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DISTRICT I

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Appeal Case No. 2015AP001613-CR

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STATE OF WISCONSIN,

Plaintiff-Appellant,

vs.

JAMES A. WEBB,

Defendant-Respondent.

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ON APPEAL FROM THE ORDER GRANTING  
MOTION TO SUPPRESS, ENTERED IN THE  
MILWAUKEE COUNTY CIRCUIT COURT,  
THE HONORABLE JOHN SIEFERT, PRESIDING

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REPLY BRIEF OF PLAINTIFF-APPELLANT

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**ARGUMENT**

**I. Officer Susler Had Reasonable Suspicion To Stop  
Mr. Webb's Ford Expedition.**

The circuit court erred in granting Mr. Webb's motion to suppress. The Secretary and Department of Transportation have statutory authority to regulate brake lights with Wis. Admin. Code § Trans. 305.15(5) for motor vehicles, which includes Mr. Webb's vehicle, and to delegate enforcement to local law enforcement officers, like Officer Susler. Further, Officer Susler stopped Mr. Webb on the reasonable suspicion

of a non-criminal traffic violation when Officer Susler observed Mr. Webb operating his 2001 Ford Expedition without a functioning manufactured high mount stop lamp.

**A. The Department Of Transportation Did Not Exceed The Scope Of The Existing Statute When It Promulgated Wis. Admin. Code § Trans. 305.15(5)(A).**

Wis. Stat. § 347.14(1) sets forth a minimum, but not comprehensive or exclusive, standard. Wis. Stat. § 110.075 empowers the Department of Transportation, under the guidance of the Secretary, to promulgate rules to match the ever-changing landscape of federal regulations, technology and innovation. The Department of Transportation has promulgated Wis. Admin. Code § Trans. 305.15 which sets forth reasonable and safe standards for the operation of brake lights in every motor vehicle, consist with changes in federal manufacture rules of motor vehicles.

Mr. Webb states that Wis. Admin. Code § Trans. 305.15(5)(a) conflicts with Wis. Stat. § 347.14(1) because it is more restrictive than the statutory provision; however, Mr. Webb misinterprets this statute. (Def Brief, pg. 3). Wis. Stat. § 347.14(1) clearly provides limitations as to “vehicle[s] *originally* equipped at the time of manufacture and sale with 2 stop lamps...” Wis. Stat. §347.14(2) (emphasis added). The statute requires such vehicles originally manufactured with only two stop lamps be required, when on the highway, to have both stop lamps in good working order. *Id.* This statute, does not discuss anywhere the federal law requiring all motor vehicles since September 1, 1993, be manufactured with a high mounted stop lamp. 49 C.F.R. §571.108 S6.1.1.2 (2012).

Wis. Admin. Code § Trans. 305.15(5)(a), which was promulgated on September 5, 1997, incorporated the federal regulation requiring vehicles be manufactured not only with two lower stop lamps, but add vehicles must be manufactured with a high mounted stop lamp. 49 C.F.R. §571.108 S6.1.1.2. Federal regulation further required that vehicles manufactured with these three stop lamps, only operate on the highway if all three stop lamps are in good working order. *Id.* Therefore, Wis. Admin. Code § Trans. 305.15(5)(a) is not more restrictive

than Wis. Stat. § 347.14, but instead, addresses vehicles manufactured following the federal regulation requiring high mounted stop lamp. Id.

The Department of Transportation in promulgating Wis. Admin. Code § Trans. 305.15(5)(a) incorporated the ever-changing landscape of federal regulations, technology and innovation, as empowered by Wis. Stat. § 110.075. Further, Wis. Admin. Code § Trans. 305.15(5)(a) provides Wisconsin police officers the ability to enforce a violation of the federal regulation mandating high mounted stop lamp, which is only outlined in the Administrative Code, not anywhere in the statutes.

Wisconsin legislature does not place itself in a position to be required to rewrite its voluminous statutes every time there is a new federal regulation, technological advancement or safety improvement, such as the addition of high mount brake lights on vehicles. Instead, it creates administrative agencies and empowers them to promulgate rules to fill gaps in the legislative process. High mount brake light regulation is an example of exactly such process. Wis. Stat. § 110.075 gives the Department of Transportation authority to set standards for all motor vehicle equipment. Wis. Admin. Code § Trans. 305.15 sets forth the standards as motor vehicles manufactured with the high mounted stop lamp, which is not discussed in Wis. Stat. § 347.14. Therefore, Wis. Admin. Code § Trans. 305.15(5)(1) is neither more restrictive than the standard, requirement, or threshold contained in Wis. Stat. §347.14 nor does it conflict with the statute.

