

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

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Appeal No. 2017AP001979  
Winnebago County Circuit Court Case No. 2017TR005019

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**WINNEBAGO COUNTY,**

Plaintiff-Respondent,

v.

**LESA L. MAUS,**

Defendant-Appellant.

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**AN APPEAL FROM THE JUDGMENT OF CONVICTION  
BEFORE THE HONORABLE JOHN A. JORGENSEN,  
JUDGE, WINNEBAGO COUNTY CIRCUIT COURT**

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**THE BRIEF AND APPENDIX OF THE DEFENDANT-  
APPELLANT LESA L. MAUS**

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## **STATEMENT OF THE ISSUES**

1. Did Deputy Shawn Glasel have the requisite level of suspicion to stop Ms. Maus' vehicle?

Answer: The trial court answered yes.

## **STATEMENT AS TO ORAL ARGUMENT AND PUBLICATION**

Because this is an appeal within Wis. Stats. Sec. 752.31(2), the resulting decision is not eligible for publication. Because the issues in this appeal may be resolved through the application of established law, the briefs in this matter should adequately address the arguments; oral argument will not be necessary.

## **STATEMENT OF THE CASE/FACTS**

The defendant-appellant, Lesa Maus (Ms. Maus) was charged with operating a motor vehicle while under the influence of an intoxicant and with a prohibited alcohol concentration in violation of Wis. Stat. § 346.63 (1)(a) and (b), respectively, on March 30, 2017. The defendant, by counsel, entered a not guilty plea at the initial appearance, in writing on April 24, 2017. On June 15, 2017 the defendant, by counsel, filed a motion for suppression of evidence alleging an unlawful stop. A hearing on said motion was held on July 5, 2017, the Honorable, John A. Jorgensen, judge, Winnebago County presiding. An order denying defendant's motion was entered and signed on October 3, 2017. (R.22:1/ App. 1).

A trial to the court, before the Honorable John A. Jorgensen, judge, Winnebago County, was held on September 22, 2017. The court found Ms. Maus guilty of operating a motor vehicle while under the influence of an intoxicant, but dismissed the operating a motor vehicle with a prohibited alcohol concentration charge. A judgement of conviction was entered on September 22, 2017. (R.21:1).

The defendant timely filed a Notice of Appeal on October 3, 2017. (R.23:1-2).

The appeal herein stems from the finding of guilt, and specifically, the trial court denying the defendant's motion for suppression of evidence. The facts that are pertinent to this appeal were received through the testimony of Deputy Shawn Glasel at the motion hearing held on July 5, 2017.

The following testimony was adduced at said hearing. Winnebago County Sheriff Deputy Shawn Glasel, testified that he was a six year veteran of the Winnebago County Sheriff's Department. Glasel testified that on March 30, 2017, he was alerted through dispatch of a vehicle traveling the wrong direction, northbound in the southbound lanes, on Interstate 41 in Winnebago County. (R.30:3/ App. 2). The information was transmitted to Deputy Glasel from dispatch via a citizen witness. (R.30:4/ App. 3). Glasel learned from dispatch that the State Traffic Operation Center (STOC) was also viewing the vehicle through their cameras. *Id.* Apparently, STOC has cameras that line the roadway on Interstate 41, and STOC could monitor traffic in real-time.

Deputy Glasel testified that the original report of the vehicle did not provide a make or model of the vehicle, but did provide a color – beige. (R.30:5/ App. 4). STOC reported the vehicle going northbound in the southbound lanes, but they did

not give a description of the vehicle. (R.30:5/ App. 4). STOC advised Glasel that the vehicle exited the highway near the Highway 45 interchange and continued southbound on Algoma toward Oshkosh. (R.30:6/ App. 5).

When Deputy Glasel received the dispatch of the vehicle exiting, he was a short distance away headed southbound on I-41. *Id.* Glasel testified that he did not recall at what time this was happening, but it was a time when there were not a “lot of vehicles on the road.” *Id.*

Glasel first saw Ms. Maus’ vehicle as it was turning northbound onto I-41. (R.30:7/ App. 6). Glasel got behind Ms. Maus’ vehicle and followed it for approximately one mile as it traveled northbound on Interstate 41. (R.30:9/ App. 7). Glasel testified that STOC was providing him updates as he got behind Ms. Maus’ vehicle as she traveled northbound on Interstate 41. *Id.* However, at no point did STOC communicate to Deputy Glasel that the vehicle that he was stopping was the correct vehicle. (R.30:10-11/ App. 8-9). As he followed Ms. Maus’ vehicle for one mile on the camera laden portion of Interstate 41, at no point did he observe any deviant driving, and at no point did STOC indicate to Glasel that he was following the correct vehicle. (R.30:12/ App. 10). Nor is there any testimony that

Glasel attempted to contact STOC to assure he was following the correct vehicle. More significant, and in stark contrast to the initial call of a beige offending vehicle, Glasel acknowledged the vehicle driven by Ms. Maus was not beige, it was black. (R.30:9/ App. 7).

Subsequent to the stop, Glasel arrested Ms. Maus for operating a motor vehicle while under the influence of an intoxicant.

