STATE OF WISCONSIN

C O U R T A P P E A L S

District I

Case No. 2016 AP 001742-CR

STATE OF WISCONSIN,

Plaintiff-Respondent

vs.

DAMIEN SCOTT,

Defendant-Appellant

ON APPEAL TO REVIEW THE JUDGMENT OF CONVICTION
ENTERED ON MARCH 29, 2016, THE HONORABLE
WILLIAM POCAN PRESIDING,
ENTERED IN THE CIRCUIT COURT FOR MILWAUKEE COUNTY.

REPLY BRIEF OF APPELLANT

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ARGUMENT

I. THE RESPONDENT'S BRIEF DOES NOT REBUT APPELLANT'S ARGUMENT THAT THE POLICE LACKED LEGAL AUTHORITY TO STOP DEFENDANT'S CAR.

In its Brief, the Respondent does not attempt to rebut Defendant's arguments in his Appellant's Brief that the West Allis Police had lacked legal authority to stop his car. Hence, this failure to so rebut amounts to a confession that these arguments are sound. Failure to respond to arguments raised by the appellant amounts to a confession that they are sound. Hoffman vs. Economy Preferred Ins. Co., 232 Wis.2d 53, 606 N.W.2d 590 (2000). This standard applies to criminal as well as civil cases. See e.g., State vs. Davidson, 222 Wis.2d 233, 589 N.W.2d 38 (Ct.App. 1998), rev'd on other grounds, 236 Wis.2d 537, 613 N.W.2d 606 (2000).

Here, clearly, as argued by the Defendant in his Appellant's Brief, the police did not have reasonable suspicion to stop his vehicle. The State's failure to rebut this argument constitutes an admission of this legal and factual conclusion.

Furthermore, as indicated in Appellant's Brief, the trial court had concluded that there was reasonable suspicion to stop Defendant's vehicle simply due to the crime that had recently occurred. The trial court's conclusion was not related to the specific vehicle or individual in question. However, as discussed in Appellant's Brief, this conclusion was legally erroneous. This, based upon the relevant and applicable case and statutory law cited in Appellant's Brief. Here, the State's failure to support this trial court conclusion constitutes an admission that this trial

court conclusion was erroneous. This failure is an admission that the Defendant's position is correct.

II. THE RESPONDENT'S ARGUMENT THAT THE ROADBLOCK WAS LEGAL IS ALSO ERRONEOUS. RESPONDENT'S CITED LAW DOES NOT SUPPORT THIS ARGUMENT.

Here, the Respondent has attempted to argue that the West Allis police roadblock in question was somehow justified as a "Special Needs Exception" to the general requirement for a warrant under circumstances related to crime detection. (Resp.Brf, page 3). However, the Respondent has provided no legal argument or legal basis for the existence of such an exception. Hence, without such legal argument, this argument that such an exception exists must fail. This argument is undeveloped. Failure to argue a raised issue or cite legal authority for an argument is waiver. Post vs. Schwall, 157 Wis.2d 652, 460 N.W.2d 794 (Ct.App. 1990). Conclusory allegations of error should be conclusory dismissed. Butler vs. State, 102 Wis. 364, 78 N.590 (1899). The Court of Appeals should not address amorphous and insufficiently developed arguments. See Block vs. Gomez, 201 Wis.2d 795, 549 N.W.2d 783 (Ct.App. 1996). This is particularly true for complex constitutional issues. See Cemetery Servs. Inc. vs. Department of Regulation and Licensing, 221 Wis.2d 817, 586 N.W.2d 191 (Ct.App. 1998).

Interestingly, the trial court had concluded at the Motion hearing that, if the present situation were a checkpoint, then the

Defendants would have prevailed. (37:58-60). Further, the Respondent never directly addresses or attempts to rebut this legal conclusion by the trial court.

Instead, the Respondent has attempted to justify the obvious roadblock/checkpoint situation present here. This, by stating that such roadblocks may be legally justified under the Respondent's proffered "Special Needs" exception to the generally realized exception to the warrant requirement. However, the Respondent's own cited law fails.

