

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal Case No. 2016AP000913-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

MARIE A. MARTIN,

Defendant-Appellant.

ON APPEAL FROM A JUDGMENT OF CONVICTION
AND DECISION DENYING MOTION TO SUPPRESS
ENTERED IN THE MILWAUKEE COUNTY CIRCUIT
COURT, THE HONORABLE T. CHRISTOPHER DEE,
PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

1. Did the circuit court properly deny Ms. Martin's motion to suppress evidence?

Answer: Yes

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State of Wisconsin does not believe oral argument is required in this case as the briefs fully present and meet the issues on appeal and fully develop the 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 cost to the litigant. Wis. Stat. § 809.22(3).

Because this case is an appeal from a misdemeanor, and therefore, subject to a one judge review pursuant to Wis. Stat. § 752.31(2) & (3), this opinion is not eligible for publication. Wis. Stat. § 809.23(1)(b)4.

STATEMENT OF THE CASE

On Thursday, December 18, 2014, at approximately 2:00 a.m., City of Franklin Police Officer Anne Aide was on duty and located at South 76th Street and West Rawson Avenue in the city of Franklin, County of Milwaukee. (R27:5). Officer Aide was looking southbound, looking towards the parking lot of the George Webb's Restaurant. *Id.*

Officer Aide initially observed a Honda two door stop in the George Webb's parking lot and let out two female passengers. *Id.* One of the female passengers entered an SUV and left the scene. *Id.* The other female passenger, later identified as Ms. Martin, entered a black Chevy Lumina. *Id.*

Officer Aide did a records check on both the Honda and Chevy. (R27:6). As Officer Aide was exiting the parking lot, she ran Ms. Martin's vehicle through DOT records. *Id.* As Officer Aide was traveling eastbound, she received notice that Ms. Martin's vehicle registration was coming back suspended. (R27:6-7).

Officer Aide pulled over about a block away. (R27:7). Officer Aide was able to identify that that the registration was listed to Ms. Martin and that Ms. Martin's operating privileges were actually revoked, and that she had an occupational

license, but was outside of her occupational license restrictions. *Id.*

Officer Aide could see that Ms. Martin was still parked in the George Webb parking lot and the headlights were on. *Id.* After about five minutes, Officer Aide went back to the George Webb's parking lot. *Id.* Officer Aide thought it was odd that Ms. Martin was still in her car after the other vehicles had warmed up and left, so she decided to go back and check on Ms. Martin's welfare. (R27:8) Officer Aide was able to tell that Ms. Martin's car was running because there was smoke coming out of the exhaust. *Id.*

Officer Aide then pulled her squad car not directly behind Ms. Martin, but at an angle to Ms. Martin's rear driver's side quarter panel. *Id.* Officer Aide's lights were not activated and there were no emergency equipment activated. *Id.*

As Officer Aide began to approach the vehicle she was able to hear the vehicle turn off. (R27:9). Officer Aide could not recall if she knocked on the window or if the window was already rolled down, but she was able to make contact with Ms. Martin (R27:21). Officer Aide stated that her purpose for making contact with Ms. Martin was to check on her welfare. (R27:7-8). After noticing an odor of intoxication emanating from Ms. Martin, Officer Aide asked Ms. Martin to complete field sobriety tests. (R27:10-11) Ms. Martin was subsequently arrested and charged with Operating a Motor Vehicle While Intoxicated – 4th Offense. (R1:1-3).

At the motion hearing on October 6, 2015, the State originally argued that Officer Aide's encounter was not in fact a Terry stop, but rather a welfare check under the community care taker exception. (R27:33-34). Ms. Martin, through her attorney, argued that Officer Aide did conduct a Terry stop and that there was no reasonable suspicion to conduct this stop. (R27:35-39).

After re-briefing the issues (R12, R13), the court held that the community caretaker function did not exist in this case and there was a stop. (R28:3-4). The court also held that the stop was justified under *Terry v. Ohio*, 392 U.S. 1, because Officer Aide could have reasonably believed that the registered

owner of the vehicle was revoked and would be driving on the city streets in “short order.” (R28:5).

