

RECEIVED

08-07-2019

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

APPEAL NO. 2019AP000789-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

JAMIE ELLIN GRIMM,

Defendant-Appellant.

BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM THE JUDGMENT OF CONVICTION
AND ORDER DENYING DEFENDANT'S MOTION TO SUPPRESS
THE HONORABLE PHILLIP A. KOSS, CIRCUIT COURT JUDGE
CIRCUIT COURT FOR WALWORTH COUNTY

Zeke S. Wiedenfeld
District Attorney for
Walworth County, Wisconsin

By: Matthew R. Leusink
Assistant District Attorney
Attorney for Plaintiff-
Respondent
State Bar No. 1091526

ADDRESS:

P.O. Box 1001
Elkhorn, WI 53121
(262) 741-7198

TABLE OF CONTENTS

Table of Authorities. . . . .	.2
Statement of Issues.	3
Statement of Publication and Oral Argument. . . . .	.3
Statement of the Facts. . . . .	.3-6
Argument.	6-15
I. OFFICER BLANTON OBSERVED SPECIFIC FACTS, WHICH COMBINED WITH THE LOGICAL INFERENCES FROM THOSE FACTS, REASONABLY WARRANTED AN INVESTIGATORY STOP IN THIS CASE.	6-15
Conclusion.	15

TABLE OF AUTHORITIES

CASES:

<i>Adams v. Williams</i> , 407 U.S. 143, 32 L.Ed.2d 612, 92 S.Ct. 1921 (1972) . . . . .	.7
<i>County of Jefferson v. Renz</i> , 231 Wis. 2d 293, 603 N.W.2d 541 (1999). . . . .	.8, 11
<i>Sarber v. Comm'r of Pub. Safety</i> , 819 N.W.2d 465 (Minn.App.2012). . . . .	.13
<i>State v. Anderson</i> , 155 Wis.2d 77 84, 454 N.W.2d 63 (Ct. App. 1990). . . . .	.8
<i>State ex rel. Kalal v. Circuit Ct. for Dane Cty.</i> , 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110.	9-10
<i>State v. Dearborn</i> , 2010 WI 84, 327 Wis. 2d 252, 786 N.W.2d 97. . . . .	.6
<i>State v. Houghton</i> , 2015 WI 79, 364 Wis. 2d 234, 868 N.W.2d 143.	6-8, 14
<i>State v. Tomaszewski</i> , 2010 WI App 51, 324 Wis.2d 433, 782 N.W.2d 725.	11-12
<i>State v. Truax</i> , 151 Wis.2d 354, 444 N.W.2d 432 (Ct. App. 1989)	8
<i>State v. Walli</i> , 2011 WI App 86, 34 Wis. 2d 402, 799 N.W.2d 868.	6-7
<i>State v. Waldner</i> , 206 Wis.2d 51, 556 N.W.2d 681 (1996). . . . .	.8
<i>State v. Young</i> , 212 Wis.2d 417, 569 N.W.2d 84 (Ct. App. 1997). . . . .	.8
<i>Terry v. Ohio</i> , 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968).	7

WISCONSIN STATUTES:

347.12(1).	in passim
--------------------	-----------

STATEMENT OF THE ISSUE

DID THE ARRESTING OFFICER POSSESS REASONABLE SUSPICION TO CONDUCT AN INVESTIGATIVE STOP OF GRIMM'S VEHICLE?

Trial court answer: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Neither publication of this court's opinion nor oral argument are necessary in this case. The issues presented are adequately addressed in the brief and under the rules of appellant procedure, publication of this decision is not appropriate because it is a one judge appeal. See § 809.23(1)(b)4, Wis. Court Rules and Procedures, 2017-2018.

STATEMENT OF THE FACTS

Officer Sean Blanton is a police officer with the Village of Sharon Police Department with seventeen years of law enforcement experience (R57:4).

