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DISTRICT III

July 28, 2026

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You are hereby notified that the Court has entered the following opinion and order:

2024AP751-CR

State of Wisconsin v. Peter C. Yao (L. C. No. 2020CT691)

Before Hruz, J.¹

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Peter C. Yao appeals a judgment convicting him of operating a motor vehicle with a restricted controlled substance, as a third offense, contrary to WIS. STAT. § 346.63(1)(am). Yao argues that the circuit court erred by denying his motion to suppress evidence because law enforcement lacked the reasonable suspicion required to conduct the investigative traffic stop that ultimately led to Yao's arrest and conviction. Based upon our review of the briefs and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm the judgment.

The State filed a criminal complaint charging Yao with operating a motor vehicle while under the influence of an intoxicant (OWI) and operating a motor vehicle with a restricted controlled substance, both as third offenses. Yao pled not guilty to the charges and moved to suppress the evidence obtained during the arrest, including the results of the blood test. The following evidence was introduced at the suppression hearing.

Appleton Police Department Officer Phillip Akins testified that on October 15, 2019, at approximately 12:09 a.m., he observed a blue sedan, later determined to be operated by Yao, exiting the parking lot of a tavern and heading northbound on Appleton Street. Akins began to follow the vehicle. While the sedan was negotiating a curve in the road as it merged into Oneida Street, Akins observed the car deviating from its lane, crossing over the double yellow lines by several inches, applying its brakes, and correcting itself back into the lane. Later, as the sedan turned eastbound onto Atlantic Street, Akins observed the sedan turn and encroach into the bike lane, and he was then able to see the sedan's license plate. The sedan then approached the stop sign on Drew Street and "rolled right through it" before turning to enter northbound traffic. Thereafter, Akins activated his emergency lights and initiated a traffic stop.

As Officer Akins established contact with Yao, he noted that Yao did not respond to his remarks made to help Yao find his driver's license. Akins testified that although the driver's license was observable in plain view from outside of the car, he needed to tell Yao a second time that the license was in his wallet. Akins noted that Yao had glossy eyes, and Akins asked Yao how much he had to drink that night. Although Yao answered that he had not drank anything,

Akins noted that Yao's speech was slurred throughout their contact and that Yao was uncooperative and "passive-aggressive" towards him. Akins became concerned that Yao was under the influence of a prohibited substance, called for a backup unit, and noted that Yao had previously been convicted twice of OWI. Afterwards, Yao performed poorly on the field sobriety tests, and Yao's performance suggested that he was under the influence of an intoxicant or controlled substance. Yao was then taken into custody. Blood test results for Yao showed that he had 1.8 ng/mL of Delta-9-THC, 23 ng/mL of Carboxy-THC, 460 ng/mL of methamphetamine, and 58 ng/mL of amphetamine in his blood.

At the conclusion of the evidence, Yao argued that the evidence of his intoxication was obtained as part of an illegal arrest, in violation of the Fourth and Fifth Amendments to the United States Constitution, because the facts and circumstances known to Officer Akins at the time of his arrest were only based on "mere suspicion" and, thus, there was no probable cause to lead a reasonable person in the officer's position to believe Yao was committing a crime. Yao also questioned whether Akins had reasonable suspicion to stop his vehicle.

The circuit court denied Yao's motion to suppress. In doing so, the court expressly found Officer Akins' testimony to be credible and that Akins had reasonable suspicion to conclude that Yao had likely operated a motor vehicle while under the influence. Regarding any challenge to the basis for the traffic stop itself, the court stated:

Officer Akins testified consistently that he observed a lane deviation on the left, unexplained breaking, a lane deviation on the right, and a failure to stop at a stop sign. Regarding the intrusion into the bike lane, Officer Akins did not fault Yao for simply crossing the bike lane as he made his right-hand turn. Officer Akins testified that Yao "completely drove into the bike lane[]" and "clearly encroache[d]" over the solid white line. Even if the

Court discounts this observation, the officer observed three additional driving behaviors that indicated Yao was impaired.

