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**STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II**

Case Nos. 2024AP1540-CR, 2024AP1541-CR

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

-v-

**Case Nos. 2023 CM 1276
2023 CT 158
(Waukesha County)**

**NATALIE S. LOZANO,
Defendant-Appellant.**

**APPEAL FROM THE ORDER DENYING
SUPPRESSION (IN 2023 CT 158) AND
THE JUDGMENTS OF CONVICTION
ENTERED IN WAUKESHA COUNTY CIRCUIT
COURT, THE HONORABLE
LLOYD V. CARTER PRESIDING**

BRIEF OF DEFENDANT-APPELLANT

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STATEMENT OF ISSUE

I. WHETHER THE TRIAL COURT ERRED IN DENYING DEFENDANT’S MOTION TO SUPPRESS IN CASE 2023 CT 158.

The trial court orally denied defendant’s pretrial motion to suppress in Case 2023 CT 158 (53:34-39, App. at 14-19). On 10/28/24, a written order denying the suppression motion was entered (71).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Defendant does not request oral argument or publication.

STATEMENT OF THE CASE

On 2/7/23, defendant was charged in Waukesha County Circuit Court Case 2023 CT 158 with the commission of the offense of operating while under the influence of an intoxicant, the offense allegedly committed on 2/3/20 (3¹). On 2/7/23, a not guilty plea was entered on defendant’s behalf (56:2). On 4/18/23, an amended complaint was filed alleging a second count of operating with a prohibited blood alcohol concentration (13). On 4/19/23, a motion to suppress was filed on defendant’s behalf (14). On 6/19/23, a motion hearing was held (53). At the conclusion of the hearing, the

¹All cites will be to the record in 2024AP1541-CR unless otherwise noted.

trial court orally denied the motion (53:35-39, App. at 14-19). On 10/28/24, an order denying the motion was entered (71). On 11/14/23, a plea and sentencing hearing was held (54). Pursuant to an agreement with the State, defendant agreed to plead guilty or no contest to operating while intoxicated as a second offense and the single count of misdemeanor bail jumping in Waukesha County Case 23 CM 1276 (54:2-3). The State agreed to dismiss all remaining charges against defendant in 2023 CT 158, 2023 CM 602 and 2023 CM 610 (54:2-3). The trial court imposed a sentence of 25 days jail, \$350 plus costs, 12 months revocation and ignition interlock and assessment on the OWI 2nd and a concurrent 25-day sentence on the misdemeanor bail jumping (54:36). On 11/22/23, the trial court stayed the sentence pending appeal (42).

On 7/31/24, a notice of appeal was filed both 2023 CT 158 and 2023 CM 1276 (59). The cases have been consolidated for briefing purposes.

STATEMENT OF FACTS

The relevant facts were presented at the suppression hearing. At about 1 a.m. on 2/3/23, Officer Gurgol of the Village of Harland Police Department was on patrol (53:6, 12). He observed a black SUV parked at a bar (53:12-13). The last two digits of the six-digit vanity license plate, reading “LOZANO” had some paint missing (21). A photograph of the plate was introduced as evidence by the defense (21, 53:11). The upper half of the “Z” and “O” had paint; the lower half was missing (21). While he was unable to immediately determine whether the vehicle was properly registered, he confirmed it was (53:15-17). About an hour later, he observed the same vehicle pass him as he was parked in a lot (53:8-16). He conducted a traffic stop (53:8). In the process of the stop, defendant exhibited indicia of intoxication (53:9). Defendant was arrested for operating while intoxicated.²

² Defendant is not raising any issue regarding whether there was probable cause to arrest defendant for operating while intoxicated in this appeal.

Officer Gurgol testified why he stopped the vehicle:

ADA: And why did you perform that traffic stop?

Gurgol: So there were registration issues, issues with legibility of the registration. There was a bracket in question and then some of the digits were scratched away or portion of the digits were scratched away on the plate.

ADA: Now when you performed the traffic stop, did you do a Department of Transportation records check to get a mach on the vehicle?

Gurgol: I did. It required several different types of searches though?

ADA: Why is that?