On September 3, 2017 at approximately 11:32 p.m., Officer Blanton was on routine patrol traveling eastbound on Stateline Road when he observed a vehicle approaching him westbound on Stateline Road in the Village of Sharon, Walworth County, Wisconsin (R57:5-6). Another vehicle was traveling eastbound in front of Officer Blanton's squad car (R15: squad video 00:1-00:59). As the westbound car approached within 500 feet of Officer Blanton, the vehicle flashed its high beam headlights at Officer Blanton's squad car (R15:squad video 00:53-00:55). In response to this action,

Officer Blanton activated his squad car's overhead emergency lights, turned around and conducted a traffic stop of the westbound vehicle (R57:7; R15:squad video 00:55-02:48). Officer Blanton approached the driver side of the vehicle and made contact with the driver and sole occupant who was identified by Illinois photo driver's license as Jamie E. Grimm (R57:7; R15:body camera 0:00:00-0:01:14). Officer Blanton immediately explained to Grimm that he stopped her vehicle because Grimm flashed her high beam headlights (R15: body camera 0:00:00-0:01:14). Grimm apologized several times and stated, "[O]n these roads I turn them on and off and I meant to hit this and I hit the other way." (R15: body camera 0:01:01-0:01:08).

Grimm was subsequently arrested for operating a motor vehicle while intoxicated (R57:13, 27).

THE TRIAL COURT'S FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Based upon the evidence adduced at the suppression hearing, the trial court made the following ruling:

All right, I've reviewed the video again, and Officer Blanton does ask Ms. Grimm, "Do you know why I'm stopping you?" and she says "no". And he says: You flashed your brights at me; you can't do that. She gives some reasons why she did it.

So it's not consistent. I got the impression from his testimony that she was - he was saying Ms. Grimm was driving with her brights continuously on, and that's how

the testimony seemed...¹ They are approaching each other on east/west road leading into Sharon. She's coming from Lake Geneva.

I read 347.12(1)(a)...I have to interpret - well, if Blanton is saying she did not dim her headlights at all, clearly there is a basis to stop. If Blanton is saying you flashed them at me one time, that's a much closer case. But the statute only permits, apparently, according to the second sentence when it says: This paragraph does not prohibit an operator from intermittently flashing at a vehicle whose high beams are on as they approach, you could read that to say therefore, it does prohibit an operator from flashing high beams when it's not for that reason.

So it appears it's a violation, according to the way the statute is read - written, a violation of 347.12 either way.

With that, by the way - and I'll make a finding that they were flashed, or at least that's what - based on the most - on the best evidence, with I think is what he immediately says to Ms. Grimm at the scene and how she is answering in context, as if they were flashed.

So for any appellate purposes...I'll make a finding that they were not on constantly but were flashed. And when Officer Blanton - who frankly I believe gave credible testimony. I think he was summarizing that it was just driving with high beams in the way that he later - or was earlier described in the video.

So I'm still finding that there was a basis to stop, as a violation of 347.12(1)(a).

R58:12-14. The Court then clarified that because the relevant statute specifically states under what circumstances it is

¹ Officer Blanton did testify that Grimm failed to dim her high beam headlights, which were still on within 500 feet of approaching Officer Blanton's squad car. R57:5-6. The squad car video, however contradicted Officer Blanton's testimony and showed that Grimm flashed her high beams at Officer Blanton. R15. Officer Blanton is familiar with the difference between a vehicle with its high beams on and its high beams off and can tell the difference. R57:5-6.

acceptable for a driver to flash a vehicle's bright lights at oncoming traffic, flashing the brights under other circumstances is not lawful (R58:18). The Court continued:

And I do believe, as I added, that they were within 500 feet of each other. It's a safety issue. If you flash your high beams at people, it makes it difficult for that other driver to see; therefore it's logical as well. There really is no reason to flash high beams unless you're trying to get somebody else to turn theirs off.

R58:18-19.²

ARGUMENT

OFFICER BLANTON OBSERVED SPECIFIC FACTS, WHICH COMBINED WITH THE LOGICAL INFERENCES FROM THOSE FACTS, REASONABLY WARRANTED AN INVESTIGATORY STOP IN THIS CASE.

