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STATE OF WISCONSIN COURT OF APPEALS DISTRICT I

10-21-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

CITY OF WEST ALLIS,
Plaintiff-Appellant,

v.

TERESA A. MICHALS,
Defendant-Respondent.

Case Nos. 2015-AP-001688
2015-AP-001689

ON APPEAL FROM THE CIRCUIT COURT FOR MILWAUKEE COUNTY
THE HONORABLE MICHAEL D. GUOLEE, PRESIDING

BRIEF OF PLAINTIFF-APPELLANT

CITY OF WEST ALLIS

By: Jenna Merten
Attorney for Plaintiff-Appellant
State Bar No. 1051848

7525 West Greenfield Avenue
West Allis, Wisconsin 53214
414-302-8450

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TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Statement of the Issue	iii
Statement on Oral Argument and Publication	iv
Statement of the Case	v
Standard of Review	viii
Argument	1
I. Officer Komorowski Had Reasonable Suspicion to Stop Teresa Michals's Vehicle Because under the Totality of the Circumstances, Officer Komorowski Had Specific and Articulable Facts That Warranted a Reasonable Belief That Teresa Michals Was Engaged in Unlawful Behavior.	
Conclusion	7
Certification	8
Certification of Compliance with Rule 809.19(12)	9
Index to Appendix	
Appendix Certification	A57
Appendix Certification of Compliance with Rule 809.19(13)	A58

TABLE OF AUTHORITIES

<u>Cases</u>	<u>Page</u>
<i>State v. Anagnos</i> , 2012 WI 64, 341 Wis.2d 576, 815 N.W.2d 67`	2-3, 5
<i>State v. Houghton</i> , 2015 WI 79, 868 N.W.2d 143	1
<i>State v. Post</i> , 2007 WI 60, 301 Wis.2d 1 733 N.W.2d 634	viii, 1-2, 5
<i>State v. Waldner</i> , 206 Wis.2d 51, 556 N.W.2d 681 (Wis. 1996)	1,3 4-5
<i>State v. Young</i> , 2006 WI 98, 294 Wis.2d 1, 717 N.W.2d 729	1
 <u>Ordinances</u>	
West Allis Revised Municipal Code Section 6.03(4)(a)	vi

STATEMENT OF THE ISSUE

- I. Whether West Allis Police Officer Jason Komorowski Had Reasonable Suspicion to Perform a Traffic Stop on Teresa Michals's Vehicle.

The trial court ordered the cases dismissed after ruling that Officer Komorowski did not have reasonable suspicion to stop Teresa Michals's vehicle.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not necessary for this appeal because the briefs of the parties fully present and meet the issue on appeal and fully develop theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or costs to the litigant.

Publishing this opinion is not necessary because the decision will be by one court of appeals judge.

STATEMENT OF THE CASE

On March 16, 2014, at approximately 9:11 p.m., West Allis police officer Jason Komorowski was located at South 70th Street and West Greenfield Avenue, in the City of West Allis, which is an intersection controlled by a traffic signal. (App. at A4-5.) While he was stopped at the red light, he observed Teresa Michals's vehicle accelerate quickly from the stoplight at 73rd Street and Greenfield Avenue and travel eastbound. (*Id.* at A5.) Officer Komorowski testified that he could tell that the car accelerated quickly because the speed limit was 25 miles per hour on that street and he could tell how quickly the vehicle moved from the amount of distance it covered from intersection to intersection. (*Id.* at A7-8.) While Michals accelerated the vehicle, Officer Komorowski observed the vehicle abruptly swerve three times in its lane. (*Id.* at A5.) Officer Komorowski described the swerving as "almost like the driver jerked the wheel to each side three times." (*Id.* at A7-8.) Due to Michals's driving behavior, Officer Komorowski turned around his marked patrol car and followed her vehicle. (*Id.* at A8.)

While following the vehicle, Officer Komorowski discovered that Michals's license plate listed to North 50th

Street. (*Id.* at A9.) He observed Michals's car turned quickly onto South 68th Street and then made a turn one-half block away into a dead-end alley behind a senior center.

(*Id.* at A9-10.) Officer Komorowski testified that the alley area Michals drove to was not the place to park if she were to visit someone there, but rather was a place for deliveries. (*Id.* at A19-20.) Due to the car's registration not listing to the area and the fact that 68th Street would have sent the car into the opposite direction it was traveling, Officer Komorowski testified that he thought that the driver was trying to avoid him. (*Id.* at A9.)

