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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal No. 2021AP002086
LaCrosse County Cir. Court Case No. 20CT275

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

TRAVIS R. BRALY,
Defendant-Appellant.

APPEAL FROM AN ORDER DENYING MOTION TO SUPPRESS
EVIDENCE, ENTERED BY THE LACROSSE COUNTY CIRCUIT COURT,
THE HONORABLE SCOTT L. HORNE PRESIDING

REPLY BRIEF OF DEFENDANT-APPELLANT

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TABLE OF CONTENTS

	Page
CASES CITED.....	3
CONSTITUTIONAL PROVISIONS.....	3
STATUTES AND ORDINANCES	3
REPLY ARGUMENT.....	4-7
I. THE DENIAL OF THE MOTION TO SUPPRESS WAS ERROR BECAUSE IT STEMMED FROM CLEARLY ERRONEOUS FACTUAL AND LEGAL DETERMINATIONS BY THE CIRCUIT THE COURT, AND BECAUSE LAW ENFORCEMENT’S STOP, DETENTION AND ARREST OF MR. BRALY WAS NOT JUSTIFIED	4
<u>A. The Court's finding that “Officer Donley had a valid reason to stop Mr. Braly's vehicle” is clearly erroneous.....</u>	4
<u>B. The Court's finding that Officer Donley is credible is clearly erroneous</u>	5
<u>C. The Court did not make a finding that there was a violation of law which justified an arrest and/or search.....</u>	6
CONCLUSION.....	7

CASES CITED

Johnson v. State, 75 Wis.2d 344, 348, 249 N.W.2d 593 (1977)6

Mapp v. Ohio, 367 U.S. 643, (1961)6,7

State v. Gaulrapp, 207 Wis.2d 600, 605, 558 N.W.2d 696 (Ct.App.1996).....6

State v. Popke, 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d 5696

State v. Robinson, 2010 WI 80, 327 Wis.2d 302, 786 N.W.2d 463 (Wis. 2010) 15,
16, 21.....5

Whren v. United States. 517 U.S. 806, (1996).....6

CONSTITUTIONAL PROVISIONS

United States Constitution
Fourth, Fifth, & Fourteenth Amendments,6,7

Wisconsin Constitution
Article I, 11.....6,7

STATUTES AND ORDINANCES

Wisconsin Statute
Wis. Stat. § 346.18(3).....4
Wis. Stat. § 346.46 (2)(c).....4
Wis. Stat. § 346.46(1).....4

REPLY ARGUMENT

I. THE DENIAL OF THE MOTION TO SUPPRESS WAS ERROR BECAUSE IT STEMMED FROM CLEARLY ERRONEOUS FACTUAL AND LEGAL DETERMINATIONS BY THE CIRCUIT COURT, AND BECAUSE LAW ENFORCEMENT'S STOP, DETENTION, AND ARREST OF MR. BRALY WAS NOT JUSTIFIED.

Travis R. Braly, by and through his attorney Nancy A. Dominski hereby offers the following Reply to the State's Brief of Plaintiff-Respondent filed March 23, 2022. Defense stands on its Brief of Defendant-Appellant filed February 21, 2022 and further states the following in Reply to the State's Response:

A. The Court's finding that “Officer Donley had a valid reason to stop Mr. Braly's vehicle” is clearly erroneous.

In its Response Brief, the State argues that the traffic statute in which Mr. Braly was charged (Wis. Stat. §346.18(3)) is not at issue here, but rather some other statute(s) (Wis. Stat. §346.46(2)(c) & Wis. Stat. §346.46(1)). (Brief of Respondent p.7):

“There is no dispute that the stop sign at issue here had no stop line and no crosswalk, and therefore Wis. Stat. §346.46(2)(c) applies, and it states the following...” (Brief of Respondent p.7)

“The circuit court also cited to Wis. Stat. §346.46(1) which is very similar...” (Brief of Respondent p. 7)

However, Mr. Braly was not charged with Wis. Stat. §346.46(2)(c), nor Wis. Stat. §346.46(1). He was charged under Wis. Stat. §346.18(3) (See Incident Report Narrative App.1) which the State concedes does not apply.

It is clear that the state is attempting, *after the fact*, to find statutes to support the illegal stop and detention of Mr. Braly. In its conclusion the State claims that Officer Donley had reasonable suspicion that the defendant failed to yield the right of way by failing to stop at a stop sign prior to entering the

intersection. (Brief of Respondent p.9). However, it is clear that Officer Donley had no such reasonable suspicion, where it is not even what the officer charged. (App. 1)

Here, the officer stopped Mr. Braly, without probable cause, and now the State has attempted to come up with reasons why the stop might be valid. For these reasons, and those set forth in Defendant's Brief, the circuit court's findings may not be upheld because they were "clearly erroneous," *State v. Robinson*, 2010 WI 80, 786 N.W.2d 463, 327 Wis. 2d 302 (Wis. 2010).