The sole issue on appeal is whether Officer Blanton had reasonable suspicion to justify the traffic stop. This court's review of a circuit court's order denying a motion to suppress presents "a question of constitutional fact." *State v. Dearborn*, 2010 WI 84, ¶13, 327 Wis. 2d 252, 786 N.W.2d 97. When reviewing the constitutionality of a traffic stop, this court will uphold the circuit court's findings of fact unless they are "clearly erroneous." *State v. Houghton*, 2015 WI 79, ¶18, 364 Wis. 2d 234, 868 N.W.2d 143. The application of the law to those facts is a question this court reviews de novo. *Id.* In *State v. Walli*, 2011 WI App 86, ¶¶ 1 & 17, 334 Wis. 2d 402, 799 N.W.2d 868, this court

² Grimm does not challenge the trial court's findings of fact. *See* Grimm's Appellate Brief at p. 9.

held that the clearly erroneous standard of review applies even to factual findings, like the finding at issue in this case, that are based in part on evidence preserved on a video recording.

The United States Supreme Court has held that where a police officer observes unusual conduct which leads him to reasonably conclude in light of his experience that criminal activity may be afoot, the officer may stop the suspicious person and make reasonable inquiries aimed at confirming or dispelling his suspicions. *Terry v. Ohio*, 392 U.S. 1, 20 L.Ed.2d 889, 88 S.Ct. 1868 (1968). The officer must be able to articulate specific facts which, when combined with logical inferences from those facts, reasonably warrant the intrusion. *Id.* at 21. The Fourth Amendment does not require a policeman who lacks the precise level of information necessary for probable cause to arrest, to simply shrug his shoulders and allow a crime to occur or a criminal to escape. On the contrary, *Terry* recognizes that it may be the essence of good police work to adopt an intermediate response. A brief stop of a suspicious individual, in order to determine his identity or to maintain the status quo momentarily while obtaining information, may be the most reasonable in light of the facts known to the officer at the time. *Adams v. Williams*, 407 U.S. 143, 145-146 (1972).

The rationale of *Terry* has been applied to the stop of motor vehicles and the detention of its occupants. See *State v. Houghton*,

2015 WI 79, ¶30, 364 Wis.2d 234, 868 N.W.2d 143. "[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops." *Id.* See also *County of Jefferson v. Renz*, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999) (investigative stop justified if officer reasonably suspects that person is violating non-criminal traffic law).

The question of what constitutes reasonable suspicion is a commonsense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience. *State v. Young*, 212 Wis.2d 417, 424, 569 N.W.2d 84, 683 (Ct. App. 1997). It invokes the factual and practical considerations of everyday life on which reasonable and prudent person, not legal technicians, act. *State v. Truax*, 151 Wis.2d 354, 360, 444 N.W.2d 432, 435 (Ct. App. 1989).

A determination of reasonableness depends on the totality of the circumstances. *State v. Waldner*, 206 Wis.2d 51, 53, 556 N.W.2d 681, 683 (1996). Suspicious conduct by its very nature is ambiguous, and the principle function of the investigative stop is to quickly resolve that ambiguity. If any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have a right to temporarily detain the individual for the purpose of inquiry. *State v. Anderson*, 155 Wis.2d 77 84, 454 N.W.2d 63, 768 (Ct. App. 1990).

In the present case, Officer Blanton had reasonable and specific facts in support of why he initially stopped to investigate Grimm. He observed Grimm flash her high beam headlights at Officer Blanton as he approached Grimm's vehicle from the opposite direction within 500 feet. Wis. Stat. § 347.12(1) provides:

Use of multiple-beam headlamps. (1) Whenever a motor vehicle is being operated on a highway during hours of darkness, the operator shall use a distribution of light or composite beam directed high enough and of sufficient intensity to reveal a person or vehicle at a safe distance in advance of the vehicle, subject to the following requirements and limitations:

(a) Whenever the operator of a vehicle equipped with multiple-beam headlamps approaches an oncoming vehicle within 500 feet, the operator shall dim, depress or tilt the vehicle's headlights so that the glaring rays are not directed into the eyes of the operator of the other vehicle. **This paragraph does not prohibit an operator from intermittently flashing the vehicle's high-beam headlamps at an oncoming vehicle whose high-beam headlamps are lit.**

(b) Whenever the operator of a vehicle equipped with multiple-beam headlamps approaches or follows another vehicle within 500 feet to the rear, the operator shall dim, depress, or tilt the vehicle's headlights so that the glaring rays are not reflected into the eyes of the operator of the other vehicle. This paragraph does not prohibit an operator from intermittently flashing the vehicle's high-beam headlamps as provided under par. (a).

[Emphasis Added].

