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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

BRIEF AND APPENDIX OF DEFENDANT-APPELLANT

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ISSUE PRESENTED

Did the Circuit Court Properly Deny Mr. Mantie's Motion To Suppress Evidence?

The trial court found that the arresting officer had reasonable suspicion to stop Mr. Mantie's vehicle and denied his suppression motion.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The opportunity for oral argument is requested because of the novelty of the issues presented. Publication is requested. The case

will enunciate a new rule of law or modify, and clarify an existing rule. § 809.23(1)(a)1 stats. Further, the issues will present an established rule of law in a factual situation significantly different from that in published opinions. § 809.23(1)(a)2 stats.

STATEMENT OF THE CASE

In Milwaukee County case number 2013CF004170, Mr. Mantie was charged by criminal complaint (R 2; App. 101-02) in count one of operating a motor vehicle while under the influence of an intoxicant, contrary to § 346.63(1)(a) and 346.65(2)(am)6 stats., alleged to have occurred on September 9, 2013.

Mr. Mantie was bound over following preliminary examination on September 20, 2013.

On that date, the state filed an Information (R 4; App. 103) alleging the same offense as alleged in the criminal complaint. To that charge, Mr. Mantie entered a plea of not guilty.

On January 13, 2014, Mr. Mantie's motion to suppress physical evidence was denied following hearing.

On April 17, 2014, Mr. Mantie's motion for reconsideration of the suppression motion was also denied.

On May 8, 2014, Mr. Mantie appeared with new counsel and entered a guilty plea.

The Court, the Honorable Timothy M. Witkowiak, Circuit Judge presiding imposed a sentence of seven (7) years in the Wisconsin State Prison System with a term of initial confinement of three years six months and a term of extended supervision of three years six months.

Notice of Intent to Pursue Postconviction Relief was filed on May 8, 2014.

The last transcript was received on October 6, 2014.

By order dated December 2, 2015, this Court previously enlarged the time within which to file a postconviction motion or notice of appeal until January 9, 2015, by order dated January 8, 2015, until February 13, 2015 and by order dated February 13, 2015 until March 2, 2015.

Defendant's postconviction motions were filed on February 27, 2015. Mr. Mantie moved for a new suppression hearing and to supplement the record with the exhibits from the original hearing.

The Circuit Court set a briefing schedule with the state's brief due on or before April 7, 2015 and the defense reply due on or before April 21, 2015, which left only six (6) days for the Court's decision.

By order dated April 6, 2015, this Court enlarged the time for the Circuit Court to decide the postconviction motion until June 22, 2015.

By order dated April 28, 2015, the Circuit Court granted Mr. Mantie's postconviction request for a new suppression hearing. Due to the Circuit Court's calendar that motion hearing could not be scheduled until June 26, 2015.

By order dated May 13, 2015, this Court enlarged the time for the Circuit Court to decide the postconviction motion until August 25, 2015, and further enlarged the time for decision until November 25, 2015 by order dated July 2, 2015.

On June 26, 2015, the parties appeared before the Circuit Court for determination of the postconviction motion. However, due to court congestion, the court was unable to hear the motion and adjourned the motion until September 25, 2015. That motion was further adjourned until November 9, 2015. Following hearing, the suppression motion was denied by order dated November 17, 2015. The motion to supplement the record was granted by order dated November 17, 2015.

Notice of Appeal was filed on November 25, 2015.

