

**FILED**  
**04-26-2024**  
**CLERK OF WISCONSIN**  
**COURT OF APPEALS**

No. 2023AP1224

---

STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT II

---

**STATE OF WISCONSIN,**  
*Plaintiff-Respondent,*

*vs.*

**ROXANNE RAE REICHERT,**  
*Defendant-Appellant.*

---

Appeal from the Circuit Court for Waukesha County  
The Honorable Judge Jennifer Dorow Presiding  
Case No. 2017CT1573

---

**REPLY BRIEF OF DEFENDANT-APPELLANT**

---

**BRADLEY W. NOVRESKE**  
State Bar No. 1106967

*Attorney for Defendant-Appellant*

**KUCHLER & COTTON, S.C.**  
1535 E. Racine Ave.  
Waukesha, WI 53186  
T: (262) 542-4218  
F: (262) 542-1993  
brad@kuchlercotton.com

## ARGUMENT

**A. Contrary to the State’s argument, a traffic stop cannot be justified after the fact based on information unknown to the police at the time of the stop but observed on squad camera recordings.**

The State argues that Officer Solberg’s stop of Ms. Reichert was based on reasonable suspicion because a review of the squad camera footage done in preparation for the motion hearing shows that Ms. Reichert was weaving within her lane and crosses the yellow center line briefly while making a left turn at an intersection, facts which Officer Solberg could not recall and which were not mentioned in the incident report he prepared after the stop. (Resp. Br. at 9). Whether a traffic stop violates the Fourth Amendment must be evaluated by undertaking “an objective assessment of an officer’s actions in light of the facts and circumstances *then known to him.*” *Scott v. United States*, 436 U.S. 128, 137 (1978). In Wisconsin, the validity of such a search and seizure depends initially upon whether the defendant was lawfully stopped. *State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W. 2d 60 (1987).

Wisconsin Statutes § 345.22 provides that “[a] person may be arrested without a warrant for the violation of a traffic regulation if the traffic officer has reasonable grounds to believe that the person is violating or has violated a traffic regulation.” Implicit in the authority to arrest for a traffic violation is the authority to carry out a more limited stop or seizure where the officer has reasonable grounds to believe that a violation has occurred. *Baudhuin*, 141 Wis. 2d at 648.

Taken together, *Scott* and *Baudhuin* allow for traffic stops where there are reasonable grounds to believe a traffic violation has occurred, and that such grounds were known to the officer at the time of the stop.

While this is an objective assessment, only those facts actually known by the officer at the time of the seizure can be considered.<sup>1</sup> *Scott*, 436 U.S. at 137. In this case, Officer Solberg’s report specifically identifies the facts that led him to carry out a stop of the vehicle – that he believed he had reasonable suspicion that a domestic incident had occurred, and that he believed that there was the possibility of injuries to the driver or children. Officer Solberg’s report details his observations of the vehicle from the time he initially spots it through the time he conducts the stop. No reference is made to traffic violations, and Officer Solberg could not recall whether he observed the violations but conceded that it would have been his standard practice to include such information in his incident report had he observed it.

As Officer Solberg did not himself observe the traffic violations, either because he was busy attempting to decipher the vehicle’s registration or focusing on other aspects of his investigation, the violations were not known to him at the time of the stop and therefore cannot be properly considered in the “objective assessment of [his] actions in light of the facts and circumstances *then known to him.*” *Id.* (emphasis added).

While no Wisconsin cases have been identified which more directly address this question, numerous federal Circuit Courts have addressed the issue. For example, the Sixth Circuit Court of Appeals held that while the subjective intent of an officer in carrying out a stop is not relevant where the officer had probable cause for the stop, “in order for the traffic stop to be permissible under the Fourth Amendment, a police

---

<sup>1</sup> Or constructively known to the officer through the collective knowledge doctrine, which does not apply to this situation because the record does not suggest that any other officer was aware of the traffic violations at the time of the stop.

officer must know or reasonably believe that the driver of the car is doing something that represents a violation of the law. This is not to say that officers must be able to, at the time of a stop, cite chapter and verse – or title and section—of a particular statute or municipal code in order to render the stop permissible. *This rule might be better stated as saying that police officers may not look for after-the-fact justifications for stops that would otherwise be impermissible; following a stop, the government should not begin pouring through state and local traffic ordinances looking for any that a suspect might have violated.*” *United States v. Hughes*, 606 F.3d 311, 316 (6<sup>th</sup> Cir. 2010) (emphasis added). This position was echoed by the Fourth Circuit in *United States v. Williams*, 740 F.3d 308, 312 (4<sup>th</sup> Cir. 2014), which held “[A] police officer’s inability to identify the correct code section at the time of a stop does not undermine valid probable cause or unreasonable suspicion that a driver violated a traffic law. . . . This does not, however, give the government license to ‘look for after-the-fact justifications for stops.’”

Indeed, the Supreme Court has emphasized that the propriety of police activities is not to be determined by hindsight consideration of what evidence was thereby acquired. *Bumper v. North Carolina*, 391 U.S. 543 (1968). Here, the parties are resorting to evidence acquired during the police action – the video recording of the incident – and engaging in hindsight consideration of the propriety of the stop based on that, and *not* based on the objective facts as they were known to Officer Solberg at the time of the stop.