The Respondent has cited various cases to support its argument. However, all of those cases are either materially inapplicable or hold against the Respondent.

Respondent has argued that Illinois vs. Lidster, 540 U.S. 419, 124 S.Ct. 885, 157 L.Ed.2d 843 (2004) supports its argument. (Resp.Brf, pges 3-4). Unfortunately, this argument is incorrect. In this case, the Supreme Court had upheld a roadblock one week after a specific incident. However, the sole purpose of the roadblock was to seek information elicited to apprehend not the vehicle's occupants, but other individuals. The police had merely requested information and were distributing fliers. This was an information seeking stop not of the kind of event that involved suspicion, or lack of suspicion, of the relevant individual. Illinois vs. Lidster, 157 L.Ed.2d 843 at 844-849. This is not the situation here.

Here, clearly, the Illinois vs. Lidster reasoning was not the purpose of Officer Luedtke's roadblock. Her roadblock was not to request information on an unrelated incident and to pass out fliers. She had testified that the purpose of her roadblock was to contain the perimeter. Her car had been stopped in a position so as block the middle of the intersection. (37:25). Her roadblock was to ascertain the culpability of the specific individuals in the vehicles attempting to pass her. This, for the sole purpose of attempting to solve the armed robbery in question. This is clearly contrary to the legal holding in Illinois vs. Lidster. This case is inapplicable here. Respondent's reliance on this case is misplaced.

Respondent had also cited Delaware vs. Prouse, 440 U.S. 648, 99 S.Ct. 1391, 59 L.Ed.2d 660 (1979) to support its position. (Resp.Brf, page 5). However, this case also holds against the Respondent and supports the Defendant's argument. In this case, a police officer had stopped a vehicle solely to check the driver's license and registration. He had testified that this was the sole purpose for his stop. He had seen no traffic or equipment violations nor any suspicious activities. Upon approaching the vehicle, he smelled marijuana and then observed marijuana in plain view. Delaware vs. Prouse, 59 L.Ed.2d 660 at 665.

In Delaware vs. Prouse, the Supreme Court had found that spot checks are illegal unless there is at least a reasonable and articulable suspicion that a motorist is unlicensed or

unregistered. Hence, the Court found the stop unreasonable. Id. at 673. The Court also cited other Supreme Court case law for the proposition that "if the government intrudes...the privacy interest suffers when the government's motivation is to investigate violations of criminal laws..." Id. at 662 citing Marshall vs. Barlow's Inc., 436 U.S.307 at 312-313 (1978).

Respondent had cited the dissent of Justice Jackson in Brinegar vs. United States, 338 U.S. 160 at 183, 69 S.Ct. 1302, 93 L.ED. 1879 (1949) to support its argument. (Resp. Brf, pges 5, 7). However, Justice Jackson's statement indicated in the Respondent's Brief applies solely to the situation where such a roadblock might be necessary in order to save a threatened life, such as when a child has been kidnaped. Also, Justice Jackson never commented upon the Fourth Amendment implications in terms of suppression of evidence under such a circumstance. Brinegar vs. United States, 338 U.S. 160 at 183. Furthermore, Justice Jackson had indicated that "...when a car is forced off the road, summoned to a stop by a siren, and brought to a halt...we think the officers are then in the position of one who has entered a home: the search at its commencement must be valid and cannot be saved by what turns up." Id. at 188.

Respondent also had cited Indianapolis vs. Edmond, 531 U.S. 32, 121 S.Ct. 447, 148 L.Ed.2d 333 (2000) (Resp. Brf, pges 4, 7). However, this case does not support the proposition that stops are

justified without reasonable suspicion. True, this case does state that roadblocks might be permitted to catch a dangerous criminal who is likely to flee by way of a particular route. However, this case does not stand for the proposition that law enforcement can just stop everyone without any form of reasonable suspicion. The roadblock would be clearly justified, under this case and relevant and applicable law, if the dangerous criminal were known. Then, there would be legally recognized reasonable suspicion. However, there is no indication that this case supports a legal conclusion that such a roadblock would be justified in stopping everyone, without an individualized reasonable suspicion as to the particular individual stopped. Contrary to the Respondent, this case does not support a conclusion that such "fishing expeditions" are legal.

