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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

08-14-2019

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Appeal No. 19AP927

MICHAEL THOMAS MARTELL

Defendant-Appellant.

Appeal from Vilas County Circuit Court
Hon. Neal A. Nielsen III

**BRIEF OF
DEFENDANT-APPELLANT, MICHAEL THOMAS MARTELL**

Albert Moustakis, WI Bar No. 1018354
MOUSTAKIS & METTELKA, LLC
219 S. Main Street
P.O. Box 1934
Eagle River, WI 54521
PHONE: 715-480-4111
FAX: 715-480-4113
Attorneys for Plaintiff-Appellant

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Other:

Transcript of Proceedings, Motion Hearing on Nov. 26, 2018
(18-CT-
21)2, 3, 5

STATEMENT OF THE ISSUES

Issue: Do the totality of the circumstances rise to the level of reasonable suspicion to make a traffic stop when, during snowy road conditions, an officer receives a tip that a vehicle was travelling at variable rates of speed and pulling over to allow other vehicles to pass, then subsequently the officer observes a vehicle matching the description from the anonymous tip swerve slightly into the gravel shoulder of the road and swerve within its lane of travel at a rate of 25 miles per hour in a 45 miles per hour speed limit zone?

Circuit Court's Decision: Yes.

STATEMENT ON ORAL ARGUMENT

Defendant-Appellant, Michael Thomas Martell (Mr. Martell), respectfully requests oral arguments. This appeal will require the Court to interpret the law establishing when a law enforcement officer has reasonable suspicion to make a traffic stop. Oral argument may assist the Court in resolving the issue.

STATEMENT ON PUBLICATION

Defendant-Appellant, Michael Thomas Martell, respectfully recommends that the decision in this matter be published under the considerations of Wis. Stat. § 809.23(1)(a). The Court's decision will contribute to the legal literature by collecting case law. The Court's decision will also be of substantial public interest in Wisconsin where winter road conditions are persistent.

STATEMENT OF THE CASE

Mr. Martell respectfully asks this Court to reverse the District Court's finding that totality of the circumstances rose to the level of reasonable suspicion such that a traffic stop was warranted and subsequently the District Court's denial of Defendant's motion to dismiss. The issue presented on appeal is whether Mr. Martell's Fourth Amendment rights were violated when, given the totality of the circumstances, he was the subject of a traffic stop.

On or about February 14, 2018, Lieutenant Jeff Schaub of the Vilas County Sheriff's Department learned that a complaint was called into the Vilas County Dispatch Center regarding a black Ford SUV with a Minnesota License plate

starting with 6LY. (Transcript of Proceedings at 4-5.) The complainant stated that the vehicle was driving erratically (T. at 5). Lt. Schaub positioned himself in an area where the vehicle was reported. (T. at 5.) Once he identified a vehicle matching the description, he positioned his squad car behind the vehicle. (T. at 5). When Lt. Schaub pulled up to the vehicle, he observed the vehicle engage its brakes, touch the gravel on the shoulder, swerve within its lane of travel and travel 25 miles per hour in a 45 mile per hour speed limit zone. After observing these things, Lt. Schaub activated his emergency lights to make a traffic stop. (T. at 5-7.)

At this point, Lt. Schaub noted that the vehicle made a wide turn into a driveway. (T. at 11.) Mr. Martell asserts, and dash cam footage confirms, that the road conditions were wet with snow and that there were snowbanks piled on the sides of the road from the snowplow.

Mr. Martell moved in the Vilas County District Court to suppress all evidence subsequent to the traffic stop and dismiss the charges against him on the grounds that the totality of the circumstances did not rise to the level of reasonable suspicion such that a traffic stop was warranted.

The Vilas County District Court denied Mr. Martell's motion. (T. at 29). The District Court reasoned that (1)

because the tipster identified themselves and provided identifying information about a vehicle driving in a manner that concerned the tipster; (2) Lt. Shaub observed the vehicle matching the description provided by the tipster to be traveling 25 miles per hour in a 45 miles per hour speed limit zone; (3) Lt. Shaub observed the vehicle engage its brakes and touch the gravel shoulder; and (4) Lt. Shaub observed the vehicle swerve within its lane of travel, Lt. Shaub was justified in the traffic stop. (T. at 28-9.) Accordingly, the District Court denied Mr. Martell's motion (T. at 29.).

ARGUMENT

I. STANDARD OF REVIEW

The District Court's analysis of the scope of Mr. Martell's Fourth Amendment rights are reviewed *de novo*. Olson v. Town of Cottage Grove, 309 Wis.2d 365, 749 N.W.2d 211 (2008).

