

RECEIVED

08-10-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

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

Appellate Case No. 2015AP701

STATE OF WISCONSIN,

Plaintiff-Respondent,

-vs-

MANUEL TALAVERA,

Defendant-Appellant.

REPLY BRIEF OF DEFENDANT-APPELLANT

**Appealed from a Judgment of Conviction Entered in the Circuit Court for
Waukehsa, the Honorable Donald J. Hassin, Jr., Presiding
Trial Court Case Nos. 13 CT 1322**

Respectfully Submitted:

Melowski & Associates, LLC
524 South Pier Drive
Sheboygan, WI 53081
Telephone: (920) 208-3800
Facsimile: (920) 395-2443

By: **Sarvan Singh, Jr.**
State Bar No. 1049920
Attorneys for Defendant-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES i
REPLY TO STATE’S ARGUMENT 1-4
CONCLUSION 4

TABLE OF AUTHORITIES

Wisconsin Cases:

Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp., 90 Wis. 2d 97,
109, 279 N.W.2d 493 (Ct. App. 1979) 1
Hoffman v. Economy Preferred Ins. Co., 2000 WI App 22, ¶9, 232
Wis. 2d 53, 606 N.W.2d 590 1
In re Anagnos, 2011 WI App 118, ¶ 9 2, 4
Schlieper v. DNR, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App.
1994) 1
Shadley v. Lloyds of London, 2009 WI App 165, ¶26, 322 Wis. 2d
189, 766 N.W.2d 838 1
State v. Houghton, 2015 WI 79 1-2

REPLY TO STATE'S ARGUMENT

Firstly, Defendant-Appellant's brief specifically argued why any alleged speed violations did not support Deputy Knipfer's traffic stop. *See* Defendant-Appellant's Brief, p. 12. The State's brief focuses entirely on Mr. Talavera's failure to signal prior to turning as the basis of the stop. It is a well-established rule that an appellant's arguments not refuted by the respondent are deemed conceded. *See Shadley v. Lloyds of London*, 2009 WI App 165, ¶26, 322 Wis. 2d 189, 766 N.W.2d 838; *Hoffman v. Economy Preferred Ins. Co.*, 2000 WI App 22, ¶9, 232 Wis. 2d 53, 606 N.W.2d 590; *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994); *Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979). For this reason, the remainder of Mr. Talavera's reply brief will focus entirely on Mr. Talavera's failure to signal as the basis for the traffic stop.

The respondent cites to *State v. Houghton*, 2015 WI 79

when it argues that the standard for a valid traffic stop is reasonable suspicion that a traffic violation occurred. *See* State’s Brief p. 5. The State also references *Houghton* when it argues that even without reasonable suspicion; the traffic stop should be upheld because there was a reasonable mistake of law. *See* State’s Brief p. 10. However, the State provides no authority that *Houghton* should apply retroactively. *Houghton* was decided in April of 2015. The incident in question occurred in January of 2014. It is Mr. Talavera’s position that *Houghton* should not be applied retroactively. However, even if it is, the State’s argument still fails for the following reasons.

First, as noted on page 5 of the State’s brief, “the officer must be able to point to *specific* and *articulable* facts which, taken with rational inferences from those facts, reasonably warrant that intrusion.” (emphasis added). In addition, the State correctly points out that the Wisconsin Supreme Court decision *In re Anagnos*, 2011 WI App 118, ¶ 9, held that

“[e]vidence in the record must support a finding that Anagnos’s failure to use a turn signal affected other traffic.”
See State’s Brief p. 7.

In the present case, we have only a conclusory statement from the Deputy Knipfer that no other traffic was affected “other than me.” (R. 15; 25) There are no “specific” or “articulable” facts supporting this conclusory statement. The State attempts to make up for the lack of facts by simply arguing that the Deputy Knipfer would have been affected as he was only two car lengths behind Mr. Talavera’s vehicle. However, there is no factual basis supporting this assertion other than the Deputy Knipfer’s own conclusory statement. This argument is fleshed out in Mr. Talavera’s original brief and therefore need not be repeated. That being said, it is worth emphasizing that the standard set forth for reasonable suspicion in the State’s own brief requires more. It requires the “specific” and “articulable” facts that happen to be devoid in this case.

Second, any attempt to argue this was a reasonable mistake of law should be rejected. While the State argues the language in the statute can be interpreted multiple ways, the law was clearly set forth by the Wisconsin Supreme Court in *Anagnos* in 2011. Even if this were not specifically spelled out in *Anagnos*, the State points to nothing in the record demonstrating the Deputy Knipfer's knowledge of the law. For example, we do not know if the deputy knew the language in the statute at the time of the stop, his training on the issue, his knowledge on *Anagnos*, or any other germane facts he had at the time of the stop.

CONCLUSION

WHEREFOR, Mr. Talavera respectfully requests this Court to reverse and remand the trial court's denial of his Motion to Suppress on the grounds that the Deputy Knipfer lacked probable cause and reasonable suspicion prior to detaining Mr. Talavera.

Dated this _____ day of August, 2015.

Respectfully submitted,

MELOWSKI & ASSOCIATES L.L.C.

By: _____
Sarvan Singh, Jr.
State Bar No. 1049920
Attorneys for Defendant-Appellant

CERTIFICATION

I hereby certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is proportional serif font. The text is 13 point type and the length of the brief is 1,228 words.

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

Finally, I certify that this brief or appendix was deposited in the United States mail for delivery to the Clerk of the Court of Appeals by first-class mail, or other class of mail that is at least as expeditious, on August 7, 2015. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Dated this _____ day of August, 2015

Respectfully submitted,

MELOWSKI & ASSOCIATES L.L.C.

By: _____

Sarvan Singh, Jr.

State Bar No. 1049920

Attorneys for Defendant-Appellant