

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

RECEIVED

08-19-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal Nos. 2015AP1033, 2015AP1034

VILLAGE OF BAYSIDE,
Plaintiff-Respondent,

-vs.-

RYAN ROBERT OLSZEWSKI,
Defendant-Appellant.

**ON APPEAL FROM THE FEBRUARY 18, 2015,
ORDER ADJUDGING GUILT, AND THE SEPTEMBER
4, 2014, DECISION DENYING THE DEFENDANT'S
MOTION TO SUPPRESS, IN THE MILWAUKEE
COUNTY CIRCUIT COURT, THE HONORABLE
THOMAS J. MCADAMS, PRESIDING.
MILWAUKEE COUNTY CASE NOS. 2014TR4995,
2014TR4996**

**DEFENDANT-APPELLANT'S BRIEF
AND SHORT APPENDIX**

Respectfully submitted:
Matthew S. Pinix, SBN 1064368
Michael G. Soukup, SBN 1089707
LAW OFFICE OF MATTHEW S. PINIX, LLC
1200 East Capitol Drive, Suite 220
Milwaukee, Wisconsin 53211
T: 414.963.6164
F: 414.967.9169
matthew@pinixlawoffice.com
www.pinixlawoffice.com
Attorneys for Defendant-Appellant

TABLE OF CONTENTS

TABLE OF AUTHORITIES	ii
STATEMENT OF THE ISSUE	1
STATEMENT ON ORAL ARGUMENT AND PUBLICATION	1
STATEMENT OF THE CASE	2
I. NATURE, PROCEDURAL STATUS, AND DISPOSITION BELOW	2
II. STATEMENT OF RELEVANT FACTS.....	3
ARGUMENT	6
I. SUMMARY OF ARGUMENT.....	6
II. STANDARD OF REVIEW AND GOVERNING LAW	7
III. EVIDENCE TAKEN DURING RYAN OLSZEWSKI’S TRAFFIC STOP SHOULD BE SUPPRESSED WHERE THE ONLY REASON OLSZEWSKI WAS STOPPED WAS THE RESULT OF OFFICER PICCIOLO’S UNREASONABLE MISTAKE OF LAW.....	9
A. Officer Picciolo’s belief that Olszewski violated a traffic law was wrong; Olszewski complied with the traffic code by making a safe stop at a red light during conditions that covered the crosswalk.....	9
B. Officer Picciolo’s mistake of law was not reasonable, and therefore the traffic stop was unconstitutional.....	11
CONCLUSION.....	14
CERTIFICATION	15
CERTIFICATION OF APPENDIX CONTENT	16