II. THE DISTRICT COURT ERRED WHEN IT DENIED MR. MARTELL'S MOTION TO DISMISS BECAUSE THE TOTALITY OF THE CIRCUMSTANCES FAILED TO RISE TO THE LEVEL OF REASONABLE SUSPICION REQUIRED TO MAKE A TRAFFIC STOP.

The totality of the circumstances failed to rise to the level of reasonable suspicion, therefore the traffic stop performed by Lt. Shaub was a violation of Mr. Martell's Fourth Amendment rights.

In, State v. Anagnos (In re Anagnos), 341 Wis.2d 576, 815 N.W.2d 675, 2012 WI 64 (Wis., 2012), the Wisconsin Supreme Court reviewed a decision by the Wisconsin Court of Appeals in which Wis. Stat. § 346.34 was discussed in similar, though distinguishable circumstances to the instant case.

In, Anagnos, a deputy observed a vehicle, driven by Anagnos, pull out of Taco Bell, make a left-hand turn, and accelerate at a rapid speed before stopping at an intersection. The deputy thought that the vehicle had made an illegal left-hand turn over the median. The deputy then observed the vehicle make a left-hand turn at the intersection, at a high rate of speed, without using a turn signal. Based on these observations, the deputy made a traffic stop on the vehicle driven by Anagnos. Anagnos was subsequently arrested for OWI.

Anagnos' defense focused on whether the deputy had reasonable suspicion to make the traffic stop. The Circuit Court found that because there was no oncoming, following, nor pedestrian traffic, that Anagnos did not violate Wis. Stat. § 346.34(1)(b). Due to this finding, the Circuit Court concluded that the deputy did not have reasonable suspicion to make the traffic stop and therefore had did not have probable cause to arrest Anagnos. All evidence obtained as a

result of the stop was suppressed and Anagnos' refusal to submit to a chemical test was deemed reasonable.

The State appealed the decision of the Circuit Court. The case ended up in the Wisconsin Supreme Court where it was determined that (1) probable cause for the traffic stop did not exist because no violation of the law was observed; and (2) reasonable suspicion for the traffic stop did exist given the totality of the circumstances.

The Supreme Court in Anagnos stated:

In evaluating whether an investigatory traffic stop is supported by reasonable suspicion, the officer must have more than an "inchoate and unparticularized suspicion or hunch." *Post*, 301 Wis.2d 1, ¶ 10, 733 N.W.2d 634. 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 traffic stop. *Id.* This determination is based on "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.*, ¶ 13.

The specific and articulable facts that the deputy pointed to in, Anagnos were that Anagnos (1) made left hand turn "over an elevated median that was five feet, eight inches in width," a barrier which "is not the usual type of barrier

you're expected to be able to cross;" Id (2) accelerated rapidly, twice; and (3) made a left hand turn without signaling. Further, this "suspicion would reasonably be heightened by the officer's experience that he is more likely to encounter impaired drivers at 1:15 in the morning." Id at ¶ 58.

In the instant case, a tipster called in a vehicle driving erratically, Lt. Shaub observed that vehicle drive slower than the posted limit, swerve within its lane of travel, and briefly touch its tires to the gravel shoulder during snowy wet conditions. Like in, Anagnos, Mr. Martell was not alleged to have violated the law prior to the stop. Like Anagnos, Mr. Martell may have taken some actions that that were somewhat unusual, but those actions did not rise to the requisite level of reasonable suspicion outlined in, Anagnos. (T. at 28-9.) Therefore, all evidence obtained after the traffic stop should be suppressed and the matter dismissed.

CONCLUSION

For the foregoing reasons, Mr. Martell respectfully asks that this Court reverse the order of the District Court denying his motion.

Date: August 12, 2019



Wis. Bar No. 1018354

MOUSTAKIS & METTELKA, LLC.
219 S. Main Street
P.O. Box 1934
Eagle River, WI 54521

*ATTORNEYS FOR DEFENDANT-
APPELLANT*

FORM AND LENGTH CERTIFICATION

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 monospaced font. The length of this brief is 10 pages.




A handwritten signature in black ink, consisting of several loops and flourishes, positioned above a horizontal line.

CERTIFICATE OF SERVICE

I hereby certify that on August 13, 2019, the foregoing was sent to the Wisconsin Court of Appeals, Office of the Clerk, 110 East Main Street, Suite 215, P.O. Box 1688, Madison, WI 53701-1688. I further certify that the foregoing was personally served upon the Plaintiff-Appellee at the Vilas County Courthouse, District Attorney's Office.

August 13, 2019



_____.

ATTORNEYS FOR DEFENDANT-

APPELLANT