COURT OF APPEALS
DECISION
DATED AND FILED

March 7, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2015AP2443-CR **Cir. Ct. No. 2013CF4170**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RANDOLPH ARTHUR MANTIE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Milwaukee County: TIMOTHY M. WITKOWIAK and DENNIS R. CIMPL, Judges. *Affirmed*.

Before Brennan, P.J., Kessler and Dugan, JJ.

¶1 BRENNAN, P.J. Randolph Arthur Mantie appeals the order of the trial court denying his motion to suppress evidence from the stop of his vehicle and the judgment of conviction for OWI, eighth offense.[1] Mantie acknowledges that the trial court's factual findings were not clearly erroneous but contends that the trial court erred as a matter of law in deciding that the stop was supported by reasonable suspicion. Mantie presents a focused argument on a narrow issue, namely, that the trial court erred in determining that the officer had an objectively reasonable suspicion that Mantie was committing or about to commit a crime. Mantie bases his argument on the premise that he, not the officer, had the right-of-way at the intersection where the officer saw him stop abruptly.

¶2 The State counters that because Mantie concedes that the trial court's factual findings were not clearly erroneous, the trial court's legal conclusion that the officer had reasonable suspicion for the stop is correct. The trial court's factual findings were that Mantie failed to stop for the stop sign on Courtland and North 37th Streets and then failed to proceed with reasonable caution across North 37th to Hopkins, violating both WIS. STAT. §§ 346.46(1) and (2) (2015-16).[2] The trial court expressly concluded, based on the court's trip to view the intersection, review of the exhibits containing the officer's dash cam video, photos and maps, and testimony of the officer and Mantie, that the officer traveling southbound on Hopkins had the right-of-way, not Mantie.

[1] The Honorable Timothy M. Witkowiak presided over trial and entered the judgment of conviction. The Honorable Dennis R. Cimpl entered the order denying the defendant's suppression motion.

[2] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

¶3 We agree with the State and affirm.

BACKGROUND

¶4 On September 10, 2013, Mantie was charged with operating a motor vehicle while under the influence of an intoxicant pursuant to WIS. STAT. §§ 346.63(1)(a) and 346.65(2)(am)6. for an offense which occurred on September 9, 2013. According to the complaint, this was Mantie's eighth offense of operating while under the influence.

¶5 Mantie's first trial counsel filed a motion to suppress the physical evidence of intoxication before the Honorable Timothy Witkowiak, who was the first trial court assigned to the case. The first suppression hearing was held January 13, 2014, and the court denied Mantie's motion to suppress. Mantie moved for reconsideration, and on April 17, 2014, after a hearing, the court denied the motion for reconsideration. Then on May 8, 2014, Mantie appeared with a new lawyer and entered a guilty plea to the charge. He was then sentenced to seven 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.

¶6 Mantie's new counsel filed a postconviction motion on February 27, 2015, seeking a new suppression hearing and permission to supplement the record with exhibits from the original hearing. Both motions were granted. A second suppression hearing was held on November 9, 2015, before the Honorable Dennis Cimpl.[3] Prior to the hearing, Judge Cimpl and the parties drove to the scene to

[3] Due to judicial rotation, this case was assigned to the Honorable Dennis Cimpl effective August 1, 2015.

view the intersection. At that hearing, Officer Harold Almas and Mantie testified. At the outset of the hearing, the trial court said it had reviewed everything from the first hearing, the trial court took judicial notice of the transcripts and evidence from the first suppression hearing and granted Mantie's motion to supplement the record with additional evidence, namely, the exhibits from the first hearing. On November 17, 2015, the second suppression motion was denied by the trial court. Mantie filed a Notice of Appeal on November 25, 2015.

Legal Principles.