CERTIFICATION OF FILING BY THIRD-PARTY
COMMERCIAL CARRIER..... 17

TABLE OF AUTHORITIES

CASES

Heien v. North Carolina, 574 U.S. ___,
135 S.Ct. 530 (2014) 8, 9

State v. Gaulrapp, 207 Wis. 2d 600,
588 N.W.2d 696 (Ct. App. 1996) 7

State v. Houghton, 2015 WI 79,
__ Wis.2d __, __ N.W.2d __ (2015)passim

State v. Phillips, 218 Wis. 2d 180,
577 N.W.2d 794 (1998)..... 9

State v. Popke, 2009 WI 37, 317 Wis. 2d 118,
765 N.W.2d 569 7, 14

State v. Post, 2007 WI 60, 301 Wis. 2d 1,
733 N.W.2d 634 7, 8, 9, 14

State v. Williams, 2002 WI 94, 255 Wis. 2d 1,
646 N.W.2d 834 9

Terry v. Ohio, 392 U.S. 1 (1968)..... 7, 8

CONSTITUTIONAL PROVISIONS

U.S. Const. Amend. IV..... 7, 8

Wis. Const. Art. I, § 11..... 7

STATUTES

Wis. Stat. § 346.37(1)(c)..... 9, 10, 13

Wis. Stat. § 346.46(2)(c).....passim

STATEMENT OF THE ISSUE

WHETHER EVIDENCE OBTAINED AFTER A TRAFFIC STOP SHOULD BE SUPPRESSED BECAUSE THE DECISION TO STOP WAS AN UNREASONABLE MISTAKE WHERE, ALTHOUGH THE OFFICER BELIEVED THE DRIVER VIOLATED THE LAW BY FAILING TO STOP AT A SNOW-COVERED CROSSWALK, THE LAW IS CLEAR THAT A DRIVER MAY COMPLY WITH THE LAW BY SAFELY STOPPING AT AN INTERSECTION WHEN THE LINES ARE NOT CLEARLY MARKED?

A Village of Bayside police officer stopped Ryan Olszewski for failing to stop at an intersection short of the crosswalk. The intersection at which Olszewski stopped was partially snow covered, and the relevant lines were obscured. After Olszewski was pulled over, the officer noticed signs of drunk driving and commenced field sobriety tests. Olszewski was eventually arrested and prosecuted for OWI-first offense.

He challenged the constitutionality of his stop on the ground that the officer was wrong in believing that Olszewski had violated the law governing stops before a crosswalk.

The circuit court agreed that Olszewski did not violate any traffic law to permit the stop, but nonetheless concluded that the officer had reasonable suspicion under the circumstances to justify the stop. It thus denied the motion.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Olszewski does not believe oral argument will be necessary in the instant appeal, as the briefs should sufficiently explicate the facts and law necessary for this Court to reach a decision.

Olszewski does not believe the Court's opinion in the instant case will meet the criteria for publication because resolution of the issues will involve no more than the application of well-settled rules of law and controlling precedent, with no call to question or qualify said precedent. Additionally, Olszewski herein appeals from a determination of guilt for a traffic code violation. He has not moved for a three-judge panel, and the case will most likely be decided by one judge. Thus, this case is likely not appropriate for publication and no such request is made.

STATEMENT OF THE CASE

I. NATURE, PROCEDURAL STATUS, AND DISPOSITION BELOW

Following a February 16, 2014, traffic stop, a Village of Bayside police officer issued Ryan Olszewski traffic citations for operating a vehicle while intoxicated and operating a vehicle with a prohibited alcohol concentration. (17:Ex. 5, pg. 3-4), A-Ap. 3-4. The officer originally stopped Olszewski because he failed to stop at a traffic light before the crosswalk. (*Id.*:3), A-Ap. 3.

Olszewski filed a motion to suppress the evidence gathered during the traffic stop. (8:1-2.) He argued that the crosswalk was not clearly marked due to snowfall, and so he complied with the law when those conditions occur by safely stopping at the intersection. (*Id.*, 7:1-4.) After hearing evidence, the circuit court denied the motion. (15, 18, 16:24), A-Ap. 9-42, 62.

Subsequently, the parties stipulated to facts contained in the officer's report, which indicated the officer's belief—derived subsequent to the stop and further investigation—that Olszewski had been driving while intoxicated. (9:1-2), A-Ap. 66-67. The judge entered an order finding Olszewski guilty of

operating a vehicle while intoxicated. (10), A-Ap. 68. This appeal follows. (13:1.)

II. STATEMENT OF RELEVANT FACTS

In the early morning hours of February 16, 2014, Officer Paul Picciolo of the Bayside Police Department, was monitoring traffic in his marked squad car near the intersection of North Port Washington Road and West Brown Deer Road. (18:3-4), A-Ap. 8-9. Picciolo was parked about 150 feet away and west of the intersection. (15:12, 18:4), A-Ap. 30, 9. The intersection is controlled by traffic lights and is marked with stop lines and crosswalks. (18:4), A-Ap. 9.

