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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

2022AP1764

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

GLEN MICHAEL BRAUN,

Defendant-Appellant.

ON APPEAL FROM JUDGMENT OF CONVICTION ENTERED IN CIRCUIT
COURT 1 FOR OUTAGAMIE COUNTY

The Honorable Mark J. McGinnis, Presiding

BRIEF OF PLAINTIFF-RESPONDENT

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STATE OF WISCONSIN
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ON APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN CIRCUIT COURT
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BRIEF OF PLAINTIFF-RESPONDENT

QUESTION PRESENTED

Does a Trooper have reasonable suspicion that a violation of law occurred when the Trooper cannot read a license plate at a normal following distance, observes that the registration tag is in the wrong location, and observes a vehicle attempting to avoid police contact near bar time?

Trial Court answered Yes.

This Court should answer Yes.

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POSITION ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication, as the arguments are fully developed in the parties' briefs, and the issues presented involves the application of well-established principles to the facts presented.

STATEMENT OF THE CASE

On August 22, 2021, at approximately 1:57 a.m., State Trooper LaCourt-Baker was conducting radar on Interstate 41 near County N, in Outagamie County, Wisconsin. (R.21, 4.) He observed a white F150 truck driving southbound at or near the speed limit of 70 miles per hour. (R.21, 4.) Once the F150 came within viewing distance of the squad car, the driver rapidly decelerated to approximately 45 miles per hour, 25 miles per hour below the posted speed limit. (R.21, 5.) Trooper LaCourt-Baker knew, based on his training and experience as a Wisconsin State Trooper, that "a dramatic reduction of speed, especially on the interstate with no other traffic or other factors that would lead to a vehicle slowing down, would be a reaction to police presence, suspecting criminal activity." (R.21, 5.)

The Trooper began to follow the vehicle and observed that the F150 exited interstate 41 onto U.S. Highway 441. Once on

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U.S. Highway 441, the F150 did not accelerate past 45 miles per hour on the 65 mile per hour highway. (R.21, 14.)

While following the vehicle he was unable to read the license plate. (R.21, 6.) He also observed that the registration sticker was not located in the lower right-hand corner of the plate, covering stickers from prior years. (R.21, 6-7 and 16.) Trooper LaCourt-Baker knows the law required the sticker to be placed on the bottom corner. (R.21, 7 and 16-17.) The plate remained illegible until the Trooper stopped his squad approximately 45 feet behind the F150. (R.21, 6.) At the time he initiated the traffic stop, based on the fact he could not "readily and distinctly ... read" the plate, Trooper LaCourt-Baker believed the plate was in violation of Wis. Stat. § 314.15(2). (R.21, 18.) He also believed the plate was in violation of Wis. Stat. § 314.15(1m)(a) because the registration year sticker was not located in the bottom corner of the plate. (R.21, 16-17.)

Glen Michael Braun was issued citations for Operating While under the Influence of an Intoxicant and Operating with a Prohibited Alcohol Concentration, both as non-criminal first offense violations. (See R.1 and R.29.) Mr. Braun filed a motion to suppress evidence alleging the traffic stop was unconstitutional. The trial court held a motion hearing on

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August 2, 2022. After testimony from Trooper LaCourt-Baker and Mr. Braun, the Court denied the motion to suppress. Following a guilty plea, Mr. Braun was found guilty in 2021TR7591 of Operating While Intoxicated 1st Offense, and the PAC citation in 2021TR9102 was "Dismissed on the Court's Own Motion." (R.28 and R.29.) This appeal follows.

