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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT III

ONEIDA COUNTY,

Plaintiff-Respondent,

v.

Court of Appeals case no.:
2015AP002612

JOSEPH A. RAVEN,

Defendant-Appellant.

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

APPEAL FROM A GUILTY VERDICT IN THE
CIRCUIT COURT FOR ONEIDA COUNTY, BRANCH 1,
THE HONORABLE PATRICK F. O'MELIA PRESIDING

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ISSUES PRESENTED

1. Did the trial court err in denying Defendant's motion to suppress evidence derived from an unlawful stop?
 - a. The trial court answered no, and allowed evidence derived from the stop of the Defendant.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The Defendant requests neither oral argument nor publication.

STATEMENT OF THE CASE

Joseph Raven was cited with operating a motor vehicle while under the influence of an intoxicant (OWI), first offense, contrary to Wis. Stat. §346.63(1)(a), and operating a motor vehicle with a prohibited alcohol concentration (PAC), first offense, contrary to Wis. Stat. §346.63(1)(b).

Mr. Raven's motion to suppress evidence based on unlawful stop was heard before the Oneida County Court, the Honorable Patrick O'Melia presiding. R. 36. The circuit court denied the motion, R. 36, p. 90, and the OWI and PAC were subsequently tried to a jury. R. 33. This is an appeal of the circuit court's denial of the motion to suppress evidence based on an unlawful stop.

Joseph Raven asserts that the holding of the circuit court was erroneous. It was unlawful for the police officer to stop and detain Mr. Raven as, at the time of the stop, there was no probable cause that Mr. Raven had committed any traffic violations, and there was no reasonable suspicion that he was under the influence of an intoxicant, contrary to Wis. Stat. §346.63(1)(a), nor that he had disobeyed any law.

Whether reasonable suspicion or probable cause exists is a question of constitutional fact. A question of constitutional fact is a mixed question of law and fact. *State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. The court should apply a two-step standard of review to this type of question. *Id.* First, the court reviews the circuit court's findings of fact under the clearly erroneous standard, and second, it reviews de novo the application of those facts to constitutional principles. *Id.*

STATEMENT OF FACTS

On February 22, 2014, Joseph Raven, a concrete truck driver, was driving from McHenry, Illinois to Conover, Wisconsin, to go snowmobiling. R. 36, p. 5-6, p. 9. He had two passengers, and was hauling three snowmobiles, two in a trailer behind his truck, and one in the truck bed. R. 31-32. At Approximately 4:30 p.m., Mr. Raven passed through

Rhineland on Lincoln Street. R. 36, p. 9. It was dusk, and the roads were covered with approximately an inch and a half to two inches of snow. R. 36, p. 32. Officer Young was on patrol at this time, and came upon Mr. Raven's truck. R. 36, p. 41. Mr. Raven was driving very slowly, so officer Young decided to pass Mr. Raven on the inside lane. R. 36, p. 41. Officer Young did not notice anything unusual or erratic about Mr. Raven's driving. R. 36, p. 56. As the squad car came to the intersection of Lincoln Street and Shepard Street, Officer Young noticed that the traffic signal was yellow. R. 36, p. 41. He slowed his car to a stop. R. 36, p. 42. Mr. Raven also noticed that the traffic signal was yellow, and applied the brakes of his truck, which engaged in their anti-locking function. R. 36, p. 34. Mr. Raven rolled through the traffic signal while it was still yellow, and his truck came to a stop in the intersection. R. 36, p. 34-36. Mr. Raven realized that he could not stay in the intersection, and continued on. R. 36, p. 11-12. Officer Young conducted a traffic stop on Mr. Raven, R. 36, p. 58-61, and eventually arrested him for first offense OWI. At the suppression motion hearing, both Mr. Raven and his passenger testified that the traffic light was yellow when Mr. Raven's truck entered the intersection. R. 36, p. 11, 36, 70. Officer Young first testified that the light

was red, R. 36, p. 42, but upon further questioning admitted that he saw the light turn yellow, watched Mr. Raven's truck enter the intersection, and then saw the light was red. R. 36, p. 58-61. Because he was looking at Mr. Raven's truck, he could not be certain when the light turned red. R. 36, p. 60-61. The trial court specifically stated that it could not tell, based on the evidence presented, whether the light had turned red prior to Mr. Raven entering the intersection. R. 36, p. 89 (when [the light] turned [from yellow to red], I'm not sure). Nonetheless, the court held that there was a violation, either going into the intersection on red, going too fast for conditions, or stopping in an intersection. R. 36, p. 89 The court did not articulate which violation it held Mr. Raven had committed. R. 36, p. 89.

ARGUMENT

Officer Young Lacked Reasonable Suspicion That Mr. Raven Committed Any Traffic Offense

An officer must have reasonable suspicion that a person is committing a traffic violation before the officer may stop and detain that person. *State v. Betow*, 226 Wis. 2d 90, 94, 98, 593 N.W.2d 499 (Ct. App. 1999). Reasonable suspicion is "articulable suspicion that the person has committed or is about to commit [an offense]." *Id.* at 93. It must be particularized and objective. *Id.* at 94.