Around 1:00 a.m., Picciolo observed a red van approach the southern part of the intersection. (18:6), A-Ap. 11. The van was driven by Olszewski. (18:10), A-Ap. 16. Picciolo later testified that Olszewski's van stopped at the intersection and remained there while the light was red. (15:8, 18:10), A-Ap. 26, 16. When it changed, Olszewski turned left going westbound on Brown Deer towards Picciolo. (15:8-9, 17:Ex. 4 at frames 60-195, 18:10), A-Ap. 26-27, 5.

Picciolo turned on his lights, pursued Olszewski, and then stopped him for having committed a minor traffic violation. (17:Ex. 5 at pg. 3-4), A-Ap. 3-4. Picciolo commenced the stop because he thought that Olszewski had violated the traffic code by failing to stop his vehicle before the crosswalk at a traffic-light controlled intersection. (*Id.*:3), A-Ap. 3. He informed Olszewski of that suspicion and reason for the stop when he approached his vehicle. (*Id.*:3, 9:Ex. B at 00:01:38-00:01:44.); A-Ap. 3.

However, once Picciolo spoke with Olszewski, he smelled alcohol and noticed other indicators of intoxication, which caused him to commence field sobriety tests. (17:Ex. 5 at 3), A-Ap. 3. Upon conclusion of those tests, Picciolo determined that Olszewski was

intoxicated and arrested him for OWI. (*Id.*:3-4), A-Ap. 3-4.

Olszewski later filed a motion to suppress the evidence gathered from the traffic stop on the ground that, at the time of the stop, Picciolo lacked reasonable suspicion that he had committed any offense. (8:1-2.) Olszewski argued that he had not committed the offense for which Picciolo stopped him because the traffic code dictates that when the stop line is covered, a driver is obligated to stop the vehicle before entering the intersection such that the driver can efficiently observe traffic. (7:1-4.) Whereas the crosswalk and stop line that Picciolo accused Olszewski of driving past was covered due to snowy conditions, Olszewski argued that he lawfully stopped his vehicle by doing so in a place where he could efficiently observe traffic. (*Id.*, 8:1-2.)

The circuit court held a hearing on Olszewski's motion. (15, 18), A-Ap. 9-42. Picciolo was the only witness. He testified that he knows the location of the stop line and crosswalk at that particular intersection based on his experience. Specifically, he knew where the stop line and crosswalk were located because a traffic light pole situated on an island in the intersection marked their location. (17:Ex. 1, 18:6-7), A-Ap. 11-12. Picciolo testified that when he observed the van stop past the light pole next to the van, he surmised that the van had not stopped before the crosswalk. (15:4, 18:6-7), A-Ap. 22, 11-12. Picciolo estimated the van travelled at least three quarters past the light pole. (18:7), A-Ap. 12. Upon belief that Olszewski had illegally stopped past the stop line, Officer Picciolo waited for Olszewski to pass him, and then pulled him over. (17:Ex. 5, pg. 3), A-Ap. 3.

Picciolo agreed that it was snowing at the time he observed Olszewski at the intersection and that snow was covering parts of the roadway. (15:5-8, 10), A-Ap. 23-26, 28. He also agreed that, as the video

indicated, it was wet and the lights caused a glare. (15:10), A-Ap. 28. Picciolo could not tell the conditions of the lanes from where he was located. (15:11), A-Ap. 29. He also admitted that he could not tell if Olszewski could see the lines because of the snow. (15:13), A-Ap. 31.

The Village introduced a video taken from a Department of Transportation camera pointed at the intersection. (17:Ex. 4, 18:9-10), A-Ap. 5, 14-15. The video shows that snow had covered much of the road, including the crosswalks and stop lines. (17:Ex. 4), A-Ap. 5.

The circuit court made the following factual findings:

1. On the night of the incident, snow was falling and there was accumulation on the road. (16:4), A-Ap. 42.
2. When Olszewski approached the intersection the light was red. (*Id.*)
3. Olszewski stopped his van, but past the crosswalk. (*Id.*:4-5), A-Ap. 43-44.
4. The crosswalk was partially obscured by snow. (*Id.*:5), A-Ap 44.
5. Picciolo did not testify that the lines at the intersection were clearly marked when Olszewski approached. (*Id.*:21), A-Ap 59.

