

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2019AP1622-CR
(Buffalo County Case No. 18CM50)

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SARAH J. KATULA-TALLE,

Defendant-Appellant.

**Appeal From The Judgment of Conviction, and the
in the Circuit Court for Buffalo County,**

The Honorable Joseph D. Boles, Circuit Judge

**BRIEF AND APPENDIX OF
DEFENDANT-APPELLANT**

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ISSUES PRESENTED FOR REVIEW

I. WHETHER THE CIRCUIT COURT ERRONEOUSLY DENIED MS. KATULA-TALLE'S MOTION TO SUPPRESS.

The circuit court judge erred when he denied Ms. Katula-Talle's motion to suppress the traffic stop because there was no reasonable suspicion.

**STATEMENT ON ORAL ARGUMENT AND
PUBLICATION**

Oral argument is appropriate in this case under Wis. Stat. (Rule) 809.22. Appellant's arguments clearly are substantial and do not fall within that class of frivolous or near frivolous arguments concerning which oral argument may be denied under Rule 809.22(2)(a).

Publication is not requested under Wis. Stat. (Rule) 809.23.

STATEMENT OF THE CASE

Ms. Katula-Talle was charged with one count of Possession of Drug Paraphernalia following a traffic stop (R. 2). A motion to suppress the evidence found during a search of the vehicle was filed but ultimately erroneously denied by the trial court (R. 11; R. 37). Following the court's denial of the suppression motion, Ms. Katula-Talle entered a plea of guilty to Possession of Drug Paraphernalia (R. 21; R. 34). The trial court withheld sentence and ordered 1 year of probation with conditional time that was stayed for use by the agent if there were any probation violations (R. 34).

STATEMENT OF FACTS

On April 4, 2018, a Criminal Complaint was filed charging Ms. Katula-Talle with one count of Possession of Drug Paraphernalia¹ (R. 2). An initial appearance was held on May 2, 2018 (R. 36). On May 16, 2018, an adjourned initial appearance was held wherein Ms. Katula-Talle entered a plea of not guilty (R. 35).

On July 24, 2018, Ms. Katula-Talle filed a Motion to Suppress Fruits of Vehicle Search because the officer who conducted the traffic stop in this case stated in his report that he knew Ms. Katula-Talle's driving privileges to be revoked but he provided no evidence of how he knew the information and the

¹ A complaint was also filed in a companion case (Buffalo County case 18CM51) which charged Ms. Katula-Talle with Possession of Tetrahydrocannabinols, which was dismissed. That file is not the subject of this appeal.

officer did not check to be sure his information was still current at the time of the stop (R. 11).

On September 28, 2018, a motion hearing was held wherein the officer was called to testify. Officer Tenold testified that he had police contact with Ms. Katula-Talle on February 18, 2018 wherein he was notified that Ms. Katula-Talle's license was in revoked status at that time. The stop in the instant case occurred on March 3, 2018. Officer Tenold testified that he did not check Ms. Katula-Talle's operating status between February 18, 2018 and the March 3, 2018 stop and he had not had any additional contact with her between those dates. Officer Tenold also testified that he had no knowledge of when Ms. Katula-Talle's revocation status began or how long the revocation status was for. Additionally, Officer Tenold testified that he had no knowledge of the waiting period to have an occupational license instated after a revocation or suspension (R. 37, pp. 4:21-11:12). Defense counsel argued that Officer Tenold made the stop improperly because he initiated the stop without using any of the tools and resources available to him to determine whether or not Ms. Katula-Talle's license was valid at the time of the March 3, 2018 stop. Officer Tenold also could not provide any explanation for how he "knew" Ms. Katula-Talle's license was not valid other than he had contact with her two weeks prior and her license wasn't valid at that time. Since the stop was improper, the search of the vehicle becomes improper and the fruit of that search is suppressible (R. 37, pp. 12:10-13:14). Ultimately, the

court denied the motion to suppress, so Ms. Katula-Talle decided to enter a plea to the charge (R. 37, pp. 13:14-14:14).

On November 30, 2018, a plea and sentencing hearing was held. Ms. Katula-Talle entered a plea of guilty to Possession of Paraphernalia in the instant case². The trial court conducted a proper colloquy with Ms. Katula-Talle before accepting her guilty pleas and determining the sentences. The trial court ultimately withheld sentenced and ordered 1 year of probation with 14 days of conditional jail time to be stayed for use by the probation agent. The trial court also waived court costs in the instant case. (R. 34, pp. 3:14-21:24; R. 21).

On December 3, 2018, a Judgment of Conviction was filed reflecting the withheld sentence as ordered by the trial court (R. 22). On December 6, 2018, Ms. Katula-Talle timely filed a Notice of Intent to Pursue Postconviction Relief (R. 23).

ARGUMENT

I. THE CIRCUIT COURT ERRONEOUSLY DENIED MS. KATULA-TALLE’S MOTION TO SUPPRESS.

A. STANDARD OF REVIEW

“[The] review of an order granting or denying a motion to suppress evidence presents a question of constitutional fact.” *State v. Robinson*, 2010 WI 90, ¶22, 327 Wis. 2d 302, 786 N.W.2d 463. Similarly, “[w]hether there is probable

² Ms. Katula-Talle also entered a plea of guilty in Buffalo County case 18CT28 for Operating after Revocation 1st Offense. Additionally, as part of the plea agreement, the single count in Buffalo County case 18CM51 was dismissed and a deferred agreement in Buffalo County case 17CM123 was revoked and sentence was pronounced in that file.

cause or reasonable suspicion to stop a vehicle is a question of constitutional fact.” *State v. Popke*, 2009 WI 37 ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. “When presented with a question of constitutional fact, this court engages in a two-step inquiry. First, [the Court of Appeals] reviews the circuit court’s findings of historical fact under a deferential standard, upholding them unless they are clearly erroneous. Second, [the Court of Appeals] independently apply constitutional principles to those facts.” *Robinson*, 327 Wis.2d 302, ¶22; *State v. Post*, 2007 WI 60 ¶8, 301 Wis.2d 1, 733 N.W.2d 634. Whether an investigatory stop meets constitutional standards is a question of law that [the Court] reviews independently. *See State v. Krier*, 165 Wis. 2d 673, 676, 478 N.W.2d 63 (Ct. App. 1991).

B. ARGUMENT

The officer lacked reasonable suspicion to pursue Ms. Katula-Talle and to perform a stop. The Fourth Amendment to the United States Constitution prohibits unreasonable searches and seizures. A seizure occurs whenever a law enforcement officer "accosts an individual and restrains his freedom to walk away." *Terry v. Ohio*, 392 U.S. 1, 16, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968). Law enforcement officers may lawfully seize an individual "if they have a suspicion grounded in specific, articulable facts and reasonable inferences from those facts, that the individual has committed a crime." *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987). Under this standard, officers may under certain

circumstances temporarily freeze a situation where failure to act will result in the disappearance of a potential suspect." *Id.* at 676. Reasonable suspicion is evaluated under the totality of the circumstances. *State v. Amos*, 220 Wis. 2d 793, 800, 584 N.W.2d 170 (Ct. App. 1998). Factors that courts should consider in determining whether an investigatory stop is reasonable include:

(1) the particularity of the description of the offender or the vehicle in which he fled;

(2) the size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred;

(3) the number of persons about in that area;

(4) the known or probable direction of the offender's flight;

(5) observed activity by the particular person stopped; and

(6) knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Guzy, 139 Wis. 2d at 676-77 (citation omitted).

In determining whether the law enforcement officer had an objectively reasonable suspicion that criminal activity was afoot, the court considers the totality of the circumstances. *State v. Allen*, 226 Wis. 2d 66, 74, 593 N.W.2d 504 (Ct. App. 1999). Reasonable suspicion requires that a police officer possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot. *Id.* A mere hunch that a person has been, is, or will be involved in criminal activity is insufficient. *Terry*, 392 U.S. at 27.

Reasonable suspicion that a driver is violating a traffic law is sufficient to initiate a traffic stop. *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."). Reasonable suspicion requires that "[t]he 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." *Popke*, 2009 WI 37 at ¶23. An officer's "inchoate and unparticularized suspicion or 'hunch'" will not give rise to reasonable suspicion. *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)).

Officer Tenold did not have reasonable suspicion to stop Ms. Katula-Talle. He had no affirmative knowledge that she did not have a valid license. Nor did he have any knowledge about whether it was possible that she could have an occupational license at the time of the stop. He did not take the small effort to even look into it. He pulled Ms. Katula-Talle over on a "hunch" that did not arise to reasonable suspicion. A hunch is not enough to initiate a traffic stop. *Houghton*, 2015 WI 79 at ¶30; *Post*, 2007 WI 60 at ¶10.

It is undisputed information that Officer Tenold did not have any current information about her driving status when he stopped Ms. Katula-Talle, and testified that he did not have any information about the current status of her license. The officer never bothered to call dispatch to run her name to find out. At the time Officer Tenold stopped Ms. Katula-Talle, there was no other basis for

him to pull her over. The officer never testified that there were exigent circumstances that would not allow him to check on the status of her license prior to initiating the stop (R. 37, pp. 4:21-11:12). The stop violated Ms. Katula-Talle's Fourth Amendment rights. The circuit court erroneously found that it was reasonable suspicion for the officer to pull her over. If this Court allows the circuit court's decision to stand, then it will allow law enforcement to begin to conduct traffic stops with nothing more than a hunch when the defendant has done nothing wrong to cause a stop to be initiated. The circuit court's decision should be overturned, Ms. Katula-Talle's plea and judgment of conviction should be vacated, and the case remanded back to the circuit court for new proceedings in accordance with those findings.

CONCLUSION

Ms. Katula-Talle prays that Court of Appeals order that the motion to suppress was erroneously denied by the trial court, vacate Ms. Katula-Talle's plea and judgment of conviction, and remand the case back to the trial court for new proceedings in accordance with those findings.

Dated at Ellsworth, Wisconsin, October 7, 2019.



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BRIEF CERTIFICATION

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c), Stats., for a brief produced using the following font:

Proportional serif font: Minimum printing resolution of 200 dots per inch, 13-point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 1,736 words.

Dated: October 7, 2019



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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Wis. Stat. §809.19(2)(a) and that contains:

- (1) a table of contents;
- (2) relevant court record entries;
- (3) the findings or opinion of the court; and
- (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the court's reasoning regarding those issues.

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 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.

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CERTIFICATE OF MAILING

STATE OF WISCONSIN)
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I, Melissa Petersen, a licensed Wisconsin attorney, hereby certify that copies of Defendant-Appellant's Brief and Appendix in Appeal No. 2019AP001622-CR were placed in the U.S. Mail, with proper postage affixed this 7th day of October, 2019, addressed to the following as indicated below:

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RULE 809.19(12) ELECTRONIC CERTIFICATION

I hereby certify that the text of the electronic copies of the brief and appendix are identical to the text of the paper copies of the brief and appendix.

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