Yao was subsequently found guilty by a jury of operating a motor vehicle with a restricted controlled substance. The circuit court withheld Yao's sentence and placed him on probation for one year with several conditions, including 50 days of conditional jail, that was stayed a month later. Yao now appeals, arguing only that the court erred by finding that Officer Akins had reasonable suspicion to initiate the traffic stop.²

Whether there is probable cause or reasonable suspicion to lawfully conduct a traffic stop is a question of constitutional fact. *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. On appeal, we uphold the circuit court's factual findings unless they are clearly erroneous; however, we independently apply those facts to the relevant constitutional principles. *Id.*

A traffic stop is justified when a law enforcement officer possesses reasonable suspicion that a traffic law has been or is being violated. *State v. Houghton*, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143. The reasonable suspicion standard requires that the stop be “based on more than an officer's ‘inchoate and unparticularized suspicion or hunch.’” *State v. Post*, 2007 WI 60, ¶10, 301 Wis. 2d 1, 733 N.W.2d 634 (quoting *Terry v. Ohio*, 392 U.S. 1, 27 (1968)). Instead, the officer must be able to point to specific, articulable facts that, together with the specific, reasonable inferences that can be drawn from those facts in light of the officer's

² While Yao's motion to suppress in the circuit court argued both the lack of reasonable suspicion to initiate the traffic stop and lack of probable cause for his arrest, on appeal he only argues the former. We conclude that he has abandoned his lack of probable cause argument, and we do not address it further.

training and experience reasonably justify the stop. *Id.*, ¶¶10-13; *see also Terry*, 392 U.S. at 27. This approach balances the State’s interests in “detecting, preventing, and investigating crime with the rights of individuals to be free from unreasonable intrusions.” *Post*, 301 Wis. 2d 1, ¶13.

The reasonableness of a stop is determined under the totality of the facts and circumstances. *State v. Hogan*, 2015 WI 76, ¶36, 364 Wis. 2d 167, 868 N.W.2d 124. Behaviors that may have an innocent explanation need not be dismissed; in fact, “a combination of behaviors—all of which may provide the possibility of innocent explanation—can give rise to reasonable suspicion.” *Id.* Courts consider a variety of factors, such as observations of the defendant’s driving, the officer’s experience assessing whether drivers are impaired, the time of the stop, where the defendant is coming from, and “evidence of intoxicant usage—such as odors, an admission, or containers.” *State v. Lange*, 2009 WI 49, ¶¶24, 30-37, 317 Wis. 2d 383, 766 N.W.2d 551.

The circuit court made factual and credibility determinations to support its overall finding that Officer Akins had reasonable suspicion sufficient to initiate a traffic stop. First, the court found that “Akins testified consistently that he observed a lane deviation on the left, unexplained breaking, a lane deviation on the right, and a failure to stop at a stop sign.” Second, the court concluded that even if Yao’s encroachment into the bike lane was discounted because it was not technically unlawful, the “three additional driving behaviors” were sufficient for having reasonable suspicion that Yao was impaired.

After reviewing the evidentiary hearing testimony and all other record evidence, we are satisfied that the circuit court’s findings of fact are not clearly erroneous. In particular, the record supports the court’s finding that Officer Akins had a reasonable articulable basis for the

stop due to his having observed Yao's failure to come to a complete stop at the Drew Street stop sign, in violation of state traffic law, *see* WIS. STAT. § 346.46(1) and (2), as well as Yao's other suspicious driving behaviors that night. Once these observations are credited, they clearly establish that Akins lawfully initiated the traffic stop. *See Houghton*, 364 Wis. 2d 234, ¶30.

It is the role of the circuit court to resolve questions as to the weight of testimony and the credibility of witnesses. *State v. Hughes*, 2000 WI 24, ¶2 n.1, 233 Wis. 2d 280, 607 N.W.2d 621. We must uphold a circuit court's credibility determination unless it goes against the great weight and clear preponderance of the evidence. *Id.* The circuit court is the "sole arbiter" of a witness's credibility, *State v. Sloan*, 2007 WI App 146, ¶21, 303 Wis. 2d 438, 736 N.W.2d 189, because it has the "superior opportunity ... to observe the demeanor of witnesses and to gauge the persuasiveness of their testimony," *Kleinstick v. Daleiden*, 71 Wis. 2d 432, 442, 238 N.W.2d 714 (1976).