Wis. Stat. §346.37 governs what drivers must do in relation to traffic lights. Wis. Stat. §346.37(b)(1) explains that “traffic facing a yellow signal shall stop before entering the intersection unless so close to it that a stop may not be made in safety.” Wis. Stat. §346.37(c)(1) explains the procedures for red lights, essentially stating that traffic facing a red light must come to a stop prior to the intersection. Here, the prosecution was unable to establish that the light was red at the time Mr. Raven entered the intersection. Two witnesses testified that the light was yellow, and the third testified that when he stopped the light was yellow, and he then saw Mr. Raven’s truck enter the intersection, and after watching Mr. Raven’s truck enter the intersection, noted the light was red. Mr. Raven and Mr. Majewski, Raven’s passenger, both testified that Mr. Raven’s truck was near the intersection when the signal turned yellow, with Mr. Raven estimating that he was approximately 50 feet from the intersection when he started breaking for the yellow light. Mr. Raven tried to stop for the yellow light, however was so close that that he could not manage the stop safely. There was no reasonable suspicion that Mr. Raven violated Wis. Stat. §346.37.

Wis. Stats. §346.57(2) and (3) govern reasonable and prudent speed and conditions requiring reduced speed. They state:

REASONABLE AND PRUDENT LIMIT. No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing. The speed of a vehicle shall be so controlled as may be necessary to avoid colliding with any object, person, vehicle or other conveyance on or entering the highway in compliance with legal requirements and using due care.

CONDITIONS REQUIRING REDUCED SPEED. The operator of every vehicle shall, consistent with the requirements of sub. (2), drive at an appropriate reduced speed when approaching and crossing an intersection or railway grade crossing, when approaching and going around a curve, when approaching a hillcrest, when traveling upon any narrow or winding roadway, when passing school children, highway construction or maintenance workers, sanitation workers, or other pedestrians, and when special hazard exists with regard to other traffic or by reason of weather or highway conditions.

While these statutes require drivers to drive at speeds that are safe for conditions, including speeds below the speed limit, they do not impose an absolute liability upon drivers. "What reduced speed is appropriate depends upon the particular facts in light of the speed a person of ordinary intelligence and prudence would drive under the circumstances, so as not to subject himself or others or his or their property to an unreasonable risk of injury or damage." *Millonig v. Bakken*, 112 Wis. 2d 445, 334 N.W.2d

80 (1983), citing *McGee v. Kuchenbaker*, 32 Wis 2d 668, 671-72, 146 N.W.2d 387 (1966). In short, these statutes merely require that drivers engage in prudent conduct. *Id.*

Here, it is undisputed that Mr. Raven was driving below the speed limit, and in fact was going so slow that officer Young passed him on the inside lane. There was no reasonable suspicion that Mr. Raven was driving at a speed that caused an unreasonable risk of injury or damage, and therefore no reasonable suspicion that he was violating Wis. Stat. §346.57.

The final theory offered by the court as to what violation Mr. Raven may have committed was a violation of Wis. Stat §346.52, stopping in an intersection. Wis. Stat. §346.52(1)(a) states “No person may stop or leave standing any vehicle, whether attended or unattended and whether temporarily or otherwise, in ... an intersection.” However, this statute is modified by Wis. Stat. §346.50(1)(b), which states “the prohibitions against stopping or leaving a vehicle stand ...do not apply when... [t]he stopping of the vehicle is necessary to avoid conflict with other traffic or to comply with traffic regulations ...or traffic control sign or signal.

Here, the evidence establishes that Mr. Raven was driving below the speed limit, and attempted to stop his truck for a yellow light. Because of

the short distance and the weight of the load behind his vehicle, he was unable to bring his truck to a complete stop prior to the intersection. Rather, he moved his car immediately out of the intersection once it came to a complete stop. When read together, this is exactly the conduct that Wis. Stats. §346.37, §346.57, §346.52, and §346.50 require under the situation (“statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results.” *State ex rel. Kalal v. Circuit Court*, 2004 WI 58, 271 Wis.2d 633, 681 N.W.2d 110 (Wis., 2004).) There is not reasonable suspicion to believe that Mr. Raven violated any traffic statutes, and as such, the traffic stop conducted upon him was illegal.

CONCLUSION

The defendant-appellant respectfully prays that the matter be reversed and remanded for actions consistent with such reversal. Defendant states that the facts of this case demonstrate that there was no reasonable suspicion to stop his vehicle, and thus evidence derived from said stop should be suppressed.

Signed and dated this _18_ day of August, 2016.

Respectfully submitted,
MISHLOVE & STUCKERT, LLC

_____/s/_____
BY: Emily Bell
Attorney for the Defendant
State Bar No.: 1065784

CERTIFICATION

I certify that this brief conforms to the rules contained in Wis. Stats. §809.19(3)(b) and (c), for a brief produced with a proportional serif font. The length of this brief is 1,747 words.

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 Wis. Stats. §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.

Additionally, I certify that the text of the electronic copy of the brief is identical to the text of the paper copy of the brief.

Signed and dated this _18_ day of August 2016.

Respectfully submitted,
MISHLOVE & STUCKERT, LLC

_____/s/_____
BY: Emily Bell
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APPENDIX CERTIFICATION

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 Wis. Stat. §809.19 (2) (a) and that contains: (1) a table of contents; (2) relevant trial court record entries; (3) the findings or opinion of the trial court; and (4) portions of the record essential to an understanding of the issues raised, including oral or written rulings or decisions showing the trial court's reasoning regarding those issues.

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