¶7 Mantie argues that the trial court's denial of his motion to suppress violates his Fourth Amendment right to be free of unreasonable search and seizures. There is a well-recognized exception to the Fourth Amendment's proscription against stop and seizure for instances where a police officer has, at least, a *reasonable suspicion* that the person has committed, is committing, or is about to commit an offense. ***State v. Post***, 2007 WI 60, ¶¶10, 13, 301 Wis. 2d 1, 733 N.W.2d 634. The test for reasonable suspicion is an objective one: "under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience." ***State v. Young***, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997). When evaluating whether the behavior creates a reasonable suspicion, we look at not just the acts themselves, but also the rational inferences drawn from those facts taken together as a whole to determine whether they constitute reasonable suspicion. ***State v. Popke***, 2009 WI 37, ¶25, 317 Wis. 2d 118, 765 N.W.2d 569.

¶8 When reviewing whether there is reasonable suspicion for a stop, we employ a two-step analysis. First we uphold the trial court's factual findings unless they are clearly erroneous. ***Post***, 301 Wis. 2d 1, ¶8. Then we review the

trial court's application of those facts to constitutional standards independently of the trial court. ***Id.***

Testimony and Trial Court Rulings.[4]

¶9 Mantie's argument is that the officer who stopped him did not have a reasonable suspicion that Mantie had committed or was committing a traffic offense. The facts involve the officer's observations of Mantie at a hard-to-describe intersection of East Courtland Avenue and North Hopkins Street. The officer was traveling southbound on Hopkins, which crosses Courtland at an angle. The officer had no stop sign. A driver coming east on Courtland toward Hopkins (as Mantie was) has a stop sign that is twenty to twenty-five feet west of Hopkins. To get from the stop sign on Courtland to Hopkins, the driver travels twenty to twenty-five feet. A building sits just at the point where Hopkins crosses Courtland at the northwest corner, so a driver in the police officer's position cannot see the stop sign which is twenty to twenty-five feet back on Courtland, and a driver at the stop sign cannot see southbound traffic on Hopkins.

Officer Harold Almas' testimony

¶10 Officer Almas testified at the second hearing on November 9, 2015, that as he was traveling southbound on Hopkins, he saw Mantie's vehicle come up to Hopkins on his right, going at a good rate of speed, and then make the quick stop, where the vehicle dipped. Although he did not observe Mantie go through the stop sign on Courtland because a building blocked his view, from what he did

[4] As the trial court observed, it conducted a *de novo* hearing on the second motion hearing date. We rely on the testimony and evidence from the second hearing.

see, he drew inferences that led him to conclude that Mantie had not made a lawful stop at the sign on Courtland.

¶11 Officer Harold Almas testified as follows:

> I 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 [sic] a stop sign.

When the prosecutor asked the officer what caused him to stop Mantie's vehicle, Officer Almas testified:

> Well, I saw the front end dip down barely onto Hopkins, which was leading me to believe that he was just going to go right onto Hopkins.

The prosecutor followed up with this question and answer exchange:

Prosecutor:	Was the car moving when the front end went down?
Officer Almas:	Absolutely. It was moving at a good rate of speed.
Prosecutor:	Okay. So when you say the front end went down, what did you conclude in your mind about the front end dipping down?
Officer Almas:	When the front end's going down, I would say it was indicative of like -- like a threshold [braking], more or less. Like, he had observed me, then a quick stop.
	….
Prosecutor:	Did the stop appear to occur where it's supposed to stop? Or did it appear to be too late for where the car was supposed to have stopped?
Officer Almas:	It appeared late.

¶12 On cross-examination, trial counsel asked Officer Almas if the only thing that he saw before stopping Mantie was the vehicle dipping in front. Again the officer testified that he saw Mantie continuing eastbound at a good rate of speed, and he saw the car's front end dip down "as it entered into Hopkins." On redirect, the prosecutor asked Mantie his reason for stopping Mantie:

> Prosecutor: So can you just describe your thinking. Why did you assume that he must not have stopped at the stop sign?
>
> Officer Almas: Well, he was, like I said, moving at a good rate of speed. Okay? And you can't -- my assumption was that you cannot get from -- from Point A to Point B in that rate of a speed in that quick of a time and have your vehicle put down into that manner.

Mantie's Testimony

¶13 Mantie testified differently, saying that he stopped at the stop sign and then stopped again at Hopkins:

> 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.

