

RECEIVED

STATE OF WISCONSIN COURT OF APPEALS DISTRICT I

12-04-2015

**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

REPLY 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

TABLE OF CONTENTS

	<u>Page</u>
Table of Authorities	ii
Argument	1
 <u>I. Officer Komorowski Had Reasonable Suspicion to Stop Teresa Michals's Vehicle Because Michals's Erratic Driving Was Indicia of Intoxicated Driving and Constituted a Serious Threat to Public Safety.</u>	
Conclusion	4
Certification	5
Certification of Compliance with Rule 809.19(12)	6

TABLE OF AUTHORITIES

Cases

Page

State v. Rutzinski,
2001 WI 22, 241 Wis. 2d 729, 623 N.W.2d 516

1-2

ARGUMENT

I. Officer Komorowski Had Reasonable Suspicion to Stop Teresa Michals's Vehicle Because Michals's Erratic Driving Was Indicia of Intoxicated Driving and Constituted a Serious Threat to Public Safety.

Erratic driving is an imminent threat to public safety and can encompass driving behavior that in of itself is not a law violation. *State v. Rutzinski*, 2001 WI 22, ¶4, ¶34, 241 Wis.2d 729. In *Rutzinski*, an officer received a citizen tip that a vehicle was weaving within its own lane, varying its speed from too fast to too slow, and tailgating. *State v. Rutzinski*, 2001 WI 22, ¶4. Acting on this tip, the officer pulled the vehicle over, and after investigation, the driver was charged with operating while intoxicated. *State v. Rutzinski*, 2001 WI 22, ¶8. Finding the defendant's driving to be erratic, the court stated that "erratic driving is one possible sign of intoxicated use of a motor vehicle." *State v. Rutzinski*, 2001 WI 22, ¶34. Furthermore, in finding that the officer had reasonable suspicion to stop the vehicle, the court stated that "erratic driving can be the result of something innocuous as the driver waving at a bee in the car or something as serious as the driver having a heart attack. But

regardless of the cause, erratic driving can be very dangerous and often is symptomatic of intoxication." *State v. Rutzinski*, 2001 WI 22, ¶35 n.10. The court concluded that due to the "tremendous potential danger presented by drunk drivers," an officer may stop a vehicle to investigate observations of erratic driving. *State v. Rutzinski*, 2001 WI 22, ¶35 n.10.

Here, Officer Komorowski had reasonable suspicion to stop Michals due to his observation of erratic driving and his belief that she was operating while intoxicated or in a disorderly manner. Erratic driving is very dangerous and can be indicia of intoxicated driving. Michals's driving behavior was somewhat similar to the behavior in *Rutzinski* in that the speeds varied and involved swerving within the driver's own lane. Due to the serious potential danger that intoxicated driving causes, Officer Komorowski had a duty to pull over Michals as a means to protect the public from a potential intoxicated driver. The law does not require him to rule out innocuous behavior, and in this situation, Officer Komorowski could not rule out innocuous behavior without performing a traffic stop. Therefore, due to the erratic driving that Officer Komorowski observed and the great potential danger that intoxicated drivers cause,

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 4 pages.

Dated this 1st day of December, 2015.

CITY OF WEST ALLIS
Attorney for Plaintiff-Appellant

By: 
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 1st day of December, 2015.

CITY OF WEST ALLIS
Attorney for Plaintiff-Appellant

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

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