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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

WINNEBAGO COUNTY,
Plaintiff-Respondent,

Case No. 17AP1979

v.

LESA L. MAUS,
Defendant-Appellant.

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT

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

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I. Statement of Issue Presented for Review

Whether Deputy Shawn Glasel had reasonable suspicion to stop Lesa Maus's vehicle. The trial court answered yes.

II. Statement on Oral Argument and Publication

The County is not requesting publication. Because the issues in this appeal are able to be resolved by application of existing law, oral argument is not necessary.

III. Statement of the Case

The County does not find any errors or misstatements in Ms. Maus's Statement of the Case, but does wish to include some additional information.

The original dispatch was on March 30, 2017, at 12:30 AM. (R. 30:6, R. App. 6). The State Traffic Operations Center ("STOC") provided updates on the wrong way vehicle approximately every minute. (R.30:8, R. App. 8).

STOC reported at some point that the vehicle of concern was getting onto Highway 41 northbound from Algoma. (R.30:9, R. App. 9). Dep. Glasel was asked how much time elapsed from the time he received that update until he saw the vehicle, and he indicated, "I was right behind the

vehicle entering the roundabout to go onto 41.” (R.30:9, R. App. 9). Dep. Glasel indicated that at that point, it was the only vehicle in his vicinity. (R.30:7, 8, R. App. 7, 8). Dep. Glasel confirmed that STOC was basically describing what was occurring in front of him. (R.30:9, R. App. 9).

IV. Argument

The County agrees that a stop of Ms. Maus’s vehicle required reasonable suspicion. *State v. Gaulrapp*, 207 Wis.2d 600, 605, 558 N.W.2d 696 (Ct.App. 1996). An officer does not need to rule out innocent behavior prior to making a stop. *State v. Waldner*, 206 Wis.2d 51, 59, 556 N.W.2d 681, 685 (1996), citing *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763 (1990). Under the totality of the circumstances, a traffic stop is warranted if the officer reasonably suspects that a crime or traffic violation has occurred. *Gaulrapp* at 605.

The County agrees that Dep. Glasel’s observations alone were insufficient to justify a traffic stop. However, when considered along with the information being conveyed by STOC, there was reasonable suspicion to stop Ms. Maus’s vehicle.

STOC was conveying in the moment updates about the location and behavior of the vehicle. STOC established that a vehicle was traveling in

the wrong direction on a highway. Stopping that vehicle would be justified, so the issue is whether there was reasonable suspicion that Dep. Glasel stopped the same vehicle. The description of the offending vehicle getting on to Highway 41 northbound, Dep. Glasel's presence at that very location, and the absence of any other vehicles nearby, leads to the conclusion that Dep. Glasel had reasonable suspicion to stop Ms. Maus's vehicle, even when balanced against the report of the concerned citizen, which described the wrong way vehicle as being a different color than the vehicle stopped. It is possible the citizen was incorrect about the color, and it is also possible that the citizen was describing a different vehicle. Those possibilities do not seriously call into question whether Dep. Glasel stopped the vehicle that STOC cameras observed committing a traffic violation.

The County concedes that some uncertainty could have been resolved by communication with STOC, and verifying explicitly that the vehicle stopped was the offending vehicle. Failing to do things in an ideal manner does not cause otherwise reasonable suspicion to evaporate. Further, verifying the appropriateness of the traffic stop, after it had already been effectuated, would not impact whether there was adequate suspicion for the stop at the time it was made.

V. Conclusion

Dep. Glasel's stop of Ms. Maus's vehicle was supported by reasonable suspicion, and the trial court's ruling should be affirmed.

Dated at Oshkosh, Wisconsin this 28th day of March, 2018

By: _____
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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 638 words.

I further certify pursuant to Wis. Stat. § 809.19(b)(12)(f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

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 one or more initials or other appropriate pseudonym or designation 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.

I further certify that filed with this brief, either as a separate document or as part of this brief, is an appendix that complies with Wis. Stat. § 809.19(2)(a), and that contains a table of contents, and copies of any unpublished opinions cited.

I further certify that on the date of signature I routed the enclosed briefs to our office station for first class US Mail Postage to be affixed and mailed to:

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Dated this 28th day of March, 2018, at Oshkosh, Wisconsin by:

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Transcript of Motion Hearing 7/5/17

R. App. 1