In Adams vs. Williams, 407 U.S. 143, 145 (1972), the Supreme Court had found legal a stop when the basis for the stop was a credible informant. This clearly constituted reasonable suspicion. Under this case, the individual must, prior to the stop, be suspicious. Id. at 145-146. (Resp Brf, page 4). Also, in State vs. Buchanan, 178 Wis.2d 441, 504 N.W.2d 400 (Ct.App. 1993), the Court of Appeals held that an officer must have reasonable suspicion prior to a stop. The individual must still be suspicious. State vs. Buchanan, 178 Wis.2d 441 at 446. (Resp. Brf, page 4). Neither of these cases assist the Respondent.

Respondent has also cited Wis. Stats. 349.02(2)(a). Respondent

has attempted to distinguish it from the present situation. True, this statute applies solely to traffic stops related to traffic and ordinance violations cited under 349.02(2)(b). Also true that this statute prohibits traffic stops related to Wis. Stats. 349.02(2)(b) without reasonable suspicion. However, simply because this statute relates to Section (b) does not mean that it allows traffic stops for all other reasons. Respondent has stated that, because Wis. Stats. 349.02(2)(a) only relates to 349.02(2)(b), then law enforcement can stop vehicles at any time, for any reason, and without reasonable suspicion. This, just so long as the reason does not relate to 349.02(2)(b). Under this theory, the legislature's lack of referring to other non-cited offenses allows such stops. Unfortunately, this position is illogical and illegal. It violates all relevant and applicable case and statutory law, such as that cited in Appellant's Brief. It is contrary to Wis. Stats. 968.24, for example. Here, the language of Wis. Stats. 349.02(2)(a) is clear and unambiguous. The language relates only to Wis. Stats. 349.02(2)(b). Wis. Stats. 349.02(2)(a) has no applicability to any other situation. It does not allow any other interpretation and is irrelevant to any other interpretation. Respondent's interpretation is absurd and unreasonable. Statutory interpretation indicates that if the meaning of the statute is plain, courts should ordinarily stop the inquiry. Statutory language should be interpreted to avoid absurd or unreasonable results. State ex rel. Kalal vs. Circuit

Court for Dane County (In re. Criminal Complaint), 271 Wis.2d 633, 681 N.W.2d 110 (2004).

In conclusion, the Respondent has provided no applicable and legally relevant law to support the proposition that law enforcement may stop a vehicle or an individual without individualized reasonable suspicion. This, even under the circumstances of a check point as present here. As the trial court had correctly concluded, such a check point is illegal and violates the relevant and applicable case law and statutory law. The Respondent's arguments fail and this Court must reject them.

Based upon the arguments raised herein, as well as in Appellant's Brief, the trial court had erred in denying Defendant's Fourth Amendment Suppression Motion. This denial Decision must be reversed.

CONCLUSION

As indicated within this Reply Brief and within Appellant's original Brief, the trial court had erred in denying Defendant's Fourth Amendment Suppression Motion. Defendant requests that this Court enter all appropriate decision(s) consistent with the issue(s) that Defendant had raised in these Briefs. This would include suppression of any and all evidence seized from the vehicle in question.

Dated this 16th day of January, 2017.

Respectfully Submitted,

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CERTIFICATION

I hereby certify that the Appellant's Reply Brief of Defendant-Appellant in the matter of State of Wisconsin vs. Damien Scott, 2016 AP 001742 CR conforms to the rules contained in Wis. Stats. 809.19 (8)(b)(c) for a Brief with a monospaced font and that the length of the Brief is ten (10) pages.

Dated this 16th day of January, 2017, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-Appellant

CERTIFICATION

I hereby certify that the text of the e-brief of Appellant's Reply Brief of Defendant-Appellant in the matter of State of Wisconsin vs. Damien Scott, Case No. 2016 AP 001742 CR is identical to the text of the paper brief in this same case.

Dated this 16th day of January, 2017, in Waukesha, Wisconsin.

Mark S. Rosen
Attorney for Defendant-
Appellant