STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Appeal Nos. 2023AP1529, 2023AP1530, and 2023AP1531

STATE OF WISCONSIN,

Plaintiff-Appellant,

vs.

BRIAN LAFLEUR,

Defendant–Respondent.

RESPONSE BRIEF OF DEFENDANT–RESPONDENT

ON APPEAL FROM THE ORDER ON JUNE 21, 2023,
IN THE CIRCUIT COURT FOR DANE COUNTY, BRANCH 17,
THE HON. DAVID CONWAY, PRESIDING

Respectfully submitted,

BRIAN S. LAFLEUR,
Defendant-Respondent

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STATEMENT OF ISSUE

1. Did the charging Deputy Katzenmeyer have reasonable suspicion to stop Mr. LaFleur's vehicle based solely on the facts that he was driving on a road closed to through traffic with a registered address that was not located on the closed road.

Trial Court Answer: No.

2. Did the Town forfeit their right to appeal based upon the notice of appeal being filed outside the time limits.

Trial Court Did Not Address the Issue.

3. Is the Town barred from appealing their own motion to dismiss this matter in circuit court.

Trial Court Did Not Address the Issue.

STATEMENT ON ORAL ARGUMENT

Mr. LaFleur 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 July 30, 2022, Deputy Katzenmeyer was on patrol on Rutland-Dunn Townline Road in the Town of Dunn.[1] The length of the road that was closed was approximately 6 miles long.[2] At around 8:37 PM Katzenmeyer observed a vehicle traveling eastbound, while he was traveling westbound.[3] Katzenmeyer claimed that he performed a DOT registration check of the vehicle which indicated that the vehicle's registered owner lived in the City of Stoughton.[4] At that point, Katzenmeyer concluded that that driver was using the closed roadway as a thoroughfare.[5] Katzenmeyer then conducted a U-turn and followed the vehicle until it left the road closed area.[6] As the car left the road-closed area, Katzenmeyer initiated the traffic stop.[7]

When asked about the closed portion of the road, Katzenmeyer testified that there are signs at each point of entry, but the signs only block about half of the road, and then the other half of the road is open so that people can still access the homes, businesses, farms, and anything else they need to on that road.[8] Katzenmeyer confirmed that

[1] R. 33:4. Appx. A-1.
[2] R. 33:5 and 9. Appx. A-1.
[3] R. 33:5. Appx. A-1.
[4] R. 33:5-6. Appx. A-1.
[5] R. 33:6. Appx. A-1.
[6] R. 33:6. Appx. A-1.
[7] R. 33:6. Appx. A-1.
[8] R: 33:10. Appx. A-1.

there are homes, at least one business, a church[9], as well as several farms. In addition to the homes that are located directly on the closed portion of the road, there are additional dead-end roads that come off the closed road that have homes on them as well.[10] Katzenmeyer did not observe LaFleur going past any of the road-closed-to-through-traffic signs, or any other traffic infractions.[11]

Katzenmeyer testified that people are not allowed to drive through the closed portion of the road, but are allowed to use it to visit family or go to work.[12] Katzenmeyer admitted that had no idea where LaFleur was coming from when he was driving on Rutland-Dunn Road.[13] Katzenmeyer further admitted that the only information that he had was that this road was closed and that the registered owner of the vehicle had a Stoughton address.[14]

On the same day as the hearing, he Trial Court ruled orally that the stop was unlawful[15] and granted the motion to suppress in a

[9] R. 33:7-8. Appx. A-1.
[10] R: 33-9. Appx. A-1.
[11] R. 33: 8. Appx. A-1.
[12] R. 33:10. Appx. A-1.
[13] R. 33:12. Appx. A-1.
[14] R. 33:12. Appx. A-1.
[15] R. 33:22-23 Appx. A-1.

written order.[16] The Town of Dunn moved to dismiss the citations which motion was granted June 21, 2023.[17]

ARGUMENT

I. STANDARD OF REVIEW

Whether a stop is valid under the Fourth Amendment is a question of constitutional law reviewed *de novo*.[18] Appellate courts uphold findings of facts unless they are clearly erroneous.[19]

II. DEPUTY KATZENMEYER DID NOT HAVE REASONABLE SUSPICION THAT MR. LAFLEUR WAS COMMITTING ANY VIOLATION.

Deputy Katzenmeyer did not have reasonable suspicion to stop Mr. LaFleur's vehicle. Accordingly, the trial court properly ruled by granting Mr. LaFleur's motion to suppress and this Court should uphold the ruling of the Trial Court.