**B. Officer Susler Had Reasonable Suspicion That Mr. Webb's Vehicle Was In Violation Of The Non-Criminal Traffic Offense Of Wis. Admin. Code § Trans. 305.15(5)(A).**

A police officer may stop a vehicle based on the reasonable suspicion of a non-criminal traffic violation. *See State v. Colstad*, 2003 WI App 25, ¶11, 260 Wis. 2d 406, 659 N.W.2d 394. Officer Susler testified he personally observed Mr. Webb's 2001 Ford Expedition motor vehicle in violation of Wis. Admin. Code § Trans. 305.15(5)(a). (R4:2), (R:14:6-7, 12). Officer Susler also testified that this violation was

enforceable to every motor vehicle manufactured since the 1980s. (R4:2), (R:14:6-7, 12). Therefore, Officer Susler's observation of Mr. Webb's 2001 Ford Expedition operating with a defective high mount brake light provided an adequate basis for Officer Susler to believe Mr. Webb was violating a non-criminal traffic law and conduct a traffic stop.

Mr. Webb argues that Officer Susler lacked reasonable suspicion, because he did not specially testify that he had knowledge that Mr. Webb's 2001 Ford Expedition was manufactured with a high mount stop lamp. (Def Brief, pg. 6). Mr. Webb further argues that the unpublished court of appeals decision of *State v. Lerdahl*, supports this finding; however, the officer's knowledge and date of Lerdahl's vehicle are very different than in Mr. Webb's case. 2014AP2119-CR (Ct. App. August 4, 2015) (unpublished).

Unlike in Mr. Webb's case, in *Lerdahl*, Officer Roth mistook a cargo lamp for a high mounted stop lamp. 2014AP2119-CR at ¶2. In Mr. Webb's case, there is no mistake of fact, because it was in fact Mr. Webb's originally manufactured high mount stop lamp that was not functioning. (R4:2), (R:14:6-7, 12).

Further, a major difference in *Lerdahl* was that Mr. Lerdahl's pickup truck was manufactured in 1992. This fact is very important because federal regulation for high mount stop lamps as to passenger cars sold in the United States was required since September 1, 1985, and in new light trucks since September 1, 1993. 49 C.F.R. § 571.108. Mr. Lerdahl's main argument was that for vehicles manufactured prior to September 1, 1993, the officer must possess some knowledge about either the age of the pick-up truck, or other original-equipment vehicle information in order to rationally assess whether it is in violation of Wisconsin Administrative Code Trans § 305.15(5)(a). *Lerdahl*, 2014AP2119-CR at 11. (Def Brief).

The fact that Officer Roth did not have specific knowledge as to the manufacturing date of Mr. Lerdahl's pickup truck would affect whether Mr. Lerdahl was in fact in violation of the federal regulation and Wis. Admin. Code § Trans. 305.15(5)(a). This again is very different than in Mr.

Webb's case. Mr. Webb's vehicle was manufactured in 2001, almost 10 years following the high mount stop lamp federal regulation mandate. Therefore, it is reasonable for Officer Susler to believe that Mr. Webb's 2001 vehicle, or any other vehicle manufactured following the federal mandate, was manufactured with a functioning high mount stop lamp, unlike in *Lerdahl* where Mr. Lerdahl's vehicle's manufacturing year pre-dates the federal regulation.

Lastly, Officer Susler did testify he had knowledge that vehicles manufactured since the 1980s have been required to be manufactured with a high mounted stop lamp. (R4:2), (R14:12). This is consistent with the federal regulation mandating that vehicles be manufactured with high mount stop lamps since September 1, 1985. 49 C.F.R. § 571.108. Therefore, it was reasonable for Officer Susler to specifically determine that Mr. Webb's 2001 vehicle was original manufactured with a high mount stop lamp and then conduct a traffic stop for the violation of it not being functional.

### CONCLUSION

For the foregoing reasons, the State respectfully requests this court reverse the circuit court's decision granting Mr. Webb's motion to suppress.

Dated this \_\_\_\_\_ day of January, 2016.

Respectfully submitted,

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**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 word count of this brief is 1,258.

\_\_\_\_\_  
Date

\_\_\_\_\_  
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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 s. 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.

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