¶14 On cross examination Mantie explained that after he stopped at the stop sign and saw the officer, he had another six feet before he was up to Hopkins.

Other evidence at the hearing

¶15 Trial exhibits included the squad dash cam video, photos of the intersection, and maps, all of which this court has reviewed.

The Trial Court's Factual Findings and Rulings

¶16 The trial court in the course of its ruling made the following factual findings, on which it then based its legal conclusions on reasonable suspicion and right-of-way. The court started with the court's conclusions formed from the view of the scene with the parties and then concluded with its ruling:

> [A]nd if you'll recall, it was your car; and [the ADA] was in the front seat; and I was in the back seat.
>
> We didn't talk about anything, but I asked you to stop at the stop sign. I asked you to go forward and stop again where Courtland intersected with Hopkins; and that's my belief; and I think that the officer -- based upon what I saw on the video, based upon what I saw there -- that 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 a suspicion -- reasonable suspicion -- then to stop him.
>
> ….
>
> 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.
>
> And given the dip of his car, he was either going too fast, where he went through that stop sign -- and that's what I suspect happened, like the officer -- or he's got to yield the right-of-way; and based upon what I saw on the video, I suspect if I was the cop coming southbound on Hopkins, I would assume he blew the stop sign, even though I didn't see it. I think that was a valid assumption.

¶17 What is clear from the trial court's words is that the court did an extensive investigation of the scene—an actual physical view of the intersection,

and a review of maps and photos—and after hearing the testimony, concluded that one of two things happened: either (1) Mantie failed to stop for the stop sign on Courland, or (2) he failed to proceed with sufficient caution after stopping and before driving the twenty to twenty-five feet to the corner of Hopkins. The court believed the facts supported the inference that he "blew the stop sign" or, in the alternative, that he failed to proceed with caution after stopping. But in either case, he was committing or had committed a traffic violation. Therefore, the court concluded as a legal matter that the officer had reasonable suspicion for the stop.

DISCUSSION

¶18 Mantie on appeal does not dispute the trial court's fact findings but makes two arguments: (1) the trial court's "assumption" that Mantie failed to stop at the stop sign was not a fact finding, and (2) the court's legal conclusion that the officer, not Mantie, had the right-of-way on Hopkins was error. Both arguments fail.

1. *The trial court found as a fact that Mantie failed to stop at the stop sign on Courtland*.

¶19 The context of the trial court's findings was that the court was answering the legal question of whether the officer's belief that Mantie had just committed or was in the act of committing a traffic violation was reasonable. In that context, the court made fact findings as to speed, distance, location of objects such as the sign and the cars, and the distance from the stop sign to the Hopkins intersection, etc. The court's words show that the court found that Mantie was going too fast when the officer saw him to have stopped for the stop sign. While the court said "that's what I suspect happened" and "I would assume he blew the stop sign," the court was saying in this context that Mantie failed to stop for the stop sign on Courtland. The court was finding, as a fact, that the officer's

observations of Mantie's car—the speed, dip, and sudden stop after seeing the officer—were factually credible. The trial court was clearly *not* finding that Mantie's testimony that he *did stop* for the stop sign was credible. Thus, contrary to Mantie's argument, the trial court found factually that Mantie did not stop for the stop sign.

¶20 And with Mantie's concession that the factual findings here are not clearly erroneous and his acknowledgment that we must rely on the trial court's factual findings unless they are clearly erroneous, *see* ***Post***, 301 Wis. 2d 1, ¶8, Mantie's appeal fails.

2. *The trial court's legal conclusion that the officer, not Mantie, had the right-of-way, was correct and further supports the reasonableness of the officer's suspicion.*

¶21 The second, alternative, basis on which the trial court found that the officer had a reasonable suspicion for the stop was the court's legal conclusion that Mantie did not have the right-of-way at Hopkins. Mantie challenges this legal conclusion, arguing that WIS. STAT. § 346.18(1) shows that to be error.

