

FILED
03-23-2022
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2021AP002086

STATE OF WISCONSIN

Plaintiff-Respondent

v.

TRAVIS R. BRALY

Defendant-Appellant

ON APPEAL OF A JUDGMENT OF CONVICTION AND ORDER DENYING
MOTION TO SUPPRESS, ENTERED IN LA CROSSE COUNTY CIRCUIT
COURT CASE NO. 2020CT275, BRANCH 4, THE HONORABLE SCOTT L.
HORNE PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

Respectfully submitted,
GIDEON WILLIAM O. WERTHEIMER
Assistant District Attorney, La Crosse County
State Bar No. 1113224
333 Vine Street, Rm 1100
La Crosse, WI 54601
Attorney for Plaintiff-Respondent

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	3
Cases.....	3
Statutes.....	3
Constitutional Provisions.....	3
ISSUE PRESENTED.....	4
STATEMENT ON ORAL ARGUMENT AND PUBLICATION.....	4
STATEMENT OF THE CASE.....	4
STATEMENT OF FACTS.....	5
STANDARD OF REVIEW.....	6
ARGUMENT.....	6
I. The circuit court properly denied Mr. Braly’s motion to suppress.....	6
A. Legal Principals.....	6
B. The circuit court’s factual findings are not clearly erroneous.....	7
C. The circuit court properly applied the facts to the law.....	9
CONCLUSION.....	9

TABLE OF AUTHORITIES

Cases

	Page
<i>State v. Houghton</i> , 2015 WI 79, 364 Wis. 2d 234, 868 N.W.2d 143.....	6-7
<i>State v. Popke</i> , 2009 WI 37, 317 Wis. 2d 118, 765 N.W.2d.....	6-7,9
<i>State v. Reed</i> , 2018 WI 109, 384 Wis. 2d 469, 920 N.W. 56.....	6
<i>State v. Scull</i> , 2015 WI 22, 361 Wis. 2d 288, 862 N.W.2d 562.....	6
<i>Terry v. Ohio</i> , 392 U.S. 1, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).....	7

Statutes

	Page
Wis. Stat. §346.18.....	5,7,9
Wis. Stat. §346.46.....	4,7,9
Wis. Stat, §346.63.....	5
Wis. Stat, §752.31.....	4
Wis. Stat. §809.22.....	4
Wis. Stat. §809.23.....	4

Constitutional Provisions

	Page
U.S. Constitution Fourth Amendment.....	6
Wisconsin Constitution Article I, §11.....	6

ISSUE PRESENTED

Did the circuit court erroneously deny Defendant-Appellant's Travis R. Braly's motion to suppress due to lack of reasonable suspicion for a traffic stop for failure to stop at a stop sign?

The circuit court said that Officer Donley had reasonable suspicion to stop Mr. Braly for failure to stop at a stop sign.

This Court should affirm.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

This opinion should not be published as this appeal shall be decided by one judge under Wis. Stat. §752.31(2). Wis. Stat. §809.23(1)(b)(4). Oral argument is not necessary as the briefs should fully present the issues on appeal pursuant to Wis. Stats. §§ 809.22 and 809.23.

STATEMENT OF THE CASE

On December 9, 2020, Officer Donley of the West Salem Police Department observed Mr. Braly's vehicle fail to stop at a stop sign. (R. 38 at 6:19-23) Officer Donley initiated a traffic stop and eventually arrested Mr. Braly for Operating while under the Influence and Operating with a Prohibited Alcohol Concentration as a result of that stop.

Mr. Braly was eventually charged with those two charges as a third offense.

Mr. Braly filed a motion to suppress, alleging that Officer Donley did not have reasonable suspicion to conduct the traffic stop. (R. 14).

On April 7, 2021 in La Crosse County Circuit Court, Branch IV Hon. Scott L. Horne, presiding, denied Mr. Braly's motion to suppress evidence obtained after Officer Donley of the West Salem Police Department performed a traffic stop of Mr. Braly's vehicle following a violation of Wis. Stat. §346.46(2)(c). (R. 37) The circuit court concluded that Officer Donley had reasonable suspicion that Mr. Braly failed to comply with the statute and any evidence gathered by the subsequent traffic stop need not be suppressed. (R. 37)

After the court's decision, Mr. Braly pled no contest to Operating while under the Influence-3rd Offense, in violation of Wis. Stat. §346.63(1)(a). The Operating with Prohibited Alcohol Concentration charge was dismissed along with a traffic citation for Failure to Yield the Right of Way in violation of Wis. Stat. §346.18(3). (R. 28)

Mr. Braly proceeded to appeal the circuit court's ruling to deny his motion to suppress.