Yao's appeal fundamentally—and improperly—asks this court to reweigh Officer Akins' testimony. Yao, in opposition to the circuit court's determinations above, perceives to gain in the fact that, to some degree, Akins gave multiple versions of his basis to conduct the traffic stop. Because of slight discrepancies between the different versions, Yao contends that Akins was inherently incredible such that he lacked reasonable suspicion to lawfully conduct the traffic stop. One example to support this argument concerns Yao's crossing of the double yellow line in the center of the road. In one version, Akins testified that the vehicle had fully crossed the line; in another, he testified that only the front driver's side tire had passed the line by several inches. Yao additionally contends that Akins contradicted himself during their interaction when he differently described the appearance of Yao's eyes within a ten-minute period.

We conclude that Yao's argument fails for several reasons. First, as previously noted, the circuit court is the arbiter of the credibility of the witnesses. *Hughes*, 233 Wis. 2d 280, ¶2 n.1. When a circuit court acts as a factfinder, its role is to resolve conflicts in the testimony and determine witness credibility. *Id.* The circuit court was in the best position to determine Officer Akins' credibility, and we see nothing inherently unreasonable about its credibility determinations. Any concerns Yao raised about the discrepancies in Akins' testimony were matters for the circuit court to consider, and, after weighing Akins' credibility as a witness, the court resolved these issues against Yao.

Second, Yao's argument fails because the record clearly shows that Officer Akins had reasonable suspicion to believe a traffic law was being violated. Particularly, we point to Yao's failure to come to a complete stop at the stop sign he encountered before turning onto Drew Street. When we consider his additional driving behaviors, we, like the circuit court, must conclude that an officer could make the inferences necessary to lawfully initiate a traffic stop. As *Houghton* establishes, a traffic stop is justified when an officer possesses reasonable suspicion that a traffic law has been violated. 364 Wis. 2d 234, ¶30. Akins witnessed Yao's failure to stop, which is a violation of WIS. STAT. § 346.46(1) and (2). Moreover, Akins clearly articulated that he decided to initiate the traffic stop because of the cumulative effect of Yao's observed driving actions. Even Yao himself admitted that he had been "swerving" while driving, but he attributed it to being distracted by a conversation. As *Hogan* establishes, an officer does not need to accept innocent explanations. 364 Wis. 2d 167, ¶36. Whatever the reason for his swerving, Yao's admission that it happened further supports Akins' testimony that there were indicia of impaired driving. As such, Akins possessed reasonable suspicion to initiate the traffic stop.

On appeal, Yao also spends considerable time criticizing Officer Akins' conduct during the traffic stop and leading up to arrest. These arguments are irrelevant to our analysis for at least two reasons. First, by only challenging on appeal the legality of the traffic stop, our review looks only at the circumstances that existed at the time of the stop. See *State ex rel. Peckham v. Krenke*, 229 Wis. 2d 778, 782 n.3, 601 N.W.2d 287 (Ct. App. 1999) (explaining that issues raised in the circuit court but not argued in a party's appellate brief are deemed abandoned and will not be considered), *abrogated on other grounds by*, *State v. Popenhagen*, 2008 WI 55, 309 Wis. 2d 601, 749 N.W.2d 611. Nothing that occurred afterwards can change our objective assessment in that regard. Second, to the extent that Yao believes that Akins' post-stop but pre-arrest conduct impugns Akins' credibility generally, including the bases for his making the traffic stop, that notion was for the circuit court to include in its own assessment. The court did just that in its ruling.

Upon the foregoing, the circuit court heard Officer Akins' testimony, reviewed the other evidence, evaluated his credibility, and determined that his testimony sufficiently established that he had the reasonable suspicion necessary to initiate a traffic stop. Yao has not demonstrated that any of the court's factual findings are clearly erroneous. Those findings support the determination that the traffic stop was constitutional, including, at a minimum, a traffic violation for failing to stop at a stop sign. We therefore affirm the judgment of conviction.

IT IS ORDERED that the judgment of conviction is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals