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OF WISCONSIN**

Appeal No. 2019AP1622 – CR  
(Buffalo County Case No. 2018CM50)

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

SARAH J. KATULA-TALLE,

Defendant-Appellant.

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

**The Honorable Joseph D. Boles, Circuit Judge**

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**BRIEF AND APPENDIX OF  
PLAINTIFF-RESPONDENT**  
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**ISSUE PRESENTED FOR REVIEW****I. WHETHER THE CIRCUIT COURT ERRONEOUSLY DENIED MS. KATULA-TALLE'S MOTION TO SUPPRESS.**

The Honorable Judge Joseph Boles did not err when he denied Ms. Katula-Talle's motion to suppress the traffic stop, as he found there was probable cause for the stop based upon information presented to the Court.

### **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

Oral argument is not appropriate in this case under Wis. Statute (Rule) 809.22, as the briefs fully present and meet the issues on appeal and fully develop the theories and legal authority on each side that oral arguments would be of such marginal value that it does not justify the additional expenditure of court time or cost to the litigant.

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

### **STATEMENT OF THE CASE**

Ms. Katula-Talle was charged with one count of Possession of Drug Paraphernalia and one count of Possession of THC following a traffic stop. A motion to suppress the evidence found during a search of the vehicle was filed. At the conclusion of the hearing, the motion was denied by the trial court. Following the Court's denial of the suppression motion, the Defendant, Ms. Katula-Talle, entered a plea of guilty to Possession of Drug Paraphernalia. As part of the plea deal, the Possession of THC was dismissed. 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 .

### **STATEMENT OF FACTS**

On April 4, 2018, Criminal Complaints were filed charging Ms. Katula-Talle with one count of Possession of Drug Paraphernalia and one count of Possession of THC. An initial appearance was held on May 2, 2018. On May 16, 2018, an adjourned initial appearance was held wherein Ms. Katula-Talle entered a plea of not guilty.

On July 24, 2018, Ms. Katula-Talle, by her attorney Joseph Randtke, filed a Motion to Suppress Fruits of Vehicle Search. The Defendant, through her Attorney, put forward the theory that the officer who conducted the traffic stop did not have reasonable suspicion to stop the vehicle. In his report, Mondovi Police Officer, Cole Tenold, stated that he knew from prior police contacts that Ms. Katula-Talle's driving privileges were revoked, however, Officer Tenold provided further evidence of how he knew this in his report. At the motion hearing on September 5, 2018, Officer Tenold testified that he had

previous police contact with Sarah Katula-Talle. On February 18, 2018, he was called to a domestic disturbance in which Ms. Katula-Talle was one of the parties at the incident. At that time, Officer Tenold ran Ms. Katula-Talle and the other parties through dispatch and was informed that Ms. Katula-Talle was revoked for an OWI offense, which Officer Tenold testified is generally a six (6) month revocation. At the hearing, Officer Tenold testified that to the best of his knowledge, Ms. Katula-Talle had not had a driver's license for approximately two months. Based upon the information provided to the Court at the suppression hearing, the Court denied the motion to suppress, so Ms. Katula-Talle decided to enter a plea to the charge.

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 case. 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 sentence 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. On December 3, 2018, a Judgment of Conviction was filed reflecting the withheld sentence as ordered by the Trial Court. On December 6, 2018, Ms. Katula-Talle timely filed a Notice of Intent to Pursue Post Conviction Relief.

## **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*, 786 N.W.2d 463, 471. Also "whether there is probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact." *State v. Popke*, 765 N.W.2d 569, 571. "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 facts under a deferential standard, upholding them unless they are clearly erroneous. Second, the Court of Appeals independently applies constitutional principles to those facts." *State v. Robinson*, 786 N.W.2d 463, 471. In reviewing an Order regarding suppression of evidence, we will uphold the Trial Court's findings unless they are against the great weight and clear preponderance of the evidence. See *State v. Richardson*, 456 N.W.2d 830, 833 (1990). However, whether a stop meets statutory and constitutional standards is a question of law subject to *de novo* review. *Id.* at 833. Whether an investigatory stop meets constitutional standards is a question of law that the Court reviews independently. *State v. Krier*, 478 N.W.2d 63 (Ct. App. 1991).

### ARGUMENT

On March 3, 2018, Mondovi Police Officer Tenold had reasonable suspicion to perform an investigator stop of Ms. Katula-Talle's vehicle. 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. 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.

Reasonable suspicion that a driver is violating a traffic law is sufficient to initiate a traffic stop. *State v. Houghton*, 868 N.W.2d 143, 151 “Reasonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops”. *Id.* Reasonable suspicion requires that “ 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. *Popke* at 571. An officer’s “inchoate and unparticularized suspicion or hunch will not give rise to reasonable suspicion”. *State v. Post*, 733 N.W.2d 634.

In determining whether the law enforcement officer had an objectively reasonable suspicion that criminal activity was occurring, the Court must consider the totality of the circumstances. *State v. Allen*, 226 Wis. 2d 66, 74. Reasonable suspicion requires that a law enforcement officer possess specific and articulable facts that warrant a reasonable belief that criminal activity is occurring. *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.

On March 3, 2018, Officer Tenold knew that from a previous police contact approximately two (2) weeks prior to the traffic stop of Ms. Katula-Talle, that her driver's license was revoked. Officer Tenold testified that he knew that Ms. Katula-Talle’s driver’s license revocation was OWI related and that those are generally a six (6) month revocation. Officer Tenold also testified that to the best of his knowledge Ms. Katula-Talle had been revoked for approximately two (2) months. While on patrol March 3,

2018, he observed Ms. Katula-Talle driving a vehicle. At that point, Officer Tenold initiated an investigatory traffic stop of Ms. Katula-Talle. The stop of Ms. Katula-Talle's vehicle was not based upon a hunch but reasonable suspicion that she was driving while revoked which is a traffic violation in Wisconsin. This does not violate her Fourth Amendment rights. The Circuit Court's decision to deny Ms. Katula-Talle's motion was not erroneous and should be upheld.

### **CONCLUSION**

Based upon the case law and the facts presented at the motion hearing, the stop of Ms. Katula-Talle was based upon reasonable suspicion that she was violating Wisconsin traffic law. The State respectfully requests that the Court of Appeals deny the defendant's motion for post-conviction relief and uphold the Circuit Court's denial of her motion to suppress.

**BRIEF CERTIFICATION**

I certify that this brief conforms to the rules contained in Wisconsin Statute 809.19(8)(b) and (c), 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, leading of a minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 1,205 words.

November 7, 2019



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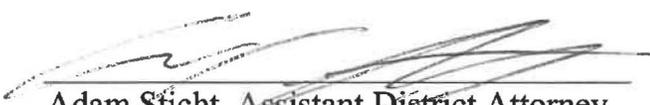
### APPENDIX CERTIFICATION

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 Wisconsin Statute 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 records 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 records 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 that have been reproduced to preserve confidentiality and with appropriate references to the record.

Dated: November 7, 2019



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### **CERTIFICATION OF MAILING**

I, Adam Sticht, a licensed Wisconsin Attorney, hereby certify that copies of Plaintiff-Respondent's Brief and Appendix in Appeal No. 2019AP001622-CR were placed in the U.S. Mail, with proper postage affixed this 7th day of November, 2019, addressed to the following as indicated below:

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