(*Id.*:3-5, 21), A-Ap. 41-43, 59.

The circuit court then considered, as a matter of law, what effect the snowfall had on the requirement to stop at the stop line. (*Id.*:14), A-Ap 52. It determined that crossing the clearly marked stop line was arguably a violation, but when the line was obscured, it would not be clearly visible. (*Id.*:19-20), A-Ap. 57-58. The circuit court concluded that Picciolo's view of the law was wrong, noting that, under Wis. Stat. § 346.46(2)(c), a stop is not required before the line in all instances. (*Id.*:20), A-Ap. 58. The circuit court noted

the absence of testimony from Picciolo that the lines were clearly marked at the time. (*Id.*:21), A-Ap. 59. Thus, the circuit court concluded that the Village would not have met its burden to prove that Olszewski had failed to stop before the line. (*Id.*:20), A-Ap. 58.

Nevertheless, the circuit court concluded that Picciolo had reasonable suspicion to stop Olszewski. (*Id.*:21), A-Ap. 59. For that, the circuit court relied on the fact that the road was partially visible, that Olszewski pulled too far over the line, and that it was 1:00 a.m. on a Saturday, which is a prime time for bars. (*Id.*) Consequently, the court denied the motion. (*Id.*:24), A-Ap. 62.

After the circuit court denied the motion to suppress, the Village and Olszewski stipulated to a set of facts for trial. (9:1-2), A-Ap. 66-67. Specifically, the parties agreed that the court could rely on Picciolo's report, which indicated that Picciolo made observations subsequent to the stop that led him to believe that Olszewski was over the legal limit for drinking. (*Id.*) On that stipulation, the court entered an order finding Olszewski guilty of operating a vehicle while intoxicated. (10), A-Ap. 71.

This appeal follows. (13.)

ARGUMENT

I. SUMMARY OF ARGUMENT

Consistent with Wisconsin's traffic code, Olszewski safely navigated his van through the intersection of Port Washington and Brown Deer Roads. *See* Wis. Stat. § 346.46(2)(c). The intersection had traffic lights, and as Olszewski approached, he safely stopped his van, waited for the signal to change, and then continued on his way. (15:8-9, 18:10), A-Ap. 26-27, 15. The road was partially snow covered, and Olszewski stopped the van at a point in the intersection where he could safely observe traffic,

consistent with the rules for situations where lines are not clearly visible. (16:19-20), A-Ap. 57-58; *see* Wis. Stat. § 346.46(2)(c).

However, despite the obvious fact that it was snowing and the clear law regarding stopping at intersections, Picciolo pulled Olszewski over. He stopped Olszewski solely because he did not stop at a line at the intersection, which the Village failed to show was then visible. (15:4, 16:21, 18:6-7), A-Ap. 22, 59, 11-12. Picciolo did not stop Olszewski for failing to safely navigate the intersection, which is the only thing the law required under then extant conditions. Where the law is clear that one does not need to stop before a line that is not visible, Picciolo's mistake was objectively unreasonable. *State v. Houghton*, 2015 WI 79, ¶¶ 67-68, __ Wis.2d __, __ N.W.2d __ (2015). Therefore, where Picciolo's decision to stop Olszewski was borne from an unreasonable mistake of law, the evidence gathered from it should have been suppressed.