Based on his training and experience of approximately 15 to 20 operating while intoxicated arrests, the time of night, the rapid acceleration of Michals's car, and Michals's abrupt swerving in her lane three times, Officer Komorowski believed that Michals was either intoxicated or operating her vehicle in a disorderly manner, contrary to West Allis Revised Municipal Code Section 6.03(4)(a). (*Id.* at A8-10.) Accordingly, Officer Komorowski activated his emergency lights and stopped Michals's vehicle. (*Id.* at A10.)

Michals testified that she was traveling in the area described by Officer Komorowski that evening and observed potholes and construction on Greenfield Avenue. (*Id.* at

A27.) She testified that she swerved around a pothole and a manhole cover on Greenfield Avenue that evening. (*Id.* at A31-33.)

After the testimony concluded, Judge Guolee found that the vehicle was swerving two to three times and that Michals made turns after the officer began following her. (*Id.* at A46-47.) Further, he found that Michals was swerving to avoid potholes. (*Id.* at A48.) Finally, Judge Guolee stated "deviating to allegedly avoid potholes in March is sufficient for her to do that and not suspicious enough for him to do the stop." (*Id.* at A48-49.) Accordingly, Judge Guolee ruled that the stop was suppressed and dismissed the cases. (*Id.* at A50.) The City of West Allis is now appealing that decision.

STANDARD OF REVIEW

The standard of review for whether a traffic stop is reasonable is a question of constitutional fact, which is a mixed question of law and fact. *State v. Post*, 2007 WI 60, ¶8, 301 Wis.2d 1, 7, 733 N.W.2d 634, 636. Using the clearly erroneous standard, the court reviews the circuit court's findings of historical fact and independently reviews the application of those facts to constitutional principles. *State v. Post*, 2007 WI 60, ¶8.

ARGUMENT

- I. Officer Komorowski Had Reasonable Suspicion to Stop Teresa Michals's Vehicle Because under the Totality of the Circumstances, Officer Komorowski Had Specific and Articulable Facts That Warranted a Reasonable Belief That Teresa Michals Was Engaged in Unlawful Behavior.

To stop a vehicle, an officer must have reasonable suspicion that a traffic law has been or is being violated. *State v. Houghton*, 2015 WI 79, ¶30, 868 N.W.2d 143. Reasonable suspicion occurs when, under the totality of the circumstances, an officer possesses specific and articulable facts that warrant a reasonable belief that a law violation has occurred or is occurring. *State v. Post*, 2007 WI 60, ¶¶10, 13. A mere hunch is insufficient, but officers do not need to eliminate the possibility of innocent behavior before initiating a brief stop. *State v. Young*, 2006 WI 98, ¶21, 294 Wis.2d 1, 717 N.W.2d 729. Briefly stopping a suspicious individual is good police work because it allows officers to maintain the status quo momentarily while obtaining more information. *State v. Waldner*, 206 Wis.2d 51, 61, 556 N.W.2d 681, 686 (Wis. 1996).

A law violation need not occur for an officer to have reasonable suspicion to stop a vehicle. *State v. Post*,

2007 WI 60, ¶24. In *Post*, at 9:30 p.m., a police officer observed a vehicle driving in an "S-type" pattern between a driving lane and an unmarked parking lane. *State v. Post*, 2007 WI 60, ¶5. The officer testified that the movement was neither erratic nor jerky, and the Defendant's car did not come near other vehicles or the curb. *State v. Post*, 2007 WI 60, ¶5. However, the officer felt that the Defendant's manner of driving was a clue that he may have been intoxicated. *State v. Post*, 2007 WI 60, ¶5. The officer did not notice any law violations before he stopped the Defendant's vehicle. *State v. Post*, 2007 WI 60, ¶¶5-6. Finding that a driver's actions need not be erratic, unsafe, or illegal to constitute reasonable suspicion, the court concluded that the stop was justified. *State v. Post*, 2007 WI 60, ¶¶24, 27. The totality of the circumstances - the width of the Defendant's weaving, the multiple instances of weaving, and time of night being 9:30 p.m. - gave the officer reasonable suspicion that the Defendant may have been operating his vehicle while intoxicated. *State v. Post*, 2007 WI 60, ¶¶35-36.

Similarly, in *State v. Anagnos*, 2012 WI 64, 341 Wis.2d 576, 815 N.W.2d 675, the court found that an officer had reasonable suspicion to stop a vehicle when the officer did not observe a law violation. *State v. Anagnos*, 2012 WI 64,

¶62. In *Anagnos*, the police officer observed the Defendant's vehicle drive over a median, rapidly accelerate his vehicle to the nearest stoplight, turn left without activating his turn signal, and then accelerate rapidly again. *State v. Anagnos*, 2012 WI 64, ¶¶10-14. At no time did the officer see the Defendant exceed the speed limit nor were any other vehicles present. *State v. Anagnos*, 2012 WI 64, ¶14. Finding that the stop was supported by reasonable suspicion, the court stated that the Defendant made "a series of unusual and impulsive driving choices, suggestive of impairment." *State v. Anagnos*, 2012 WI 64, ¶56. The court found that although no law violations occurred, the Defendant's driving and the time the incident occurred "could confirm to a reasonable officer that there was cause for suspicion." *State v. Anagnos*, 2012 WI 64, ¶57. Accordingly, the stop was upheld. *State v. Anagnos*, 2012 WI 64, ¶61.

