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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

Appeal No. 2016AP001427 CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

vs.

TERRENCE PERKINS,

Defendant-Appellant.

Appeal from the circuit court for Marathon County, Branch
V, case number 2014-CM-001589, the Honorable Michael Moran,
Circuit Court Judge, from the denial of the defendant's
motion to suppress.

BRIEF OF THE PLAINTIFF-RESPONDENT

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STATUTES CITED

§ 346.63(1)(a) Wis. Stats.	4
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STATEMENT OF THE ISSUE

WHETHER THE TRIAL COURT, WHEN IT DENIED PERKIN'S MOTION TO SUPPRESS AFTER PERKINS WAS STOPPED FOR VIOLATING A TRAFFIC OFFENSE, EXERCISED ITS DISCRETION IN ACCORDANCE WITH ACCEPTED LEGAL STANDARDS AND IN ACCORDANCE WITH THE FACTS OF THE CASE.

STATEMENT ON PUBLICATION AND ORAL ARGUMENT

The State does not request oral argument. Oral argument is not necessary because "the briefs fully present and meet the issues on appeal and fully develop the theories and legal authorities on each side so that oral argument would be of such marginal value that it does not justify the additional expenditure of court time or cost." Wis. Stat. § 809.22 (2) (b) (2013-14). Publication is not necessary.

STATEMENT OF THE FACTS

On March 12, 2015 the Honorable Michael Moran heard Perkin's motion to suppress. The motion was based upon the stop of Perkins by Officer Nathaniel Stetzer of the Wausau Police Department. At that hearing Officer Stetzer testified that he stopped Perkin's vehicle for an improper stop at a stop sign on August 10, 2014. Stetzer testified that he observed Perkins' vehicle drive past the stop sign and the crosswalk into the intersection and then he observed the vehicle back up into a legal position due to an oncoming vehicle. (R.Doc. 22 ps.3-4)

Officer Stetzer further testified that he viewed the squad video before the motion hearing and that while the video did not show the traffic infraction he could observe Perkins' vehicle backing up behind the stop area before re-entering the intersection. Officer Stetzer further testified that his squad video automatically goes back in time thirty seconds once initiated. (R.Doc. 22 ps.5-7) In effect there would have been slightly more than thirty seconds between the violation that Officer Stetzer observed and the initiation of the squad lights. This would include the vehicle turnaround time for Stetzer.

The trial court then allowed oral arguments by the parties. The State made its argument first and then it was

the turn of Perkins' attorney. Following those arguments the trial court commenced with its ruling. After laying out the legal standards, the trial court proceeded to find that the officer had reasonable suspicion to stop the Perkins' vehicle for proceeding beyond the required stop area before coming to a stop. Amidst the court's ruling Perkins' attorney interrupted the trial court and informed the court that his copy of the video was damaged and that otherwise they would have played it. The State, far from remaining silent, informed the trial court that both parties had admitted that the violation was not to be observed on the video. Also, the evidentiary portion of the hearing was complete and the trial court was actually rendering a decision which Perkins could clearly see was not going his way. (R.Doc. 22 ps.11-15)

Subsequently, Perkins obtained different counsel and filed a motion to re-consider that was heard on September 3, 2015 by the honorable Michael Moran. (R.Doc. 35 ps.1-7) There the trial court informed the parties that it had viewed the squad video that was supplied with the motion to re-consider "many, many Times." The trial court then inquired if the parties requested another evidentiary hearing. The State was opposed to such an idea as one had

already been held. Perkins thought one might be useful but when the trial court requested an offer of proof, Perkins' counsel admitted that an evidentiary hearing would not be necessary. (R.Doc. 58 ps.2-3)

The trial court then renewed its denial of Perkin's motion to suppress with language that implied that the squad video actually bolstered the State's case. (R.Doc. 58 ps.4-7)

On March 18, 2016 Perkins was convicted of §346.63(1)(a), OWI(2) and judgment was entered on one count of misdemeanor bail jumping.(R.Doc., 47. Ps.1-2)

ARGUMENT

THE TRIAL COURT, BASED UPON ALL THE EVIDENCE BEFORE IT, FOUND THAT PERKINS HAD VIOLATED THE LAW BY NOT MAKING A PROPER STOP AND THE TRIAL COURT DID NOT ABUSE ITS DISCRETION.

A. Standard of Review

The standard of review for a circuit court's evidentiary ruling is "highly deferential." Martindale v. Ripp, 2001 WI 113,§29, 246 Wis.2d 67, 629 N.W.2d 698. The question is "whether the trial court exercised its

discretion in accordance with accepted legal standards and in accordance with the facts of record." Id. (quoted source omitted). "We will not find erroneous exercise of discretion if there is a rational basis for a circuit court's decision." Id. "For a discretionary decision of this nature to be upheld, however, the basis should be set forth." Id.