II. STANDARD OF REVIEW AND GOVERNING LAW

Both the United States Constitution and the Wisconsin Constitution guarantee the right of person to be free from unreasonable searches and seizures. U.S. Const. Amend. IV; Wis. Const. Art. I, § 11. A traffic stop, even if it is brief and for a limited purpose, is a seizure subject to constitutional protections. *State v. Popke*, 2009 WI 37, ¶ 11, 317 Wis. 2d 118, 765 N.W.2d 569 (quoting *State v. Gaulrapp*, 207 Wis. 2d 600, 605, 588 N.W.2d 696 (Ct. App. 1996)). A traffic stop is valid under the Constitution if the officer has a reasonable suspicion that a traffic law has been violated. *Houghton*, 2015 WI 79, ¶ 30.

A traffic stop cannot be based on a hunch. *State v. Post*, 2007 WI 60, ¶ 10, 301 Wis. 2d 1, 733 N.W.2d 634 (citing *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Instead, the officer must point to specific and articulable facts which, taken together with rational

inferences from those facts, reasonably warrant the intrusive stop. *Houghton*, 2015 WI 79, ¶ 21 (citing *Terry*, 392 U.S. at 21). A court considers whether a reasonable police officer, in light of his or her training and experience, could suspect that the individual has committed, was committing, or is about to commit a crime. *Post*, 2007 WI 60, ¶ 13 (citations omitted). The court considers the totality of the facts and circumstances when determining the propriety of an investigatory stop. *Id.*

An officer's reasonable suspicion that a crime was committed is formed based on his or her understanding of the facts and the law. *Heien v. North Carolina*, 574 U.S. ___, 135 S.Ct. 530, 536 (2014). If an officer forms his reasonable suspicion based on a mistake of either fact or law, it does not necessarily render that suspicion unreasonable; the mistaken seizure could still be valid. *Heien*, 574 U.S. ___, 135 S.Ct. at 534; *Houghton*, 2015 WI 79, ¶ 52. However, like other aspects of an officer's conduct, the mistake must be reasonable. *Heien*, 574 U.S. ___, 135 S.Ct. at 530 (the ultimate touchstone of the Fourth Amendment is reasonableness). When a mistake of fact or law is not objectively reasonable, the seizure is not constitutional. *Heien*, 574 U.S. ___, 135 S.Ct. at 541 (Kagan, J., concurring); *Houghton*, 2015 WI 79, ¶ 67-68.

Whether a mistake is reasonable is an objective determination. *Heien*, 574 U.S. ___, 135 S.Ct. at 534; *Houghton*, 2015 WI 79, ¶¶ 67-68. Mistakes of law are exceedingly rare. *Houghton*, 2015 WI 79, ¶¶ 67-68, (quoting *Heien*, 574 U.S. ___, 135 S.Ct. at 541 (Kagan, J., concurring)). Only where the statutes involved are genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, is the mistake reasonable. *Houghton*, 2015 WI 79, ¶ 68, (quoting *Heien*, 574 U.S. ___, 135 S.Ct. at 541 (Kagan, J., concurring)). Otherwise, if the applicable statutes are not difficult or very hard to interpret, the mistake

is unreasonable and the stop cannot be upheld. *Houghton*, 2015 WI 79, ¶ 68, (quoting *Heien*, 574 U.S. ___, 135 S.Ct. at 541 (Kagan, J., concurring)).

When a defendant contends that his constitutional rights were violated by a seizure, the burden is on the government in the circuit court to show that it was reasonable. *Post*, 2007 WI 60, ¶ 12. On appeal, the court determines whether the government met its burden with a dual standard of review. *State v. Phillips*, 218 Wis. 2d 180, 189, 577 N.W.2d 794 (1998). The circuit court's findings of historical facts are upheld unless they are clearly erroneous. *State v. Williams*, 2002 WI 94, ¶ 17, 255 Wis. 2d 1, 646 N.W.2d 834. But, the conclusion of whether a constitutional violation occurred under the facts is reviewed *de novo*. *Williams*, 2002 WI 94, ¶ 17.

