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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Case No. 2018AP2382-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Kelly W. Brown,

Defendant-Appellant.

ON APPEAL FROM ORDERS ENTERED IN THE CIRCUIT
COURT FOR DODGE COUNTY, THE HONORABLE
STEVEN G. BAUER PRESIDING.

BRIEF OF THE PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Whether the circuit court appropriately denied Brown's Motion to Dismiss and/or Suppress Illegal Stop/Arrest and Brown's Motion for Reconsideration by finding that the officer had reasonable suspicion to conduct a traffic stop of Brown's vehicle.

This Court should answer: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument or publication. This case may be resolved by application of established legal principles to the facts of record. Briefs will fully develop and explain the issues pursuant to Wis. Stats. §§ 809.22 and 809.23.

STANDARD OF REVIEW

Whether a traffic stop was reasonable is a question of constitutional fact. *State v. Post*, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634; *State v. Knapp*, 2005 WI 127, 285 Wis. 2d 86, 700 N.W.2d 899. The reviewing court applies a two-step standard of review when determining a question of constitutional fact because it is a mixed question of law and fact. *State v. Post*, 2007 WI 60; *State v. Martwick*, 2000 WI 5, 231 Wis. 2d 801, 604 N.W.2d 552. "We review the circuit court's findings of historical fact under the clearly erroneous standard, and we review independently the application of those facts to constitutional principles." *State v. Post*, 2007 WI 60, ¶ 8; *State v. Martwick*, 2000 WI 5; *State v. Payano-Roman*, 2006 WI 47, 290 Wis. 2d 380, 714 N.W.2d 548. The State carries the burden of proving that a traffic stop was reasonable. *State v. Post*, 2007 WI 60.

ARGUMENT

DEPUTY WEINFURTER HAD REASONABLE SUSPICION THAT A TRAFFIC LAW WAS BEING VIOLATED AND THEREFORE, THE STOP OF BROWN'S VEHICLE WAS JUSTIFIED.

“The Fourth Amendment to the United States Constitution provides that ‘[t]he right of the people to be secure in their persons ... against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause....’” *State v. Post*, 2007 WI 60, ¶ 10. The United States Supreme Court has held that although investigative stops are seizures within the meaning of the Fourth Amendment, in some circumstances police officers may conduct such stops even where there is no probable cause to make an arrest. *Id.*; *Terry v. Ohio*, 392 U.S. 1, 88 S.Ct. 1868, (1968). However, “[s]uch a stop must be based on more than an officer's ‘inchoate and unparticularized suspicion or hunch.’” *Id.*; *Terry v. Ohio*, 392 U.S. 1. “Rather, the 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.” *Id.*; *Terry v. Ohio*, 392 U.S. 1.

A routine traffic stop is more analogous to a *Terry* stop than to a formal arrest. *State v. Iverson*, 2015 WI 101, 365 Wis. 2d 302, 871 N.W.2d 661. Although “traffic stops may be justified by either probable cause or reasonable suspicion[,]” “reasonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops.” *State v. Houghton*, 2015 WI 79, ¶¶ 29–30, 364 Wis. 2d 234, 868 N.W.2d 143.

“When determining if the standard of reasonable suspicion was met, those facts known to the officer at the time of the stop must be taken together with any rational inferences, and considered under the totality of the

circumstances.” *State v. Washington*, 2005 WI App. 123, ¶ 16, 284 Wis. 2d 456, 700 N.W.2d 305. A court must give deference to reasonable inferences drawn by police officers in light of their experience and training. *State v. Seibel*, 163 Wis. 2d 164, 471 N.W.2d 226 (1991) (*citing Terry*, 392 U.S. at 27).

