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**STATE OF WISCONSIN
COURT OF APPEALS
District IV**

TOWN OF DUNN

Plaintiff-Appellant,

Appeal Nos. 2023AP1529, 2023AP1530, 2023AP1531

vs.

BRIAN S. LAFLEUR,

Defendant-Respondent.

TOWN OF DUNN'S BRIEF

**APPEALING THE JUNE 21, 2023 FINAL ORDER IN
DANE COUNTY CIRCUIT COURT
CASE NOS. 22TR11269, 22TR11268 AND 22TR11270
THE HONORABLE DAVID CONWAY PRESIDING**

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STATEMENT OF ISSUES ON APPEAL

1. Did the charging Deputy have reasonable suspicion to stop Mr. LaFleur's vehicle when the Deputy observed it traveling through an area of road closed to through traffic when the registration came back indicating the driver lives outside the area and the vehicle left the road closed area without being seen stopping at any property within the road closed area?

Trial Court Answer: No.

STATEMENT ON ORAL ARGUMENT

The Town of Dunn believes the issues in this case will be adequately addressed in briefs and that oral argument is, therefore, not necessary.

STATEMENT OF THE CASE

On Saturday, July 30, 2022 at approximately 8:37 p.m. Deputy Nathan Katzenmeyer was on patrol working in the Town of Dunn. (R.33:4, 14; A. App. 0005-0015). He was traveling westbound on Rutland-Dunn Townline Road when he observed another vehicle traveling eastbound toward him. (R.33:5; A. App. 0006). This caught his attention because that section of Rutland-Dunn Townline Road was closed due to construction and was unpaved. (R.33:5; A. App. 0006). The entire closed area was an approximately six-mile stretch that could not be observed in its entirety from any one location. (R.33:5, 9; A. App. 0006, 0010). All public road entrances to the closed area were marked by official signs and barricades indicating that the road was closed to through traffic. (R.33:9, 10; A. App. 0009-0010). Thus, anyone traveling from outside the closed area had notice that the road could only be used to access property within the closed area and could not be used for through traffic. (R.33:10, 11; A. App. 0010-0011)

When the vehicle passed him, Deputy Katzenmeyer saw the license plate and was able to run the plate through the DOT computer system which told him that the car was registered to an owner that lived, not anywhere accessed by the closed road, but instead in Stoughton. (R.33:5-6; A. App. 0006-0008) Stoughton is to the southeast and outside of the road closed area. (R.18; A. App. 0001) Deputy Katzenmeyer suspected that a person from the City of Stoughton was using the closed road as a through route back home to Stoughton in violation of

the traffic signs. (R.33:6; A. App. 0007) Deputy Katzenmeyer turned around to follow the vehicle and, after he observed it continue to travel and exit the closed area, he activated his squad lights to stop the vehicle. (R.33:6; A. App. 0007).

The traffic stop led to three citations being issued to Mr. LaFleur: (1) operating while under the influence (1st offense); (2) operating with a prohibited alcohol concentration (1st offense); and (3) failure to obey a traffic sign in a work area. (R.17). Mr. LaFleur filed a motion to suppress all evidence obtained as a result of the stop. (R.11). A hearing was held on May 17, 2023 at which the trial court granted Mr. LaFleur's motion. (R.33; A. App. 0002-0030). With all evidence supporting the citations issued having been suppressed, the Town of Dunn moved to dismiss the citations which motion was granted June 21, 2023. (R.22). Appeal was taken from the court's June 21, 2023 final order.

ARGUMENT

Deputy Katzenmeyer had reasonable suspicion to stop Mr. LaFleur's vehicle. Deputy Katzenmeyer had limited information at his disposal, but he exhausted all available resources to gather evidence that might dispel his suspicion before he resorted to making an investigatory stop of Mr. LaFleur's vehicle. Because Deputy Katzenmeyer had reasonable suspicion the trial court erred by granting Mr. LaFleur's motion to suppress.

