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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II
CASE NO. 2025AP000684-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

Case No. 2025 AP 684 CR

v.

JOSEPH M. HEROFF,
Defendant-Appellant.

BRIEF & APPENDIX OF PLAINTIFF-RESPONDENT

ON NOTICE OF APPEAL FROM THE JUDGMENT OF CONVICTION
ENTERED FEBRUARY 20, 2025 IN THE WINNEBAGO COUNTY
CIRCUIT COURT BRANCH ONE

The Honorable Scott C. Woldt, Presiding

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STATEMENT OF ISSUE PRESENTED FOR REVIEW

Whether the circuit court correctly concluded the officer had reasonable suspicion of excessive window tinting to support the traffic stop of Mr. Heroff.

The trial court ruled that Officer Seaholm had reasonable suspicion for the traffic stop.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State is requesting neither publication nor oral argument as this matter involves application of well-settled law to the facts of this case.

STATEMENT OF THE CASE

The State finds Mr. Heroff's recitation of the case facts to be sufficient, and pursuant to Wis. Stat. § 809.19(3)(a)(2), omits a repetitive statement of the case.

ARGUMENT

Officer Seaholm articulated sufficient facts to demonstrate a reasonable suspicion that Mr. Heroff had committed a traffic violation for excessive window tint. As such, Officer Seaholm's stop of Mr. Heroff's vehicle was lawful, and any evidence gathered pursuant to that stop should not be suppressed.

The Fourth Amendment provides that “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause . . .” U.S. Const. Amend. IV.

Under the Fourth Amendment, “investigative stops are seizures.” *State v. Post*, 2007 WI 60, ¶ 10, 301 Wis. 2d 1, 8, 733 N.W.2d 634, 637. Such investigative stops are subject to the constitutional reasonableness requirement, and the State carries the burden to demonstrate that such a stop is reasonable. *Id.* at ¶ 12. An officer may conduct an investigative traffic stop if the officer has “reasonable suspicion” that a person has committed or is about to commit a crime or non-criminal traffic violation. *State v. Houghton*, 2015 WI 79, ¶ 21, 364 Wis. 2d 234, 247, 868 N.W.2d 143, 149–50. Reasonable suspicion that a driver is violating a traffic law is sufficient to initiate a traffic stop. *State v. Floyd*, 2017 WI 78, ¶ 20, 377 Wis. 2d 394, 410, 898 N.W.2d 560, 567.

The test for reasonableness is one of common sense and is determined based on the totality of the circumstances. *Post*, 301 Wis. 2d 1, ¶ 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.* Reasonable suspicion requires the officer be able to “point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop.” *Id.* at ¶ 10. The officer need not necessarily have probable cause to make an arrest in order to conduct an investigative stop. *State v. Popke*, 2009 WI 37, ¶ 23, 317 Wis. 2d 118, 132, 765 N.W.2d 569, 576. “This common sense approach balances the interests of the State in detecting, preventing, and investigating crime and the rights of individuals to be free from unreasonable intrusions. *Post*, 301 Wis. 2d 1, ¶ 13.

I. Officer Seaholm Had Reasonable Articulable Suspicion to Stop Mr. Heroff Based on Excessive Window Tint Traffic Violation.

In this case, Officer Seaholm had a reasonable articulable suspicion that a traffic violation had occurred. Specifically, Wisconsin law permits vehicle front side windows to be tinted provided the “tinting film permits passage through the windows of at least 50% of the visible light striking the windows” and the vehicle rear windows to be tinted provide the “tinting film permits passage through the window of at least 35% of the visible light

striking the window.” Wis. Admin. Code Trans. § 305.32 (4)(b)2 and (5)(b)2.

In *State v. Conaway*, a police officer conducted a traffic stop on a vehicle that appeared to have a dark window tint. 2010 WI App 7, ¶ 2, 323 Wis. 2d 250, 252, 779 N.W.2d 182, 183. The circuit court ruled, and the Wisconsin Court of Appeals affirmed, the officers traffic stop of Conway was illegal, because “the officer did not provide any specific, articulable facts, supporting reasonable suspicion of a violation.” *Id.* at ¶¶ 8, 14. In reaching this conclusion, the Court noted officers do not “need to be able to ascertain with certainty that there was a window tint violation” because “[r]easonable suspicion does not require such precision.” *Id.* at ¶ 7. The officer “need only reasonably suspect that the window violates the regulation.” *Id.* at ¶ 7. “[I]t would be enough. . . if an officer testifies that he or she is familiar with how dark a minimally complying window appears and that the suspect window appeared similarly dark or darker, taking into account the circumstances of the viewing.” *Id.* at ¶ 7.

