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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

07-29-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

2015AP701

Manuel Talavera

Defendant-Appellant.

On Appeal of an order denying Defendant's motion to suppress evidence and judgment of conviction entered in the Circuit Court of Waukesha County, the Honorable Michael J. Aprahamian, Jr., Presiding.
Trial Court Case No. 13CT1322

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Whether Deputy Knipfer had reasonable suspicion to stop the defendant for a traffic violation after he observed the defendant make three turns without signaling, and accelerate rapidly around a roundabout.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Plaintiff-Respondent (“state”) submits that oral argumentation is unnecessary because the issues can be set forth fully in the briefs. Publication is unnecessary as the issues presented relate solely to the application of existing law to the facts of the record.

STATEMENT OF THE CASE AND FACTS

On January 30, 2014, the defendant brought a motion in front of Waukesha County Circuit Court Judge Donald Hassin, to suppress evidence for lack of reasonable suspicion for a traffic stop conducted by Deputy Scott Knipfer of the Waukesha County Sherriff's Department. (R. 15:2, App. 1-2). This stop occurred on September 15, 2013, which resulted in the defendant being arrested for, and ultimately convicted of, operating while intoxicated as a second offense. (R. 15:4, App. 4; R. 12, App. 23-24).

During the motion hearing, Deputy Knipfer testified that in the early morning of September 15, 2013, he was working as a patrol deputy and driving a marked Chevrolet Tahoe. (R. 15:4, App. 4:10-17). He indicated that at about 2:30 a.m. that day he noticed a red Chevy leave a parking lot and turn onto Town Line Road in the Village of Sussex, Waukesha County, Wisconsin. (R. 15:4, App. 4:18-5:7). Deputy Knipfer subsequently learned this vehicle was being driven by the defendant. (R. 15:8, App. 8:6-17). Deputy Knipfer continued northbound behind the vehicle on Town Line Road as it approached a roundabout. (R. 15:5, App. 5:13-17). Deputy Knipfer testified that the recommended speed limit at the roundabout is 15 miles per hour. (R. 15:5, App. 5:19-20).

Deputy Knipfer testified that as the defendant's vehicle entered the roundabout he accelerated abruptly to between 30 to 35 miles per hour. (R. 15:6, App. 6:2-4). He explained this estimation of the defendant's speed was based on his observations of the defendant's vehicle against static points along the road, as well as his training during radar and laser certification school. (R. 15:6, App. 6:7-17). The deputy then watched as the defendant made a left hand turn onto Valley View Road without activating his turn signal in anticipation of the turn. (R. 15:6-7, App. 6:20-7:3). At the time the defendant failed to use his turn signal, Deputy Knipfer was directly behind the defendant's vehicle by about two car lengths. (R. 15:7, App. 7:4-6).

Deputy Knipfer noted that he believed he could see another vehicle's headlights in the distance at the time of the first left turn. (R. 15:7, App. 7:7-10). The defendant then proceeded to make two more turns without using his turn signal, all while Deputy Knipfer followed directly behind. (R. 15:7, App. 7:11-17). After the last turn without a signal, Deputy Knipfer conducted a traffic stop. (R. 15:7, App. 7:16).

In finding that there was reasonable suspicion for Deputy Knipfer to initiate the traffic stop, the court noted that the turn signal statute requires people to utilize turn signals when other traffic may be affected. (R. 15:14, App. 14:7-12). Judge Hassin then found, "...[the defendant] made three turns with the squad vehicle right behind him, at

least that's the record. Not one of the occasions did he signal and I think it's not unreasonable to construe that the officer's operation of his vehicle may well have been affected by your client's failure to signal whether he decided he was going to follow him or he wasn't going to follow him." (R. 15:17, App. 17:18-24). By this logic the court denied the defense motion to suppress, holding Deputy Knipfer effectuated a valid stop for failure to signal. (R. 15:18, App. 17:25-18:9).

ARGUMENT

In reviewing a lower court's decision on the suppression of evidence, this Court should uphold the trial court's findings of fact unless they are clearly erroneous. *State v. Eason*, 2001 WI 98, ¶ 9, 245 Wis. 2d 206, 221, 629 N.W.2d 625, 631. A court's factual findings made during a motion to suppress are clearly erroneous if they are "against the great weight and clear preponderance of the evidence." *See State v. Guzy*, 139 Wis. 2d 663, 407 N.W.2d 548, 552 (1987) (citing *State v. Flynn*, 92 Wis.2d 427, 437, 285 N.W.2d 710 (1979)).

