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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

STATE OF WISCONSIN,
Plaintiff-Respondent,

Case No. 2019AP610

v.

ROBERT L. KAVALAUSKUS
Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON NOTICE OF APPEAL FROM THE TRIAL COURT'S FINAL
ORDER
WINNEBAGO COUNTY CIRCUIT COURT
THE HONORABLE THERESA S BASILIERE, PRESIDING

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<i>State v. Post</i> , 2007 WI 60	1-3
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I. Statement of Issue Presented for Review

Whether the traffic officer had reasonable suspicion to stop Mr. Kavalauskas. The trial court decided the traffic officer articulated reasonable suspicion to stop Mr. Kavalauskas.

II. Statement on Oral Argument and Publication

The State is requesting neither publication nor oral argument, as this matter involves only the application of well-settled law to the facts of the case.

III. Statement of the Case

The State believes Mr. Kavalauskas' recitation of the facts of the case to be sufficient, and pursuant to Wis. Stat. 809.19(3)(a)(2), omits a repetitive statement of the case.

IV. Argument

Officer Aaron Achterberg articulated reasonable suspicion to stop Mr. Kavalauskas. As such, his stop was lawful, and evidence gathered pursuant to the stop is not subject to the exclusionary rule.

“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....” In *Terry v. Ohio*, the U.S. Supreme Court allowed 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. 392 US 1, 22. Such a stop must be based on more than an officer's “inchoate and unparticularized suspicion or ‘hunch.’ ” *Id.* at 27. 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.* at 21.” *State v. Post*, 2007 WI 60, ¶10.

“Investigative traffic stops are subject to the constitutional reasonableness requirement. The burden of establishing that an investigative stop is reasonable falls on the state.” *Post*, at ¶12. (Internal citations omitted).

“The determination of reasonableness is a common sense test. 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. This common sense approach balances the interests of the State in detecting, preventing, and investigating crime and the rights of individuals

to be free from unreasonable intrusions. The reasonableness of a stop is determined based on the totality of the facts and circumstances.” *Post*, at ¶13. (Internal citations omitted).

In this case, Mr. Kavalauskas went through four roundabouts in a straight line, disregarding lane markings and the curve of the roundabouts. R51 at 5. This case is analogous to *Post*, where an officer observed a driver do a series of “S” weaves within his travel lane for several blocks. *Post*, at ¶5. The Supreme Court affirmed the lawfulness of the stop, holding “it is clear that driving need not be illegal in order to give rise to reasonable suspicion.” *Post*, at ¶24.

In this case the State argued that Mr. Kavalauskas’ driving conduct violated 346.13(1), and that “straightening the curves” is conduct that justified the stop.

346.13(1) provides that

346.13 Driving on roadways laned for traffic. Whenever any roadway has been divided into 2 or more clearly indicated lanes, including those roadways divided into lanes by clearly indicated longitudinal joints, the following rules, in addition to all others consistent with this section, apply: [346.13\(1\) \(1\)](#) Except as provided in sub. [\(4\)](#), the operator of a vehicle

shall drive as nearly as practicable entirely within a single lane and shall not deviate from the traffic lane in which the operator is driving without first ascertaining that such movement can be made with safety to other vehicles approaching from the rear.

The Court ruled that the driving conduct, did not violate 346.13 under a “very technical legal standpoint,” but found coupled with the time of day (2:00 a.m.) there was “more than reasonable suspicion on behalf of the officer to make the traffic stop.” R52:P5.

The facts of this case warrants 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. In this case the officer had reason to suspect the defendant was violating the lane deviation law (there is no evidence the defendant first ascertained the lane change was safe, whether or not it was in fact safe, just as running a stop sign with nobody around is a traffic violation). There was also evidence to suspect the defendant may have been impaired or driving recklessly, with criminal negligence to the actual or potential drivers **in front of him** (the lane deviation statute only concerning vehicles approaching from the rear, and

roundabouts of course require the driver approaching the roundabout to predict the course of oncoming traffic).

For all of these reasons, Officer Achterberg had the requisite reasonable suspicion to effect the stop.

V. Conclusion

For the reasons set forth above, Officer Achterberg's stop was lawful, and evidence gathered subsequent to the stop is not subject to the exclusionary rule.

Dated at Oshkosh, Wisconsin July 10, 2019

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 842 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 first names and last initials instead of full names of person, 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 on the date of signature I routed this brief to our office station for first class US Mail Postage to be affixed and mailed to:

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