

**STATE OF WISCONSIN**

**COURT OF APPEALS**

**DISTRICT I**

**Appeal No. 2015AP002443-CR  
Circuit Court Case No. 2013CF004170**

**RECEIVED**

**08-22-2016**

**CLERK OF COURT OF APPEALS  
OF WISCONSIN**

---

**STATE OF WISCONSIN,  
PLAINTIFF-RESPONDENT,**

**v.**

**RANDOLPH ARTHUR MANTIE,  
DEFENDANT-APPELLANT.**

---

**ON NOTICE OF APPEAL TO REVIEW A JUDGMENT ENTERED  
IN MILWAUKEE COUNTY CIRCUIT COURT THE HONORABLE  
TIMOTHY M. WITKOWIAK AND DENNIS R. CIMPL PRESIDING**

---

**REPLY BRIEF OF DEFENDANT-APPELLANT**

---

**J. DENNIS THORNTON**

**Attorney at Law**

**State Bar No. 1016122**

**230 West Wells Street**

**Suite 405**

**Milwaukee, Wisconsin 53203-1866**

**Telephone: (414) 257-3380**

**Facsimile: (414) 257-3390**

**Email: jdennisthornton@gmail.com**

**Attorney for Defendant-Appellant**

## TABLE OF CONTENTS

Argument .....	1
I. The Issues Presented by Mr. Mantie Present Questions of Law and Not of Fact.....	1
II. The Issues Presented by Mr. Mantie Present Significant Legal Issues Concerning the Interplay of the Various Statutes Implicated.....	3
Conclusion .....	5
Certificate of Compliance with § 809.19(8): Form and Length Requirements .....	7
Certificate of Compliance with § 809.19(12)(f): Electronic Brief .....	7

## TABLE OF AUTHORITIES CITED

### CASES CITED

<i>118th St. Kenosha, LLC v. DOT</i> , 2014 WI 125, 359 Wis.2d 30, 856 N.W.2d 486.....	3
<i>County of Columbia v. Bylewski</i> , 94 Wis.2d 153, 288 NW 2d 129 (1980).....	4
<i>State v. Avery</i> , 2013 WI 13, 345 Wis.2d 407, 826 N.W.2d 60.....	5
<i>State v. Ford</i> , 2007 WI 138, 306 Wis. 2d 1, 742 N.W.2d 61.....	5
<i>State v. Pounds</i> , 176 Wis.2d 315, 500 N.W.2d 373, (Ct. App. 1993).....	6
<i>State v. Woods</i> , 117 Wis.2d 701, 345 N.W.2d 457, (1984).....	3
<i>Terry v. Ohio</i> , 392 U.S. 1.....	2

## CONSTITUTIONAL PROVISIONS AND STATUTES CITED

### Wisconsin Statutes

346.18(1).....	5
346.46.....	3
346.46(2)(c).....	3, 4

**STATE OF WISCONSIN**

**COURT OF APPEALS**

**DISTRICT I**

**Appeal No. 2015AP002443-CR  
Circuit Court Case No. 2013CF004170**

---

**STATE OF WISCONSIN,  
PLAINTIFF-RESPONDENT,**

**v.**

**RANDOLPH ARTHUR MANTIE,  
DEFENDANT-APPELLANT.**

---

**ON NOTICE OF APPEAL TO REVIEW A JUDGMENT  
ENTERED IN MILWAUKEE COUNTY CIRCUIT COURT  
THE HONORABLE TIMOTHY M. WITKOWIAK AND  
DENNIS R. CIMPL PRESIDING**

---

**REPLY BRIEF OF DEFENDANT-APPELLANT**

---

**REPLY ARGUMENT**

**I. The Issues Presented by Mr. Mantie Present Questions of  
Law and Not of Fact.**

The State argues that this case is determined by Mr. Mantie's concession that the Circuit Court's factual determinations are not contrary to the great weight and clear preponderance of the evidence.

As previously noted, it is not the facts as determined by the court, but the legal significance attached to those facts which Mr. Mantie contests.

The State contends that the Court's ruling presents only factual findings:

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.

(R 61, p. 32, ll. 1-8; State's Brief, p. 6).

The Court's "assumption" is a belief, not a finding of fact. An assumption is merely a word for an "inchoate and unparticularized suspicion", *Terry v. Ohio*, 392 U.S. 1 at 27 which has been thoroughly and consistently rejected by *Terry*<sup>1</sup> and its progeny.

Additionally, the Court's conclusion that "...he's got to yield the right-of-way" is a legal conclusion, not a finding of fact.

---

<sup>1</sup> And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or "hunch," but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience." *Terry v. Ohio*, 392 U.S. at 27

It is these issues that Mr. Mantie asks this Court to address independently of the facts as found by the trial court. *State v. Woods*, 117 Wis.2d 701, 715, 345 N.W.2d 457, 465 (1984).