In making its ruling, the court noted that the officer knew that the registered own of the vehicle was revoked and there was nowhere else to go from the parking lot other than 76th Street or Rawson, thus she was about to commit the crime of Operating while Revoked. *Id.*

STANDARD OF REVIEW

"Whether evidence should be suppressed is a question of constitutional fact." *State v. Knapp*, 2005 WI 127, ¶ 19, 285 Wis. 2d 86, 700 N.W.2d 899. A finding of constitutional fact consists of the circuit court's findings of historical fact, and its application of those historical facts to constitutional principles. See *State v. Turner*, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987). This court reviews the former under the clearly erroneous standard, and the latter, de novo. See *Id.*

ARGUMENT

1. THERE ARE SUFFICIENT OBJECTIVE FACTS OBSERVED BY OFFICER AIDE TO SUPPORT REASONABLE SUSPICION THAT MS. MARTIN WAS ABOUT TO COMMIT A CRIME

Ms. Martin argues that “the record is devoid of any indication that [she] was about to be driving her vehicle on city streets.” (Def. Brief, pg. 2). Ms. Martin attempts to support this argument by highlighting Officer Aide’s subjective reasoning for stopping her. The crux of Ms. Martin’s argument is an emphasis on the fact that Officer Aide testified that “she was not investigating any concern that Ms. Martin was operating a vehicle after revocation or that she was about to drive the vehicle but rather she was ‘checking on her welfare, to see if there was a problem.’” (Def. Brief, pg. 3)

The actual motivations of a police officer bears no weight on the constitutional reasonableness of traffic stops. *United States v. Smith*, 668 F.3d 427, 430 (7th Cir. 2012). The

lawfulness of a vehicle stop depends on the objective facts observed by an officer, not the officer's subjective intent. *State v. Baudhuin*, 141 Wis. 2d 642, 650–51, 416 N.W.2d 60 (1987); *see also*, *State v. Sykes*, 2005 WI 48, ¶ 29, 279 Wis. 2d 742, 759, 695 N.W.2d 277, 286.

In *State v. Baudhuin*, a police officer testified that he observed the defendant traveling at 17mph in a 25mph zone for several blocks. 141 Wis.2d 642, 645, 416 N.W.2d 60, 61 (1987). Although the officer was able to articulate the traffic violation, he also stated that he did not anticipate issuing a traffic violation but just wanted to see if the defendant needed assistance and if there was anything wrong. *Id.* at 646, 416 N.W.2d at 61. The court held that an

officer's subjective intent does not alone render a search or seizure of an automobile or its occupants illegal, as long as there were objective facts that would have supported a correct legal theory to be applied and as long as there existed articulable facts fitting the traffic law violation.

Id. at 651, 416 N.W.2d at 63.

Here, just because Officer Aide's subjective intent was to check on the welfare of Ms. Martin does not alone render the stop illegal. As the circuit court elaborated in its decision, the objective facts observed by Officer Aide support the conclusion that a reasonable officer could have believed that Ms. Martin was about to commit the offense of Operating After Revocation.

Officer Aide knew that Ms. Martin's license was revoked and that she was outside of her occupational license timeframe. (R27:7). Officer Aide had seen two other cars that Ms. Martin had been associated with drive away. (R27:5). It was 2:00 a.m. and Ms. Martin's car was running in the George Webb's parking lot. *Id.* There was nowhere else for Ms. Martin to go from the parking lot but out on a major street. Although Officer Aide's subjective intent was to simply check on Ms. Martin's welfare, there is sufficient articulated objective facts to support the conclusion that a reasonable officer could have believed Ms. Martin was about to commit the offense of Operating After Revocation.

CONCLUSION

For the foregoing reasons, the State respectfully asks this court to uphold the decision of the circuit court denying Ms. Martin's motion to suppress evidence.

Dated this _____ day of October, 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 1,381.

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.

Date

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