In the present case, Brown filed a Motion to Dismiss and/or Suppress Illegal Stop/Arrest on February, 14, 2018. (R. 11) In the criminal complaint, Deputy Robbie Weinfurter reported that he was traveling northbound at 9:48pm on November 15, 2017 when he observed a vehicle traveling southbound on County Highway G in Dodge County, Wisconsin. (R. 3) Deputy Weinfurter further reported that he noticed that the vehicle had “extremely bright headlights.” (*Id.*) In fact, Deputy Weinfurter stated that “the lights were so bright that they were almost blinding.” (*Id.*) Deputy Weinfurter further stated that as he got closer to the vehicle, the high beams turned off, but the fog lights remained illuminated. (*Id.*) Based on those observations, Deputy Weinfurter believed that the vehicle was operating with more than four headlamps illuminated in violation of Wisconsin Statute § 347.07(1). (*Id.*)

Wisconsin Statute § 347.07(1) provides:

Whenever a motor vehicle equipped with headlamps also is equipped with any adverse weather lamps, spotlamps or auxiliary lamps, or with any other lamp on the front thereof projecting a beam of intensity greater than 300 candlepower, not more than a total of 4 of any such lamps or combinations thereof on the front of the vehicle shall be lighted at any one time when such vehicle is upon a highway.

Wis. Stat. § 347.07(1) (2017-18). Deputy Weinfurter subsequently conducted a traffic stop and identified the driver as Kelly W. Brown, the above-named Defendant-Appellant. (R. 3) Deputy Weinfurter informed Brown that he pulled him over because he had six lights illuminated and that is was blinding to oncoming traffic. (*Id.*)

At the motion hearing conducted May 4, 2018, Deputy Weinfurter testified that Brown's vehicle had "extremely bright lights. I could see that it had headlights and high beams as well as what appeared to be some sort of fog lamp or auxiliary lamp lit as well for a total of six lights." (R. 59:7-8) Deputy Weinfurter further testified that "they were probably the brightest lights I've ever seen while on patrol or in my personal time for that matter... It was very distracting. It was very bright directed into my eyes." (R. 59:8) Even after Brown turned the high beams off and four total lights were illuminated, Deputy Weinfurter testified that the vehicle's lights were "still exceptionally bright." (*Id.*) Moreover, Deputy Weinfurter testified that Brown's "fog lights or auxiliary lights are equally as bright as the headlamps." (R. 59:9)

In both his police reports and described in the criminal complaint and through his testimony, Deputy Weinfurter pointed to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop of Brown's vehicle. Deputy Weinfurter testified that he has been a law enforcement officer for thirteen years and had never seen lights this bright in his life. (R. 59) What was known to the Deputy Weinfurter at the time of the traffic stop was his observation of six "almost blinding" lights illuminated at one time and then observed four "extremely bright" lights after the high beams were turned off.

Based on Deputy Weinfurter's observations and his knowledge of Wisconsin Statute § 347.07(1), it was perfectly reasonable to suspect that Brown's vehicle was violating a traffic law by operating with more than four lights illuminated at one time and that it was projecting an intensity greater than 300 candlepower. Whether Brown's headlights were factory-produced or added aftermarket is irrelevant. Whether Brown's bulbs were multifilament lamps is irrelevant. What is relevant here is that Deputy Weinfurter


was practically blinded by Brown's oncoming vehicle and observed it with six lights illuminated at once. Therefore, Deputy Weinfurter had reasonable suspicion that a traffic law was being violated and the traffic stop of Brown's vehicle was justified.

CONCLUSION

For the reasons discussed above, the State respectfully asks that this Court affirm the circuit court's denial of Brown's Motion to Dismiss and/or Suppress Illegal Stop/Arrest and Brown's Motion for Reconsideration.

Dated this 29th day of March, 2019.

Respectfully submitted,



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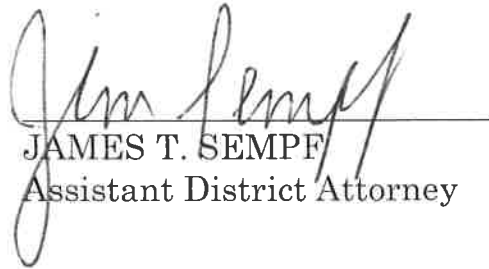
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CERTIFICATION

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 length of this brief is 1,004 words.

Dated this 29th day of March, 2019.



JAMES T. SEMPF
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § 809.19(12)

I hereby certify that:

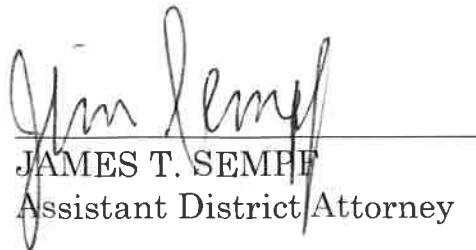
I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § 809.19(12).

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 29th day of March, 2019.



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