¶22 First, however, we note that there is no dispute about the following facts regarding the intersection in question. Mantie had a stop sign on Courtland as he drove east. From the stop sign to the western edge of Hopkins is a distance of twenty to twenty-five feet. There is no second stop sign at the western end of the twenty to twenty-five feet. This is undisputed. It is also undisputed that traffic going southbound on Hopkins, as the officer was, is uncontrolled. It is also undisputed that there is a large building on the northwest corner of Hopkins and Courtland that obstructs the view of the stop sign from Hopkins and the view of southbound traffic from Courtland.

¶23 Mantie argues that he had the right-of-way based on WIS. STAT. § 346.18, which states the general rules for right-of-way *when no other rules control*. He argues that under WIS. STAT. § 346.18(1), he, as the driver of the car on the right of an uncontrolled intersection (which is his characterization of North 37th and North Hopkins), had the right-of-way over the squad approaching from the left. First, Mantie's own actions show that his characterization of the intersection of Hopkins and Courtland as "uncontrolled" within the meaning of WIS. STAT. § 346.18(1) is inaccurate. To get onto Hopkins, Mantie had to approach slowly so that he could see around the large building that obstructed his view of southbound traffic on Hopkins, then wait for traffic to allow him to enter Hopkins. The squad dash cam distinctly shows Mantie's car approach Hopkins and then stop, albeit belatedly and abruptly, for the officer's squad. The evidence shows there's no way a driver on Courtland would think he had the right-of-way onto Hopkins. As the video from the dash cam shows, Mantie did not think he had the right-of-way. He quickly stopped.

¶24 But more importantly Mantie's argument fails because this was not an uncontrolled intersection within the meaning of WIS. STAT. § 346.18(1). It is covered by the legal rules in WIS. STAT. §§ 346.46 (1) and (2). That statute required Mantie to stop for the stop sign on Courtland and proceed into the intersection *after yielding the right-of-way* to other vehicles approaching on Hopkins, which is plainly not controlled by a stop sign or traffic signal.

> **Vehicles to stop at stop signs and school crossings.** (1) 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.

WIS. STAT. § 346.46(1).[5] If Mantie stopped for the stop sign on Courtland as he says he did, he still had the duty to yield the right-of-way to the vehicles approaching the intersection at Hopkins because it was not controlled by a stop sign or signal.

¶25 Basically, Mantie is arguing that the twenty to twenty-five feet after the stop sign on Courtland and before the western edge of Hopkins created a new intersection that was uncontrolled within the meaning of WIS. STAT. § 346.18. But as the evidence plainly shows, the twenty to twenty-five feet was in reality nothing more than a slightly longer space between the stop sign and intersection. Mantie still had the duty to yield the right-of-way to the cars on Hopkins as WIS. STAT. § 346.46 states.[6]

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[5] WIS. STAT. § 346.46 (2) states:

> Stops required by sub. (1) shall be made in the following manner:
>
> (a) If there is a clearly marked stop line, the operator shall stop the vehicle immediately before crossing such line.
>
> (b) If there is no clearly marked stop line, the operator shall stop the vehicle immediately before entering the crosswalk on the near side of the intersection.
>
> (c) 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.

[6] A case Mantie relies on, ***Seitz v. Seitz***, 35 Wis. 2d 282, 291, 151 N.W.2d 86 (1967), is factually distinguishable and therefore does not support his argument. There, in a negligence case, the court construed a different statute, WIS. STAT. §§ 346.39(1) and (2), to determine the relative duties of drivers who entered an intersection, one with a flashing red light and the other with a flashing yellow light. ***Id.***

¶26 Common sense and the traffic statutes required Mantie to yield the right-of-way to the officer, just as the trial court correctly concluded. So, even if Mantie had not failed to stop for the stop sign, he still failed to proceed with caution after the stop, given the factual findings of speed and the sudden, late stop. Thus we conclude that the record shows two alternative factual bases for reasonable suspicion. Accordingly, the officer's suspicion that Mantie was committing, or had committed, a traffic offense was reasonable and consequently we affirm.

By the Court.—Judgment and order affirmed.

Not recommended for publication in the official reports.