

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2016AP0001471
Marathon County Circuit Court Case Nos. 2015TR005650

COUNTY OF MARATHON,

Plaintiff-Respondent,

v.

ARMIN JAMES BALZAR,

Defendant-Appellant.

AN APPEAL FROM THE JUDGEMENT OF
CONVICTION AND THE DECISION OF THE TRIAL
COURT DENYING THE DEFENDANT-APPELLANT'S
MOTION FOR SUPPRESSION OF EVIDENCE IN THE
CIRCUIT COURT FOR MARATHON COUNTY, THE
HONORABLE GREGORY HUBER, JUDGE, PRESIDING

THE REPLY BRIEF AND APPENDIX OF THE
DEFENDANT-APPELLANT ARMIN JAMES BALZAR

By: **Walter A. Piel, Jr.**
Attorney for the Defendant-Appellant
State Bar No. 01023997

Piel Law Office
500 W. Silver Spring Drive
Suite K-200
Milwaukee, WI 53217
(414) 617-0088
(920) 390-2088 (FAX)

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City of Mequon v. Cooley, 2011 WI App 44, 322 Wis.
2d. 318 3

ARGUMENT

The State takes issue with Mr. Balzar's characterization of the initial contact with Mr. Balzar's vehicle. (Brief of Plaintiff-Respondent page 5). The State contends that the facts in Mr. Balzar's case are identical to those in *City of Mequon v. Cooley*, 2011 WI App 44, 322 Wis. 2d. 318 (unpublished). *Id.* Not true. Here, as Officer Bean was following Mr. Balzar, she observed his vehicle turn into a closed business. (cite). Bean pulled into the lot immediately, and pulled behind Mr. Balzar's vehicle after it had stopped. Bean then activated her lights. The pursuit was continuous.

In *Cooley* the officer pursued a vehicle in the city of Mequon on New Year's Eve. The vehicle pulled into the parking lot of a closed movie theatre. The officer drove past the movie theatre and then made a U-turn to travel back toward the parking lot. When the officer arrived, he observed the vehicle parked, the engine running, and only the running lights activated. (*Id.* at ¶2). The pursuit in *Cooley* was not continuous. Because the vehicle remained in the lot stopped with only running lights on, it was clear that the vehicle was not simply turning around in the lot. Conversely, Deputy Bean contemporaneously followed Mr.

Balzar into the parking area and immediately activated her lights.

Mr. Balzar claim is that the act of turning into the parking lot of a closed business does not alone provide an officer with sufficient reasonable suspicion to stop his vehicle. Had Mr. Balzar remained in the lot for some time after turning in, or parked and extinguished his lights (as in *Cooley*) Bean might have had sufficient suspicion that illegal activity was afoot. However, to allow an officer to stop any vehicle for simply turning into a closed business would allow unfettered intrusions. The innocent act of pulling into a closed parking lot to turn around would justify police contact. In *Cooley* the officer had more than a vehicle simply turning into a closed business parking lot. The vehicle remained in the lot when the officer returned, parked, and extinguished all lights but for the running lights. Contrary to the State's contention, the facts in *Cooley* are distinguishable from the facts herein.

Finally, the State contends that Bean had more here, because Mr. Balzar's vehicle made a gradual movement across the fog line by one foot. (R23:7-8/ Reply App. 2-3). Officer Bean acknowledged, that the only reason she stopped Mr. Balzar's vehicle was because "she found it suspicious he was

pulling into a closed business at 1:30 in the morning.” (R23:6,9/
Reply App. 1,4) Clearly, Officer Bean did not think that the
manner in which Mr. Balzar operated his vehicle sufficiently
justified the stop. Thus, the State’s own witness does not
support their argument.

CONCLUSION

Because Officer Bean did not possess sufficient
reasonable suspicion justifying the intrusion, the trial court erred
in denying Mr. Balzar’s motion for suppression of evidence. The
Court should reverse the trial court’s ruling and vacate the
judgment of conviction.

Dated this 9th day of January, 2017.

Respectfully Submitted

Piel Law Office

Walter A Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

Mailing Address:

500 W. Silver Spring Drive
Suite K200
Milwaukee, WI 53217
(414) 617-0088
(920) 390-2088 (FAX)

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 10 pages. The word count is 1369.

Dated this 9th day of January, 2017.

Respectfully Submitted

Piel Law Office

Walter A Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

Mailing Address:
500 W. Silver Spring Drive
Suite K200
Milwaukee, WI 53217
(414) 617-0088
(920) 390-2088 (FAX)

**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 9th day of January, 2017.

Respectfully submitted,

Piel Law Office

Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

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 9th day of January, 2017.

Respectfully submitted,

Walter A. Piel, Jr.
Attorney for the Defendant-Appellant
State Bar No. 01023997

APPENDIX