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STATE OF WISCONSIN  
C O U R T O F A P P E A L S  
D I S T R I C T I I

Appeal Case Nos. 2024AP1540, 2024AP1541

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STATE OF WISCONSIN,  
  
Plaintiff-Respondent,  
  
vs.  
  
NATALIE S. LOZANO,  
  
Defendant-Appellant.

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AN APPEAL FROM A JUDGMENT OF CONVICTION  
AND ORDER DENYING DEFENDANT’S MOTION TO  
SUPPRESS ENTERED BY THE HONORABLE LLOYD V.  
CARTER, CIRCUIT JUDGE, BRANCH 4, WAUKESHA  
COUNTY

Case Nos. 2023 CM 1276, 2023 CT 158

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BRIEF OF PLAINTIFF-RESPONDENT

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### **ISSUES PRESENTED**

Did the circuit court properly deny Lozano's motion to suppress, which alleged that Officer Gurgul of the Village of Hartland Police Department lacked reasonable suspicion to conduct a traffic stop of Lozano's vehicle based on an illegible registration plate?

Yes, the circuit court correctly concluded after the motion hearing that the Village of Hartland Police Department had reasonable suspicion to conduct a traffic stop, based on the fact that the registration plate was illegible to a reasonable police officer.

### **STATEMENT ON ORAL ARGUMENT AND PUBLICATION**

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. § 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. §809.23(1)(b)4.

### **STATEMENT OF THE CASE**

On February 3<sup>rd</sup>, 2023, Officer Dillon Gurgul of the Village of Hartland Police Department initiated a traffic stop on a vehicle driven by the Defendant due to the vehicle's illegible license plate. (R. at 13:2.) After detecting a strong odor of intoxicants and other signs of intoxication, Officer Gurgul asked the Defendant to perform field sobriety tests. (R. at 13:2.) After the Defendant performed poorly on field sobriety tests and refused to give a preliminary breath test, Officer Gurgul placed her under arrest for operating a motor vehicle while under the influence of intoxicants. (R. at 13:3.)

On February 7<sup>th</sup>, 2023, the Defendant was charged with Operating A Motor Vehicle While Under The Influence - 2nd Offense in Waukesha County Case 2023CT000158. (R. at 3:1). The State filed an amended criminal complaint on April 18<sup>th</sup>, 2023, adding Count Two, Operating With Prohibited Alcohol Concentration - 2nd Offense, after the State received blood test results which indicated that the Defendant's blood alcohol concentration was .144 grams per 100 mL. (R. at 13:3.)

On April 19<sup>th</sup>, 2023, Defense Counsel filed a Motion to Suppress. (R. at 14). This Motion alleged that a reasonable officer could not find the Defendant's license plate illegible, and therefore Officer Gurgul lacked reasonable suspicion to believe a traffic violation was occurring so all evidence obtained as a result of the traffic stop should be suppressed. (R. at 14:2-5.)

On June 19<sup>th</sup>, 2023, the trial court held an evidentiary hearing on this Motion. (R. at 53.) Officer Gurgul, the sole witness, testified that he first saw the vehicle that the Defendant was driving parked near the Phoenix Bar and Grill at around 1:00 A.M. (R. at 53:12-13.) He testified that he attempted to check the vehicle's personalized registration with his squad car's computer, but it took him several attempts. (R. at 53:13-14.) He testified that he had difficulty confirming the validity of the registration because the registration plate's last two digits were "scratched away at least up to the halfway point from the bottom", and because there was a bracket obscuring the fact that the registration plate was actually a truck registration plate (which requires a different search query in the registration system). (R. at 53:7, 13.) Officer Gurgul testified that he had to return to the parked vehicle and look at the front plate to see that the Acura SUV was unusually registered as a truck. (R. at 53:18, 22.) After finally confirming that the vehicle's registration was valid, Officer Gurgul left and parked a short distance away. (R. at 53:13.)

Approximately an hour later, Officer Gurgul observed the vehicle driving and initiated a traffic stop. (R. at 53:13.) He testified that he recognized the black Acura SUV from an hour prior but he was unable to read the registration plate from a

normal following distance. (R. at 53:26.) He only knew what the vehicle's rear plate read due to his earlier investigation when he looked at both the front and back plates from feet away. (R. at 53:25.)

Judge Lloyd V. Carter orally denied the Motion to Suppress, finding that Officer Gurgul had reasonable suspicion to believe that a traffic violation was occurring, namely that the vehicle's registration plate was illegible contrary to Wis. Stat. § 341.15(2). (R. at 53:37-39.) A selection follows:

It's clear that the last two digits of this plate from the perspective of a reasonable police officer behind that vehicle were not readable. And that would justify a traffic stop. The rest of it not part of what the Court's evaluation is here today, what happened after the stop. But the question is whether or not there was reasonable suspicion to warrant the seizure itself, the traffic stop and seizure. And that we all know and concede. So on the basis of the totality of the record here, I'm finding that there was reasonable suspicion to stop the vehicle.

