OFFICE OF THE CLERK
WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

January 22, 2025

To:

Hon. Michael O. Bohren
Circuit Court Judge
Electronic Notice

Monica Paz
Clerk of Circuit Court
Waukesha County Courthouse
Electronic Notice

John D. Flynn
Electronic Notice

Steven Hughes
Electronic Notice

Alyssa M. Schaller
Electronic Notice

Will Straube
Electronic Notice

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

2023AP2217-CR State of Wisconsin v. Stevie Quentin Vance, Jr.
(L.C. #2022CF984)

Before Gundrum, P.J., Neubauer and Grogan, JJ.

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).

The State appeals from an order suppressing evidence obtained from Stevie Quentin Vance, Jr. after a traffic stop.[1] The State contends that the stop of Vance's vehicle was supported by reasonable suspicion. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21

[1] The Honorable Shelley Gaylord presided at the motion hearing and pronounced the oral ruling. The Honorable Michael O. Bohren signed the written order from which the State appeals.

(2021-22).[2] Because the circuit court failed to set forth a sufficient analysis for our appellate review, we reverse and remand for further proceedings.

Background

During the traffic stop, the arresting officer discovered pills later determined to contain controlled substances, a bag containing a green leafy plant substance later determined to be marijuana, and a loaded handgun. Based on the stop, the State filed multiple charges against Vance, including drug possession and carrying a concealed weapon. Vance filed a motion to suppress all evidence resulting from the traffic stop, contending that the officer violated his constitutional right to be free from unreasonable searches and seizures. *See* U.S. CONST. amend. IV; WIS. CONST. art. I, § 11. He specifically argued that the officer lacked the reasonable suspicion necessary to lawfully stop him. The circuit court held an evidentiary hearing on Vance's motion at which the following relevant evidence was presented.

Wisconsin State Patrol Trooper David Heinisch testified that he was on patrol at about 11:30 a.m. on April 25, 2022, and was parked in a median crossover on Interstate 94 near the City of Brookfield. The weather was clear that day, which afforded Heinisch a clear view of the westbound traffic as it passed him. Heinisch described the volume of traffic as "moderate." While monitoring traffic, he saw a Dodge SUV pass about twelve feet in front of his vehicle. Heinisch testified that he "noticed that the vehicle's driver was not wearing a seatbelt." He further stated that "there was no seatbelt, black seatbelt across [the driver's] white shirt." Given the height of Vance's SUV and that of the officer's squad vehicle, which was also an SUV,

[2] All references to the Wisconsin Statutes are to the 2021-22 version unless otherwise noted.

Heinisch was able to look "straight across" at Vance. Believing that Vance was committing a seatbelt safety restraint violation, Heinisch stopped the vehicle.[3] He testified that he approached the driver's side of the vehicle and confirmed that the driver, Vance, was wearing a white shirt and was not wearing the seatbelt, which was black. Heinisch testified repeatedly that he never saw Vance wearing a seatbelt, and he wrote that in his report. Had he been mistaken, he would have noted the mistake in his report.

The squad camera video from Heinisch's vehicle was admitted as an exhibit and portions of it were played during the hearing. When Vance's vehicle entered the frame of the video, the prosecutor paused the video and Heinisch testified that he could not see Vance wearing a seatbelt across his white shirt. After watching another segment of the video, Heinisch confirmed that even if it was not clearly visible on the footage, he definitely saw "from [his] eyes" that Vance was not wearing a seatbelt. Heinisch acknowledged that one could not see if Vance was wearing a seatbelt on the video but agreed that he had a better view of Vance from his vehicle than what was shown on the video. Heinisch testified that he was able to observe Vance's vehicle for a longer period of time than shown on the video.

Though the video shows Heinisch speaking to Vance before Vance exited the vehicle, Heinsch testified that "the wind or passing vehicles made it very difficult to understand what was being said." When asked why it took Vance "so long to get out of the vehicle," Heinisch said it was because Vance informed him about a weapon in the car, which prompted Heinisch to ask Vance to exit the car. Heinisch denied that the delay was due to Vance unbuckling his seatbelt.

[3] Heinisch confirmed that no other suspected traffic violations prompted the stop.

Vance also testified at the hearing. He testified that he was wearing a seatbelt across his chest. According to Vance, when Heinisch told him he had been stopped because he was not wearing a seatbelt, he "looked down at [his] seatbelt and asked him, are you serious?" Vance acknowledged that a still shot from the squad video does not show that he was wearing his seatbelt and that his conversation with Heinisch could not be heard clearly on the video. Vance acknowledged that Heinisch asked him if there was "any[thing] illegal[]" in the vehicle before Vance got out and that Vance told him that a firearm was under the seat. Vance stated that he unbuckled his seatbelt before he exited his vehicle.

The State argued that Heinisch had grounds to stop the vehicle; it was a clear day and he could see the vehicles coming across his view. It noted Heinisch's testimony that he saw Vance drive past and saw that he was wearing a white shirt but no black seatbelt across his chest. Heinisch also did not see Vance wearing a seatbelt when he approached the car.

Vance's attorney argued that the issue was "whether … Mr. Vance was wearing a seatbelt." He noted that the video does not show whether Vance was wearing a seatbelt. He also argued that the pause before Vance exited the vehicle corroborated Vance's testimony that he unbuckled before he got out. He argued that the conflicting testimony meant the court could not find reasonable suspicion. Both parties made arguments about the witnesses' credibility and motives to testify truthfully or falsely.

The circuit court stated that a portion of the video in which Vance, still in the driver's seat, leaned to his right appeared to be Vance unbuckling a seatbelt and that there was no other explanation for that movement. The court also noted that the portion of the video in which Vance's vehicle passed Heinisch's vehicle did not show whether Vance was wearing his seatbelt.

The court stated that Vance "is a black man. That seatbelt could have been across his black neck. I mean so I'm sorry, but I think this is at best a 50/50, which means it's not reasonable suspicion." The court granted Vance's motion to suppress. The State appeals.

Discussion

Whether evidence from a traffic stop "should be suppressed is a question of constitutional fact." ***State v. Truax***, 2009 WI App 60, ¶8, 318 Wis. 2d 113, 767 N.W.2d 369. When reviewing such questions, we will sustain a circuit court's findings of fact unless they are clearly erroneous, but we will decide de novo whether those facts satisfy the constitutional standard. ***State v. Popke***, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569.

Because an investigatory stop constitutes a "seizure" under the Fourth Amendment, the officer must be able to cite specific and articulable facts that have created a reasonable suspicion that a traffic law has been or is being violated. *See* ***County of Jefferson v. Renz***, 231 Wis. 2d 293, 310, 603 N.W.2d 541 (1999); ***State v. Griffin***, 183 Wis. 2d 327, 333-34, 515 N.W.2d 535 (Ct. App. 1994). A mere hunch is insufficient. ***Popke***, 317 Wis. 2d 118, ¶23. "The reasonableness of a stop is determined" by the totality of the circumstances. ***State v. Post***, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634. "The burden of establishing that an investigative stop is reasonable falls on the [S]tate." ***Id.***, ¶12.

The State contends that we must reverse the circuit court's decision because its comments indicate that it found credible Heinisch's testimony that Vance was not wearing his seatbelt when his vehicle passed Heinisch's vehicle or when Heinisch approached Vance's vehicle. The State contends this is enough to show that Heinisch reasonably believed that Vance was not wearing a seatbelt even though the court also found that Vance's movement to the right while in the

driver's seat indicated that he was unbuckling his seatbelt. Vance contends that the court's "50/50" comment indicates that it did not find Heinisch to be more credible than Vance and thus the State did not meet its burden of establishing reasonable suspicion by a preponderance of the evidence.

The circuit court's sparse and cryptic comments do not provide a sufficient basis for appellate review. The court's conclusion that the stop was not supported by reasonable suspicion rested on its determination that "this is at best a 50/50." It is unclear what the court meant by this. Its few remarks suggest the court was focused on whether Vance was wearing a seatbelt when Heinisch pulled him over. The court stated that it could not see in the video whether or not Vance had a seatbelt on when he passed Heinisch's vehicle. We agree that the video does not definitively answer that question. The court also noted that Vance could be seen leaning to the right before exiting the vehicle, which in the absence of "[an]other explanation" led the court to conclude that Vance was unbuckling his seatbelt. This would support an inference that he had been wearing it when he passed Heinisch. The court also stated that a black seatbelt might not be visible against Vance's "black neck." Does this suggest the court may have believed that Heinisch thought Vance was not wearing a seatbelt when he made the stop, but Heinisch's belief was a reasonable mistake? The court's "at best a 50/50" remark provides no clarity.

As noted above, it appears that the circuit court was focused on whether Vance was wearing a seatbelt. Vance's attorney identified that as the key issue at the hearing. But even if the court concluded that Vance was, or might have been, wearing a seatbelt, the relevant question is whether Heinisch reasonably believed that he was not when Heinisch made the traffic stop. The constitutionality of a traffic stop does not depend on whether the driver was actually guilty of committing a traffic offense; the pertinent question instead is whether it was reasonable for the

officer to believe that the offense occurred. ***Popke***, 317 Wis. 2d 118, ¶23. Indeed, "searches and seizures *can* be based on mistakes of fact[.]" ***State v. Houghton***, 2015 WI 79, ¶75, 364 Wis. 2d 234, 868 N.W.2d 143. "[P]olice officers who reasonably suspect an individual is breaking the law are permitted to conduct a traffic stop 'to try to obtain information confirming or dispelling the officer's suspicions.'" ***Id.***, ¶22 (quoting ***Berkemer v. McCarty***, 468 U.S. 420, 439 (1984)). A reasonable mistake of fact does not render a stop constitutionally infirm. *See* ***Heien v. North Carolina***, 574 U.S. 54, 57 (2014). An officer's mistake of fact is reasonable if it is supported by "specific and articulable facts" and constitutes a "rational inference[ ] from those facts." ***Popke***, 317 Wis. 2d 118, ¶23 (citation omitted). We cannot discern from the court's limited remarks whether it addressed whether Heinisch's belief that Vance was not wearing a seatbelt, even if mistaken, was nonetheless reasonable.

As the State suggests, where a circuit court fails to set forth sufficient findings of fact, we may reverse the decision and remand the case to allow the court to make the required factual findings and apply the relevant legal principles to them. *See* ***State v. Williams***, 104 Wis. 2d 15, 22, 310 N.W.2d 601 (1981) (stating that "remand for the making of findings and conclusions" is an available option for this court when a circuit court fails to make findings of fact) (citation omitted). We conclude that the court's failure to set forth sufficient findings of fact, including credibility determinations and ultimately whether Heinisch's belief that Vance was not wearing a seatbelt was reasonable, requires remand. We are not a factfinding court. ***Wurtz v. Fleischman***, 97 Wis. 2d 100, 107 n.3, 293 N.W.2d 155 (1980) (noting that the court of appeals is "preclude[d] … from making any factual determinations where the evidence is in dispute.").

Therefore,

IT IS ORDERED that the order of the circuit court is summarily reversed and this case is remanded to the circuit court for further proceedings consistent with this opinion. *See* 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