Ms. Maus challenged the stop of her vehicle. As indicated *supra*, the court denied that motion on July 5, 2017, a written order having been filed on October 3, 2017. The court found that Glasel had reasonable suspicion to stop Ms. Maus' vehicle. (R.30:14-15, App. 11-12). The court stated that while it might have been a better practice to confirm that this was the vehicle that STOC observed, nevertheless, Deputy Glasel had sufficient articulable reasons to stop Ms. Maus. *Id.* The defendant timely filed a Notice of Appeal on October 3, 2017. The appeal herein stems from the Court's denial of the defendant's motion for suppression of evidence.



## STANDARD OF REVIEW

Whether reasonable suspicion exists is a question of constitutional fact. *State v. Powers*, 2004 WI App 143, ¶6, 275 Wis.2d 456, 685 N.W.2d 869. The court applies a two-step standard of review when reviewing questions of constitutional fact. A trial court's finding of historical fact will be upheld unless they are clearly erroneous. However, determining whether a reasonable suspicion justified the stop is reviewed de novo. *Id*

## ARGUMENT

### A. DEPUTY GLASEL LACKED SPECIFIC ARTICULBLE FACTS THAT MS. MAUS' VEHICLE WAS THE VEHICLE TRAVELING THE WRONG WAY ON INTERSTATE 41

A traffic stop is a seizure under the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution. For a traffic stop to pass constitutional muster, it must be supported by reasonable suspicion. *State v. Post*, 2007 WI 60, ¶10, 301 Wis.2d 1, 733 N.W.2d 634. It is well settled that the “temporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning of the Fourth Amendment.” *State*

*v. Gaulrapp*, 207 Wis.2d 600, 605, 558 N.W.2d 696 (Ct.App. 1996). Reasonable suspicion requires more than an “inchoate and unparticularized suspicion or hunch.” To satisfy the constitutional standard of the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution, an investigative traffic stop must be supported by either “probable cause to believe that a traffic violation has occurred, or an officer must have grounds to reasonably suspect that a violation has been or will be committed. *State v. Popke*, 2009 WI 37, ¶12, 317 Wis.2d 118, 765 N.W.2d 569. To meet the requirements of reasonable suspicion, an officer must point to “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant’ the intrusion of the stop.” *Post* at ¶10, citing to *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

“Probable cause refers to the ‘quantum of evidence which would lead a reasonable police officer to believe’ that a violation has occurred.” *Popke* at ¶14 citing to *Johnson v. State*, 75 Wis.2d 344, 348, 249 N.W.2d 593(1977). The evidence must be sufficient to “lead a reasonable officer to believe that guilt is more than a possibility.” *Id.*

However, even if probable cause does not exist, an officer can conduct a traffic stop where “under the totality of the circumstances, he has grounds to reasonably suspect that a crime or traffic violation has been or will be committed.” *State v. Gaulrapp*, 2007 Wis.2d 600, at 605, 558 N.W.2d 696. In this situation, an 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. 634. “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 facts adduced through the testimony of Deputy Glasel do not support a conclusion by a reasonable officer that Ms. Maus had committed, was committing or was about to

commit a violation. First, the observations made by Deputy Glasel did not support a conclusion that Ms. Maus was or had committed a violation. Glasel specifically testified that he observed no traffic law violations.

Second, neither the anonymous call, nor the information relayed by STOC supported a conclusion that Ms. Maus was or had committed a violation. The initial vehicle description provided by the anonymous source (R.30:14/ App. 11) did not even match the type of vehicle that Ms. Maus was driving. The caller indicated that a beige vehicle was traveling the wrong way on Interstate 41. Deputy Glasel responded to the scene, and observed Ms. Maus' vehicle as it entered onto Interstate 41 in the correct direction. The caller provided no additional description of the vehicle other than that the color of the offending vehicle was beige. Glasel's testimony revealed that Ms. Maus' vehicle was black not beige.

Furthermore, Glasel followed Ms. Maus' vehicle for one mile and eventually stopped the vehicle. Glasel testified STOC provided information regarding the wrong way vehicle, prior to the stop. Despite, Glasel following Ms. Maus' vehicle for one mile on I-41, and despite the vehicle he was following being the wrong color, Glasel never confirmed with STOC that Ms. Maus'

vehicle was in fact the offending vehicle. Without this confirmation, it was unclear as to whether Ms. Maus' vehicle was the offending vehicle. What is clear is Ms. Maus' vehicle did not fit the minimal information communicated to Deputy Glasel through dispatch. At a very minimum, Deputy Glasel should have attempted to confirm with STOC that he had the correct vehicle, he did not do so.

To pass constitutional muster, Glasel's stop must have been based on specific and articulable facts. Based on the facts adduced at the motion hearing herein, a reasonable officer could not have concluded that Ms. Maus' vehicle was the offending vehicle. Glasel's stop of Ms. Maus' vehicle was based on nothing more than an "inchoate and unparticularized" hunch.

### **CONCLUSION**

Because of the above, the Court erred when it denied Ms. Maus' motion. This Court should vacate the judgment of conviction and reverse the trial court's order denying Ms. Maus' motion.

Dated this 29<sup>th</sup> day of January, 2018.

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 17 pages. The word count is 3124.

Dated this 29<sup>th</sup> day of January, 2018.

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 29<sup>th</sup> day of January, 2018

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 29<sup>th</sup> day of January, 2018.

Respectfully submitted,

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**APPENDIX**