STATEMENT OF FACTS

On December 9, 2020, Officer Jacob Donley observed a vehicle approaching a stop sign at an intersection with Highway M in the Village of West Salem, WI.

Officer Donley observed the vehicle failing to slow down as it entered approached the stop sign. Officer Donley observed the vehicle enter the intersection, causing Officer Donley to brake and jerk his vehicle away from Mr. Braly's vehicle as Mr. Braly's vehicle entered the intersection. (R. 38 at 7:1-3)

Officer Donley observed that stop sign does not have a stop line nor a cross walk. The intersection is an open area with little visual obstruction when looking onto Highway M. (R. 38 at 7:11)

Immediately after observing what he believed to be a traffic infraction, Officer Donley initiated a traffic stop for failure to yield from a stop sign. (Front Squad Video 23:27:33)

As a result of the traffic stop, Officer Donley eventually found the driver of the vehicle, Travis R. Braly to be impaired following further investigation. Officer Donley ultimately placed Mr. Braly under arrest for Operating while under the Influence.

Mr. Braly moved to suppress the evidence gathered following Officer Donley's stop of the vehicle, stating the stop was unsupported by reasonable suspicion. Mr. Braly alleged that the Officer Donley did not have reasonable suspicion for Failure to Yield at an Intersection.

After considering the testimony of Officer Donley and watching the squad video of the incident, the circuit court denied Mr. Braly's motion in an oral ruling.

Mr. Braly pled no contest to Operating While under the Influence-Third Offense, and the court imposed a sentence consisting of 125 days jail, a fine, 27 month license revocation, a 27 month ignition interlock device, and a requirement that Mr. Braly complete an alcohol assessment and driver safety plan. (R. 28)

Mr. Braly now appeals the circuit court's denial of the motion to suppress, advancing the argument that the circuit court's factual findings were clearly erroneous and Officer Donley did not have reasonable suspicion to initiate the traffic stop.

STANDARD OF REVIEW

Whether a traffic stop was reasonable is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d. The reviewing court applies a two-step process for when determining a question of constitutional fact because it is a mixed question of law and fact. *State v. Scull*, 2015 WI 22, ¶16, 361 Wis. 2d 288, 862 N.W.2d 562. The first step is to review the circuit court's findings of fact and uphold them unless clearly erroneous. *Id.* The second step is to apply constitutional principles to those facts de novo. *Id.*

ARGUMENT

I. The circuit court properly denied Mr. Braly's motion to suppress

A. Legal Principals

Both the Fourth Amendment to the United States Constitution and Article I, §11 of the Wisconsin Constitution prohibit unreasonable searches and seizures. *State v. Reed*, 2018 WI 109, ¶52, 384 Wis. 2d 469, 920 N.W. 56. Temporary detention of individuals during an automobile stop constitutes a seizure under the Fourth Amendment. *Popke*, 317 Wis. 2d 118, ¶11, 765 N.W.2d 569.

A traffic stop is reasonable if it is supported by reasonable suspicion that a traffic violation has been or will be committed. *State v. Houghton*, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143. The standard requires the appellate court

to determine whether the facts of a case, together with reasonable inferences would warrant a reasonable officer in light of his training and experience to suspect that a traffic violation has been committed. *Terry v. Ohio*, 392 U.S. 1, 21, 88 S.Ct. 1868, 20 L.Ed.2d 889 (1968).

Probable cause is not needed to conduct traffic stops. *Popke*, ¶ 23, 317 Wis. 2d at 132, 765 N.W.2d at 576.

This incident concerns a failure to yield at a stop sign. The failure to yield statute also incorporates the failure to stop at a stop sign statute which is the primary contested issue in this case.

The failure to yield statute under Wis. Stat. §346.18(3) states the following:

The operator of a vehicle shall stop as required by §346.46 (2)(a), (b) or (c) before entering a through highway, and shall yield the right-of-way to other vehicle which have entered or are approaching the intersection upon the through highway.

There is no dispute that the stop sign at issue here had no stop line and no crosswalk, and therefore Wis. Stat. §346.46(2)(c) applies, and it states the following:

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 circuit court also cited to Wis. Stat. §346.46(1) which is very similar to the failure to yield statute and states:

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.

(R. 37 at 4:11-15)

B. The circuit court's factual findings are not clearly erroneous

The circuit court found Officer Donley's testimony to be credible after its own review of the squad video. (R. 37 at 6:7-8) Officer Donley testified that the vehicle did not stop prior to entering the intersection. (R. 38 at 6:19-20) Under

Wis. Stat. §346.46(2)(c), a vehicle must stop “before entering the intersection.” The court’s observations on the video are consistent with Officer Donley’s testimony as Officer Donley clearly swerves his vehicle to the left when Mr. Braly would be entering the intersection.