Reasonable suspicion must be based on a standard amounting to more than a mere hunch. There must be "some objective manifestation that the person stopped is or is about to be engaged in

[16] R. 17:1 Appx. A-11
[17] R. 22. Appx. A-10.
[18] ***State v. Guzman***, 166 Wis. 2d 577 (1992).
[19] ***State v. Robinson***, 327 Wis. 2d 302, 786 N.W.2d 483 (Wis. 2010).

criminal activity."[20] To execute a valid investigatory stop consistent with the Fourth Amendment, a law enforcement officer must reasonably suspect, in light of his or her experience, that the persons stopped engaged in or are engaging in some kind of unlawful activity. The officer must be able to point to specific and articulable facts that, taken together with rational inferences from those facts, warrant the intrusion.[21] The question of what constitutes reasonable suspicion is a commonsense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of their training and experience. An inchoate and unparticularized suspicion or hunch will not suffice, even if the hunch is an "inspired" one.[22]

The trial court properly ruled that 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." Unfortunately, these two pieces of information are all that Katzenmeyer had. The trial court further stated that:

> "It would impose too great of a burden on the Fourth Amendment rights of the numerous homeowners, business owners, business customers, invitees, farm owners, farm

[20] ***United States v. Ienco***, 182 F.3d 517, 523 (7th Cir. 1999), (quoting ***United States v. Cortez***, 449 U.S. 411, 417 (1981)); ***United States v. Brown***, 188 F.3d 860, 864 (7th Cir. 1999).
[21] ***Terry v. Ohio***, 392 U.S. 1 at 21.
[22] ***United States v. Quinn***, 83 F.3d 917, 921 (7th Cir. 1996); ***Ienco***, 182 F.3d at 524.

> employees, church goers to know that, just because they don't live on a particular road, their very presence in their vehicle on the closed road is sufficient to subject them to an investigative stop."[23]

The trial court further stated in its decision that, "[I] just don't find that simply being on a closed road with a vehicle registered to an address elsewhere is enough to justify reasonable suspicion, and that's all that the town has been able to prove today…"[24]

Many of the points raised by the Town have absolutely no relevancy to the Trial Court's ruling or the corresponding case law. The Town mentioned that "…Rutland-Dunn Townline Road is a rural Dane County road. 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."[25] People visiting rural and urban areas are equally protected under the United States Constitution, so this comment carries no weight.

Another fallacy from the Town is that it believes that it is "…improper to rely on uses of abutting property for the entire length of the road to identify potential a lawful purpose for being on the

[23] R. 33: 26-7. Appx. A-1.
[24] R. 33:27-28. Appx. A-1.
[25] Brief of Appellant at 8. (Internal citations omitted.)

road."[26] The Town claims that because there are 6 different access points to the closed road that this limits the universe of persons that might lawfully be using the closed portion of the road. This argument is erroneous because there is no legal requirement that one uses the road minimally. If one were to be driving from one end of the closed road to visit an individual who lives 5 miles down the road, they would be using that road lawfully as they would not be considered through traffic. There is no requirement that one only enters the closed road at the closest access point to their destination.

The Town admits that "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." The town goes on to argue that because "[a] 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." The problem with this logic is that it may only give rise to some suspicion that LaFleur does not live at an address on the closed road. This information does not indication that Mr. LaFleur was violating any law as one does not have to reside on the closed

[26] Appellant's Brief at 9.

road in order to use it. As mentioned previously, it does not suggest that he is not a business owner, business customer, farm employee, service worker, or invited guest. In addition, the residents on or near the closed road, the other categories of people mentioned do not forfeit their Constitutional Rights by using the road.

The Town seems to think that just because an officer cannot monitor the entirety of the closed road, relieves them of the requirements to make investigative stops based upon reasonable suspicion. The Court considered all the information that the Officer gathered prior to the stop. This information alone did not give rise to reasonable suspicion that Mr. Lafleur violated any law. That is clearly not enough to reasonably believe that the person is committing an infraction when you have no idea where they are driving from.

For the reasons stated, the trial court correctly ruled that Katzenmeyer did not have reasonable suspicion to conduct an investigative stop of LaFleur's car.

III. THE NOTICE OF APPEAL WAS NOT FILED TIMELY AND THEREFORE SHOULD BE BARRED FROM BRINGING THIS APPEAL.

On September 13, 2023; this Court issued an order denying Mr. LaFleur's motion for dismissal for the Town's Notice of Appeal not

being filed timely. Mr. LaFleur asks the Court to reconsider the motion for dismissal with the additional facts and argument provided in this brief. The applicable law in the original motion to dismiss should be considered along with the following:

Appeals of traffic cases are governed by 809.40(2):

> "An appeal to the court of appeals from a judgment or order in a ch. 799, traffic regulation or municipal ordinance violation case must be initiated within the time period specified in s. 808.04, and is governed by the procedures specified in ss. 809.01 to 809.26 and 809.50 to 809.85, unless a different procedure is expressly provided in ss. 809.41 to 809.42."