"[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper, and intended effect." *State ex rel. Kalal v. Circuit Ct. for Dane Cty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110.

"[S]tatutory interpretation 'begins with the language of the statute.'" *Id.* ¶ 45 (citation omitted). "Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage." *Id.* ¶ 46 (citations omitted). Courts interpret statutory language "reasonably, to avoid absurd or unreasonable results." *Id.* (citations omitted).

A reasonable officer in Officer Blanton's position would have reason to believe Grimm was violating Wis. Stat. § 347.12(1)(a). On September 3, 2017 at approximately 11:32 p.m. Officer Blanton was on routine patrol traveling eastbound on Stateline Road. At that time Officer Blanton observed a vehicle approaching Officer Blanton with its low beam headlights illuminated. As the vehicle came within 500 feet of Officer Blanton's squad car, the vehicle flashed its high beam headlights.

Based on these facts, there is more than sufficient evidence to meet the reasonable suspicion to stop standard. Although disputed by Grimm, these facts establish reasonable suspicion to believe that Grimm failed to comply with the requirements of Wis. Stat. §347.12(1). The plain language of the statute provides that an operator may intermittently flash the vehicle's high-beam headlamps at an oncoming vehicle whose high-beam headlamps are lit. There is absolutely no indication from the squad video that Officer Blanton's squad car had the high beams illuminated, nor

was there any evidence to suggest that he did.³ In fact, the squad video along with Grimm's explanation for flashing her bright headlights are inconsistent with any such finding.⁴ Officer Blanton also testified that he did not flash his high beams at Grimm, suggesting that he never had them on, particularly considering Officer Blanton was following a vehicle traveling eastbound. Therefore, under the plain language of the statute and the circumstances of this case, Grimm's flashing on her bright headlights provided an adequate basis for Officer Blanton to believe Grimm was violating a non-criminal traffic law. *See Renz*, 231 Wis.2d at 310, 603 N.W.2d 541. *See also State v. Tomaszewski*, 2010 WI App 51, ¶¶10-11, 324 Wis.2d 433, 782 N.W.2d 725 (The operation of high beams within 500 feet of another vehicle can establish reasonable suspicion to stop a vehicle).

Moreover, contrary to Grimm's assertions, *Tomaszewski* supports the officer's interpretation of the statute. In *Tomaszewski*, an inspector for the Wisconsin State Patrol observed a vehicle driven by Tomaszewski following closely behind a westbound semi-truck. Tomaszewski's high beams were on and the

³ In the trial court Grimm never argued that Officer Blanton's high beams were lit, so the trial court never addressed this issue.

⁴ Grimm's assertion that "the defendant's stated reasons for flashing the high beams is not dispositive on the issue of whether the stop of defendant's vehicle was lawful" is without merit. *See Grimm's Appellate Brief* at p. 11. When evaluating a challenge to whether evidence satisfies the constitutional standard of reasonableness, this court may consider evidence adduced at the subsequent trial in support of the trial court's decision at a suppression hearing. *See State v. Truax*, 141 Wis.2d 354, 360, 444 N.W.2d 432, 435 (Ct. App. 1989).

inspector estimated Tomaszewski was 400 feet behind the truck. *Id.* at ¶ 3. The inspector conducted a traffic stop and Tomaszewski was subsequently arrested for operating a motor vehicle while intoxicated. *Id.* at ¶ 4. Tomaszewski argued that the inspector lacked reasonable suspicion to stop his vehicle for violating Wis. Stat. 347.12(1) because "there was no evidence that the glaring rays of his vehicle's high beams reflected into the eyes of the semi-truck driver." *Id.* at ¶ 8. Tomaszewski further argued that "no evidence could be produced because a semi-truck lacks a rear windshield through which the lights could shine." *Id.* at ¶ 8.

In rejecting Tomaszewski's contention, the Court of Appeals stated:

We conclude Wis. Stat. § 347.12(1)(b) does not require proof that the headlights reflected into the eyes of another driver. The statute directs drivers operating within 500 feet to dim their headlights, and concludes by describing the purpose of this requirement: to prevent the glaring rays from reflecting into another driver's eyes. Tomaszewski's interpretation would require an ordinary driver using high beams to know whether his or her headlights will impair another driver's vision. This interpretation is absurd; drivers are in no position to determine whether their vehicle's high beams glare into the eyes of other drivers. To avoid this problem, the statute assumes the use of high beams within 500 feet will cause impairment, and prohibits their use.