Gurgol: So initially the last two digits were scratched away at least up to the halfway point from the bottom. So there's that. But aside from that, the vehicle was actually a truck plate, which would not have been known to anyone because of the bracket. So until I was standing directly behind it or operating my vehicle directly behind it, I wasn't able to see it was a truck plate. And those require a different type of search.

ADA: Now by bracket do you mean like a license plate frame?

Gurgol: Correct. Around the borders.

ADA: Now, were you finally able to get a return hit on the vehicle?

Gurgol: Yes.

ADA: And what was that result?

Gurgol: From what I remember, it was valid (53:7-8).

After giving this testimony, on cross-examination, Officer Gurgol admitted he was able to successfully run a registration check one hour earlier while the vehicle was parked at a bar and that as of that time, he knew the registration was valid (53:15-17).

ARGUMENT

I. THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO SUPPRESS IN CASE 2023 CT 158.

A. Standard of review.

In *State v. Walli*, 2011 WI App. 86, ¶10, 334 Wis.2d 402, 799 N.W.2d 898, the court wrote:

A Whether reasonable suspicion exists is a question of constitutional fact. *State v. Powers*, 2004 WI App 143, ¶6, 275 Wis.2d 456, 685 N.W.2d 869. When reviewing questions of constitutional fact, we apply a two-step standard of review. *Id.* First, we will uphold a trial court's findings of historical fact unless they are clearly erroneous. *Id.* Second, based on the historical facts, we review de novo whether a reasonable suspicion justified the stop. *Id.*

B. Relevant law.

In *Walli*, *supra*, the court addressed an issue regarding the legal basis to stop a vehicle. The court wrote:

[I]n 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. The question we must answer is whether the State has shown that there were "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant" the intrusion of the stop. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968). The burden of establishing that an investigative stop is reasonable falls on the State. *Post*, 301 Wis.2d 1, ¶12, 733 N.W.2d 634. The determination of reasonableness is a commonsense test. *Id.*, ¶13.

The crucial question is whether the facts of the case would warrant a reasonable police officer, in light of his or her training and experience, to suspect that the individual has committed, was committing, or is about to commit a crime. *Id.* This commonsense approach balances the interests of the State in detecting, preventing, and investigating crime and the rights of individuals to be free from unreasonable intrusions. *Id.* The reasonableness of a stop is determined based on the totality of the facts and circumstances. *Id.*

The law of reasonable suspicion and investigative stops was summarized in *State v. Washington*, 2005 WI App 123, ¶16, 284 Wis.2d 456, 700 N.W.2d 305:

Thus, the standard for a valid investigatory stop is less than that for an arrest; an investigatory stop requires only "reasonable suspicion." The reasonable suspicion standard requires the officer to have "'a particularized and objective basis' for suspecting the person stopped of criminal activity [,]"; reasonable suspicion cannot be based merely on an "inchoate and unparticularized suspicion or 'hunch[,]'" 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. Stated otherwise, to justify an investigatory stop, "[t]he police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is [or was] violating the law." However, an officer is not required to rule out the possibility of innocent behavior before initiating a brief investigatory stop. (Citations omitted.) *Id.* at ¶¶9-10.

Wis. Stat. §341.15(2) reads:

Registration plates shall be attached firmly and rigidly in a horizontal position and conspicuous place. The plates shall at all times be 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 are not properly displayed to display such plates as required by this section.

Wis. Stat. §341.15(3) reads:

Any of the following may be required to forfeit not more than \$200:

- (a) A person who operates a vehicle for which a current registration plate, insert tag, decal or other evidence of registration has been issued without such plate, tag, decal or other evidence of registration being attached to the vehicle, except when such vehicle is being operated pursuant to a temporary operation permit or plate or displays a historical plate under s. 341.265(1m) or 341.266 (2).

- (b) A person who operates a vehicle with a registration plate attached in a non-rigid or non-horizontal manner or in an inconspicuous place so as to make it difficult to see and read the plate;
- (c) A person who operates a vehicle with a registration plate in an illegible condition due to the accumulation of dirt or other foreign matter.

C. Analysis.

Even accepting the trial court's findings of fact as true, defendant asserts the trial court's ruling on suppression should be reversed. On appeal, defendant asserts there was no legal basis to pull her vehicle over.