The Appellant argued in their response to the motion to dismiss, that they were not provided written notice of the decision under 806.06(5). However, the Court can plainly see from the Motion filed on September 11, 2023,[27] that the Order Granting Plaintiffs' Motion to Dismiss was electronically filed on June 21, 2023. It would seem unusual for the court to require a notice of entry of judgment to be served by the party that did not seek to have such judgment entered.

Wis. Stat. § 801.18 is the statute governing the electronic filing system and states the following:

[27] R. 22. Appx. A-10.

> "If the clerk of court accepts a document for filing, it shall be considered filed with the court at the date and time of the original submission, as recorded by the electronic filing system. ***The electronic filing system shall issue a notice of activity to serve as proof of filing. When personal service is not required, the notice of activity shall constitute proof of service on the other users in the case."***[28] ***(emphasis added)***

Furthermore Wis. Stat. § 801.18 (6)(a) states:

> "The electronic filing system shall generate a notice of activity to the other users in the case when documents other than initiating documents are filed. Users shall access filed documents through the electronic filing system***. For documents that do not require personal service, the notice of activity is valid and effective service on the other users and shall have the same effect as traditional service of a paper document, except as provided in par. (b).***"[29](***emphasis added***)

According to both above statutes, the notice of activity that is generated when a document is filed through the electronic filing system constitutes "valid and effective service." Neither 808.04 nor 806.06 require personal service. Therefore, the Appellant (Town) in LaFleur's case received "valid and effective service" of the final judgment when it was electronically filed. Therefore, the filing deadline for the Town to file a Notice of Appeal should be 45 days from the date of the final adverse order. As previously stated, in Mr.

[28] Wis. Stat. § 801.18 (4)(c).
[29] Wis. Stat. § 801.18 (6)(a).

Lafleur's motion to dismiss the present appellate matter, the Order to Dismiss that the Town drafted and filed themselves on June 21, 2023, would mean that they filed the Notice of Appeal 58 days After the final order.

For the prosecution's argument to succeed that the 90-day time limit should apply, they would have to show one of the following: (1) Personal service is required. This argument fails simply because the statute does not require personal service. Furthermore, a review of Wisconsin case law on the issue shows that service by mail is acceptable; or (2) Traditional notice is required (i.e. service through mail), which should fail because the entire purpose of the electronic filing system is to render traditional service methods obsolete and unnecessary. This would be especially unnecessary considering they were the ones who filed the motion and received confirmation that the judge signed their own proposed order.

The Town attempted to argue that 806.06 (3) indicates the need for traditional service by mail is required. The Statue states: "After an order or judgment is entered, either party may serve upon the other a written notice of entry containing the date of entry."[30]

[30] Wis. Stat. § 806.06 (3).

However, the statute was written when traditional, written notice, would have been the only means of notice. More importantly, the statute is intended to provide a means of imposing the 45-day deadline in the event that final judgment is entered through the very next section of the statute. Wis. Stat. § 806.06 (1)(d) states that: "A judgment is granted when given orally in open court on the record."

In this case, the Town (prosecution) filed the Motion to Dismiss the matter in the trial court, and the Proposed Order June 21, 2023. The trial court signed and filed the Order Dismissing the case that same day.[31] Through the trial court's electronic filing system, the Town would have received notice of the judgment (that they asked for) at the time of filing.[32] Knowing that the Town, prosecuting Mr. LaFleur, received notice from the court with a date/time stamp, there would be no reason to separately serve them with notice personally or in the mail in order to shorten the time for the Town of Dunn to file the appeal.

The reason that Mr. LaFleur's counsel mentioned that it was unclear whether the Town was seeking review of the circuit court's June 21, 2023, order or an earlier order entered on May 17, 2023, was

[31] R. 22. Appx. A-10.
[32] Id.

because Town had their own Motion to Dismiss granted by the trial court. Mr. LaFleur's Counsel made the comment about the confusion in surprise, because the judge granted Mr. LaFleur's Motion to Suppress, adverse to Town on May 17, 2023, but on June 21, 2023, **The Town** filed the Motion to Dismiss the case, and the Court granted their motion in writing by signing the order and then sending it to The Town via the eFile system.

IV. THE TOWN RECEIVED THE RELIEF THAT THEY SOUGHT IN THEIR OWN MOTION TO DISMISS, AND THEREFORE SHOULD BE BARRED FROM BRINGING THIS APPEAL.

Because The Town filed the motion requesting that the case be dismissed in their June 21, 2023, motion, they are faced with another, equally substantial issue of whether they can appeal a non-adverse ruling.