The review of the trial court's decision whether this defendant's constitutional rights were violated should be reviewed de novo. *State v. Houghton*, 2015 WI 79, ¶ 18. The Wisconsin Supreme Court recently clarified the standard required to support a traffic stop, an issue pertinent to many suppression motions including the motion being reviewed in the case at hand. *Id.* at ¶ 5. The Court held that, "...an officer's reasonable suspicion that a motorist is violating or has violated a traffic law is sufficient for the officer to initiate a traffic stop of the offending vehicle." *Id.* Thus, reasonable suspicion, and not probable cause is required in this case.

Reasonable suspicion requires that, "the officer must be able to point to specific and articulable facts which, taken with rational inferences from those facts, reasonably warrant that intrusion." *Terry v.*

Ohio, 392 U.S. 1, 21, 22 (1968). Additionally, “The reasonableness of a stop is determined based on the totality of the facts and circumstances.” *State v. Post*, 2007 WI 60, ¶ 13, 301 Wis. 2d 1, 9, 733 N.W.2d 634, 638. It is a common sense test that considers the officer’s training and experience to analyze the stop’s reasonableness. *Id.*

Pertinent to this case, Section 346.34(1) (b), Wisconsin Statutes, requires drivers making turns to use a signal if other traffic may be affected. Specifically it states:

In the event any other traffic may be affected by the movement, no person may turn any vehicle without giving an appropriate signal in the manner provided in s. 346.35. A person making a U–turn shall use the same signal used to indicate a left turn. When given by the operator of a vehicle other than a bicycle or electric personal assistive mobility device, the signal shall be given continuously during not less than the last 100 feet traveled by the vehicle before turning. The operator of a bicycle or electric personal assistive mobility device shall give the signal continuously during not less than the last 50 feet traveled before turning. A signal by the hand and arm need not be given continuously if the hand is needed in the control or operation of the bicycle or electric personal assistive mobility device.

The Supreme Court of Wisconsin analyzed the turn signal statute, and generally found that the signal is only required when other traffic may be affected, as stated in the statute. *City of Milwaukee v. Johnston*, 21 Wis. 2d 411, 413, 124 N.W.2d 690 (1963). In a Court of Appeals case, the court held that “other traffic” could not have been affected, and therefore the driver did not violate the statute, where driver turned left without a signal while the deputy watched from the right hand turn lane of the same intersection and no other traffic was observed during

the turn. *In re Anagnos*, 2011 WI App 118, ¶ 9, 337 Wis. 2d 57, 63-64, 805 N.W.2d 722, 725. The *Anagnos* court relied on the Wisconsin Supreme Court's interpretation of the signal statute where the court held, "...failure to give a right-hand-turn signal is not a traffic violation unless 'other traffic may be affected by such movement.'" *Johnston* at 413 (quoting Wis. Stat. § 946.34). Over 40 years later, the Court of Appeals in *Anagnos* seemingly added an element to the violation by eliminating the word "may" in its discussion. *Anagnos* at ¶ 9. That court specifically required that, "Evidence in the record must support a finding that Anagnos's failure to use a turn signal affected other traffic." *Id.*

I. DEPUTY KNIPFER HAD REASONABLE SUSPICION THAT THE DEFENDANT VIOLATED SECTION 346.34, WISCONSIN STATUTES, WHEN, WHILE DRIVING BEHIND DEFENDANT AT A DISTANCE OF TWO CAR LENGTHS, HE OBSERVED DEFENDANT MAKE THREE TURNS WITHOUT SIGNALING.

Testimony in this case supports Judge Hassin’s finding that Deputy Knipfer may have been affected by the defendant’s failure to signal his turn. The deputy did not describe any other traffic in the area, apart from the defendant and his squad, and the state asserts that Deputy Knipfer’s squad is the “other traffic” that may have been affected in this case. Common sense certainly informs the analysis in this case, that when a vehicle is following directly behind another vehicle, the following vehicle may be affected by the lead vehicle’s failure to signal a turn. Deputy Knipfer estimated he was following the defendant’s vehicle at a distance of two car lengths when the first turn was made. Deputy Knipfer testified during cross examination that this did affect his operation of the squad car. (R. 15: 11, App. 11:23-25).

The circuit court’s finding that Deputy Knipfer may have been affected by defendant’s turns without signal is not clearly erroneous, and should be affirmed on the basis that it is supported by Deputy Knipfer’s testimony.

The ultimate question of whether the defendant's constitutional rights were violated in this case must be answered in the negative, given the standard of reasonable suspicion required for the stop. Deputy Knipfer certainly had specific articulable facts that led him to believe the defendant violated the turn signal statute, because he saw the defendant fail to use signal and opined it affected his operation. The stop for fail to signal was reasonable based on the positioning of the vehicles.