**II. The Issues Presented by Mr. Mantie Present Significant Legal Issues Concerning the Interplay of the Various Statutes Implicated.**

"Statutory interpretation and application present questions of law that we review de novo while benefiting from the analyses of the court of appeals and circuit court." *118th St. Kenosha, LLC v. DOT*, 2014 WI 125, ¶ 19, 359 Wis.2d 30, 856 N.W.2d 486 (citations and internal quotation marks omitted).

Mr. Mantie clearly argues that he had the right of way approaching Hopkins on Courtland based on the positioning of the stop sign and layout of the intersecting streets, as well as the statutory regulation of the right of way.

The Circuit Court's legal conclusion to the contrary renders §346.46(2)(c)<sup>2</sup> stats. a nullity.

---

<sup>2</sup> **346.46 Vehicles to stop at stop signs and school crossings.**

(2) Stops required by sub. (1) shall be made in the following manner:

(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.

The State brushes aside Mr. Mantie's arguments concerning right of way stating "...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." (State Brief, p. 10, fn. 11)

The State cites no authority for the proposition that laws are not in force at problematic intersections.

The factual underpinning of Mr. Mantie's position is that the stop sign in question is located at 37<sup>th</sup> Street and Courtland, at which he avers that he stopped. To proceed, he had to then cross 37<sup>th</sup> Street to reach Hopkins. There is no traffic control at 37<sup>th</sup> and Hopkins and vision to the left is absolutely impaired.

The only option available to Mr. Mantie was to edge forward to "...such point as will enable the operator to efficiently observe the traffic on the intersecting roadway". § 346.46(2)(c).

The Circuit Court's legal conclusion to the contrary renders §346.46(2)(c) void as a nullity and violates the "...basic rule of statutory construction" is "...that in construing statutes, effect is to be given, if possible, to each and every word, clause and sentence in a statute, and a construction that would result in any portion of a statute being superfluous should be avoided". *County of Columbia v. Bylewski*, 94 Wis.2d 153, 164, 288 N.W.2d 129, (1980).

The Circuit Court's legal conclusion that the officer's vehicle had the right of way approaching the intersection ignores the reality that to reach Hopkins while southbound on Courtland, Mr. Mantie had to cross 37<sup>th</sup> Street to reach an uncontrolled intersection.

Neither the Circuit Court nor the State's brief states any rationale as to why § 346.18(1)<sup>3</sup> stats., the general rule of right of way, should not apply in this instance.

Under these circumstances, the Circuit Court's decision is erroneous, having been based on an error of law. *State v. Ford*, 2007 WI 138, ¶ 28, 306 Wis. 2d 1, 742 N.W.2d 61; *State v. Avery*, 2013 WI 13, ¶ 23, 345 Wis.2d 407, 826 N.W.2d 60.

## CONCLUSION

For the reasons offered in this reply brief and in Mr. Mantie's principal brief, Mr. Mantie requests that the judgment of conviction be vacated with directions to suppress the evidence obtained as a result of the seizure of Mr. Mantie and that he be permitted to

---

<sup>3</sup> **346.18 General rules of right-of-way.**

(1) General rule at intersections. Except as otherwise expressly provided in this section or in s. 346.19, 346.20, 346.215, or 346.46 (1), when 2 vehicles approach or enter an intersection at approximately the same time, the operator of the vehicle on the left shall yield the right-of-way to the vehicle on the right. The operator of any vehicle driving at an unlawful speed forfeits any right-of-way which he or she would otherwise have under this subsection.



withdraw his guilty plea. *State v. Pounds*, 176 Wis.2d 315, 326, 500  
N.W.2d 373, 378, (Ct. App. 1993)

Dated: August 18, 2016.

---

**J. DENNIS THORNTON**  
**State Bar No. 1016122**  
**230 West Wells Street Suite 405**  
**Milwaukee, WI 53203-1866**  
**Telephone: (414) 257-3380**  
**Facsimile: (414) 257-3390**  
**Email: jdennisthornton@gmail.com**  
**Attorney for Defendant-Appellant**

## **CERTIFICATIONS**

I certify that this brief meets the form and length requirements of Rule 809.19 (8)(b) and (c) on that it is: proportional serif font, minimum printing resolution of 300 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The text is 13 point type and the length of the brief is 1318 words and 8 pages.

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.

---

**J. DENNIS THORNTON**  
**State Bar No. 1016122**  
**230 West Wells Street Suite 405**  
**Milwaukee, WI 53203-1866**  
**Telephone: (414) 257-3380**  
**Facsimile: (414) 257-3390**  
**Email: jdennisthornton@gmail.com**

**Attorney for Defendant-Appellant**

## **ELECTRONIC CERTIFICATION**

I further certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief pursuant to § 809.19(12).

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

---

**J. DENNIS THORNTON**

**Attorney at Law**

**State Bar No. 1016122**

**230 West Wells Street**

**Suite 405**

**Milwaukee, Wisconsin 53203-1866**

**Telephone: (414) 257-3380**

**Facsimile: (414) 257-3390**

**Email: [jdennisthornton@gmail.com](mailto:jdennisthornton@gmail.com)**

**Attorney for Defendant-Appellant**