Officer Seaholm articulated he began following a vehicle he believed to be speeding. [13:3]. After Officer Seaholm caught up to the vehicle, Officer Seaholm observed the subject vehicle’s rear window had

excessively dark window tint. [13:3]. Officer Seaholm noted he had great difficulty seeing inside the rear window, even while traveling directly behind the vehicle, and that normally he has no problem seeing into a vehicle from his squad at night. [13:3] Even when traveling almost directly behind the vehicle, Officer Seaholm could not see into the rear window because the window appeared completely black. [13:3] At one point, when the vehicle came to a stop, Officer Seaholm noted he was able to see a silhouette from light coming through the front of the vehicle, illuminated through the vehicles rear window, but it was still very difficult. [13:3] Officer Seaholm further observed the side windows of the vehicle were excessively tinted when the vehicle turned northbound. [13:4]

Even after making these observation regarding the darkness of the vehicles rear window tinting, Officer Seaholm did not immediately conduct a traffic stop but rather continued observing the vehicle. Officer Seaholm followed the vehicle as it pulled into a gas station parking lot. [13:4]. During this time, Officer Seaholm observed a van, the same distance away as the vehicle he had been following was, and Officer Seaholm noted he could see into the rear van window fine; Officer Seaholm observed the driver's silhouette and the seatbelts hanging down. [13:4]. Officer Seaholm

could not observe such things through the windows of the subject vehicle due to the observed excessive window tint. [13:4]. Therefore, Officer Seaholm initiated a traffic stop as he reasonably believed the vehicle's windows were in violation of Wis. Admin. Code Trans. § 305.32 (4)(b)2 and (5)(b)2.

Further, when Officer Seaholm conducted a traffic stop on the vehicle, he shined his LED spotlight on the rear window of the vehicle and the light did not pierce the visibility of the rear window. [13:4]. Officer Seaholm even attempted to shine his flashlight in the rear and driver's side windows and still could not see into the vehicle. [13:4].

Based on these facts, Officer Seaholm had reasonable suspicion to believe a traffic violation had occurred and thus, probable cause to conduct a traffic stop on Mr. Heroff's vehicle. As provided in *Popke*, where the facts of the case would warrant a reasonable officer to suspect that the individual has committed a traffic violation based on the totality of the facts and circumstances, the stop of that vehicle is reasonable. *Popke*, 317 Wis. 2d 118, ¶¶ 13, 17. Officer Seaholm observed and articulated sufficient facts to justify a stop of Mr. Heroff's vehicle.

Additionally, as provided in *Conaway*, an officer need only “reasonably suspect” the vehicle window violates tinting regulations. *Conway*, 323 Wis. 2d, ¶ 7. Here, Officer Seaholm based his reasonable suspicion to conduct a traffic stop not only on observations of the visibility of Mr. Heroff’s vehicle but also compared it to the visibility of a van the same time of night. While Officer Seaholm testified at the motion hearing that this is not a traffic stop he routinely makes, based on his observations of Mr. Heroff’s vehicle, “it was almost impossible to see in/through the vehicle.” (59:11-12). Taking into consideration the totality of the circumstances, including Officer Seaholm’s observations and the fact that he did not immediately conduct a traffic stop, Officer Seaholm had reasonable suspicion to conduct a traffic stop on Mr. Heroff’s vehicle.

CONCLUSION

For the reasons set forth above, Officer Seaholm had reasonable suspicion to conduct a traffic stop due to excessive window tinting. Thus, the traffic stop of Mr. Heroff was lawful.

Dated at Oshkosh, Wisconsin, this 9th day of September, 2025.

Electronically Signed By:
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CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (bm), and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 1,362 words.

I further certify pursuant to Wis. Stat. § 809.19(b)(12)(f) that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief, ***other than the appendix material is not included in the electronic version.***

I further certify that filed with this brief, either as a separate document or as a part of 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; and (3) portions of the record essential to an understanding of the issues raised, including oral or written findings or decision showing the circuit court's reasoning regarding these issues.

I further certify that if this appeal is taken from a circuit court order of 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 person, 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.

I further certify that on the date of signature I routed this brief to our office station for first class US Mail Postage to be affixed and mailed to:

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