N.W.2d 623. Officers may use otherwise innocent behavior in the aggregate as a basis for reasonable suspicion if the accumulated facts lead to reasonable inferences about the cumulative effect of those facts. *See State v. Waldner*, 206 Wis. 2d 51, 57-59, 556 N.W.2d 681 (1996) (holding that independently lawful actions, such as unnecessarily stopping, accelerating quickly, and dumping liquid out of a cup, gave the officer reasonable suspicion to stop the vehicle to investigate further). Further, officers need not rule out the possibility of innocent behavior prior to initiating a traffic stop. *Colstad*, 2003 WI App 25, ¶ 8.

In this case, Officer Charles Vosters, a 15-year veteran of the Kaukauna Police Department, possessed numerous, articulable facts that gave rise to reasonable suspicion that the defendant, Thomas Ort, committed a crime or a non-criminal traffic violation. At the motion hearing on January 30, 2015, Officer Vosters stated the following:

As I was stopped for the stoplights facing east, there was a vehicle that pulled in next to me heading to the west. The driver stopped. I recognized him as Michael Campbell. He said, this guy following me in a silver truck was swerving and was tailgating me. And, at that time when I was talking to Mike, I seen [sic] the silver truck come around the corner onto 2nd Street and almost run into the back of Mike who was stopped next to me. The truck then went alongside and stopped. And I looked over and I pointed and I said, “Is that the guy?” He said yes at that time.

(R4 at 4-12).

At this point, Officer Vosters had reasonable suspicion to stop the suspect’s vehicle to investigate further. It was reasonable at that time to believe that the suspect committed a violation of Reckless Driving in violation of Wis. Stat. § 346.62(2) or Following Too Closely in violation of Wis. Stat. § 346.14(1), given the statements by Mr. Campbell about how Ort was “swerving and tailgating.” (R4 at 6). The veracity of Mr. Campbell’s statements are bolstered by the fact that Officer Vosters knew Mr. Campbell and knew how to get ahold of him. *See State v. Rutzinski*, 2001 WI 22, 241 Wis. 2d 729, ¶ 32 (noting that the reliability of an informant or reporting party is bolstered when the reporting party is known and therefore exposes himself or herself to being identified).

Additionally, given the time of night, which was approximately 7:49 p.m., in addition to the reckless driving complaint, Officer Vosters had reasonable suspicion to stop the suspect’s vehicle to investigate the possibility of impaired driving. *See Post*,

2007 WI 60, ¶ 36 (noting that the time of night is a factor that can contribute to reasonable suspicion to stop a vehicle).

Furthermore, as Officer Vosters was engaging in a pursuit of the vehicle, he noticed that the suspect's vehicle appeared to be traveling at least 40 miles per hour on a roadway with a 25 mile per hour speed limit, giving Officer Vosters reasonable suspicion to stop the suspect's vehicle for violating the state's speeding laws under Wis. Stat. § 346.57(4). (R7 at 19-20). Although Officer Vosters did not use his radar to gauge the suspect's vehicle's speed, he testified that based upon his training and numerous years of experience—importantly, his experience on the roads of Kaukauna—he is able to accurately predict the approximate speed of a vehicle without a radar, and he predicted in this case that the suspect's vehicle was traveling at least 15 miles per hour over the speed limit. (R8 at 6-12).

The defendant also argues that Officer Vosters did not have reasonable suspicion to stop Ort's vehicle because he lost sight of the truck two different times. (Def.'s Br. at 11-12). This argument should be easily rejected. Officer Vosters testified that he lost sight of the truck immediately because he had to do a U-turn to follow the truck. (R5 at 12-22). Officer Vosters stated that he only lost sight of the truck for approximately ten seconds. (R5 at 24). Once Officer Vosters completed a U-turn, he reestablished visual contact with the truck. (R6 at 2-3). Later in the pursuit, Officer Vosters lost sight of the truck once again because of a large hill. (R6 at 18-20). Officer Vosters testified that at that time, he only lost sight of the truck for approximately five to ten seconds, at the most. (R7 at 3). During this pursuit, Officer Vosters testified that there was "no car between [him] and the suspect," other than Mr. Campbell. (R12-15).

It is not surprising that police officers often lose sight of vehicles during pursuits. This fact alone is not fatal to the state's argument. Indeed, it is to be expected in vehicle pursuits that travel several miles on numerous roads. In this case, given the description of the vehicle, the direction of the vehicle, and the lack of traffic on the road, it was entirely reasonable for Officer Vosters to have determined that the truck he ultimately pulled over was the suspect's truck.

The circuit court's analysis is well-reasoned. The court noted the reliability of the reporting party, who was the police chief's son. (R23 at 20-25). The court further characterized the reporting party's description of what occurred as "reckless driving" on the part of the suspect. (R24 at 2). The court also recognized that although Officer Vosters lost contact with the suspect's vehicle, Mr. Campbell maintained visual contact with the suspect's vehicle and directed Officer Vosters to the suspect. (R24 at 22-25). Based upon the totality of the circumstances, the court made the determination that Officer Vosters "articulated objective facts" that he was following the suspect's truck, and that there "certainly was [ ] reasonable suspicion for the stop." (R26 at 1-9). Based upon the record, the court's findings are not "clearly erroneous." *Post*, 2007 WI 60, ¶ 8.

### **CONCLUSION**

For the foregoing reasons, this court should affirm the decision of the circuit court.

Respectfully submitted this 24th day of November, 2015.

By: \_\_\_\_\_  
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## **CERTIFICATION**

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief and appendix produced with a monospaced font. The length of this brief is 5 pages.

Dated: November 24, 2015

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ATTORNEY'S OFFICE

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**CERTIFICATION OF THIRD-PARTY COMMERCIAL DELIVERY**

I certify that on November 24, 2015, this brief or appendix was delivered to a third-party commercial carrier for delivery to the Clerk of the Court of Appeals within 3 calendar days. I further certify that the brief or appendix was correctly addressed.

Date: November 24, 2015

Signature: \_\_\_\_\_

**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 this 24th day of November, 2015.

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