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STATE OF WISCONSIN, COURT OF APPEALS, DISTRICT III

ONEIDA COUNTY,

Plaintiff-Respondent,

vs.

JOSEPH A RAVEN,

Defendant-Appellant.

Case No. 2015AP002612

ON APPEAL FROM THE CIRCUIT COURT FOR ONEIDA COUNTY, THE HONORABLE  
PATRICK F. O'MELIA PRESIDING.

**STATE'S RESPONSE BRIEF**

Respectfully Submitted,

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### *Cases*

*State v. Post*, 2007 WI 60, 301 Wis. 2d 1.

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*Terry v. Ohio*, 392 U.S. 1, 19, 88 S. Ct. 1868 (1968).

*State v. Chambers*, 55 Wis. 2d 289, 198 N.W.2d 377 (1972).

*State v. Jackson*, 147 Wis. 2d 824, 434 N.W.2d 386 (1989).

*State v. Anderson*, 155 Wis. 2d 77, 454 N.W.2d 763 (1990).

*State v. Waldner*, 206 Wis. 2d 51, 556 N.W.2d 681 (1996).

*United States v. Sharpe*, 470 U.S. 675, 105 S. Ct. 1568, (1985).

### *Statutes*

Wisconsin Statute § 968.24.

Wisconsin Statute § 346.57(3).

Wisconsin Statute § 346.37(1)(c).

Wisconsin Statute § 346.52(1)(a).

## **QUESTION PRESENTED**

Whether the circuit court properly exercised discretion in denying the Defendant's Motion to Suppress Evidence when it ruled there was sufficient reasonable suspicion to conduct an investigatory stop when the defendant's truck entered the snow-covered traffic-controlled intersection while the traffic signal was yellow, the defendant's truck remained in the intersection when the traffic signal turned red, and then proceeded through the intersection when the traffic signal was red.

## **STATEMENT OF FACTS**

At approximately 4:30 p.m. on February 22, 2014, Raven was driving a pickup truck with an attached trailer hauling two snowmobiles, [R 36: 31-32], through the City of Rhinelander on roads covered with approximately 1 ½ to 2 inches of unplowed snow. [R. 36: 32]. Raven approached a traffic-controlled intersection, observed a yellow traffic signal, and applied the truck's breaks. [R. 36: 34-35]. Unable to stop the truck in time, Raven's truck crossed the white line, into the intersection at which time the traffic signal turned red. [R. 36: 10]. With the truck almost at a stop, Raven accelerated and proceeded through the intersection. [R. 36: 10-12]. Subsequently Oneida County Sherriff's Department Deputy Tyler Young ("Deputy Young"), with approximately 18 years of experience, [R. 36: 39], stopped Raven's vehicle for proceeding through an intersection on a red light. [R. 36: 43].

Joseph A. Raven was convicted for a first offense of operating a motor vehicle while under the influence (OWI), [Exhibit A], after the trial court denied his motion to suppress evidence. [R. 35: 89-90]. Raven filed a Motion to Suppress based on an unlawful traffic stop, asserting "at the time of the stop, there was no probable cause that Mr. raven committed . . . any traffic violations, and there was no reasonable suspicion that he was under the influence of an intoxicant . . . nor that he had disobeyed any law." [Appellant's Brief at 1-2]. The circuit court

denied the motion to suppress stating the officer had reasonable suspicion to conduct a traffic stop. [R. 35: 89-90]. Further the circuit court justified the traffic stop by stating Raven committed a traffic violation of either driving too fast for conditions, proceeding through an intersection during a red signal, or stopping in an intersection. [R. 35: 89]. Raven now appeals. [R. 35].

### **STANDARD OF REVIEW**

On review of a motion to suppress evidence, the Court must engage in a two-step standard of review.

The question of whether a traffic stop is reasonable is a question of constitutional fact. A question of constitutional fact is a mixed question of law and fact to which we apply a two-step standard of review. We review the circuit court's findings of historical fact under the clearly erroneous standard, and we review independently the application of those facts to constitutional principles.

*State v. Post*, 2007 WI 60, ¶ 8, 301 Wis. 2d 1, 6–7, 733 N.W.2d 634, 636–37 (citations omitted).

Consistent with the fourth amendment of the federal constitution, Article I, sec. 11 of the Wisconsin Constitution guarantees citizens the right to be free from “unreasonable searches and seizures.” *State v. Rutzinski*, 2001 WI 22, ¶ 14, 241 Wis. 2d 729, 623 N.W.2d 516. And while investigatory stops are seizures within the meaning of the Fourth Amendment, the United States Supreme Court has held there are circumstances where law enforcement officers may conduct an investigatory stop even when there may not be probable cause to make an arrest. *Terry v. Ohio*, 392 U.S. 1, 19, 88 S. Ct. 1868, 1878–79, 20 L. Ed. 2d 889 (1968). And the Wisconsin Supreme Court has adopted the *terry* standard for investigative stops. *Post*, 2007 WI 60, ¶ 11 *citing State v. Chambers*, 55 Wis. 2d 289, 294, 198 N.W.2d 377 (1972).

The arresting officer must have reasonable suspicion to justify the stop. WIS. STAT. § 968.24. The constitutional reasonableness of an investigatory stop is a common sense question; whether, under the totality of the circumstances, a reasonable law enforcement officer,

in light of his or her training and experience, would have suspected that the defendant was committing, had committed, or was about to commit a crime. *State v. Jackson*, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989). The State must establish “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant,” a stop. *Jackson*, 147 Wis. 2d 824, 830. An “inchoate and unparticularized suspicion or ‘hunch’” will not suffice. *State v. Anderson*, 155 Wis. 2d 77, 88, 454 N.W.2d 763 (1990) *quoting Terry v. Ohio*, 392 U.S. at 1, 27.