STANDARD OF REVIEW

Whether there is probable cause or reasonable suspicion to conduct a traffic stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 23, 317 Wis. 2d 118, 765 N.W.2d 569. The Court of Appeals upholds the circuit court's factual findings unless they are clearly erroneous; however, the Court of Appeals independently applies those facts to constitutional principles. *Id.*

ARGUMENT

- 1. The Trooper observed enough specific, articulable facts for a reasonable officer to believe Glen Michael Braun violated Wis. Stat. § 341.15(2), Wis. Stat. § 341.15(1m), or a traffic law.**

The Fourth and Fourteenth Amendments to the Federal constitution and Art. I, § 11 of the State constitution guarantee Wisconsin citizens freedom from "unreasonable searches and seizures." See *State v. Williams*, 2001 WI 21, ¶ 18, 241

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Wis. 2d 631, 623 N.W.2d 106. Wisconsin courts consistently follow the United States Supreme Court's interpretation of the search-and-seizure provision of the federal constitution in applying the same provision of the state constitution. See *State v. Rutzinski*, 2001 WI 22, ¶ 13, 241 Wis. 2d 729, 623 N.W.2d 516.

Whether a search or seizure has occurred, and if so, whether it passes constitutional muster are questions of law, subject to independent review. See *id.*, ¶ 12. A trial court's underlying findings of evidentiary or historical fact must be upheld, however, unless they are clearly erroneous. See *Williams*, 241 Wis. 2d 631, ¶ 20.

In order to perform an investigatory traffic stop, the officer must have a reasonable suspicion that the person stopped is committing, committed, or is about to commit, a violation of the law. *State v. Colstad*, 2003 WI App 25, ¶ 11, 260 Wis. 2d 406, 659 N.W.2d 394. An "objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop." *State v. Houghton*, 2015 WI 79, ¶ 52, 364 Wis. 2d 234, 868 N.W.2d 143. The officer's reasonable suspicion must be based on "specific articulable facts which, taken together with rational inferences from those facts,

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reasonably warrant the intrusion." *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). What is "reasonable" is based on the totality of the circumstances. *State v. Anderson*, 155 Wis. 2d 77, 83-84, 454 N.W.2d 763 (1990). Individual facts that may be insufficient to give rise to a reasonable suspicion alone, may amount to a reasonable suspicion when taken together. *State v. Waldner*, 206 Wis.2d 51, 58, 556 N.W.2d 681 (1996).

a. At the time of the stop, the trooper had a reasonable belief the plate's condition violated §341.15(2), stats.

When determining if the standard of reasonable suspicion was met, those facts known to the officer at the time of the stop must be taken together with any rational inferences, and considered under the totality of the circumstances. *State v. Washington*, 2005 WI App 123, ¶16, 284 Wis. 2d 456, 700 N.W.2d 305 (emphasis added).

Wisconsin Statute Section 341.15(2) requires that:

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.

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The Trooper testified that he could not read the license plate until he was stopped approximately 45 feet behind the vehicle. Similarly, he testified that the photograph of the plate submitted by the defense at the motion hearing was taken from a similar distance (45 feet). He also testified that the photograph was taken in the daylight, whereas the traffic stop was at night.

Mr. Braun argues on appeal that the fact that the trooper was able to read the plate after he came within 45 feet of the vehicle, eliminates the reasonable suspicion that the plate was not "maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read." Wis. Stat. §341.15(2).

The Seventh Circuit Court of Appeals considered a similar argument regarding Wis. Stat. §341.15 in *U.S. v. Dexter*.¹ In *Dexter*, the license plate was not located in the normal location outside the vehicle. Prior to making the stop, the Wisconsin State Trooper did not see the temporary registration certificate affixed to the inside of the tinted rear window of the van. *United States v. Dexter*, 165 F.3d 1120, 1122 (7th Cir. 1999).

¹*United States v. Dexter*, 165 F.3d 1120, 1122 (7th Cir. 1999). This case is offered as persuasive authority.

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After the vehicle was stopped, the trooper approached the vehicle and saw the temporary license behind the tinted back window. *Id.*

Dexter argued that they were renting the van and the only place to put the license was in the back window. Dexter argued he could not have complied with the violation. *Id.* at 1125.

