STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Appeal No. 2022AP1764
Outagamie County Case No. 2021TR7591

STATE OF WISCONSIN,

Plaintiff- Respondent,

v.

GLEN MICHAEL BRAUN,

Defendant- Appellant.

BRIEF OF DEFENDANT- APPELLANT

APPEAL FROM THE CIRCUIT COURT FOR OUTAGAMIE COUNTY
THE HONORABLE MARK MCGINNIS PRESIDING

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ISSUE PRESENTED FOR REVIEW

1. Did the Trial Court erroneously apply the law when determining the officer had reasonable suspicion?

The Circuit Court answered: No.
Defendant-Appellant submits: Yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not requested. Publication is requested. The issues present questions of significance.

STATEMENT OF THE CASE

This is an appeal from a judgment of conviction entered in the Outagamie County Circuit Court, the Honorable Mark McGinnis, presiding on October 13th, 2022 in Branch 1 of the Outagamie County Circuit Court. Before trial, Glen Braun, Defendant-Appellant, filed a motion challenging the traffic stop in this case (R.6). The motion was denied. The Trial Court denied the motion (R.18), and cited Wis. Stat. § 341.15(2) ruling that because Trooper LaCourt-Baker had difficulty reading the plate, allegedly due to chipping paint, it was reasonable for the trooper to suspect that the Defendant had violated § 341.15(2) (R.21). The Trial Court, using only the facts in LaCourt-Baker's report, as stipulated to by both parties, adjudicated the Defendant-Appellant guilty of Operating While Intoxicated (1st), contrary to Wis. Stats. §346.63(1)(a) (R.29). Sentence was stayed pending Appeal (R.36). The Defendant-Appellant now seeks review of the Trial Court's determination that the Trooper did have the requisite reasonable suspicion to conduct a traffic stop.

STATEMENT OF THE RELEVANT FACTS

On August 22nd, 2021, the Defendant-Appellant was driving Southbound on U.S. Interstate Highway 41. Trooper LaCourt-Baker was conducting radar on Interstate Highway 41 just north of State Highway 441. At approximately 1:55AM the Trooper observed the Defendant's white pickup. The Defendant-Appellant, noticing the Trooper

and in preparation of exiting the interstate, reduced his speed by approximately 15 miles per hour. The Trooper found this velocity reduction to be suspicious and began to follow the Defendant-Appellant's vehicle. The Trooper allegedly had difficulty reading the Defendant's license plate number and also observed that the current year registration sticker was placed sideways and slightly above the previous years' registration stickers (R.21:Pg. 6). After making these observations the Trooper concluded that he had the requisite authority to conduct a traffic stop and accordingly pulled over the Defendant's vehicle. After making initial contact and allegedly observing indicators of intoxication Trooper LaCourt-Baker conducted field sobriety tests. Ultimately the Defendant was arrested for OWI (1st) (R.1).

On November 8th, 2021 the Defendant-Appellant filed a motion challenging the stop and arguing that the Trooper did not have the authority to conduct a traffic stop. On August 2nd, 2022 the Defendant Appellant's motion was heard by the Trial Court. Only the Trooper and the Defendant-Appellant testified (R.21). The Trooper testified that, while the speed did make him suspicious, the misplaced registration stickers and the Defendant's damaged plate were the reasons for the stop (R.21:Pg. 6). The parties made their respective arguments.

The State cited Wis. Stat. § 341.15(2) and argued that the trooper had reasonable suspicion that the statute had been violated and thus had authority to conduct a traffic stop. The Court rejected the State's argument regarding § 341.15(1m)(a), ruling that, although Mr. Braun's decal's may have not been in the exact location prescribed by the department, because it was attached to the rear plate in a clearly visible location there was no enforceable traffic violation and thus the stop could not be predicated on the decal placement alone and the State effectively conceded this point (R.21:PG. 30,31,32).

The Court then turned to the primary issue in the case, whether the Defendant's plates were in violation of § 341.15(2). Defense counsel had argued that because Trooper LaCourt-Baker could read the plate and because they were otherwise properly displayed in a rigid, horizontal, and conspicuous manner that the statute was not violated (R.21:PG. 26, 27). The Court however, while admitting that it was a close call, did ultimately rule that LaCourt-Baker's suspicions that the Defendant-Appellant's plates were improperly displayed were reasonable. Defendant-Appellant now appeals this ruling by the trial Court.

ARGUMENT

i. TROOPER LACOURT_BAKER DID NOT HAVE REASONABLE SUSPICION TO CONDUCT A STOP AND THE COURT MISAPPLIED THE LAW TO THE FACTS OF THE CASE

a. STANDARD OF REVIEW

Determining whether there was probable cause or reasonable suspicion to conduct a traffic stop is a mixed question of law and fact, *State v. Post*, 2007 WI 60, 301 Wis.2d 1, 733 N.W.2d 634.