(R. at 53:37). The court additionally found that the last two digits of the license plate were unreadable from the perspective of a reasonable police officer at an ordinary following distance, and that the "TRUCK" designation on the plate was "like 99 percent covered". (R. at 53:36-38.) In addition to Officer Gurgul's testimony, the court based its findings on two pictures of the rear registration plate (Exhibits One and Two, R. at 21 and R. at 20; R. at 53:38). On October 28<sup>th</sup>, 2024, a written order denying the motion to suppress was filed. (R. at 71.)

On November 14<sup>th</sup>, 2023, the Defendant plead guilty to Count One (Operating A Motor Vehicle While Under The Influence - 2nd Offense) in 2023CT000158 and Count One (Misdemeanor Bail Jumping) 2023CM001276. (R. at 54:2-3.) Count Two in 2023CT000158 was dismissed by operation of

law, and pursuant to a plea agreement, the remaining counts in cases 2023CM000602 and 2023CM000610 were dismissed and read-in. (R. at 54:2-3.) On the operating while intoxicated count, the court imposed a sentence of 25 days jail with Huber privileges, a \$350 fine plus court costs, 12 months of driver's license revocation and ignition interlock installation. (R. at 35:1.) On the Misdemeanor Bail Jumping count, the court imposed a concurrent sentence of 25 days jail with Huber privileges. (R. at 43:1.)

On November 20<sup>th</sup>, 2023, the Defendant filed a Notice of Intent to Pursue Postconviction Relief and a Motion for Stay Pending Appeal in both of the above-captioned cases. (R. at 36, 42.) On November 22<sup>nd</sup>, 2023, the court stayed the Defendant's sentences pending appeal. (R. at 42.)

This appeal follows.

### **SUMMARY OF ARGUMENT**

Officer Gurgul lawfully conducted a traffic stop on the Defendant's vehicle because its rear license plate was illegible from an ordinary following distance, in violation of Wis. Stat. § 341.15(2). That her license plate was legible from feet away did not bring her into compliance with this statute. A contrary view would unreasonably expect drivers to follow a vehicle dangerously closely to read its faded license plate. Further, even if Defendant's license plate was legal, the traffic stop was still lawful because an officer could reasonably believe that Defendant was violating this statutory provision.

### **STANDARD OF REVIEW**

When reviewing a decision on a motion to suppress evidence, an appellate court upholds the circuit court's factual findings unless they are clearly erroneous, but it independently applies constitutional principles to the facts. *State v. Sykes*, 2005 WI 48, ¶ 12, 279 Wis. 2d 742, 695 N.W.2d 277. An appellate court independently interprets and applies a statute. *State v. Houghton*, 2015 WI 79, ¶ 18, 364 Wis. 2d 234, 868 N.W.2d 143.

## ARGUMENT

**Officer Gurgul lawfully stopped the Defendant's vehicle because he had reasonable suspicion to think that her illegible license plate was illegal.**

**I. A traffic stop is lawful if police have reasonable suspicion that a driver violated a traffic law.**

The “[t]emporary detention of individuals during the stop of an automobile by the police, even if only for a brief period and for a limited purpose, constitutes a ‘seizure’ of ‘persons’ within the meaning” of the Fourth Amendment. *State v. Houghton*, 2015 WI 79, ¶ 31, 364 Wis. 2d 234, 251, 868 N.W.2d 143, 152 (quoting *Whren v. United States*, 517 U.S. 806, 809-810, 116 S. Ct. 1769, 1772, 135 L. Ed. 2d 89 (1996)). In order to justify a seizure, an officer must have reasonable suspicion that a crime or violation has been or will be committed. *Houghton* at ¶ 21. Reasonable suspicion must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Id.*, quoting *Terry v. Ohio*, 392 U.S. 1, 21, 88 S. Ct. 1868, 1880, 20 L. Ed. 2d 889 (1968).

The State bears the burden of showing an investigative stop is reasonable. *State v. Post*, 2007 WI 60, ¶ 12, 301 Wis. 2d 1, 9, 733 N.W.2d 634, 638 (citation omitted). “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.” *State v. Washington*, 2005 WI App 123, ¶ 15, 284 Wis. 2d 456, 470, 700 N.W.2d 305, 312 (citation omitted).

“[A]n objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop.” *Houghton* at ¶ 52. If “a reasonable judge could agree with the officer’s view” of the statute at issue, then the officer’s mistaken view of the statute “was objectively reasonable” and the traffic stop was lawful. *Id.* at ¶ 71 (citation omitted).

