STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT I

Case No. 2015AP2443-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

RANDOLPH ARTHUR MANTIE,

Defendant-Appellant.

APPEAL FROM AN ORDER DENYING A MOTION TO SUPPRESS EVIDENCE, ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT, THE HONORABLE TIMOTHY M. WITKOWIAK AND THE HONORABLE DENNIS R. CIMPL, PRESIDING.

BRIEF OF PLAINTIFF-RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT ON ORAL ARGUMENT

The State requests neither oral argument nor publication. This Court may resolve this case by applying well-established legal principles to the facts presented.

SUPPLEMENTAL STATEMENT OF THE CASE AND STATEMENT OF FACTS

As respondent, the State exercises its option not to present a full statement of the case. Wis. Stat. § (Rule) 809.19(3)(a)2.[1] Instead, the State will present the following summary and additional facts, if necessary, in the argument portion of its brief.

Randolph Arthur Mantie appeals the circuit court's order denying his motion to suppress. (42; 45.) The following summary is based on the evidence presented at the hearings underlying that ruling.[2] Two witnesses testified at the

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[1] Unless indicated otherwise, all citations to Wisconsin Statutes refer to the 2013-14 edition.

[2] The circuit court originally denied Mantie's suppression motion following a January 13, 2014 hearing. (53.) The court also denied Mantie's motion to reconsider that decision. (9; 13; 56.) Mantie eventually filed a postconviction motion for a new suppression hearing, which the circuit court granted on April 28, 2015. (27; 28; 34.) The Honorable Timothy M. Witkowiak presided over those proceedings.

On November 9, 2015, the circuit court held an evidentiary hearing on Mantie's "new" motion to suppress. (61.) At the outset of that hearing, the court noted that it had reviewed the transcripts and evidence from the prior proceedings, and that the court was "tak[ing] judicial notice of everything that happened before this." (61:3.) The court also granted Mantie's motion to supplement the record with additional evidence. (28; 61:32-34.) The Honorable Dennis R. Cimpl presided over that hearing.

hearings: (1) the officer who stopped Mantie and arrested him for drunk driving,[3] Harold Almas, and (2) Mantie.

Officer Almas testified that he was driving south on North Hopkins when he saw Mantie's car "traveling at a good rate of speed[,]" and that "when [Mantie] hit Hopkins, I saw his whole front end dip down, which – leading me to believe that he had, you know, r[u]n a stop sign." (61:6-7.) Officer Almas explained exactly what led him to stop Mantie's car:

> A: Well, I saw the front end dip down barely onto Hopkins, which was leading me to believe that he was just going to go right onto Hopkins. I stopped my car and motioned for him to proceed because I was going to conduct a traffic stop and find out what was going on.
>
> . . . .
>
> Q: Okay. So when you say the front end went down, what did you conclude in your mind about the front end dipping down?
>
> A: When the front end's going down, I would say it was indicative of like – like a threshold breaking, more or less. Like, he had observed me, then a quick stop.
>
> . . . .
>
> Q: Did the stop appear to occur where it's supposed to stop? Or did it appear to be too late for where the car was supposed to have stopped?
>
> A: It appeared late.

(61:7-8.)[4]

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[3] This was Mantie's eighth drunk driving offense. (2:2.)

[4] Officer Almas also explained that his squad video started recording when he initiated the related traffic stop, and that the

Officer Almas acknowledged that he hadn't actually seen Mantie run the stop sign because a building on the corner of the intersection blocked his view of the sign itself. (*See* 28, Ex. C-5; 61:18-19; 60, Ex. 7.)[5] From what he could see, however, Officer Almas concluded that Mantie had not stopped appropriately:

> Q: So can you just describe your thinking. Why did you assume that he must not have stopped at the stop sign?
>
> A: Well, he was, like I said, moving at a good rate of speed. Okay? And you can't – my assumption was that you cannot get from – from Point A to Point B in that rate of speed in that quick of a time and have your vehicle put down into that manner.
>
> Q: Because the other option – the other possibility – was that he had stopped at the stop sign and then was kind of inching out so he could get a view past the corner of the building?
>
> A: Yes, sir.
>
> Q: But it was the tipping of the front end that caused you to discount that possibility?

---

recording was set up with a buffer that captured the thirty seconds of activity that preceded activation of the squad's lights and sirens. (61:7.) The video was entered into evidence as Exhibit 7 at the November 9, 2015 hearing, (61:12-14), and it shows what Officer Almas observed before he stopped Mantie.

[5] The intersection is unusual and difficult to describe in words. That is probably why the circuit court chose to view the scene personally in connection with Mantie's motion. (35:3; 61:35-36.) Viewing the photograph referenced here and the squad video are extremely helpful in this regard. The illustration on page 5 of Mantie's brief does not accurately depict the intersection. (*See* 28, Ex. C-5; 60, Ex. 7.)

A: Yeah. I saw the car. I saw the rate of speed; and I saw the dipping, which caused me to stop him.