Id. at ¶ 10.

Similarly, in this case the State did not have to show that Grimm's flashing of her high beam headlights glared into Officer Blanton's eyes. Because Wis. Stat. 347.12(1) assumes the use of

high beams within 500 feet will cause impairment, the statute prohibits any use of the high beams, even a momentary flicker. The only exception to this rule is when an oncoming vehicle has its high beam headlamps lit, then a driver may intermittently flash the vehicle's high-beam headlamps to advise the driver of the hazard he is causing.

Grimm relies on several out of state cases including *Sarber v. Comm'r of Pub. Safety*, 819 N.W.2d 465 (Minn.App.2012) to support his position that flashing the high beams is not a violation of Wis. Stat. § 347.12(1)(a). Grimm's reliance on *Sarber* is misplaced. In *Sarber*, a deputy observed a driver flashing his high beams twice and stopped him based on a violation of section 169.61(b). *Id.* at 467. But the officer did not testify that his vision was impaired by the flashing. *Id.* The Court determined that the deputy misinterpreted section 169.61(b), reasoning that "the legislature's inclusion of the term 'glaring' leads us to conclude that briefly flashing or flickering one's high beams at an oncoming vehicle is not a violation, unless another driver was at least temporarily blinded or impaired by the lights." *Id.* at 468. *Sarber*, however, is of no consequence. As previously shown, in Wisconsin Wis. Stat. 347.12(1) assumes the use of high beams within 500 feet will cause impairment, and the statute prohibits any use of the high beams, even a momentary flicker, unless it is for the narrow exception carved out by the statute.

Under the facts of this case, Grimm's stop was legally justified by Wisconsin law.

Even if this Court concludes that Grimm did not violate section 347.12(1), however, it should still affirm because Officer Blanton reasonably thought that Grimm was violating that provision. "[A]n objectively reasonable mistake of law [or fact] by a police officer can form the basis for reasonable suspicion to conduct a traffic stop." *Houghton*, 2015 WI 79, ¶ 52. If "a reasonable judge could agree with the officer's view" of the statute at issue, then the officer's mistaken view of the statute "was objectively reasonable" and the traffic stop was lawful. *Id.* ¶ 71 (citation omitted). Here, the circuit court agreed that Grimm was violating Wis. Stat. 347.12(1) by flashing her headlights within 500 feet of Officer Blanton's oncoming squad car. (R. 58:12-14, 18-19).

And the officer's view was reasonable. The reasonableness of an officer's statutory interpretation is enhanced if no case law has interpreted the provision at issue. *See Houghton*, 2015 WI 79, ¶ 70 & n.12. As Grimm concedes, no published Wisconsin case law has addressed the specific issue raised in this case. *See Grimm's Appellate Brief* at p. 7. The trial court believed that the plain language of the statute itself prohibited Grimm's conduct in this case (R58:18-19). *See Wis. Stat. § 347.12(1)*. Based on the plain language of the statute, it was reasonable for the officer here to

believe Grimm's flashing of her high beam headlights within 500 feet of his oncoming vehicle was a violation of the statute. In short, a *reasonable* judge could agree with the officer that Grimm was violating section 347.12(1) because Grimm flashed her high beams within 500 feet of Officer Blanton's vehicle under circumstances inconsistent with the exception listed in the statute. Thus, the officer's view of the statute, if mistaken, was reasonable—which means that the traffic stop was lawful.

CONCLUSION

For the reasons set forth above, the State respectfully requests that the trial court be affirmed in its denial of Grimm's suppression motion.

Dated this ____ day of August, 2019.

Respectfully submitted,

MATTHEW R. LEUSINK
Assistant District Attorney
Walworth County, Wisconsin
State Bar No. 1091526

Walworth County Judicial Center
1800 Co. Rd. NN
PO Box 1001
Elkhorn, WI 53121
262-741-7198

CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c).

_____ Monospaced font: 10 characters per inch; double spaces; double spaced; 1.5 inch margin on left side and 1 inch margins on the other 3 sides.

The length of the brief is _____ pages.

I also certify that:

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

Signed,

Attorney