“[T]he purpose of statutory interpretation is to determine what the statute means so that it may be given its full, proper,



and intended effect.” *State ex rel. Kalal v. Circuit Ct. for Dane Cty.*, 2004 WI 58, ¶ 44, 271 Wis. 2d 633, 681 N.W.2d 110. “[S]tatutory interpretation ‘begins with the language of the statute.’” *Id.* at ¶ 45 (citation omitted). “Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.” *Id.* at ¶ 46 (citations omitted). Courts interpret statutory language “reasonably, to avoid absurd or unreasonable results.” *Id.* (citations omitted).

## **II. Police may stop a vehicle if its license plate is illegible.**

A vehicle’s registration “plates shall at all times be maintained in a legible condition and shall be so displayed that they can be readily and distinctly seen and read.” Wis. Stat. § 341.15(2). “Any peace officer may require the operator of any vehicle on which plates are not properly displayed to display such plates as required by this section.” *Id.* A police officer may stop a driver if they have reasonable cause to believe that the driver has violated any provision in Wis. Stat. Chapter 341. *Id.* § 349.02(2)(a), (2)(b)3.

## **III. Officer Gurgul had reasonable suspicion to think that the Defendant’s unreadable license plate was illegal.**

The circuit court correctly denied Lozano’s motion to suppress. Officer Gurgul lawfully stopped Lozano’s car because she was violating Wis. Stat. § 341.15(2) by displaying an illegible license plate which could not be readily or distinctly seen or read. Even if Lozano’s license plate was legal, the traffic stop was still lawful because the officers reasonably thought that Lozano was violating that statute.

The record clearly establishes, and the circuit court found, that the Defendant’s license plate was illegible in violation of Wis. Stat. § 341.15(2). Whether a license plate “was ‘legible’ and could be ‘readily and distinctly seen’ is a question of fact.” *United States v. Dexter*, 165 F.3d 1120, 1125 (7th Cir. 1999) (interpreting Wis. Stat. § 341.15(2)). Officer Gurgul testified that the Defendant’s license plate was illegible from a normal following distance, and that he was only able to recognize the plate on the road from his earlier up close investigation of the

vehicle when it was parked. (R. at 53:25-26.) The circuit court noted that several of the rear registration plate's digits were "at least halfway gone, not down to the white but down to the bare metallic, silver metallic surface.", and that pictures taken from two to three feet behind the vehicle showed that that the plate's "TRUCK" designation was "like 99 percent covered". (R. at 53:36-37.) Based on all of these factors, as well as the circuit court's finding that Officer Gurgul was a reasonable officer who testified credibly that the plate was illegible, the circuit court found that he had reasonable suspicion to perform a traffic stop and denied the motion to suppress. (R. at 53:38-39.)

The fact that the Defendant's license plate was more legible from two to three feet away does not mean that she was complying with Wis. Stat. § 341.15(2). This Court, taking a contrary view of the statute, would produce absurd and unreasonable results. If this license plate were held to be legible, then police officers or civilian drivers would have to approach dangerously close to a vehicle's rear bumper in order to read the plate. Wisconsin law recognizes the danger involved in following too closely: "The operator of a motor vehicle shall not follow another vehicle more closely than is reasonable and prudent, having due regard for the speed of such vehicle and the traffic upon and the condition of the highway." Wis. Stat. § 346.14. "The practice of following too close is one of the leading causes of accidents." *Hibner v. Lindauer*, 18 Wis. 2d 451, 456, 118 N.W.2d 873 (1963).

Since following too closely is dangerous and illegal, this Court should interpret Wis. Stat. § 341.15(2) as requiring a license plate to be legible from a reasonable and legal following distance. The statute does not state the distance from which a license plate must be legible. Even if this Court concludes that Officer Gurgul was mistaken and the Defendant did not violate Wis. Stat. § 341.15(2), it should still affirm the circuit court's decision denying the motion to suppress. Here, the circuit court did agree with Officer Gurgul that the Defendant's license plate was illegible. Therefore, even if Officer Gurgul was mistaken, his view of the statute was "objectively reasonable" and the

traffic stop was still lawful. *See Houghton*, 364 Wis. 2d 234, ¶ 70 & n.12.

There are insufficient facts in this record for the court to conclude that Officer Gurgul lacked reasonable suspicion to conduct a traffic stop on the Defendant's vehicle. There is nothing in the record to suggest the Defendant's license plate was legible, meaning Officer Gurgul had reasonable suspicion that a traffic violation was occurring and the traffic stop was lawful. This Court should accept the circuit court's finding of fact that the Defendant's license plate was illegible, and affirm the denial of Defendant's motion to suppress.

### CONCLUSION

For the reasons discussed, this Court should affirm the circuit court's denial of Lozano's motion to suppress and affirm the judgment of conviction.

Dated this 29th day of January, 2025.

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), (bm) and (c) for a brief produced with a proportional serif font. The word count of this brief is 2,877.

Dated this 29th day of January, 2025

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