(61:21.)[6]

Mantie's version of the events was slightly different:

A: . . . I stopped at the stop sign; and as I was approaching Hopkins, I noticed the officer. He looked like he was distracted; and he looked up; and he had an astonished look on his face, like he was looking right through me; and he started slowing down. So I kind of stopped quicker than I would have stopped.

. . . .

Q: It's your testimony you stopped at that stop sign?

A: Correct.

Q: And can you describe the speed with which you proceeded?

A: I probably just – you know, like a normal – you know, when you take off, you know? And when – you know, just stepped on the gas, like proceeding through a normal intersection. . . .

(61:23-24.)[7]

Based on the record, the circuit court found that the traffic stop was valid:

There is no question in my mind that when a car is going eastbound on Courtland, it must stop for the stop sign, which is somewhere between 20 to 25

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[6] Officer Almas's testimony was consistent with his testimony at the first suppression hearing. (*See* 53:8-12, 27-29.)

[7] Mantie admitted that his blood alcohol concentration at the time of the stop was approximately .169. (61:25.)

> feet of the intersection; and then he's got to proceed with caution; and when he gets to the actual – where he's about to cross over – the westerly lane of Hopkins, if it was extended – he's got to stop again to look around that building to see whether or not a car is coming; and if a car is coming, he's got to stop again.
>
> And given the dip of his car, he was either going too fast, where he went through that stop sign – and that's what I suspect happened, like the officer – or he's got to yield the right-of-way; and based upon what I saw on the video, I suspect if I was the cop coming southbound on Hopkins, I would assume he blew the stop sign, even though I didn't see it. I think that was a valid assumption.

(61:31-32.)

The court's denial of Mantie's renewed suppression motion left in place his earlier judgment of conviction and prison sentence for operating while intoxicated as an eighth offense. (19; 57.)

Mantie appeals.

ARGUMENT

I. Applicable legal principles.

To conduct an investigative stop consistent with the Fourth Amendment's prohibition against unreasonable search and seizure, a police officer must have at least reasonable suspicion that the person has committed, is committing, or is about to commit an offense. *State v. Post*, 2007 WI 60, ¶¶ 10, 13, 301 Wis. 2d 1, 733 N.W.2d 634.

"[W]hat constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience." *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

Although acts and circumstances by themselves may be lawful behavior that falls short of reasonable suspicion, the rational inferences drawn from those facts taken together as a whole may constitute reasonable suspicion. *State v. Popke*, 2009 WI 37, ¶ 25, 317 Wis. 2d 118, 765 N.W.2d 569.

Appellate courts apply a two-step analysis when reviewing a circuit court's determination that an officer had reasonable suspicion to initiate an investigative stop. *Post*, 301 Wis. 2d 1, ¶ 8. This Court will uphold the circuit court's factual findings unless they are clearly erroneous. *Id.* The application of those facts to constitutional standards is reviewed *de novo*. *Id.*[8] Mantie agrees with the State on this point. (Mantie's Br. 9-10.)

II. The circuit court's findings of fact are not clearly erroneous.

Notably, Mantie also agrees with the State that the circuit court's findings of fact in this case are not clearly erroneous. (Mantie's Br. 10-11.) And the key finding of fact that the circuit court made was that:

> . . . [G]iven the dip of his car, [Mantie] was either going too fast, where he went through that stop sign – and that's what I suspect happened, like the officer – or he's got to yield the right-of-way; and based upon what I saw on the video, I suspect if I was the cop coming southbound on Hopkins, I would assume he blew the stop sign, even though I didn't see it. I think that was a valid assumption.

(61:32.) In other words, the circuit court found that Mantie ran the stop sign.

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[8] Mantie agrees and correctly recites the applicable standard of review in his brief. (Mantie's Br. 9-10.)

That finding is clearly one of fact, not law. A circuit court's conclusions about *how* a defendant was driving are factual determinations. The speed at which someone was driving is a question of fact. Whether that speed warranted an officer's belief that the driver was committing a speeding offense is a question of law. Whether a driver repeatedly swerved out of his lane is a question of fact. Whether the swerving justified an officer's belief that the driver illegally deviated from his lane of travel is a question of law. And whether someone drove past a stop sign without stopping is a question of fact. Whether doing so justifies an officer's belief that the driver violated the law is a question of law.

At most, the real issue in this case was whether there was sufficient evidence to support the factual determination that Mantie ran the stop sign at the intersection of Hopkins and Courtland. The circuit court properly found that the evidence was sufficient. Although Officer Almas did not see Mantie pass the stop sign, he did see Mantie driving at a high rate of speed and making an abrupt stop that wouldn't have been possible if Mantie had actually stopped for the sign. (61:21.) And unlike most traffic cases, the judge presiding over the hearing actually visited and drove through the intersection twice. (61:35.) Based on the evidence, the circuit court's finding that Mantie ran the stop sign was not clearly erroneous. *Post*, 301 Wis. 2d 1, ¶ 8. Mantie concedes that point. (Mantie's Br. 10-11.)[9]

[9] He also concedes that "[T]he duty to stop at a stop sign is absolute, *Seitz v. Seitz*, 35 Wis. 2d 282, 291, 151 N.W.2d 86 (1967)." (Mantie's Br. 12.)