III. EVIDENCE TAKEN DURING RYAN OLSZEWSKI'S TRAFFIC STOP SHOULD BE SUPPRESSED WHERE THE ONLY REASON OLSZEWSKI WAS STOPPED WAS THE RESULT OF OFFICER PICCIOLO'S UNREASONABLE MISTAKE OF LAW.

A. Officer Picciolo's belief that Olszewski violated a traffic law was wrong; Olszewski complied with the traffic code by making a safe stop at a red light during conditions that covered the crosswalk.

Here, the Village did not meet its burden to show that the traffic stop was reasonable because Picciolo made an unreasonable mistake of law. Picciolo gave one reason for the traffic stop: he believed that Olszewski had committed the traffic violation of driving past a crosswalk before stopping at a red light. (17:Ex. 5, pg. 3-4, 18:6-7), A-Ap. 3-4, 11-12. Under Wis. Stat. § 346.37(1)(c), a person approaching a red signal must stop before a crosswalk. Based on his experience monitoring the intersection, Picciolo knew that the crosswalk was located by a nearby light post. (18:6-7),

A-Ap. 11-12. When he noticed Olszewski go past the light post, Picciolo surmised that Olszewski committed the traffic violation. *Id.*

The circuit court correctly concluded, however, that Picciolo was wrong. Picciolo's belief that Olszewski committed a traffic violation was a mistake because he did not account for fact that the snowfall rendered the crosswalk not clearly marked. (16:14, 19-20), A-Ap. 52, 57-58. The video of Olszewski's stop at the intersection clearly shows snow on the ground. (17:Ex. 4), A-Ap. 5. Moreover, the video shows a glare as well, due to the wet street and light posts. (*Id.*) The crosswalk lines are not visible in the area of the intersection where Olszewski stopped. (*Id.*) Picciolo agreed that these were the conditions at the time, which the circuit court accepted amongst its factual findings. (15:5-8, 10-11, 16:5), A-Ap. 23-26, 28-29, 43.

In the instant case, the snowfall obviously rendered the crosswalks and other markings no longer visible. In such situations, the law clearly provides that drivers should make a safe stop before entering the intersection. Namely, under Wis. Stat. § 346.37(1)(c), if there is no marking, the driver must stop before entering the intersection until the light is green. Moreover, Wis. Stat. § 346.46(2)(c) provides in relevant part that:

(c) If there is neither a clearly marked stop line nor a marked or unmarked crosswalk at the intersection or if the operator cannot efficiently observe traffic on the intersecting roadway from the stop made at the stop line or crosswalk, the operator shall, before entering the intersection, stop the vehicle at such point as will enable the operator to efficiently observe the traffic on the intersecting roadway.

Thus, where the crosswalk was not visible, Olszewski complied with the traffic laws. The video from the street camera clearly shows that Olszewski stopped for the red light before entering the

intersection and at a point where one could efficiently observe traffic on the roadway. (17:Ex. 4 at frames 60-195), A-Ap. 5. Picciolo observed Olszewski stop at the light, wait for it to turn green, and then proceed safely through the intersection. (15:8-9, 18:10), A-Ap. 26-27, 15. Thus, as the circuit court concluded, Olszewski had not violated any traffic law when Picciolo decided to pull him over. (16:20-21), A-Ap. 58-59.

B. Officer Picciolo's mistake of law was not reasonable, and therefore the traffic stop was unconstitutional.

Officer Picciolo's erroneous view that Olszewski committed a traffic violation, which was the sole reason for the traffic stop, was not a reasonable mistake. The applicable laws involved are clear and unambiguous, and a reasonable officer in Picciolo's position would not have stopped Olszewski for his safe navigation through the intersection.