Mr. Braly’s brief cites to an incorrect time stamp for Officer Donley’s movement to the left in its contention about how close Mr. Braly got to Officer Donley. (Braly’s Br. at 11) Mr. Braly seems to confuse the two different videos that showed the incident. Officer Donley is speaking about the video from inside his squad vehicle which looks out the right side. (R. 38 at 8:13-14). On that video at 23:27:14, the court could clearly see Mr. Braly’s vehicle and observed how close it was to hitting Officer Donley. That time stamp also corresponds to the time stamp from the front squad video where Officer Donley jerks his vehicle to the right.

The court also recognizes the Officer Donley’s immediate reaction was to pull Mr. Braly over, strengthening his credibility. (R. 37 at 5:18-22) Finally, the court observes Mr. Braly speed when he is approaching the intersection, observing that it would be difficult for Mr. Braly to slow down prior to entering the intersection. (R. 37 at 5:9-12) That observation is not clearly erroneous.

Mr. Braly’s brief also contents that there are inconsistencies in Officer Donley’s testimony. He first cites that the vehicle behind Officer did not swerve but the vehicle behind Officer Donley is not relevant to whether Mr. Braly yielded to Officer Donley. (Braly’s Br. at 12) Also, the vehicle behind Officer Donley does not pass the officer for approximately 15 seconds while Officer Donley is waiting for Mr. Braly on the side of the road, indicating that the other vehicle was not immediately behind Officer Donley and probably would have more time to react unlike Officer Donley. (Front Squad Video 23:27:14-23:27:30)

C. The circuit court properly applied the facts to the law

Reasonable suspicion is not a high bar. Here, Officer Donley was not relying on hunches that Mr. Braly failure to stop at the stop sign and failure to

yield prior to the intersection. Officer Donley had particularized observations, taken together with rational inferences, from those that the defendant failed to stop prior to the intersection. First, he stated he observed it, which the court found credible. (R. 37 at 6:7-8) Second, he braked and swerved his vehicle to the left, which can be observed on the video. (Front Squad Video 23:27:13-23:27:15) Third, the squad video shows Mr. Braly moving quickly towards the intersection. (Front squad Video 23:27:11-23:27:14) Those facts, along with rational inferences from those facts, are enough reasonable suspicion that Mr. Braly did not stop *prior* to entering the intersection in violation of Wis. Stat. §346.46(2)(c) and Mr. Braly did not yield to Officer Donley while approaching the intersection in violation of Wis. Stats. §§346.18(3) and 346.46(1).

For reasonable suspicion, the court does not have to find whether a violation *actually* occurred for a traffic stop to be valid. See *State v. Popke*, 2009 WI 37, ¶26, 317 Wis. 2d 118, 765 N.W.2d. Therefore, unlike what is stated in Mr. Braly's brief, whether something happened definitively is not needed for a reasonable suspicion analysis. (Braly's Br. at 12)

Officer Donley had reasonable suspicion that the defendant failed to yield the right of way by failing to stop at a stop sign prior to entering the intersection. As Officer Donley had reasonable suspicion to conduct the traffic stop, the evidence gathered from the traffic stop is valid.

CONCLUSION

For the reasons set forth above, the State requests that this Court affirm the circuit court's ruling denying Mr. Braly's motion to suppress evident as well as his judgment of conviction.

Dated this 23rd day of March, 2022

Respectfully submitted

Electronically signed by
Gideon Wertheimer

Gideon Wertheimer
Assistant District Attorney
State Bar #1113224

Attorney for Plaintiff-Respondent

La Crosse County District Attorney's Office
333 Vine Street, Room 1100
La Crosse, WI 54601
(608) 785-9604
gideon.wertheimer@da.wi.gov

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in §809.19 (8) (b), (bm), and (c) for a brief. The length of the brief is 2577 words

Signed: Electronically signed by Gideon Wertheimer

Gideon Wertheimer
Assistant District Attorney

APPENDIX CERTIFICATION**CERTIFICATION BY ATTORNEY**

I hereby certify that filed with this brief is an appendix that complies with s. 809.19 (2) (a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23 (3) (a) or (b); and (4) 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.

Signed: Electronically signed by Gideon Wertheimer

Gideon Wertheimer
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH 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 s. 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.

Signed: Electronically Signed by Gideon Wertheimer

Gideon Wertheimer
Assistant District Attorney