III. Mantie is trying to create a legal issue where none exists.

Perhaps recognizing that the circuit court's findings of fact are essentially fatal to his claim, Mantie argues that "[w]hile the duty to stop at a stop sign is absolute, there is some variability in the obligation based on the realities of intersection sight distances[.]" (Mantie's Br. 12 (citation omitted).) The statute he cites in support of that argument, Wis. Stat. § 346.46(2)(c), does not stand for that proposition. To the contrary, it supports the circuit court's decision.

Wisconsin Stat. § 346.46(1) requires a driver to stop for an official stop sign at an intersection before proceeding through the intersection.[10] Stops required by that section must occur as follows:

> (a) If there is a clearly marked stop line, the operator shall stop the vehicle immediately before crossing such line.
>
> (b) If there is no clearly marked stop line, the operator shall stop the vehicle immediately before entering the crosswalk on the near side of the intersection.

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[10] The provision reads:

> (1) Except when directed to proceed by a traffic officer or traffic control signal, every operator of a vehicle approaching an official stop sign at an intersection shall cause such vehicle to stop before entering the intersection and shall yield the right-of-way to other vehicles which have entered or are approaching the intersection upon a highway which is not controlled by an official stop sign or traffic signal.

Wis. Stat. § 346.46(1).

> (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.

Wis. Stat. § 346.46(2)(a)-(c).

Mantie seems to argue that the circuit court contravened the mandate of this provision because "[a]s Mr. Mantie drove eastbound on Courtland there was '. . . neither a clearly marked stop line nor a marked or unmarked crosswalk at the intersection' and he could not '. . . efficiently observe traffic on the intersecting roadway from the stop made at the stop line.'" (Mantie's Br. 12-13.) Mantie's argument is contradicted by the law, the record and common sense.

The circuit court did not specifically address this point, but there obviously was an unmarked crosswalk at the intersection where Mantie was required to stop. (Mantie's Br. 13; 28, Ex. C-2, Ex. C-3, Ex. C-4, Ex. C-6; 60, Ex. 7.) A "crosswalk" means either:

> (a) *Marked crosswalks*. Any portion of a highway clearly indicated for pedestrian crossing by signs, lines or other markings on the surface; or
>
> (b) *Unmarked crosswalks*. In the absence of signs, lines or markings, that part of a roadway, at an intersection, which is included within the transverse lines which would be formed on such roadway by connecting the corresponding lateral lines of the sidewalks on opposite sides of such roadway or, in the absence of a corresponding sidewalk on one side of the roadway, that part of such roadway which is included within the extension

> of the lateral lines of the existing sidewalk across such roadway at right angles to the center line thereof, except in no case does an unmarked crosswalk include any part of the intersection and in no case is there an unmarked crosswalk across a street at an intersection of such street with an alley.

Wis. Stat. § 340.01(10)(a)-(b).

Despite some snow, the photographs introduced into evidence and the squad video show an unmarked crosswalk running between the sidewalks on the opposite sides of Courtland. (28, Ex. C-2, Ex. C-3, Ex. C-4, Ex. C-6; 60, Ex. 7.) The related stop sign sits just before that crosswalk. (28, Ex. C-2, Ex. C-3, Ex. C-4, Ex. C-6; 60, Ex. 7.) This only makes perfect sense. For pedestrian safety, drivers are not permitted to stop for a stop sign *after* they've driven through a crosswalk. Wis. Stat. § 346.46(2)(b) and (c).

So Mantie was required to stop "immediately before" the unmarked crosswalk on Courtland. Wis. Stat. § 346.46(2)(b). Not surprisingly, that point corresponds very closely to the location where the stop sign sits. (28, Ex. C-2, Ex. C-3, Ex. C-4, Ex. C-6; 60, Ex. 7.) Then, assuming he was unable to "efficiently observe traffic on the intersecting roadway [Hopkins] from *the stop made at the stop line or crosswalk*," he was required to stop *again* at a point where he could properly observe oncoming traffic. Wis. Stat. § 346.46(2)(c) (emphasis added).[11] The circuit court's ruling

[11] Mantie also seems to float on an argument that he did stop for the stop sign and then somehow entered an uncontrolled intersection that gave *him* the right of way over Officer Almas. (*See* Mantie's Br. 12.) That argument fails for precisely the same reasons. Wis. Stat. § 346.46(2)(b) and (c). And it's worth noting that if Mantie's claims were accurate, it would transform an already problematic intersection into chaos that would severely jeopardize the safety of both drivers and pedestrians.

essentially mirrors these statutory requirements. (61:31-32.) Coupled with the court's factual finding that Mantie failed to stop properly for the stop sign, the court properly denied Mantie's motion to suppress.

CONCLUSION

For the foregoing reasons, this Court should affirm the circuit court's denial of Randolph Arthur Mantie's motion to suppress and his related request to withdraw his plea.

Dated: August 5, 2016.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b), (c) for a brief produced with a proportional serif font. The length of this brief is 2,783 words.

_____
NANCY A. NOET
Assistant Attorney General

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: August 5, 2016

_____
NANCY A. NOET
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