I. THE STANDARDS TO APPLY TO THE REVIEW OF AN INVESTIGATORY STOP OF A MOTOR VEHICLE ARE WELL ESTABLISHED.

"Investigative traffic stops are subject to the constitutional reasonableness requirement." *State v. Post*, 2007 WI 60, ¶12, 301 Wis. 2d 1, 733 N.W.2d 634, citing *Whren v. United States*, 517 U.S. 806, 809-10, 116 S. Ct. 1769, 135 L. Ed. 2d 89 (1996); *State v. Rutzinski*, 2001 WI 22, P14, 241 Wis. 2d 729, 623 N.W.2d 516.. The burden to establish that the stop in this case was reasonable is upon the Town. *Id.*

In deciding whether a stop is reasonable, the court applies a common sense test that asks whether the facts would allow a reasonable officer, in light of his or her training and experience, to suspect that the person has committed, was committing or is about to commit a traffic offense. *Id.* at ¶13. This approach is designed to balance the interests of the state in "detecting, preventing, and investigating crime and the rights of individuals to be free from unreasonable intrusions." *Id.* at ¶ 13.

Whether a traffic stop is reasonable is a question of constitutional fact – a mixed question of law and fact to which a two-step standard of review is applied. *Id.* at ¶8. The court applies the “clearly erroneous” standard to trial court’s findings of historical fact and conducts the application of historical fact to constitutional principles independently without deference to the trial court’s conclusions. *Id.* at ¶8.

II. DEPUTY KATZENMEYER HAD REASONABLE SUSPICION THAT MR. LAFLEUR WAS OPERATING HIS MOTOR VEHICLE IN VIOLATION OF THE ROAD CLOSURE SIGNAGE.

The trial court found that the subject roadway was indeed closed and implicitly found that anyone entering the area would have received adequate notice by official signage that through traffic into the construction area was prohibited. (R.33:25-26; A. App. 0026-0027). The trial court concluded, however, that “it’s not enough for a vehicle to be traveling on a closed road and have an address registered elsewhere to initiate a traffic stop.” (R.33:26; A. App. 0027). These two facts, however, do not constitute the totality of the circumstances presented to Deputy Katzenmeyer.

First, the maps and video clip make clear that Rutland-Dunn Townline Road is a rural Dane County road. (R.18; R.31; A. App. 0001). While the entire closed stretch has a church near Oregon, one nursery business and a variety of homes and farms, this is not a bustling urban area. (R.18; R.31; R.33: 7-8; A. App. 0001, 0008-0009). The court, in its decision found the burden of allowing a stop under the circumstances to put to great a burden on “the numerous

homeowners, business owners, business customers, invitees, farm owners, farm employees, [and] church goers.” (R.33:27; A. App. 0028). This, however, is an erroneous characterization of the individual rights side of the equation. Contrary to the court’s apparent belief, no evidence exists to support the conclusion that all the potential traffic that could be occurring anywhere on the 6.2 mile stretch at any given time would be likely to be occurring all at once on the particular section of road at issue at 8:37 p.m. on a Saturday night.

Homeowners and many farm owners, however, would presumably mostly have vehicles registered to the area within the construction zone. So, the court’s conclusion that those individuals would be burdened at all by allowing an investigatory stop under the circumstances of this case is clearly erroneous. Business owners, business customers and farm employees, however, are also not nearly as likely to be traveling this road for business or employment purposes at 8:37 p.m. on a Saturday night than they may be at other times. Given the nature of churches and the one business that the evidence revealed, it is also less likely than at other times that these sources of potential traffic are likely to be occurring at this time either.

Further, it is clearly improper to rely on uses of abutting property for the entire length of the road to identify potential a lawful purposes for being on the road. Not including the beginning and ending of the road closed area, there are 6 different places along the closed area for vehicles to exit the road once leaving a property within the closed area. (R.18; A. App. 0001). This necessarily limits the

universe of persons that might lawfully be using the closed portion of the road and substantially reduces the individual rights burden against which the governmental interest in law enforcement is to be balanced. See *Post*, 2007 WI 60 at ¶ 13.

Clearly Deputy Katzenmeyer, under the circumstances, could not know for certain whether Mr. LaFleur had come from a property within the road closure such that his travel did not constitute through traffic on the closed roadway. It is, however, well established that it is reasonable to assume that the registered owner of a vehicle is likely the driver. *Kansas v. Glover*, 140 S. Ct. 1183, 1188, 206 L.Ed.2d 412, 420 (2020). Where that driver's registration shows a residence outside of the closed area, it is self-evident that it is also reasonable to conclude that the driver likely does not reside in the closed area.

Given that the time was 8:37 p.m. on a Saturday night, it also is reasonable to conclude that it is less likely than it might be at other times that such person is conducting some business in the closed area. That universe of possibilities is further limited by the many other places a vehicle could exit the closed area. While the record does not clearly reveal where the first sighting and stop occurred, the map in evidence shows that potential exits from the closed roadway are relatively evenly distributed across the closed area. (R.18; A. App. 0001). It would never be necessary for anyone to use the whole 6 mile stretch.

