STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case Number 2023 AP 398

Columbia Co. Circuit Court Case Number 2021 TR 6926R

STATE OF WISCONSIN,

Plaintiff – Respondent,

v.

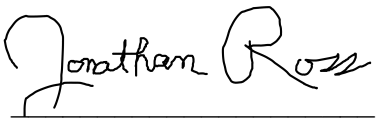
JASON W. CASTILLO,

Defendant – Appellant.

ON APPEAL OF THE COURT'S JUDGMENT FINDING THE DEFENDANT GUILTY OF REFUSAL – SPECIFICALLY THE LEGALITY OF THE STOP, IN THE CIRCUIT COURT FOR COLUMBIA COUNTY, BRANCH III, THE HONORABLE TROY D. CROSS PRESIDING

REPLY BRIEF OF PLAINTIFF-RESPONDENT

Respectfully submitted,



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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request either oral argument or publication.

STANDARD OF REVIEW

This Court analyzes the denial of a suppression motion under a two-part standard of review: the Court upholds the Circuit Court's findings of fact unless they are clearly erroneous, but the Court independently reviews whether those facts warrant suppression. *State v. Conner*, 2012 WI App 105, ¶ 15, 344 Wis.2d 233, 821 N.W.2d 267. "We do not reweigh the evidence or reassess the witnesses' credibility, but will search the record for evidence that supports findings the [circuit] court made, not for findings it could have made but did not." *Dickman v. Vollmer*, 2007 WI App 141, ¶ 14, 303 Wis.2d 241, 736 N.W.2d 202.

ARGUMENT

I. The Circuit Court properly denied the Defendant's motion to suppress the evidence in this case.

Suppression of the evidence is both inappropriate because there was no police misconduct, and because the purpose of the exclusionary rule would not be served by doing so. The Supreme Court of the United States has recognized that searches and seizures based on mistakes of fact can be reasonable. *Heien v. North Carolina*, 574 U.S. 54, 61, 135 S. Ct. 530, 190 L. Ed. 2d 475 (2014). In this case, it is the Defendant who made a reasonable mistake of fact.

A. The exclusionary rule does not apply because there was no police misconduct.

For the exclusionary rule to apply, there must have been some police misconduct. *State v. Kerr*, 2018 WI 87, ¶ 22, 383 Wis. 2d 306, 913 N.W.2d 787. In this case, the Defendant-Appellant cannot point to *misconduct* from the deputy. As outlined in the Brief of Appellant, the deputy testified that he did not see an opportunity to safely pass the Defendant's vehicle in order to get closer to the suspect's vehicle prior to activating his squad vehicle's emergency lights. Appellant's Br. at 8. However, the Defendant-Appellant now opines what the deputy ought to have done in order to effectuate the traffic stop on the motorist who failed to dim their lights. Our Supreme Court has stated regarding ineffective assistance of counsel claims, "Monday morning quarterbacks and hot stove leaguers always would have won the game in which they did not participate." *Johnson v. State*, 39 Wis. 2d 415, 418, 159 N.W.2d 48 (1968). The same is true in the case now before this Court. The deputy testified that he could not safely position

himself between the suspect and the Defendant on the roadway, yet the Defendant-Appellant asks the Court to position itself as a Monday morning quarterback and articulate how the deputy ought to have initiated a traffic stop. The deputy, relying upon his training and experience, performed his duties in a manner he determined to be safe. The Defendant then mistakenly believed the deputy was attempting to perform a traffic stop upon him. There was no police misconduct, and thus the exclusionary rule does not apply.

B. Suppression is an improper remedy because it would not serve the purpose of the exclusionary rule.

If this Court finds that there was police misconduct, then the evidence still ought not be suppressed in this case because that does not serve the purpose of the exclusionary rule. "The sole purpose of the exclusionary rule is to deter future Fourth Amendment violations." *State v. Burch*, 2021 WI 68, ¶ 17, 398 Wis. 2d 1, 961 N.W.2d 314, cert. denied, 211 L. Ed. 2d 503, 142 S. Ct. 811 (2022) (internal quotations omitted) (quoting *Davis v. United States*, 564 U.S. 229, 236-37, 131 S.Ct. 2419, 180 L.Ed.2d 285 (2011). Exclusion of evidence is then "warranted only where there is some present police misconduct, and where suppression will appreciably deter that type of misconduct in the future." *Davis*, 564 U.S. at 237. "But when the police act with an objectively reasonable good-faith belief that their conduct is lawful, or when their conduct involves only simple, isolated negligence, the deterrence rationale loses much of its force, and exclusion cannot pay its way." *Id*. at 238.

The Defendant-Appellant cannot persuasively argue that suppression here would appreciably deter the same type of misconduct in the future. The deputy initiated a traffic stop in the present case in a manner he

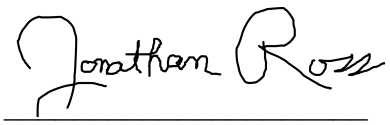
perceived to be safest. At worst, the deputy activating his emergency lights when he did was only simple negligence, "and isolated negligence is not 'misconduct' for the purposes of the exclusionary rule." *State v. Kerr*, 2018 WI 87, ¶ 22, 383 Wis. 2d 306, 913 N.W.2d 787 (citing *Herring v. United States*, 555 U.S. 135, 146-47, 129 S. Ct. 695, 172 L. Ed. 2d 496 (2009)). Suppressing evidence is a "massive remedy" for police misconduct. *Hudson v. Michigan*, 547 U.S. 586, 599, 126 S. Ct. 2159, 165 L. Ed. 2d 56 (2006). If there was police misconduct here, it was simple negligence on the part of the deputy and suppressing evidence is too great and disproportionate of a response.

CONCLUSION

For the reasons stated above, this Court should affirm the Circuit Court's denial of the Defendant's motion to suppress.

Dated this 18th day of August 2023.

Respectfully submitted,



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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief. The length of this brief is 1114 words.