The Court of appeals disagreed, finding that a registration tag must be readable from a normal following distance. *Id.* An innocent reason for why it is unreadable from a normal following distance "cannot immunize the vehicle from investigatory stops to determine whether the unreadable temporary registration tag is valid." *Id.* And even if the statute was unconstitutional as applied, "suppression would not be justified because (the trooper) reasonably relied on the statute when he determined that there was a violation." *Id.*

Like the trooper in Dexter, Trooper LaCourt-Baker could not read the license plate from a "normal following distance." (R.21, 6 and 17.) He testified that he was only able to read the license plate after he stopped 45 feet behind Mr. Braun. (R.21, 6.) He also testified that the exhibit showing the license plate in the daylight was not an accurate depiction of

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how it would look at night, from a normal following distance.
(R.21, 11 and 17.)

As the 7th Circuit pointed out in *Dexter*, the question is "regardless of whether or not he was violating the law," did the trooper have probable cause to believe a violation had occurred. *Dexter*, 165 F.3d at 1124. Like the trooper in *Dexter*, at the time of night Trooper LaCourt-Baker was initiated the stop of Mr. Braun, he was unable to read the license plate. Regardless of whether the license plate is readable in the day light, or from 45 feet away, at the time of the stop Trooper LaCourt-Baker could not read the plate. As he could not read the plate at the time he initiated the stop, he had probable cause to believe a violation of Wis. Stat. § 341.15(2) occurred.

1. At the time of the stop, the Trooper had a reasonable belief that the location of the registration decal violated §341.15, stats.

The registration decal or tag "shall be placed on the rear registration plate of the vehicle in the manner directed by the department." Wis. Stat. §341.15(1m)(a). The Wisconsin Department of Transportation directs people to "Place the month sticker in the lower left corner of the plate; place

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the year sticker in the lower right corner." See <https://wisconsindot.gov/Pages/dmv/vehicles/title-plates/val-autos.aspx> (last visited March 6, 2023.) It is undisputed that the registration year decal was not located in the lower right corner of the plate. Rather it was located on the side of the plate, above a prior year's sticker and rotated 90 degrees. (R.21, 7 and 16.)

It was objectively reasonable for Trooper LaCourt-Baker to believe that the improper location of the registration decals was a violation of the law. He was aware of the statute, DOT directions, and the registration violation. Even if this Court finds that the sticker was "close enough" to the correct location, "an objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop." *Houghton*, 2015 WI 79, at ¶ 52.

The trial court judge and Mr. Braun both argue that the stop cannot be justified because Wis. Stat. §341.15(3) does not specifically list a penalty for violation of the placement of the registration stickers. While there is no penalty expressed in Wis. Stat. § 341.15(3) for a violation of §341.15(1m)(a),

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that does not mean there is no penalty for the violation. Wisconsin Statute § 939.61 provides a penalty when no penalty is expressed. That penalty is a forfeiture not to exceed \$200.00. Wisconsin Statutes § 939.61(1) provides as follows:

939.61 Penalty when none expressed.

(1) If a person is convicted of an act or omission prohibited by statute and for which no penalty is expressed, the person shall be subject to a forfeiture not to exceed \$200....

In this case it is clear that Mr. Braun was operating a motor vehicle that did not comply with the registration statutes due to the act of improperly placing the registration stickers on the rear license plate in a manner not directed by the department. Although he was not issued a citation for the violation, he certainly could have been cited for the same. There is no penalty specifically listed in Wis. Stats. §341.15(3) for the violation of Wis. Stats. §341.15(1m)(a). Therefore, we turn to Wis. Stats. §939.61, which provides the penalty for the violation of Wis. Stats. §341.15(1m)(a). That penalty is a forfeiture not to exceed \$200.00.

If there was any mistake of law, it was an objectively reasonable one that could provide the basis for a finding of reasonable suspicion that a traffic law is being

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violated. See *Houghton*, 2015 WI 79, at ¶ 52. The traffic stop should be upheld based on the violation of Wis. Stat. §341.15(1m)(a).

a. State did not abandon this argument

In his brief-in-chief, Mr. Braun argues that the State "effectively conceded this point" in argument. (App. Br. 6.) The State respectfully disagrees with this assertion.