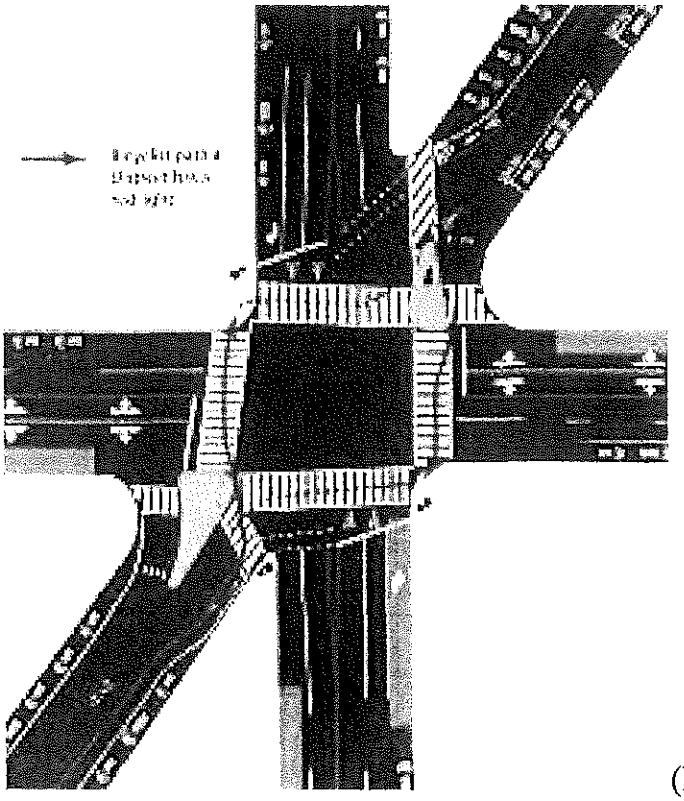
Notification of Filing of Circuit Court Record was dated February 16, 2016.

By order dated March 21, 2016, this Court enlarged the time to file appellant's brief and appendix until April 29, 2016.

STATEMENT OF FACTS

The facts produced at the various hearings indicate that on September 9, 2013, Mr. Mantie was operating a vehicle eastbound on North Courtland Avenue (Courtland) approaching the intersection with North Hopkins Street (Hopkins) and North 37th Street (37th).

There is a stop sign controlling eastbound Courtland approaching 37th. A vehicle must stop here, cross 37th, then intersect Hopkins on which there is no traffic control:



(Illustrative only)

At the initial suppression hearing, City of Milwaukee Police Officer Harold Almas (Almas) testified that he was on duty in a marked squad travelling southbound on Hopkins when he stated that he observed Mr. Mantie "...actually drove past the stop sign. He did not come to a complete stop at the stop sign, he kind of blew past it, and realized that he probably made a mistake. And came into North Hopkins." (R 53, pp. 9-10)

At the subsequent suppression hearing, Almas testified

> Did you see the vehicle that you stopped not stop at that stop sign?
>
> Sir, I believe he did not stop at that --
>
> THE COURT: Did you see it?
>
> No, I did not.

(R 61, p. 18, ll. 9-13)

Almas also testified that he

> observed the vehicle traveling at a good rate of speed; and when he hit Hopkins, I saw his whole front end dip down, which -- leading me to believe that he had, you know, ran a stop sign.

(R 61, p. 7, ll. 1-4)

Almas further observed that

To get from the stop sign on Courtland to Hopkins, the vehicle has to cross 37th Street; doesn't it?

Sir, that's right onto Hopkins.

Sorry?

THE COURT: Does it have to cross 37th Street if 37th Street was extended; yes or no?

Yes.

(R 61, p. 19, ll. 10-17)

In contrast, Mr. Mantie testified that he lived

approximately one block away from that intersection. I come out of my alley, turned south on 38th Street, went to Courtland, and hung a left-hand turn. I proceeded down Courtland east. I stopped at the stop sign; and as I was approaching Hopkins, I noticed the officer. He looked like he was distracted; and he looked up; and he had an astonished look on his face, like he was looking right through me; and he started slowing down. So I kind of stopped quicker than I would have stopped.

(R 61, p. 23, ll. 11-20)

The case then devolved into a discussion over which vehicle, i.e., Mr. Mantie's or the officer's had the right of way.

The Court asked

> Who had the right-of-way, Mr. Potter? The officer coming southbound on Hopkins or the defendant going eastbound on Courtland?
>
> MR. POTTER: The officer.
>
> MR. THORNTON: And we believe the defendant did.

(R 61, p. 19, ll. 7-12)

The Court made factual observations:

> it's a five-cornered intersection, and you've got to stop at that stop sign on Courtland until everything is gone who does not have a stop sign, and Hopkins does not have it, and that means that he's got to proceed with caution into that intersection.