In *Houghton*, the Wisconsin Supreme Court recently provided guidance about what is a reasonable mistake of law and what is unreasonable. *Id.* ¶¶66-78. In that case, the officer stopped the driver under two separate traffic violations. *Id.* ¶¶ 7, 12. One violation concerned the prohibition of the placement of any object in the front windshield, and the other involved the requirement that vehicles have both a front and rear license plate. *Id.*

For the first violation, the court concluded that the officer made a reasonable mistake about the law. *Id.* ¶ 70. Regarding the prohibition on items near the windshield, the court noted that there were two applicable provisions. *Id.* ¶ 56. One provision outright prohibited certain items from being placed near any window. *Id.* A second provision prohibited any item from the windshield if it obstructed the driver's clear view. *Id.* The officer believed that an air freshener and a GPS unit near the windows violated those laws. *Id.* ¶ 7.

Ultimately, the court concluded that what the officer observed was not a violation of the statute, because the statute only prohibited material obstructions. *Id.* ¶ 65. However, the traffic stop was not invalid based on the officer's mistake about what the law required because it was reasonable given the ambiguity in the two competing provisions and the fact that there had yet to be an interpretation resolving that ambiguity. *Id.* ¶¶ 70-71.

But, turning to the officer's belief regarding the missing license plate, the court concluded that the officer's interpretation was not objectively reasonable. *Id.* ¶¶ 72, 76. The officer pulled the car over because it did not have a license plate on the front. *Id.* ¶ 7. The Court noted that the applicable statute is clear that a car must have both a front and rear license plate, but only when a car is issued two plates. *Id.* ¶ 73. When the officer drove past the car and saw only one plate, it was unreasonable of the officer to mistakenly believe it was a violation. *Id.* ¶¶ 74-76. The Court noted that where Wisconsin borders four states, and there is regularly interstate traffic, an officer is objective unreasonable to believe there is a violation merely because a car does not have a plate. *Id.* ¶ 76.

Similar to the officer's view in *Houghton* about the missing license plate, it is clear that Picciolo's mistake in the instant case was not objectively reasonable. Upon seeing a car with no front plate, the officer in *Houghton* believed it was in violation of the statute. Similarly here, Picciolo believed that Olszewski committed a traffic violation because he surmised based on his experience that Olszewski drove past the crosswalk before stopping.

But what the officer in *Houghton* did not consider is that the provision clearly provides that only cars that are issued two plates must display both, and many interstate cars travel through Wisconsin that are not subject to that provision. Similarly here, Picciolo failed to take into account the statute's clear

provision that when the lines are not visible—because of snow in the instant case—all that Olszewski had to do was come to safe stop, which is what he did. Wis. Stat. § 346.37(1)(c); Wis. Stat. § 346.46(2)(c); (15:8-9, 17:Ex. 4 at frames 60-195, 18:10), A-Ap. 26-27, 5, 15. Picciolo did not stop Olszewski for not driving safely, but instead because he did not stop at a line that was not clearly marked at the time. Thus, Picciolo’s mistake, like the one in *Houghton*, was not objectively reasonable.

Unlike the statute at issue in *Heien* or the first question in *Houghton*, the applicable statutes facing Officer Picciolo are clear. They are not conflicting or ambiguous. *See supra* at 9-10. This does not require an involved reading of the statute, or divining statutory interpretation of vague terms. Instead, the law is simple. If the crosswalk is visible, then stop before the line. Wis. Stat. § 346.37(1)(c). If the crosswalk is not visible, then simply stop safely at the intersection. Wis. Stat. § 346.37(1)(c); Wis. Stat. § 346.46(2)(c).

Consequently, the circuit court’s decision that Picciolo’s traffic stop was constitutional should be reversed. The circuit court concluded that Picciolo was mistaken about the law. (16:19-20), A-Ap. 57-58. Nonetheless, the court also concluded that it was a valid traffic stop because Picciolo had reasonable suspicion. (*Id.*)