B. The Court's finding that Officer Donely is credible is clearly erroneous.

The State in its Brief of Respondent states:

"On that the video at 23:27:14, the court could clearly see Mr. Braly's vehicle and observed how close it was to hitting Officer Donley. That time stamp also corresponds to the time stamp from the front squad video where Officer Donley jerks his vehicle to the right." (Brief of Respondent p. 8)

Despite the State's claims about what the court should see on the video, these were NOT the court's findings. Rather the court stated:

"It appeared to the court that at 23:27:14 there appeared to be a slight immediate hesitation or swerve to the left as the officer was passing the intersection and then the officer immediately pulled over – pulled over." (R.37 p. 5 L.15-19; App.35)

"It's – from the court's perspective, it appears likely from the speed and proximity to the intersection that Mr. Braley would have had a difficult time stopping before entering the intersection. But that view is not definitive. (R.37 p.5 L9-13; App.35)

Here, the court made no findings about how close Mr. Braly was to the police vehicle, no findings that the Officer jerked his vehicle either to the left or the right, and definitely no finding that Mr. Braly impeded traffic.

Importantly, the State in its Brief of Respondent, claims the video at 23:27:14 shows "where Officer Donley jerks his vehicle to the *right*." (Brief of

Respondent p.8). This clearly conflicts with Officer Donley's own testimony where he *claims* to jerk his vehicle to the *left*.

When a witness makes conflicting and contradictory statements, they cannot be considered credible. Again, the burden of establishing that an investigative stop is justified by reasonable suspicion or probable cause falls on the state. *State v. Taylor*. 60 Wis.2d 506, 519, 210 N.W.2d 873 (1973). The state has not met that burden and all evidence obtained by unreasonable searches and seizures in violation of the Constitution is inadmissible in court. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, 84 A.L.R.2d 933 (1961)

C. The Court did not make a finding that there was a violation of law which justified an arrest and/or search.

In it's Brief of Respondent, the State attempts to erode protections set forth in the US Constitution Fourth, Fifth and Fourteenth Amendments, The Wisconsin Constitution Article I, and misstates the law and the findings in *State v. Popke*, 2009 WI 37, 317 Wis. 2D 118, 765 N.W.2d. Contrary to the State's argument in its Response, *Popke* states:

An officer may conduct a traffic stop when he or she has *probable cause* to believe a traffic violation has occurred. *Gaulrapp*, 207 Wis.2d at 605, 558 N.W.2d 696; *see also Whren*, 517 U.S. at 809-10, 116 S.Ct. 1769 (stating that a traffic stop is "reasonable where the police have probable cause to believe" there was a traffic violation.) *Popke* at ¶13.

The *Popke* court further stated:

Probable cause refers to the "quantum of evidence which would lead a reasonable police officer to believe" that a traffic violation has occurred. *Johnson v. State*, 75 Wis.2d 344, 348, 249 N.W.2d 593 (1977) (citation omitted). The evidence need not establish proof beyond a reasonable doubt or even that guilt is more probable than not, but rather, probable cause requires that "the information lead a reasonable officer to believe that guilt is more than a possibility." *Id.* at 348-49, 249 N.W.2d 593 (citation omitted). In other words, probable cause exists when the officer has "reasonable grounds to believe that the person is committing or has committed a crime." *Id.* at 348, 249 N.W.2d 593 (quoting Wis. Stat. § 968.07(1)(d)). *Popke* at ¶14.

Here, the State's contention that “rational inferences” exist for a violation of a statute in which Mr. Braly was not even charged do not raise to the level of probable cause required for the officer to stop and detain Mr. Braly.

Because the traffic stop violated the constitutional protections of the Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution, all evidence obtained by the unreasonable stop and detention is inadmissible in court. *Mapp v. Ohio*, 367 U.S. 643, 81 S.Ct. 1684, 6 L.Ed.2d 1081, 84 A.L.R.2d 933 (1961)

CONCLUSION

For the reasons set forth in Defendant's-Appellant's Brief and this Reply, Mr. Braly respectfully asks this Court to enter an order reversing the trial court's denial of his motion to suppress evidence, reversing his conviction and any judgments against him as a result of this case, and any other relief the Court deems appropriate.

Dated this 6th day of April, 2022.

Respectfully submitted,

**Electronically signed by
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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in §809.19 (8) (c), (2), for a reply brief. It is in proportional serif font, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1459 words.

Dated this 6th day of April, 2022.

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**CERTIFICATE OF COMPLIANCE
WITH RULE 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief, including the appendix, if any, which complies with the requirements of §809.19.

Dated this 6th day of April, 2022.

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