

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 22, 2017

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2015AP2612

Cir. Ct. No. 2014TR468

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

ONEIDA COUNTY,

PLAINTIFF-RESPONDENT,

V.

JOSEPH A. RAVEN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Oneida County:
PATRICK F. O'MELIA, Judge. *Affirmed.*

¶1 SEIDL, J.¹ Joseph Raven appeals a judgment of conviction for first-offense operating a motor vehicle while intoxicated (OWI). He argues the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2015-16). All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

circuit court erred by denying his motion to suppress evidence obtained as a result of a traffic stop. We disagree and affirm.

BACKGROUND

¶2 After a police officer stopped his vehicle, Raven was cited for first-offense OWI and first-offense operating a vehicle with a prohibited alcohol concentration (PAC). Raven filed a motion to suppress evidence, arguing deputy Tyler Young had neither reasonable suspicion to support the stop of Raven's vehicle, nor probable cause to support Raven's arrest.²

¶3 At the suppression hearing, Young testified he was driving his squad car in the City of Rhinelander at dusk on a snow-covered street. Young observed a pickup truck towing a trailer traveling in front of his vehicle. Raven was later identified as the driver of the truck. Young passed the truck on the left inside lane of the street. Young then stopped at a controlled intersection upon observing the intersection's traffic light turn yellow. As he stopped, Young saw Raven's truck in his passenger-side rear-view mirror approach the intersection at a speed which, although slow, did not appear to Young to be slow enough to allow the truck to stop at the traffic light. Young watched the truck go past his vehicle and through the intersection. Young testified the traffic light turned red prior to the point at which the truck entered the intersection. Young activated his emergency lights and stopped the truck. Young made contact with Raven, and observed Raven smelled of intoxicants and had slurred his speech.

² On appeal, Raven does not argue there was a lack of probable cause to support his arrest after the stop.

¶4 Raven and a passenger in Raven's truck at the time of the stop also testified at the suppression hearing. Raven, who was called to testify by the State, explained the road conditions were poor, he was towing a trailer hauling two snowmobiles, and his truck's brakes were unable to stop his vehicle in time to prevent it from sliding through the light into the intersection. He testified he saw the light was yellow as he went through the intersection. Raven also testified his truck "almost came to a complete stop" in the intersection after the light turned red before he proceeded through the intersection while the light was still red. The passenger also testified the traffic light was yellow when the truck reached the intersection, but he did not remember when the light turned red.

¶5 The circuit court denied Raven's suppression motion, concluding Young was permitted to stop Raven's truck upon observing traffic violations for failing to stop at a red light, failing to stop at an intersection, and driving too fast for conditions. Consistent with Raven's admission, the circuit court found Raven's truck "stop[ped] within an intersection" while the traffic light was red. A jury found Raven guilty of OWI. He now appeals, challenging the denial of the motion to suppress.

DISCUSSION

¶6 The Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution prohibit unreasonable searches and seizures.³ *State v. Maddix*, 2013 WI App 64, ¶13, 348 Wis. 2d 179, 831

³ These constitutional protections are not restricted to criminal cases, but also apply to individuals arrested for civil offenses, *State v. Wilks*, 121 Wis. 2d 93, 100, 358 N.W.2d 273 (1984), which, in Wisconsin, include first-offense OWI or PAC violations, *see* WIS. STAT. §§ 346.65(2)(am)1., 939.12.

N.W.2d 778. A traffic stop is a seizure within the meaning of the Fourth Amendment. *See State v. Popke*, 2009 WI 37, ¶11, 317 Wis. 2d 118, 765 N.W.2d 569. “[R]easonable suspicion that a traffic law has been or is being violated is sufficient to justify all traffic stops.” *State v. Houghton*, 2015 WI 79, ¶30, 364 Wis. 2d 234, 868 N.W.2d 143. Reasonable suspicion is a common sense nontechnical standard consisting of “the factual and practical considerations of everyday life on which reasonable and prudent [persons], not legal technicians, act.” *State v. Eason*, 2001 WI 98, ¶19, 245 Wis. 2d 206, 629 N.W.2d 625 (quoted source omitted).

¶7 Review of an order granting or denying a motion to suppress evidence, including one based on the reasonableness of a traffic stop, presents a question of constitutional fact involving a two-step standard of review. *See State v. Post*, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634; *State v. Hughes*, 2000 WI 24, ¶15, 233 Wis. 2d 280, 607 N.W.2d 621. First, we uphold the circuit court’s findings of fact unless they are clearly erroneous. *Post*, 301 Wis. 2d 1, ¶8; *Hughes*, 233 Wis. 2d 280, ¶15. In the second step, we review de novo the application of constitutional principles to any findings of fact. *Post*, 301 Wis. 2d 1, ¶8; *Hughes*, 233 Wis. 2d 280, ¶15.