## **ARGUMENT**

Under the totality of the circumstances, there was sufficient reasonable suspicion to justify the investigatory stop because Deputy Young observed Raven driving a truck hauling a trailer with two snowmobiles on snow-covered roads enter the intersection on a yellow traffic signal, Raven’s truck still in the intersection when the traffic signal turned red, and Raven proceeded through the intersection.

I. THE INVESTIGATORY STOP WAS JUSTIFIED BECAUSE RAVEN COMMITTED A TRAFFIC VIOLATION GIVING RISE TO REASONABLE SUSPICION.

Raven asserts that there was not sufficient reasonable suspicion for Deputy Young to conduct an investigatory stop because Raven did not commit a traffic violation. [Appellant’s Brief at 5].

While it may have been unclear which traffic violation Raven committed, the circuit court noted that the facts could support a violation of Driving too Fast for Conditions<sup>1</sup>, Failing to Stop at a Red Light<sup>2</sup>, Stopping in an Intersection<sup>3</sup>. Thus, the fact that Deputy Young knew enough to know Raven had violated at least one traffic regulation gave rise to reasonable

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<sup>1</sup> Section 346.57(3) of the Wisconsin Statutes.

<sup>2</sup> Section 346.37(1)(c) of the Wisconsin Statutes.

<sup>3</sup> Section 346.52(1)(a) of the Wisconsin Statutes.

suspicion sufficient to justify the investigatory stop. “The Fourth Amendment does not require a police officer who lacks the precise level of information necessary for probable cause to arrest to simply shrug his or her shoulders and thus possibly allow a crime to occur or a criminal to escape.” *State v. Waldner*, 206 Wis. 2d 51, 59, 556 N.W.2d 681, 685 (1996).

Further, it is not necessary for the circuit court to specify which traffic violation Raven may have committed. The fact that Raven committed a traffic offense of either Driving too Fast for Conditions, Failing to Stop at a Red Light, or Stopping in an Intersection is sufficient to give rise to reasonable suspicion justifying an investigatory stop. Deputy Young with approximately 18 years of experience, suspected Raven committed a traffic offense. And when determining the reasonableness of an investigatory stop, “the court should not indulge in unrealistic second-guessing.” *See United States v. Sharpe*, 470 U.S. 675, 686, 105 S. Ct. 1568, 1575, 84 L. Ed. 2d 605 (U.S.S.C. 1985).

The requisite level for reasonable suspicion occurs when the accumulated facts reach a sum of suspicion greater than each individual fact. *Waldner*, 206 Wis. 2d 51, 58. In this case, Deputy Young observed Raven’s truck enter the intersection while the traffic signal was yellow, Raven’s truck was in the intersection when the traffic signal turned red, Raven then proceeded through the intersection during a red traffic signal.

Therefore, in view of the totality of the circumstances, there were sufficient specific and articulable facts, taken together with rational inferences from those facts by Deputy Young with approximately 18 years of experience, to give rise to the requisite level of reasonable suspicion necessary for an investigatory stop.

II. A VEHICLE IN AN INTERSECTION DURING A RED TRAFFIC SIGNAL, WHEN THE ROADS ARE SNOW-COVERED IS UNSAFE DRIVING GIVING RISE TO REASONABLE SUSPICION JUSTIFYING THE INVESTIGATORY STOP.

Raven contends that because the officer did not observe any traffic violations or erratic driving, no specific facts gave rise to reasonable suspicion. [Appellant's Brief at 7]. However, driving does not need to be erratic, unsafe, or illegal to be part of the totality of the circumstances giving rise to reasonable suspicion justifying an investigatory stop. *Post*, 2007 WI 60, ¶26.

Raven was unable to stop his truck in time, Raven's truck entered the intersection while the traffic signal was yellow, Raven's truck was in the intersection when the traffic signal turned red. As a result, Raven both in the middle of a snow-covered traffic-controlled intersection during a red light and then proceeded through the intersection during a red traffic signal. "[P]olice officers are not required to rule out the possibility of innocent behavior before initiating a brief stop." *Waldner*, 206 Wis. 2d 51, 59. Therefore, even if Raven did not commit a traffic violation, the totality of the facts demonstrate Raven's lack of control of his vehicle ultimately creating unsafe circumstances for other drivers and certainly support a finding of reasonable suspicion.

**CONCLUSION**

For the reasons set forth above, the State respectfully request that the Court affirm the circuit court's decision to deny the defendant's Motion to Suppress Evidence.

Dated this 7th day of October, 2016.

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## **RESPONDENT'S BRIEF 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 section 809.19(2)(a) of the Wisconsin Statutes 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 one or more initials or other appropriate pseudonym or designation 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.

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## FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in sections 809.19(8)(b) and (c) of the Wisconsin Statutes for a brief produced with a monospaced serif font.

The length of this brief is five pages.

Dated this 7th day of October, 2016.

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## **RESPONDENT'S CERTIFICATION OF MAILING**

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 October 7, 2016. I further certify that the brief or appendix was correctly addressed and postage was pre-paid.

Dated this 7th day of October, 2016.

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**CERTIFICATE OF COMPLIANCE WITH RULE 809.19(13)**

I hereby certify that I have submitted an electronic copy of this appendix, which complies with the requirements of section 809.19(13) of the Wisconsin Statutes.

I further certify that this electronic appendix is identical in content to the printed form of the appendix filed as of this date. A copy of this certificate has been served with the paper copies of this appendix filed with the court and served on all opposing parties.

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