The analysis is fairly simple. The officer testified he pulled over defendant based on several concerns:

So there were registration issues, issues with legibility of the registration. There was a bracket in question and then some of the digits were scratched away or portion of the digits were scratched away on the plate (53:8).

Defendant asserts these concerns did not provide a legal basis for the stop of defendant's vehicle. Neither §341.15(2) nor §341.15(3) provide that legal basis.

§341.15(2) does allow a peace officer to detain and require a motorist to take limited actions regarding license plates to make sure they are properly displayed, that is they are attached firmly and rigidly in a horizontal position and in a conspicuous place. In this case, the plates were displayed as required by this section. Therefore, §341.15(2) would not provide a legal basis for a peace officer to detain a person whose plates are properly displayed.

There are several ways a violation of §341.15(3) would provide a law enforcement officer with reasonable suspicion, grounded in specific and articulable facts and reasonable inferences from those facts, that an individual is or was violating the law. This subsection prohibits conduct that is punishable by the forfeiture. If there is no proscribed penalty for conduct, it is not a violation of the law. §341.15(3)(a), (b) and (c) prohibit conduct that is punishable by law, including, failing to have a current plate, tag, decal or proof that registration has been issued without a plate; failing to properly display the plate in one of three ways, either because it is

attached in a non-rigid fashion or a nonhorizontal fashion or in an inconspicuous place so as to make it difficult to see or read the plate; or that the registration plate is in an illegible condition due to the *accumulation* of dirt or other foreign matter.

Defendant asserts her plate does not violate any of the prohibitions set forth in §341.15(3). While illegibility of a plate can be actionable, that illegibility has to be either the result of improper placement of the plate on the vehicle or based on the accumulation of dirt or foreign matter on the plate.

If the legislature had meant for peace officers to be able to pull over a vehicle for any perceived illegibility of the plate, it could have easily done so by omitting the phrase, “due to the accumulation of dirt or other foreign matter” in §341.15(3)(c).

This court, in interpreting the relevant statute, should, consistent with canons of statutory construction, give meaning to every word. *See eg. Thompson v. Ouellette*, 2023 WI App 7, ¶39, 406 Wis.2d 99, 986 N.W.2d 338. Further, consistent with law from *Teschendorf v. State Farm Ins. Companies*, 2006 WI 89, ¶12, 293 Wis.2d 123, 717 N.W.2d 258, this Court should look at the entirety of the statute in determining its meaning:

[T]his court adheres to the proposition that statutory interpretation begins with the language of the statute, and if the meaning there is plain, the inquiry ordinarily ends. (citation omitted). In examining the statutory text, however, we emphasize that ascertaining plain meaning requires us to do more than focus on "a single, isolated sentence or portion of a sentence[.]" *Landis v. Physicians Ins. Co. of Wis., Inc.*, 2001 WI 86, ¶16, 245 Wis.2d 1, 628 N.W.2d 893. We are expected to look to "the role of the relevant language in the entire statute." *Id.*; *see Wis. Citizens Concerned for Cranes & Doves v. DNR*, 2004 WI 40, ¶6, 270 Wis.2d 318, 677 N.W.2d 612. Accordingly, we consider the context in which words appear, the structure of the statute, and the purpose of the statute where it is evident from the statutory text. *Kalal*, 271 Wis.2d 633, ¶¶48, 49, 681 N.W.2d 110.

Defendant asserts the condition of her plate did not provide a lawful basis for the arresting officer to pull over her vehicle. The evidence gathered as a result of the illegal detention should be suppressed.

CONCLUSION

For the reasons set forth above, this court should reverse the trial court's suppression order and should remand for further proceedings consistent with that reversal.

Dated: November 4, 2024

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) 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: November 4, 2024

Attorney for Defendant
Electronically signed by Philip J. Brehm

CERTIFICATION AS TO FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in Wis. Stat. §809.19(8)(b), (bm) and (c) and is 2,119 words produced with proportional serif font.

Dated: November 4, 2024

Attorney for Defendant
Electronically signed by Philip J. Brehm

CERTIFICATE OF EFILE/SERVICE

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 serve for all participants who are registered users.

Dated: November 4, 2024

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