¶8 We determine there was a reasonable articulable basis for the officer to believe that Raven committed violations of WIS. STAT. § 346.37(1)(c)1., failing to stop at a red light, WIS. STAT. § 346.57, driving at an unreasonable speed under conditions requiring reduced speed, and WIS. STAT. § 346.52(1)(a), stopping a vehicle in an intersection.⁴ First, we conclude the circuit court’s findings of fact

⁴ WISCONSIN. STAT. § 346.37(1)(c)1. states that

(continued)

were not clearly erroneous. Young’s testimony at the hearing established he observed (1) the traffic light was yellow as he stopped his squad car at the intersection, (2) Raven’s truck crossed into the intersection past his squad car while the traffic light was red, and (3) Raven’s truck proceeded through the intersection while the traffic signal was red. The court additionally found, based on Raven’s admission during direct examination by the State, that the truck came to a stop in the intersection while the light was red.

¶9 Next, we conclude Young drew a rational inference under the totality of the circumstances that Raven committed multiple traffic violations. *See State v. Waldner*, 206 Wis. 2d 51, 59-60, 556 N.W.2d 681 (1996). For the purposes of reasonable suspicion, specific, articulable facts need not rise to the level of sustaining a citation—or even probable cause—for each individual traffic violation to allow a stop. *See Eason*, 245 Wis. 2d 206, ¶19.

¶10 We reject Raven’s arguments that the County failed to establish reasonable suspicion of a single traffic offense. First, Raven claims the County failed to establish the traffic light was red because both he and his passenger

Vehicular traffic facing a red [traffic-control] signal shall stop before entering the crosswalk on the near side of an intersection, or if none, then before entering the intersection or at such other point as may be indicated by a clearly visible sign or pavement marking and shall remain standing until green or other signal permitting movement is shown.

WISCONSIN STAT. § 346.52(1)(a) states in relevant part that “[n]o person may stop or leave standing any vehicle ... whether temporarily or otherwise ... [w]ithin an intersection.” Finally, WIS. STAT. § 346.57(2) states, “No person shall drive a vehicle at a speed greater than is reasonable and prudent under the conditions and having regard for the actual and potential hazards then existing,” while subsection (3) states, “The operator of every vehicle shall, consistent with the requirements of sub. (2), drive at an appropriate reduced speed when approaching and crossing an intersection.”

testified the light was yellow as he entered the intersection and Young did not observe the exact moment the traffic light turned red. Although the circuit court stated it was “not sure” exactly *when* the traffic light changed to red, it recognized Young testified the light was red while Raven’s truck entered the intersection. In addition, it found that Raven’s memory was “flawed from that evening” on the details of the stop and that the passenger was unsure of when the light turned red. We defer to the circuit court’s assessment of witness credibility. *See State v. Young*, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736. Taking both Raven’s and Young’s testimony into account, the court implicitly found the light was red before Raven’s truck entered the intersection. *See State v. Martwick*, 2000 WI 5, ¶31, 231 Wis. 2d 801, 604 N.W.2d 552 (“[I]f a circuit court fails to make a finding that exists in the record, an appellate court can assume that the circuit court determined the fact in a manner that supports the circuit court’s ultimate decision.”). This implied finding, which is not clearly erroneous, supports a conclusion that Young had reasonable suspicion to stop Raven for violating WIS. STAT. § 346.37(1)(c)1.

¶11 Raven also claims he could not have been traveling at an imprudent speed under WIS. STAT. § 346.57 when entering the intersection because he was driving at the speed limit, and it is undisputed Young passed his vehicle before reaching the intersection. While Young did testify the truck was not travelling at a fast speed, Raven glosses over Young’s testimony that the truck’s speed while approaching the intersection was too great to allow it to properly stop on a yellow or red light. Young was entitled to apply his training and experience as a traffic officer in making that observation. *See Post*, 301 Wis. 2d 1, ¶13.

¶12 Finally, Raven argues a vehicle is allowed to stop in an intersection when it “is necessary to avoid conflict with other traffic or to comply with traffic

regulations ... or traffic control sign or signal.” *See* WIS. STAT. § 346.50(1)(b). However, Raven points to no other vehicles in the intersection, traffic regulations, or other circumstance that made it necessary for him to stop inside of the intersection when the traffic light was red. The circuit court therefore properly denied Raven’s motion to suppress evidence.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