(R 61, p. 28, ll. 12-17; App. 115);

> There is no question in my mind that when a car is going eastbound on Courtland, it must stop for the stop sign, which is somewhere between 20 to 25 feet of the intersection; and then he's got to proceed with caution; and when he gets to the actual -- where he's about to cross over -- the westerly lane of Hopkins, if it was extended -- he's got to stop again to look

around that building to see whether or not a car is coming; and if a car is coming, he's got to stop again.

(R 61, p. 31, ll. 16-25; App. 118)

The Court concluded that

based upon what I saw on the video, based upon what I saw there -- the officer had reasonable suspicion that Mr. Mantie either blew the stop sign and was speeding through it -- he doesn't know for sure -- or was about to proceed into that intersection, failing to yield the right-of-way to the officer. Either one. He had suspicion -- reasonable suspicion -- then to stop him.

(R 61, p. 29, ll. 7-14; App. 116)

Further facts will be stated as necessary.

ISSUE PRESENTED

I. The Circuit Court Erroneously Denied Mr. Mantie's Motion To Suppress Evidence.

A. Standard of Review

The Fourth Amendment to the Constitution of the United States provides that "[t]he right of people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated." The Wisconsin Constitution has a provision under Article 1, Section 11 "which is identical in all

important respects." *State v. Guy*, 172 Wis.2d 86, 93, 492 N.W.2d 311, 314 (1992).

Whether evidence should be suppressed because it was obtained in violation of the Fourth Amendment is a question of constitutional fact that is reviewed under a two-step standard of review. *State v. Phillips*, 218 Wis.2d 180, 189-90, 577 N.W.2d 794, 798-799 (1998). First, the trial court's findings of evidentiary or historical fact will be accepted and will not be upset unless they are contrary to the great weight and clear preponderance of the evidence. The reviewing court independently applies constitutional principles to the facts as found by the trial court. *State v. Woods*, 117 Wis.2d 701, 715, 345 N.W.2d 457, 465 (1984).

B. The Circuit Court's Factual Determinations Are Not Contrary To the Great Weight and Clear Preponderance of the Evidence.

Mr. Mantie acknowledges that the Circuit Court's findings of evidentiary or historical facts will be sustained unless "clearly erroneous", described more particularly as being contrary to the great weight and clear preponderance of the evidence. § 805.17(2)[1];

[1] **805.17 Trial to the court.**

(2) Effect. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the ultimate facts and state separately its conclusions of law thereon. The court shall either file its findings and conclusions prior to or concurrent with rendering judgment, state them orally on the record following the close of evidence or set them forth in an opinion or memorandum of decision

State v. Bangert, 131 Wis.2d 246, 283-284, 389 N.W.2d 12, 30 (1986). Even if the evidence would permit a contrary finding, findings of fact will be affirmed on appeal as long as the evidence would permit a reasonable person to make the finding. *Sellers v. Sellers*, 201 Wis.2d 578, 586, 549 N.W.2d 481, 484 (Ct.App.,1996) citing *Noll v. Dimiceli's, Inc.,* 115 Wis.2d 641, 643, 340 N.W.2d 575, 577 (Ct.App.1983).

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

C. The Circuit Court's Legal Conclusion That the Officer's Observations Rose to the Level of Reasonable Suspicion to Believe that a Traffic Violation Had Occurred Is Erroneous.

The court concluded that as Mr. Mantie was eastbound on Courtland and having crossed 37th, he was obligated to yield the right of way to a southbound vehicle on Hopkins.

The general rule of right of way states:

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filed by the court. In granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses. The findings of a referee may be adopted in whole or part as the findings of the court. If an opinion or memorandum of decision is filed, it will be sufficient if the findings of ultimate fact and conclusions of law appear therein. If the court directs a party to submit proposed findings and conclusions, the party shall serve the proposed findings and conclusions on all other parties not later than the time of submission to the court. The findings and conclusions or memorandum of decision shall be made as soon as practicable and in no event more than 60 days after the cause has been submitted in final form.

"(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." § 346.18 stats.

While the duty to stop at a stop sign is absolute, *Seitz v. Seitz*, 35 Wis.2d 282, 291, 151 N.W.2d 86, (1967), there is some variability in the obligation based on the realities of intersection sight distances:

"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." §346.46(2)(c) stats.