First, "it is well-established law in Wisconsin that an appellate court may sustain a lower court's ruling 'on a theory or on reasoning not presented to the lower court.'" See *Blum v. 1st Auto & Cas. Ins. Co.*, 2010 WI 78, ¶27 n.4, 326 Wis. 2d 729, 786 N.W.2d 78 (citation omitted). Therefore, even if this Court finds the prosecutor succumbed to the trial judge's pressure and abandoned the argument during the hearing, this Court can and should consider the State's arguments on appeal that the violation of Wis. Stat. §341.15(1m)(a) and §939.61 justified the stop.

Additionally, the State presented evidence on this violation and the prosecutor specifically argued that it was a violation of the law. The prosecutor argued the sticker

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violation supported the stop and then pivoted their argument to concentrate on the violation of 341.15(2) only after it became clear the trial judge did not agree. In reading the transcript as a whole, it is clear the State did not concede the argument.

2. Under the totality of the circumstances, Trooper LaCourt-Baker observed "specific articulable facts which, taken together with rational inferences from those facts," are sufficient to reasonably suspect Mr. Braun was committing a traffic violation.

As mentioned above, it is well-established law in Wisconsin that an appellate court may sustain a lower court's ruling 'on a theory or on reasoning not presented to the lower court.'" See *Blum*, 2010 WI 78, ¶27 n.4. While the prosecutor did not argue the totality of the circumstances give rise to a reasonable suspicion of a violation of a criminal or traffic law; this court can and should analyze the facts elicited at the motion hearing and conduct a *Post* evaluation.

Under *Post*, the officer does not need to identify a specific traffic violation to have a reasonable suspicion a driver is violating a traffic law. *State v. Post*, 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634. What *Post* does require is for the court to examine the totality of the circumstances. *Id.* ¶¶ 29-37. And officers "are not required to rule out the

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possibility of innocent behavior before initiating a brief stop.... [I]f any reasonable inference of wrongful conduct can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn, the officers have the right to temporarily detain the individual for the purpose of inquiry." *State v. Anderson*, 155 Wis.2d 77, 84, 454 N.W.2d 763, 766 (1990) (citation omitted).

In Post, the officer observed the vehicle travel within its lane of traffic from the centerline to the curb "a few times" at 9:30 p.m. The *Post* court found the swerving and time of night justified the stop. *Post*, 2007 WI 60 at ¶ 37.

In this case, the trooper observed the F150 near bar time at 1:57 a.m. (R.21, 4.) He observed the F150 dramatically reduce its speed from 70 miles per hour to 45 miles per hour after the F150 came close enough for the driver to see the squad car. (R.21, 5.) The trooper testified that most vehicles only reduce their speed by around 10 miles per hour upon seeing a squad. (R.21, 9.) After seeing the squad, the vehicle immediately exited that highway, did not accelerate to the speed limit on the next highway, and then exited that highway at the next available exit. (R.21, 9-14.) The trooper testified that,

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based on his training and experience, the dramatic decrease in speed was indicative of criminal activity. (R.21, 5.)

While this case does not involve swerving within a traffic lane, the *Post* analysis is not restricted to weaving cases. The totality of the circumstances show a person who made attempts to avoid police contact as soon as they saw the marked squad car. They slowed down considerably more than most vehicles in that situation, they quickly exited the interstate, then quickly exited the highway after seeing the squad continued following them. Taken as a whole, it is reasonable to suspect a person who takes all of those dramatic steps to avoid police is, has, or is about to violate the law.

CONCLUSION

Trooper LaCourt-Baker testified to specific, articulable facts that establish reasonable suspicion Glen Braun was violating the law. As he had reasonable suspicion, and probable cause, that Mr. Braun was in violation of § 341.15, this Court must affirm the trial courts denial of the motion to suppress.

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Respectfully submitted this 7th day of March, 2023.

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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 801.19(8) (b), (bm), and (c) for a brief produced with a proportional serif font. The length of the brief is 3402 words including header and certifications.

Electronically signed by:

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CERTIFICATE OF EFILE/SERVE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 7th Day of March 2023

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