Wis. Stat. § 809.10 governs the initiation of appeal in this case. Wis. Stat. § 809.10 (4) says the following:

> "Matters reviewable. An appeal from a final judgment or final order brings before the court all prior nonfinal judgments, orders and rulings adverse to the appellant and favorable to the respondent made in the action or proceeding not previously appealed and ruled upon."

Based on the plain meaning of the statute, while The Town would technically be able to appeal the adverse order to suppress evidence (filed on May 17, 2023), they would be unable to appeal the non-adverse order for dismissal which they moved for. It is non-adverse because the Town was the moving party, and the trial court granted its motion. Had the Town asked for a trial, and the trial court ruled in favor of Mr. Lafleur, the Town would have been allowed to appeal that final adverse ruling along with all other adverse rulings in the matter. The Town is not able to make their own motion an adverse motion simply by stating that they reserve their right to an appeal in that motion.

It is well established that a defendant in a civil OWI first matter, a defendant cannot appeal an adverse suppression order if they enter a plea of guilty or no contest to resolve the matter because Wis. Stat. § 971.31(10) applies only to criminal cases.[33]

"The idea underlying the waiver rule is that a guilty plea itself constitutes both an admission that the defendant committed past acts and a consent that a judgment of conviction be entered against him

[33] *See Generally* ***Racine Cnty. v. Smith****,* 122 Wis. 2d 431, 362 N.W.2d 439 (Ct. App. 1984).

without a trial."[34] It is accepted that one may waive the right to appeal in civil cases where he has caused or induced a judgment to be entered or has consented or stipulated to the entry of a judgment."[35] "He cannot be heard to complain of an act to which he deliberately consents. *Consensus tollit errorem*."[36]

One of the cases that *Smith* relies on is *Fox v. Kaminsky*, 239 Wis. 559, 2 N.W.2d 199(1942), which explains:

> Since the trial court entered judgment in favor of Meta Fox upon her own motion, and since she was not concerned with the denial of relief to Lloyd Fox, she is plainly within the rule that having received one of the forms of relief asked for, she cannot appeal from the judgment entered, although other alternative motions have been denied. Neither may she have the review requested here. (Internal citations omitted)[37]

In order for a defendant to file a Notice of Appeal for a civil traffic matter, he/she must go to trial after the suppression motion. If they enter a plea to finalize the matter, they have waived their right to

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[34] ***Racine Cnty. v. Smith***, 122 Wis. 2d 431, 437, 362 N.W.2d 439, 442 (Ct. App. 1984) citing ***Brady v. United States***, 397 U.S. 742, 748, 90 S.Ct. 1463, 1468, 25 L.Ed.2d 747 (1970).
[35] ***Racine Cnty. v. Smith***, 122 Wis. 2d 431, 437, 362 N.W.2d 439, 442 (Ct. App. 1984) Citing ***Fox v. Kaminsky***, 239 Wis. 559, 567, 2 N.W.2d 199, 202 (1942); Larson v. Hanson, 207 Wis. 485, 487–88, 242 N.W. 184, 185 (1932); 4 Am.Jur.2d Appeal and Error § 243 (1962).
[36] ***Racine Cnty. v. Smith***, 122 Wis. 2d 431, 437, 362 N.W.2d 439, 442 (Ct. App. 1984) citing ***Agnew v. Baldwin***, 136 Wis. 263, 267, 116 N.W. 641, 643 (1908).
[37] ***Fox v. Kaminsky***, 239 Wis. 559, 567, 2 N.W.2d 199, 202 (1942).

an appeal. Just like in *Fox*, the State has received the relief that they asked for, in their motion to dismiss, and therefore waived any non-jurisdictional ruling from the trial court.

For these reasons, this Court should dismiss the Town of Dunn's Appeal for trying to appeal a ruling that was not adverse.

CONCLUSION

For the reasons stated above, Mr. Lafleur respectfully requests that this Court affirm the circuit court's order suppressing all evidence obtained due to an unlawful traffic stop and reconsider this Court's jurisdiction for the Town's Appeal.

Dated at Middleton, Wisconsin, January 21, 2024.

Respectfully submitted,

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CERTIFICATION

I certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief produced using the following font:

Proportional serif font: Min. printing resolution of 200 dots per inch, 13-point body text, 11-point for quotes and footnotes, leading of min. 2 points, maximum of 60 characters per full line of body text. The length of this brief is 3184 words.

Dated: January 26, 2024.

Signed,

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CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with § 809.19(2)(a) and that contains, at a minimum:

(1) a table of contents;
(2) the findings or opinion of the circuit court; and
(3) 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 first names and last initials instead of full names of persons, specifically including juveniles and parents of juveniles, with a notion that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated: January 26, 2024.

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