As Mr. Mantie drove eastbound on Courtland there was "...neither a clearly marked stop line nor a marked or unmarked crosswalk at the intersection" and he could not "...efficiently

observe traffic on the intersecting roadway from the stop made at the stop line":

(R 28).

The Circuit Court's legal conclusion renders §346.46(2)(c) stats. a nullity. A "...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).

"When multiple statutes are contained in the same chapter and assist in implementing the chapter's goals and policy, the statutes should be read *in pari materia* and harmonized if possible." *In re Angel Lace M.,* 184 Wis. 2d 492, 512, 516 N.W.2d 678 (1994), quoting *In re R.W.S.,* 162 Wis. 2d 862, 871, 471 N.W.2d 16 (1991).

A circuit court has erroneously exercised its discretion if it bases its decision on an error of law or an error of fact. *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.

Only under the circuit court's error of law do the officer's observations rise to the level of reasonable suspicion that a traffic violation had occurred.

While mindful that, *State v. Houghton,* 2015 WI 79, ¶30, ___ Wis. 2d ___, 868 N.W.2d 143, adopting *Heien v. North Carolina,* 135 S. Ct. 530 (2014) holds that "...an objectively reasonable mistake

of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop", *Houghton,* ¶52, *Houghton* does not excuse an officer's complete lack of knowledge about the law, but rather a reasonable mistake concerning it.

Houghton considered what constitutes an objectively reasonable mistake of law:

> A court tasked with deciding whether an officer's mistake of law can support a seizure thus faces a straightforward question of statutory construction. If the statute is genuinely ambiguous, such that overturning the officer's judgment requires hard interpretive work, then the officer has made a reasonable mistake. But if not, not. As the Solicitor General made the point at oral argument, the statute must pose a "really difficult" or "very hard question of statutory interpretation." *Houghton,* 2015 WI 79, ¶68 (citing *Heien,* 135 S. Ct. at 541 (Kagan, J., concurring)).

The officer's factual mistake about the location of the stop sign coupled with his misinterpretation of the law on right of way is not objectively reasonable.

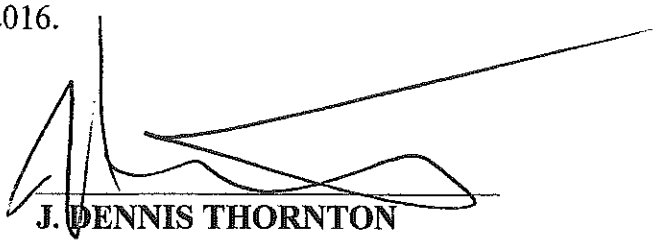
In this instance, the statutes on right of way and required stops have been frequently interpreted. No "...reasonable judge could agree with the officer's view" *Houghton,* ¶52 without erroneously interpreting the statutes involved.

CONCLUSION

The Court erroneously concluded that Mr. Mantie was obligated to yield to the officer's vehicle. In absence of that obligation, the officer's observations did not rise to the level of reasonable suspicion to believe that a traffic violation had occurred.

The judgment of conviction should be vacated with directions to suppress the evidence obtained as a result of the seizure of Mr. Mantie and that he be permitted to withdraw his guilty plea. *State v. Pounds,* 176 Wis.2d 315, 326, 500 N.W.2d 373, 378, (Ct. App. 1993)

Dated: April 26, 2016.



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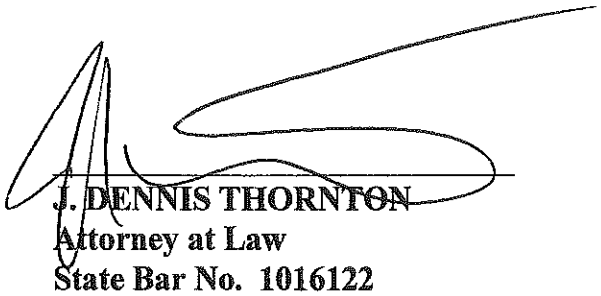
CERTIFICATIONS

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 18 pages and 2,418 words.

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.



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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).

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