Reasonable police officers cannot ignore reasonable inferences that unlawful behavior may be occurring. *State v. Waldner*, 206 Wis.2d 51, 61, 556 N.W.2d 681, 686 (Wis. 1996). In *Waldner*, a police officer observed the Defendant's car travel at a slow speed, stop at an intersection unnecessarily, and accelerate at a high rate of speed; additionally, the officer observed the driver

pour out a liquid on the side of the roadway. *State v. Waldner*, 206 Wis.2d 51, 53. The officer stopped the Defendant and later arrested him for operating while intoxicated. *State v. Waldner*, 206 Wis.2d 51, 54. The court noted that although no law violation occurred, the totality of the circumstances gave the officer reasonable suspicion that the Defendant was acting unlawfully. *State v. Waldner*, 206 Wis.2d 51, 58. The court stated that "officers are not required to rule out the possibility of innocent behavior before initiating a brief stop." *State v. Waldner*, 206 Wis.2d 51, 60. Since suspicious conduct is ambiguous, the officer's main function of the investigative stop is to quickly resolve the ambiguity. *State v. Waldner*, 206 Wis.2d 51, 60. The court concluded that the officer's stopping the Defendant was good police work because the officer maintained the status quo temporarily while obtaining more information. *State v. Waldner*, 206 Wis.2d 51, 61. If the officer had failed to investigate the Defendant's conduct, the officer would have been remiss in his duty. *State v. Waldner*, 206 Wis.2d 51, 61. Accordingly, the court upheld the stop of the Defendant. *State v. Waldner*, 206 Wis.2d 51, 61.

Here, Officer Komorowski had reasonable suspicion that the Defendant was acting unlawfully. He observed the

Defendant accelerate at a high rate of speed, saw her swerve three times within her lane in a very short distance, make quick turns once his patrol car came behind her vehicle, turn down a road that would have led her back to the opposite direction from which she was traveling, and travel down a dead-end alley meant for only deliveries at a senior center. While these actions viewed independently are not law violations and could have innocent explanations, under the totality of the circumstances, Officer Komorowski reasonably suspected that the Defendant was driving in an intoxicated manner and was entitled to investigate the situation. The court has found similar behavior to be reasonably suspicious in the past: swerving within one's own lane in *Post* and accelerating quickly in *Anagnos* and *Waldner*. Furthermore, similarly to *Post*, the time of night being 9:11 p.m. was also indicia that the Defendant's driving behavior was suspicious. Officer Komorowski needed to protect the societal interest of keeping the streets clear of intoxicated drivers; ignoring the Defendant's conduct would have been poor police work. Just as in *Anagnos*, Michals's unusual and impulsive driving choices could lead a reasonable police officer to reasonably believe that she was driving in a disorderly manner or was operating while intoxicated. Therefore,

Officer Komorowski had reasonable suspicion to stop Michals's vehicle.

CONCLUSION

The court should reverse the circuit court's ruling and find that Officer Komorowski had reasonable suspicion to stop Teresa Michals's vehicle.

CITY OF WEST ALLIS
Attorney for Plaintiff-Appellant

By: Jenna Merten
Jenna Merten
Assistant City Attorney
State Bar No. 1051848

P.O. Address
7525 West Greenfield Avenue
West Allis, WI 53214
(414) 302-8450

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. Section 809.19(8)(b) and (c) for a brief produced with a monospaced font.

The length of this brief is 7 pages.

Date this 19th day of October, 2015.

CITY OF WEST ALLIS
Attorney for Plaintiff-Appellant

By: Jenna Merten
Jenna Merten
Assistant City Attorney
State Bar No. 1051848

P.O. Address
7525 West Greenfield Avenue
West Allis, WI 53214
(414) 302-8450

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief that complies with Wis. Stat. Section 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 19th day of October, 2015.

CITY OF WEST ALLIS
Attorney for Plaintiff-Appellant

By: Jenna Merten
Jenna Merten
Assistant City Attorney
State Bar No. 1051848

P.O. Address
7525 West Greenfield Avenue
West Allis, WI 53214
(414)302-8450