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**DISTRICT I**

January 31, 2023

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You are hereby notified that the Court has entered the following opinion and order:

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2020AP1483-CR

State of Wisconsin v. Latasha Renee Black (L.C. # 2018CF2513)

Before Brash, C.J., Dugan and White, JJ.

**Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).**

Latasha Renee Black appeals from a judgment of conviction, arguing that the trial court erred when it denied her pre-trial motion to suppress evidence obtained following an allegedly unlawful seizure. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).<sup>1</sup> The judgment is summarily affirmed.

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<sup>1</sup> All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

The relevant background facts are largely undisputed. On March 6, 2018, shortly before 1:00 a.m., St. Francis Police Officer Kyle Gerasch observed a vehicle parked on the side of the road. The car stood out because it had its lights on, and the parking location caught Gerasch's attention because beginning at 3:00 a.m., the vehicle would be in violation of strictly enforced local parking regulations. Gerasch continued on patrol, then returned to check the vehicle, which was near a residence under investigation as a possible drug house. This time, the vehicle's lights were off, but the car was still occupied. Gerasch parked "a couple of blocks away to watch the vehicle[.]" After five to ten minutes, the vehicle turned its lights back on and slowly pulled forward.

At that point, Gerasch "thought [he] would make an FI [field investigation], stop, talk to the vehicle [occupant], see what is going on." Before making contact with the driver, Gerasch noticed that the car did not have a rear license plate, so he turned on his emergency lights. He exited his squad and made contact with Black, the vehicle's occupant. When Gerasch made contact, he noticed the odor of marijuana coming from the vehicle. This led to a search of the vehicle, which revealed a suspected controlled substance packaged in twenty-four individual corner cut bags within a larger bag in Black's purse. Black was charged with possession with intent to deliver between ten and fifty grams of methamphetamine.

Black moved to suppress all evidence from the search. She argued that Gerasch lacked reasonable suspicion to conduct the traffic stop, so there was no reason to make contact with her and, consequently, any evidence derived therefrom had to be suppressed. The trial court conducted a hearing at which only Gerasch testified. Following the hearing, the trial court determined that Gerasch had probable cause for a stop and denied the motion. A jury convicted

Black as charged, and she was sentenced to six years' imprisonment, imposed and stayed in favor of three years of probation. Black appeals.

Evidence obtained as the result of an unconstitutional seizure must be suppressed. *See State v. Smith*, 119 Wis. 2d 361, 365-66, 351 N.W.2d 752 (Ct. App. 1984). Review of the trial court's decision denying a motion to suppress evidence presents a question of constitutional fact that is subject to a two-step inquiry. *See State v. Tullberg*, 2014 WI 134, ¶27, 359 Wis. 2d 421, 857 N.W.2d 120. First, we review the circuit court's findings of historical fact, upholding those facts unless clearly erroneous. *See id.* We then independently apply constitutional principles to those facts. *See id.*

A traffic stop is constitutionally permissible when an officer has reasonable suspicion to believe that a crime or a traffic violation has been or will be committed. *See State v. Houghton*, 2015 WI 79, ¶¶21-22, 364 Wis. 2d 234, 868 N.W.2d 143. "In order to justify such a seizure, police ... 'must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.'" *Id.*, ¶21 (citation omitted).

The trial court concluded that based on the totality of the circumstances, Gerasch had reasonable suspicion to approach Black. On appeal, Black argues this conclusion is incorrect because the trial court could only consider what Gerasch knew prior to his decision to make any contact with Black. Prior to his decision to conduct a "field investigation," Gerasch knew only the condition of Black's vehicle on each pass, that it would soon be in violation of parking regulations, and its proximity to a suspected drug house. Black contends this does not rise to reasonable suspicion because Black could have been picking up a friend, looking at a map,

calling for directions, or many other “normal but also safe behavior[s].” She additionally contends the trial court could not properly consider the fact of the missing rear license plate because it came to Gerasch’s attention *after* he had already made the decision to contact her.

Black is incorrect. First, “police officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.” *See State v. Waldner*, 206 Wis. 2d 51, 59, 556 N.W.2d 681 (1996). Further, while an investigative stop is a seizure for Fourth Amendment purposes, not all police-citizen encounters are seizures. *See id.* at 55; *see also State v. Kelsey C.R.*, 2001 WI 54, ¶30, 243 Wis. 2d 422, 626 N.W.2d 777. Thus, we must determine not when the officer decided to make a stop, but when Black was actually seized.

Generally, police contact becomes a seizure “when an officer ‘by means of physical force or show of authority, has in some way restrained’” the person’s liberty. *See State v. Young*, 2006 WI 98, ¶18, 294 Wis. 2d 1, 717 N.W.2d 729 (citations omitted). “As long as a reasonable person would have believed he was free to disregard the police presence and go about his business, there is no seizure and the Fourth Amendment does not apply.” *Id.* Here, the first time Gerasch displayed any arguable show of authority was when he activated his emergency lights *after* discovering Black’s vehicle had no rear license plate, and Black does not dispute that the lack of a rear plate was a sufficient justification for the stop. As long as there was an appropriate legal basis for the stop, the officer’s subjective motivation does not require suppression. *See State v. Baudhuin*, 141 Wis. 2d 642, 651, 416 N.W.2d 60 (1987). We therefore conclude that the trial court properly denied Black’s suppression motion.

IT IS ORDERED that the judgment of conviction is summarily affirmed. *See* WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

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*Sheila T. Reiff*  
*Clerk of Court of Appeals*