

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2015AP001788
Outagamie County Circuit Court Case Nos. 2013CV001063

TOWN OF GRAND CHUTE,

Plaintiff-Respondent,

v.

SHELLEY L. KOWALEWSKI,

Defendant-Appellant.

AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND OF THE TRIAL COURT'S RULING
DENYING THE DEFENDANTS MOTION FOR
SUPPRESSION OF EVIDENCE IN THE CIRCUIT
COURT FOR OUTAGAMIE COUNTY, THE
HONORABLE GREGORY B. GILL, JR., PRESIDING

THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT SHELLEY L.
KOWALEWSKI

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ARGUMENT

The Respondent's initial argument that Ms. Kowalewski "states without any legal citation or authority that 'the facts here would not have led a reasonable officer in Officer Enneper's position to believe that she had committed a traffic violation,'" Brief of Plaintiff-Respondent, page 8-9, is without merit. Counsel provided adequate citations for Ms. Kowalewski's position therein.

The Respondent's second argument is that the observations made by Officer Enneper provided sufficient reason to stop Ms. Kowalewski. "The crucial question is whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing or is about to commit a crime." *Id.* at ¶13. This standard requires that the stop be based on something more than an "inchoate and unparticularized suspicion or 'hunch.'" *Terry v. Ohio*, 392 U.S. 1, 27 (1968). "The determination of reasonableness is a common sense test." *State v. Post*, 2007 WI 60, ¶ 301 Wis.2d 1, 733 N.W.2d 634 citing *State v. Anderson*, 155 Wis. 2d 77, 83-84, 454 N.W.2d 763 (1990).

The Respondent argues that the *Post* case, cited to by Ms. Kowalewski in her brief, is distinguishable from the facts herein. Respondent seems to imply that the facts in *Post* are less egregious than those herein, and in that case the court found the stop reasonable. However, in *Post*, the officer observed the defendant's vehicle canted between the parking and travel lane, thus driving in both the parking and travel lane. More importantly, and conveniently absent from the Respondent's brief, the officer observed the vehicle traveling in a S-type pattern, moving ten feet from right to left "several times over two blocks." *State v. Post*, 2007 WI 60, ¶4-5, 301 Wis.2d 1, 733 N.W.2d 634. The *Post* court found that the above observations justified the traffic stop.

Conversely, Ms. Kowalewski's movement within her lane were minor compared to that in *Post*. The video admitted into evidence substantiates this conclusion.

Finally, Respondent claims that Officer Enneper's vehicle was affected when Ms. Kowalewski changed lanes without using her signal. Once again the video does not support this conclusion. When asked if he thought it would have been appropriate for Ms. Kowalewski to have used her turn signal given the position of Officer Enneper's squad, Enneper testified

“I believe so.” However, Enneper continued stating that “people should use their turn directionals all the time.” (R.21:9/ReplyApp 1). What is missing from Officer Enneper testimony is anything suggesting that he felt that Ms. Kowlewski failing to signal a lane change affected his vehicle’s movement on the roadway. Enneper was under the mistaken belief that individuals should always use their turn signals.

Contrary to the Respondent’s contention, a reasonable officer in Enneper position would not have had the requisite suspicion to believe that Ms. Kowalewski was committing an offense. The stop violated Ms. Kowalewski’s rights under both the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution.

CONCLUSION

Because of the above, Officer Enneper did not have the requisite level of suspicion to stop Ms. Kowalewski's vehicle. Thus, the trial court erred in denying the defendant's suppression motion. The Court should vacate the judgment of conviction and reverse the trial court's order.

Dated this 21st day of December, 2015.

Respectfully Submitted

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FORM AND LENGTH CERTIFICATION

The undersigned hereby certify that this brief and appendix conform to the rules contained in secs. 809.19(6) and 809.19(8) (b) and (c). This brief has been produced with a proportional serif font. The length of this brief is 12 pages. The word count is 1769.

Dated this 21st day of December, 2015.

Respectfully Submitted

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**CERTIFICATION 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.

Dated this 2nd day of November, 2015.

Respectfully submitted,

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with s. 809.19(2)(a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or a judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 21st day of December, 2015.

Respectfully submitted,

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APPENDIX