B. Perkins' argument.

Perkins argues that the State did not prove that he committed a traffic violation and that it was an error for the trial court to deny his motion to suppress.

C. State's argument.

The State introduced the testimony of Officer Stetzer, a seven year veteran officer, who testified that while on duty he observed Perkins' vehicle proceed through a stop sign and pass over the cross walk before reversing his vehicle back into a legal position to avoid oncoming traffic. Stetzer further testified that there was a squad video of that night's activities but that it did not depict the actual violation. He testified that the video started with Perkins' vehicle apparently backing up. (R.Doc. 22 ps.3-10) The only evidence Perkins produced in the two

motion hearings was a copy of the squad video which the trial court viewed in camera.

Based upon the evidence before the trial court, Judge Moran then rendered a decision. The trial court found that "Certainly, at 2:30 in a morning, if a vehicle blows a stoplight and backs up, that is reasonable suspicion. I wish there was a video that showed this. The video doesn't show it, so the only evidence I have in front of me is the testimony of the officer." (R.Doc. 22 ps.12-15) Subsequent to the trial court's original ruling, the court had a chance to actually review the video and reaffirmed its decision. (R.Doc. 58 ps.4-7)

That in essence is this case. Perkins bases a large portion of his argument on matters of little import or on matters that were eventually cleared up.

First, the trial court viewed the video in camera. It does not matter if the video was originally damaged and re-supplied by the State, fixed or never actually damaged. It was viewed. Furthermore, there is nothing suspicious about the actual illegal act not being captured by the squad camera. The officer testified that he had to turn his vehicle around and catch up to Perkins before he initiated

his squad lights which activated the squad camera. (R.Doc. 22 ps.3-9) That obviously takes time.

Secondly, the trial court's initial skepticism about it taking thirty seconds to find a spot to turn around and then actually turn the squad car and catch up to Perkins, was dispelled by the trial court's viewing of the video. (R.Doc. 58 ps.4-7) The court found, after using a stopwatch, that it "makes perfect sense that the video, in comparison to when the lights were turned on, would not have caught anything prior to what we see on the video." (R.Doc. 58 p.5)

Thirdly, the trial court did not find that Officer Stetzer lied. The trial court did register some level of confusion as to what Stetzer actually meant when he said that Perkins was halfway into the intersection and that it could have been better fleshed out via further testimony. But quite frankly the trial court did not hold that Stetzer's testimony about being in the middle of the intersection equated to being in the middle of the street as Perkins would have the Court believe. Also, the trial court found that it did not really matter if Perkins was a little over the crosswalk or a lot, it was still a traffic violation. (R.Doc 58 ps.5-6)

Lastly, the trial court did rationally set forth its reasoning for its decision. According to the trial court, the evidence before it consisted of Officer Stetzer's testimony that he observed Perkins drive his vehicle past the legally required stop area next to a stop sign at 2:30 a.m. in the morning when vehicles would have their headlights on and that there was a squad video which actually bolstered Stetzer's testimony. There was no other evidence before the trial court that would have countered the trial court's ruling on that evidence. There was mention of measurements and figures included in Perkins' motion to re-consider but that was not in evidence. (R.Doc. 35 ps.1-7) There was no testimony, no foundation laid, no stipulation by the parties and it was not marked as an exhibit or accepted by the trial court as being evidence or "in evidence".

CONCLUSION

Based on the above analysis, this court should uphold the trial court's denial of Perkins' motion to suppress.

Dated this 29 day of December, 2016, at Wausau, WI.

Respectfully submitted:

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CERTIFICATION OF FORM AND LENGTH

I certify that this brief conforms to the rules contained in sec. 809.19(8)(b) and (c) for a brief produced using the following font:

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this brief is
11 pages.

Dated: December 29, 2016.

Signed,

Attorney Sidney A. Brubacher

CERTIFICATION OF MAILING

I certify that on this 29th day of December, 2016, pursuant to sec. 809.80(3)(b) and (4), the original and nine copies of the Brief of Plaintiff-Respondent were

served upon the Wisconsin Court of Appeals via United States first-class mail in properly addressed, postage paid Envelopes. Three copies of the same were served upon Counsel of record for Defendant-Appellant via United States first-class mail in properly addressed, postage paid Envelopes.

Signed,

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CERTIFICATION OF ELECTRONIC BRIEF

I certify that on this 29th day of December, 2016, I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of sec. 809.19(12) of the Wisconsin Statutes. I further certify that this electronic brief is identical in content and in 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 filled with the court and served on all opposing parties.

Signed,

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