The appellate court first conducts a review of the trial courts historical finding of facts and defers to the trial court unless these findings are clearly erroneous. Then the court applies Constitutional principles to the facts and makes a determination, de novo, as to whether they provide a sufficient basis for probable cause or reasonable suspicion to conduct a stop, *State v. Anagnos (In re Anagnos)*, 2012 WI 64, 341 Wis. 2d 576, 815 N.W.2d 675, citing *Post*.

This case also requires this Court to analyze the statutory interpretation of the Trial Court. "Interpretation of statutory language is a matter of law we review de novo,"

Christensen v. Sullivan, 2009 WI 87, 320 Wis. 2d 76, 768 N.W.2d 798. If the language of a statute is unambiguous, we will ordinarily stop the inquiry and apply the statute in accordance with its plain meaning.

b. THE CIRCUIT COURT ERRED IN RULING THAT THE TROOPER HAD REASONABLE SUSPICION TO CONDUCT A TRAFFIC STOP

In this case the essential facts were undisputed. The Trooper testified to the location and circumstances of the stop, why he initially began to follow the Defendant, and admitted honestly that a picture of the plate, taken the day after the stop by the Defendant, was an accurate representation of the license plate on the night in question (R.21:PG 17,18,19). The Defendant corroborated much of what the trooper said, testifying as to why he reduced his speed in the manner that Trooper LaCourt-Baker described, and candidly admitting that his decal sticker was positioned in the wrong spot, (R.21: Pg. 23, 24).

The Trial Court applied the Law to the facts and analyzed each reason given by the State for the stop in-turn. First the Court concluded that, based on the Trooper's testimony, that the Defendant was not improperly stopped for reducing his speed, rather this act merely made the Trooper suspicious (R.21:Pg. 27, 28).

The Court then addressed the placement of the decal sticker. The Court ruled that, while the Defendant may not have had the decal in the ideal place, the sticker was

attached to the rear plate and was placed in conspicuous area, therefore there was no enforceable traffic violation and thus this fact alone would not support a traffic stop (R.21: Pg.29,30,31,32).

Finally, the Court ruled on the visibility of the license plate and whether or not this issue, combined with the Troopers other observations was enough to support a reasonable suspicion that the Defendant was in violation of an equipment violation regarding his license plate. Ultimately the Trial Court ruled that Trooper LaCourt-Baker's suspicions that the Defendants plates were not displayed in a manner consistent with Wis. Stat. § 341.15(2), which was the statutory violation that the Trooper referred to on re-cross (R.21:Pg. 18), were reasonable, (R.21: Pg. 35, 36). The Court however misinterprets the plain language of Wis. Stat. § 341.15(2) and erroneously validates the Trooper's justification for the stop in the process.

When a word is not defined by statute, it is normally construed in accordance with its ordinary or natural meaning, *Smith v. United States*, 508 U.S. 223, 228 (1993). If the language of a statute is unambiguous, the court will apply the statute in accordance with its plain meaning, *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, 271 Wis. 2d 633, 681 N.W.2d 110. Furthermore, statutory interpretation should not produce absurd results, *Lake City Corporation v. City of Mequon*, 207 Wis. 2d 155, 558 N.W.2d 100 (Wis. 1997).

Wis. Stat. § 341.15(2) reads, verbatim:

> Registration plates shall be attached firmly and rigidly in a horizontal position and conspicuous place. The plates shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read. Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.

This creates three similar but distinct duties by a person driving a motor vehicle; that registration plates are: 1) attached to the vehicle rigidly and horizontally, 2) maintained so that they are legible, and 3) displayed so that they can be readily and distinctly seen and read. In this case, we will address only the Defendant-Appellant's rear plate, as that was the only plate in question there is no any evidence in the record suggesting that the front plate was defective.

The evidence showed and the court ruled that the plates were properly attached to the vehicle. This leaves two possible ways the Defendant could be in violation of this statute and the Trial Court, and the Trooper, erroneously conflates these two modes of commission in its reasonable suspicion analysis.

First the plates were obviously legible. Oxford Languages defines legible as: "(of handwriting or print) clear enough to read." The plate was clear enough to read, and the Trial Court made note of this when examining Trooper LaCourt-Baker (R.21:Pg. 17), and the Trooper himself even testified that he was, eventually, able to read the plate, and testified that page two of Exhibit 2 (R.15:Pg. 2) accurately depicted the plate on the night he stopped the Defendant-Appellant, *see Figure 1*.

Figure 1, Page 2 of Exhibit 2.

The plate was legible and was properly attached to the vehicle leaving one way possible way to violate § 341.15(2) and that would to display the plates in a manner which would prevent them from being readily and distinctly read.