Defendant relies on *Anagnos* to argue that this court should reverse the trial court, however that case is distinguished factually here. In finding the defendant did not violate the turn signal statute, the court in *Anagnos* noted, "there was no oncoming or following traffic or pedestrians present when he turned." *Anagnos* at ¶ 9. The defendant in this case failed to signal with following traffic, specifically another vehicle following at a close distance of two car lengths.

II. SHOULD THE COURT FIND THAT DEPUTY KNIPFER MISINTERPRETED THE STATUTORY TURN SIGNAL REQUIREMENT, THE MISTAKE WAS A REASONABLE ONE ACCORDINGLY THE STOP SHOULD BE UPHELD.

The Wisconsin Supreme Court in *Houghton*, also adopted the ruling made by the Supreme Court of the United States, stating “We also adopt the Supreme Court’s holding in *Heien* that an officer’s objectively reasonable mistake of law may form the basis for a finding of reasonable suspicion.” *Houghton* at ¶ 5, *see also Heien v. North Carolina*, 574 U.S. ---, 135 S.Ct. 530, 190 L.Ed2d 475 (2014).

Although above, the state argues Deputy Knipfer had reasonable suspicion to stop the defendant for fail to use turn signal, based on the statutory requirement that other traffic “may” have been affected, the defense argues a different standard. Defense argues the record must provide a specific example of how the deputy was affected by the turn, such as action to avoid an accident or braking or swerving. Should this court adopt that interpretation of section 346.34(1)(b), Wisconsin Statutes, the state asserts that Deputy Knipfer’s mistake of law was a reasonable one, and therefore the stop was valid.

The plain language of section 346.34(1)(b), Wisconsin Statutes, only creates a signal violation where other traffic “may” be affected. The standard dictionary definition of the term “may” is, “used to express possibility.” *May Definition*, DICTIONARY.COM,

<http://dictionary.reference.com/browse/may?s=t> (last visited July 27, 2015). The plain language does not require officers to witness potential accidents or evasive maneuvers as defendant suggests. Given the language of the statute, Deputy Knipfer's stop was certainly reasonable. The plain language requires only a possibility, where Deputy Knipfer observed an actual affect as the driver of the following vehicle.

The United States Supreme Court found, "To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them fair leeway for enforcing the law in the community's protection." *Heien* at 536. When an officer relies on the common understanding of language in the statute, but they are mistaken, it is an inherently reasonable mistake. Additionally, there appears to be some inconsistency between the interpretation of section 346.34(1)(b) by the Wisconsin Supreme Court in *Johnston*, and the Court of Appeals in *Anagnos*, further supporting the reasonableness of Deputy Knipfer's interpretation in this case.

III. SHOULD THIS COURT CONCLUDE DEPUTY KNIPFER HAD NEITHER REASONABLE SUSPICION OF A SIGNAL VIOLATION, NOR A REASONABLE MISTAKE OF LAW, THEN THIS COURT SHOULD UPHOLD THE STOP BASED ON THE SPEEDING VIOLATION

Deputy Knipfer noted that the defendant drove through the roundabout in this case at between 30 and 35 miles per hour. He testified that the recommended speed limit in the roundabout was 15 miles per hour. Additionally, Deputy Knipfer is radar and laser certified, which requires training in speed estimation. (R. 15:6, App. 6:7-17). He utilized skills learned during that training to estimate the defendant's speed in this case, based on static points around the vehicle. Applying the reasonable suspicion standard required for stops based on traffic violations, the defendant's speed provides a basis for the stop in this case.

CONCLUSION

For all the reasons stated above, the state respectfully requests that the Court affirm the circuit court's denial of the defendant's suppression motion, and affirm the judgments of conviction.

Dated this ___ day of July, 2015.

Respectfully,

Abbey Nickolie
Assistant District Attorney
Waukesha County
Attorney for Plaintiff-Respondent
State Bar Number 1092722

CERTIFICATION OF BRIEF

I hereby certify that this document conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c), for a brief with proportional serif font. The length of this brief is 3,141 words long.

Dated this ____ day of July, 2015.

Abbey Nickolie
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**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated at Waukesha, Wisconsin this ____ day of July, 2015.

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**CERTIFICATE OF COMPLIANCE
WITH WIS. STAT. § (RULE) 809.19(13)**

I hereby certify that: I have submitted an electronic copy of this appendix, which complies with the requirements of Wis. Stat. § (Rule) 809.19(13).

I further certify that the content of the electronic copy of the appendix is identical to the content of the paper copy of the appendix.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated at Waukesha, Wisconsin this _____ day of July, 2015.

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APPENDIX CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as 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; (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 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 notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this ____ day of July, 2015.

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