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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

Court of Appeals case no.:
2015AP002440 – CR

v.

CURTIS D. CHRISTIANSON,

Defendant-Appellant.

REPLY BRIEF OF DEFENDANT-APPELLANT

APPEAL FROM A JUDGMENT OF CONVICTION OF THE
CIRCUIT COURT FOR EAU CLAIRE COUNTY, BRANCH 5,
THE HONORABLE PAUL LENZ, PRESIDING

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State Bar Number: 1065784

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ARGUMENT

Where an officer conducts a traffic stop based on a specific traffic violation, he or she must have probable cause to believe that the specific violation occurred. *State v. Longcore*, 226 Wis. 2d 1, 594 N.W.2d 412 (1999). A determination of probable cause requires a finding that guilt is more than a mere possibility. *State v. Paszek*, 50 Wis. 2d 619, 184 N.W.2d 836 (1971). If an officer fails to observe a specific traffic violation, he or she may only affect a traffic stop if, “under the totality of the circumstances, he or she has grounds to reasonably suspect that a crime or traffic violation has been or will be committed.” *State v. Popke*, 2009 WI 37, 23, 317 Wis. 2d 118, 765 N.W.2d 569. The officer “must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop.” *State v. Post*, 2007 WI 60, ¶ 10, 301 Wis.2d 1, 733 N.W.2d 634

Here, the State failed to establish that the officer had reasonable suspicion that Mr. Christianson was or would be operating while under the influence. The officer followed Mr. Christianson for two miles while he drove under the speed limit and appropriately responded to traffic conditions such as construction. Thus there was no reasonable suspicion

that Mr. Christianson was or would be operating while under the influence of an intoxicant.

The State argues that any time a vehicle deviates from a designated lane, a violation of Wis. Stat. §346.13(3) has occurred. This, however, ignores the statute's context, and leads to absurd results. "Statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely related statutes; and reasonably, to avoid absurd or unreasonable results." *State ex rel. Kalal v. Circuit Court for Dane Cnty.*, 2004 WI 58, ¶46, 271 Wis. 2d 633, 681 N.W.2d 110. Were the court to accept the State's interpretation, it would be necessary to ignore the statutory context of Wis. Stat. §346.13(3). No language in the statute indicates that subsection 1 and subsection 3 of the statute are meant to contradict each other, and a reasonable reading of the statute's context is that all driving on laned roads should occur as nearly as practicable within marked lanes. In addition to ignoring the statutory context of Wis. Stat. §346.13(3), in order to agree with the State's interpretation, the court would have to ignore the practical realities of driving in Wisconsin. Were it to accept the State's interpretation, drivers who deviate from their lanes to avoid impediments

such as accidents that occur in front of them, or animals such as deer jumping out onto the road, or, as in this case, to avoid construction, would be guilty of traffic violations for engaging in safe driving behavior. This result is absurd.

Here, the testimony establishes that Mr. Christianson was driving below the speed limit, and driving as much as is practicable in his designated lane. There was no probable cause or reasonable suspicion to believe Mr. Christianson had committed or was about to commit a traffic violation.

CONCLUSION

For all the reasons stated in his brief in chief and his reply brief, the defendant-appellant respectfully prays that the matter be reversed and remanded for actions consistent with such reversal. Defendant states that the facts of this case demonstrate that there was no reasonable suspicion that he was operating while under the influence of an intoxicant, and no reasonable suspicion or probable cause that he violated or was about to violate a specific traffic statute.

Signed and dated this _6_ day of May, 2016.

Respectfully submitted,
MISHLOVE & STUCKERT, LLC

_____/s/_____
BY: Emily Bell
Attorney for the Defendant
State Bar No.: 1065784

CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stats. §809.19(3)(b) and (c), for a brief produced with a proportional serif font. The length of this brief is 609 words.

I 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.

Additionally, I certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Signed and dated this _6_ day of May, 2016.

Respectfully submitted,
MISHLOVE & STUCKERT, LLC

_____/s/_____

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