The plates were displayed in a manner that would allow them to be readily and distinctly read. The plates were attached to the rear of the vehicle in a dedicated license plate holder which is designed as to put the plates in a position and location which is plainly viewable to any passerby. Furthermore, there are no modifications to the Defendant's vehicle which obstruct the view of the plate, and the area is illuminated by, no less than one, license plate lights.

All of the facts above clearly support the conclusion that the Defendant-Appellant's license plate was not in violation of § 341.15(2), yet the Court found the Trooper's actions reasonable. The Court clearly erred in this regard. Reasonable suspicion is an objective standard and an officer's subjective beliefs should be given little weight in determining whether or not a suspicion was reasonable *State v. Howes*, 2017 WI 18, 373 Wis. 2d 468, 893 N.W.2d 812. To the Trooper's credit, he was generally, straightforward and honest in his testimony and it was likely not a falsity that the Trooper had trouble reading the plates, but the Trooper's subjective inability to read the plates, without any objective indicators that his lack of ability to read the plates was due to the plates, attachment, maintenance, or display, would simply not support reasonable suspicion to stop the Defendant, as numerous factors or conditions may prevent an officer from being able to read a plate which is otherwise properly attached, maintained, and displayed.

The Court in its conclusions made the following finding in reference to the plate: "you could see and read it. But based upon the condition of it, nothing to do with his tampering with it, it was a challenge to read at a certain distance." However, the Statute does not require a person to maintain or display plates so that they are legible at any distance. To interpret the Statute in such a manner would lead to absurd results; rendering it unconstitutionally vague and placing an impossible burden on the people. An Outagamie County Deputy in New London, WI, Deputy A, would not be able to read the license plate of a vehicle at the Outagamie County Courthouse. Could Deputy B then stop the vehicle in question due to Deputy A's inability to read the plate? This would clearly

be an absurd result, and while the aforementioned example would be an extreme set of circumstances which would be clearly unreasonable, it illustrates the problem when upholding reasonable suspicion based on an officer's subjective experience instead of objective fact.

It should be noted that Trooper LaCourt-Baker, did testify to some objective facts about the plate, namely, that the white, reflective paint was peeling off, which in turn made the plate hard to read. This fact regarding the paint is verified by Page 2 of Exhibit 2. The Defendant-Appellant must also concede that he cannot know, exactly, what the Trooper observed on the night in question, however, the facts articulated by the Trooper simply do not support a finding of reasonable suspicion. The issue of the paint is one of maintenance. Although, the white paint was peeled away, the black paint on the actual number was, largely, intact, and the bare-metal, underneath the white paint, would also be reflective so the black numbers would still stand out against the background of the plate. Furthermore, the Trooper himself testified that he was able to read the plate when he got close enough (R.21:Pg. 6), and, again, the Defendant-Appellant had no statutory duty to maintain his plate in perfect order, the Defendant-Appellant's duty, based on the plain language of the statute, was simply to maintain the plates so that they were clear enough to read, and considering the Court's, the Trooper's, and the Defendant's ability to read the plate there is little doubt as to the plate's legibility.

Based on the Court's own finding that the plate was visible and legible and based on the Trooper's own testimony that the plate was otherwise correctly attached, it

becomes painfully obvious that the Defendant-Appellant was not in violation of Wis. Stat. § 341.15(2). Given that, the objective facts do not support a conclusion that the Defendant-Appellant was violating the Statute, it was not reasonable for the Trooper to suspect that he was; and the Trial Court erred when determining that Trooper LaCourt-Baker had Reasonable suspicion to conduct a traffic stop.

CONCLUSION

WHEREFORE, the Defendant-Appellant humbly asks this Court to find that the Trial Court erred in interpreting Wis. Stat. § 341.15(2) and misapplied this error in law to the facts of the case, thus violating the Defendant-Appellant's Fourth Amendment right to be free from any unreasonable seizure of his person. The Defendant-Appellant thus requests an order from this Court reversing the Trial Court's reasonable suspicion determination and remanding the case back to the trial Court for reconsideration, consistent with the finding of this Court.

Dated at Appleton, Wisconsin this 12th day of January, 2023

Respectfully Submitted:

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FORM AND LENGTH CERTIFICATION

I, John M. Carroll, hereby certify that this brief conforms to the rules contained in s. 809.19 (8)(b), (bm) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 2417 words.

Dated this 12th day of January, 2023.

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ELECTRONIC BRIEF CERTIFICATION

I, John M. Carroll, hereby certify in accordance with Sec. 809.19(12)(f), Stats, that I have filed an electronic copy of a brief, which is identical to this paper copy.

Dated this 12th day of January, 2023.

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