But, the circuit court’s determination is not correct. As shown above, Picciolo’s decision to stop for a violation of Wis. Stat. § 346.37(1)(c) was an objectively unreasonable mistake. Picciolo gave no other reason for the stop and the record reflects no other basis upon which an objectively reasonable officer could have stopped Olszewski. The only observations made by Picciolo specific to Olszewski were his safe navigation through an intersection late at night. (15:8-9, 17:Ex. 4 at frames 60-195, 18:10,) A-Ap. 26-27, 5, 15. The circuit court’s conclusion that Picciolo had reasonable suspicion despite his mistaken

opinion that Olszewski violated the traffic code is thus unsupported by the record. *Contra Post*, 2007 WI 60, ¶ 37-38 (officer's observation of repeatedly suspicious or erratic driving rendered investigatory stop reasonable), and *Popke*, 2009 WI 37, ¶ 26 (same). Therefore, the circuit court erred in concluding that the traffic stop was supported by reasonable suspicion, and this Court should accordingly find that the traffic stop violated Olszewski's constitutional rights.

CONCLUSION

When Olszewski stopped his vehicle in a location that allowed him to safely navigate the snow-covered intersection with obscured crosswalk lines, he complied with the traffic code. The officer's opinion that Olszewski had violated the law was an unreasonable mistake. Insofar as the ensuing stop was based entirely on that unreasonable mistake, it was unconstitutional. Olszewski's motion to suppress should have been granted.

Thus, Olszewski asks this Court to reverse the circuit court's denial of his motion to suppress and to remand for further proceedings consistent with so holding.

Dated this 10th day of August, 2015.

LAW OFFICE OF MATTHEW S. PINIX, LLC
Attorneys for Defendant-Appellant



Matthew S. Pinix
State Bar No. 1064368
Michael G. Soukup
State Bar No. 1089707

CERTIFICATION

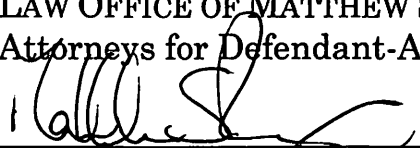
I certify that this brief conforms to the rules contained in Section 809.19(8)(b) and (c) for a brief produced using a proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points, maximum of 60 characters per full line of body text. The length of this brief is 3,690 words, as counted by the commercially available word processor Microsoft Word.

I further certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Section 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 this 10th day of August, 2015.

LAW OFFICE OF MATTHEW S. PINIX, LLC
Attorneys for Defendant-Appellant



Matthew S. Pinix
State Bar No. 1064368
Michael G. Soukup
State Bar No. 1089707

CERTIFICATION OF APPENDIX CONTENT

I hereby certify that filed with this brief, either as a separate document or as a part of this brief, is an appendix that complies with Section 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 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 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 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 10th day of August, 2015.

LAW OFFICE OF MATTHEW S. PINIX, LLC
Attorneys for Defendant-Appellant

A handwritten signature in black ink, appearing to read 'Matthew S. Pinix', is written over a horizontal line.

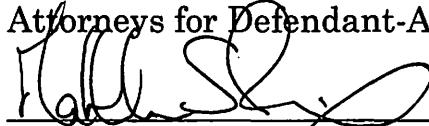
Matthew S. Pinix
State Bar No. 1064368
Michael G. Soukup
State Bar No. 1089707

**CERTIFICATION OF FILING BY THIRD-
PARTY COMMERCIAL CARRIER**

I hereby certify, pursuant to Rule 809.80(4)(a), Rules of Appellate Procedure, that this Appellant's Brief and Short Appendix will be delivered to a FedEx, a third-party commercial carrier, on August 10, 2015, for delivery to the Clerk of the Court of Appeals, 110 East Main Street, Suite 215, Madison, Wisconsin 53703, within three calendar days. I further certify that the brief will be correctly addressed and delivery charges prepaid. Copies will be served on the parties by the same method.

Dated this 10th day of August, 2015.

LAW OFFICE OF MATTHEW S. PINIX, LLC
Attorneys for Defendant-Appellant



Matthew S. Pinix
State Bar No. 1064368
Michael G. Soukup
State Bar No. 1089707