Of course, no affirmative reason existed for Deputy Katzenmeyer to conclude with any certainty that Mr. LaFleur had not been making a social visit to a residence, but the law is clear that "[r]easonable suspicion does not require

ruling out innocent explanations.” *State v. Conaway*, 2010 WI App 7, ¶5, 323 Wis. 2d 250, 779 N.W.2d 182. Rather, “if any reasonable inference of wrongful conduct can be ‘objectively discerned,’ officers may temporarily detain an individual for purposes of investigation.” *Id.* at ¶5. How else could Deputy Katzenmeyer have determined whether any innocent explanation actually existed for Mr. LaFleur, a person that did not reside in the closed area, to be apparently traveling through the closed area at 8:37 p.m. on a Saturday night?

This case stands in stark contrast to *State v. Swiecichowski*, 2017 Wis. App. LEXIS 47; 2017 WI App 14; 2016-AP-1808-CR.¹ In *Swiecichowski*, the officer observed a vehicle drive past a “road closed” sign and ran its plates. *Id.* at ¶5. The registration came back to a person living in Racine, about seven or eight miles away from the construction zone. *Id.* at ¶5. The officer stopped the car while it was still in the closed area. *Id.* at ¶6. The driver indicated that the car was registered to his girlfriend and that he lived in the construction zone. *Id.* at ¶6. The officer admitted that he did not know at the time of the stop whether the vehicle was passing through or would stop somewhere in the closed area. *Id.* at ¶6.

The court found that the officer lacked reasonable suspicion for the stop. The court found that there were a number of homes in the area and, accordingly, there were numerous reasons why the vehicle could have lawfully entered the

¹ Unpublished opinion citable for persuasive value under Wis. Stats. §(Rule) 809.23(3)(b).

closed area. *Id.* at ¶15. The court, while noting that the officer was not required to rule out innocent explanations, found that in this instance, the officer “could have easily acquired more information to transform his hunch – or seen it dispelled – if he simply followed Swiecichowski to see where he went.” *Id.* at ¶15.

In this case, Deputy Katzenmeyer had no opportunity to develop additional information. He did not have the opportunity to see where Mr. LaFleur had come from. He saw a vehicle in the road closed area. He learned that the owner of the vehicle did not reside in the closed area. He then continued to follow it until it left the road closed area which told him that this person was likely on their way home (eastbound to Stoughton). (R.33:5-6, A. App. 0006-0007). Whether Mr. LaFleur was lawfully coming from a property in the closed zone was less likely at that time than it may have been at other times. In any event, this innocent explanation was no more likely than one that supported guilt.

“The reasonable suspicion inquiry ‘falls considerably short’ of 51% accuracy.” *Kansas v. Glover*, 140 S. Ct. 1183, 1188, 206 L.Ed.2d 412, 420 (2020). At 8:37 p.m. on a Saturday, it was reasonable for Deputy Katzenmeyer to suspect that a vehicle owned or driven by someone from Stoughton would not be driving on a rural town road that is closed for construction for lawful purposes. No question exists that the road entrances were properly posted. At that day and time, the universe of innocent explanations are, while far from zero, limited.

Deputy Katzenmeyer did not stop Mr. LaFleur the moment he received the registration information. Rather, he followed him to be sure he wasn’t stopping at

a location in the closed zone. Deputy Katzenmeyer gathered all the information he could to confirm or dispel his suspicion before stopping him. Only when all other opportunity to gather information had been exhausted, he conducted an investigatory stop to perform the fundamental purpose of such a stop – to investigate. Deputy Katzenmeyer properly balanced the interests in individual liberty and the need to enforce traffic laws. *Post*, 2007 WI 60 at ¶ 13. Deputy Katzenmeyer's suspicion and conduct was reasonable and the trial court erred in finding otherwise.

CONCLUSION

For the above and forgoing reasons, the trial court's decision to grant Mr. LaFleur's suppression motion should be reversed and all three citations remanded for further proceedings.

Dated this 21st day of November, 2023.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in s. 809.19 (8) (b), (bm) and (c) for a brief. The length of this brief is 2,787 words.

I further certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review of an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 21st day of November, 2023.

Electronically signed by: /s/ Matthew J. Fleming
Matthew J. Fleming

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