In this case, the validity of the stop must be analyzed objectively under the “reasonable officer” standard, but must be limited to the facts and circumstances actually known to Officer Solberg at the time of the

stop. Officer Solberg did not observe any traffic violations, and so these violations cannot form the basis for a lawful stop.

**B. Officer Solberg lacked sufficient information for the traffic stop to be justified as a means of maintaining the status quo or exercising a community caretaker function.**

As argued in Ms. Reichert's opening brief, Officer Solberg lacked sufficient information to believe that the particular dark-colored SUV he stopped was involved in the incident that he was responding to or that the occupants of the vehicle were in need of assistance. For a stop to be permissible under these exceptions, or where there is reasonable suspicion that a crime has occurred but uncertainty as to the identities of the individuals involved, there must be a sufficiently detailed description to justify the seizure of any particular person. *LaFave, Wayne R. Search and Seizure : a Treatise on the Fourth Amendment.* [St. Paul, Minn.] :5e West, 2012. The police activity must not be a "dragnet approach" which potentially results in the temporary seizure of a large number of persons within the range of the possible scene or direction of travel of individuals believed to be involved with an incident. Instead, there must be "selective investigative procedures" whereby seizures are made only of those as to whom there exists of being a "reasonable possibility" of their involvement. *Id.* In determining whether a particular description is sufficiently unique, the ultimate question is whether the description affords a sufficient basis for such selective investigative procedures.

In this case, the information known to police at the time of the stop was fairly thorough – they believed they were looking for a woman driving a purple Honda SUV with children in it which was believed to have been involved in at least one vehicle collision. Had Officer Solberg

been able to confirm that Ms. Reichert's vehicle fit more than one of these criteria – that it was a purple Honda SUV – he would likely have had a sufficient basis to believe that there was a “reasonable possibility” for the vehicle he was stopping to have been involved. However, because it was dark, Officer Solberg could not tell who the driver was, whether there were passengers in the vehicle, or the ages or genders of each. And the information he was provided regarding the possibility of accident damage being visible on the vehicle suggested that Ms. Reichert's vehicle was *not* the one he was looking for, as her vehicle had no visible damage. Officer Solberg simply saw a purple Honda SUV in the general vicinity of what he believed was the scene of the incident and chose to stop it to make sure that the passengers were safe and unharmed.

Because Officer Solberg's decision to stop the vehicle was not based on reasonable suspicion that the driver had violated a traffic law, and the information he had about the vehicle at the time of the stop was not specific enough to ensure that he was only stopping a vehicle if it was “reasonably possible” that the vehicle was involved in the incident, the stop was unreasonable under any of the State's proposed justifications.

**C. To the extent that the stop was justified, Officer Solberg impermissibly extended the traffic stop beyond that justification.**

Officer Solberg was able to determine within a minute of the stop that the occupants of the vehicle were not in need of assistance or medical care such that the community caretaker function was complete. And, as Ms. Reichert was stopped nowhere near the location of the possible domestic incident being investigated, Officer Solberg was not merely freezing that scene to maintain the status quo while further

investigation was underway. Over the course of half an hour, Officer Solberg confirmed that Ms. Reichert and her children were safe, confirmed that there was not a domestic incident that rose to the level of making an arrest of anyone involved, and did not observe anything in his interactions with Ms. Reichert face to face over the course of that half hour that would suggest that she was operating under the influence or had a prohibited alcohol concentration. Those personal observations (or, more specifically, the lack of signs of impairment) defeat any reasonable suspicion that might have existed based on the self-serving reporting of Ms. Reichert's abusive boyfriend, provided to officers while he was detained at the scene. The State (and the trial court) place an inappropriate amount of emphasis on the "tip" coming from an identified witness as opposed to an anonymous tipster while dismissing the extent to which "Victim A" was the reported aggressor attempting to prevent Ms. Reichert from leaving with her children after she expressed discomfort with the way that Victim A was acting.

Victim A's self-exonerating tip that Ms. Reichert was intoxicated was inconsistent with Officer Solberg's lack of observed signs of impairment during his half-hour interaction face-to-face with Ms. Reichert. At the point FSTs were requested, Officer Solberg had concluded both of the claimed purposes for the stop, and the authority to continue the stop beyond this point ended. As such, any evidence obtained during the extension should have been suppressed.

### **CONCLUSION**

Officer Solberg lacked probable cause or reasonable suspicion to stop Ms. Reichert's vehicle. He also lacked sufficient information to reasonably conclude that the vehicle that she was traveling in was

connected to the domestic altercation such that it was likely that an occupant of the vehicle was in need of assistance or medical attention. After stopping the vehicle, Officer Solberg completed his community caretaker role and investigation into the possible domestic incident, and his authority to continue the stop ended. Nevertheless, he extended the stop to put Ms. Reichert through FSTs. This unreasonable extension of the stop violated her Fourth amendment rights and should have been suppressed.

Dated at Waukesha, Wisconsin this 26th day of April, 2024.

**KUHLER & COTTON, S.C.**

*Electronically signed by*  
BRADLEY W. NOVRESKE  
State Bar No. 1106967



**CERTIFICATE OF COMPLIANCE**

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm) and (c) for a brief. The length of this brief is 2060 words as calculated by Microsoft Word's word-count feature.

Dated at Waukesha, Wisconsin this 26th day of April, 2024.

Electronically signed by Bradley W. Novreske  
State Bar No. 1106967