**COURT OF APPEALS**
**DECISION**
**DATED AND FILED**

**June 3, 2008**

**David R. Schanker**
**Clerk of Court of Appeals**



**Appeal No. 2008AP9-CR** **Cir. Ct. No. 2007CT700**

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

**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOHN M. RODRIGUEZ-LUIS,**

**DEFENDANT-APPELLANT.**

APPEAL from a judgment and order of the circuit court for Milwaukee County: RUSSELL W. STAMPER and WILLIAM D. GARDNER, Reserve Judges. *Affirmed.*

¶1 WEDEMEYER, J.[1] John M. Rodriguez-Luis appeals from a judgment entered after he pled guilty to operating with a prohibited alcohol

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2) (2005-06).

content, second offense, contrary to WIS. STAT. §§ 346.63(1)(b), 340.01(46m) and 346.65(2) (2005-06).[2] He challenges an order denying his motion seeking to suppress. Because the officer had reasonable suspicion to conduct the investigatory stop, the trial court did not err in denying the motion to suppress. Accordingly, the judgment is affirmed.

## BACKGROUND

¶2 On July 9, 2005, at approximately 2:23 a.m., University of Wisconsin-Milwaukee Police Officer Christopher Utecht, and his partner, Officer Jamie Kuenzi were on patrol in a marked squad car driving east on East Kenwood Boulevard, approaching the intersection of East Kenwood Boulevard and North Lake Drive. As the officers approached the intersection, the traffic light governing eastbound traffic was red. The officers observed a white Toyota coming in the opposite direction proceed westbound through the intersection without stopping. Officer Utecht believed that the westbound traffic at that point was also governed by a solid red light.

¶3 Officer Utecht turned his squad around and proceeded to catch up with the Toyota, which was traveling at a high rate of speed. Officer Utecht indicated that the speed limit was 30 m.p.h., but the Toyota had been traveling at least 50 m.p.h. During the pursuit, Officer Utecht observed the Toyota drive though the intersection of East Kenwood Boulevard and North Downer Avenue without stopping despite the flashing red signal at that intersection. Two blocks later, Officer Utecht activated his squad's red and blue emergency lights. The

[2] All references to the Wisconsin Statutes are to the 2005-06 version unless otherwise noted.

Toyota pulled into a driveway at 2660 East Kenwood Boulevard and the driver was identified as Rodriguez-Luis. The officers conducted field sobriety tests and Rodriguez-Luis was issued citations for operating a motor vehicle while under the influence of an intoxicant, operating a motor vehicle while having a prohibited alcohol concentration, violating a red traffic light, and driving at an unreasonable and imprudent speed. While these citations were being prosecuted, Rodriguez-Luis was charged with another, separate OWI-related offense, which was resolved first. Accordingly, the citations in the instant case were re-filed as second-offense OWI charges in a criminal complaint. Rodriguez-Luis initially pled not guilty and filed a motion to suppress. After the hearing on the motion, the trial court denied the motion to suppress. Rodriguez-Luis then entered into a plea agreement, wherein he pled guilty to the PAC charge in the criminal complaint and the other OWI count was dismissed. He was found guilty of that offense. Judgment was entered. He now appeals.

## DISCUSSION

¶4 Rodriguez-Luis claims that the trial court erred in denying his motion to suppress because the officers lacked reasonable suspicion necessary to conduct a lawful traffic stop of the Toyota. This court is not convinced.

¶5 Both the Fourth Amendment of the United States Constitution and article I, section 11, of the Wisconsin Constitution guarantee to all citizens the right to be free from unreasonable searches and seizures. Because an investigatory stop is a "seizure" within the meaning of the Constitution, a law enforcement officer, before stopping an individual, must reasonably suspect, in light of his or her training and experience, that the individual is, or has been, violating the law. ***Terry v. Ohio***, 392 U.S. 1, 20-22 (1968); ***State v. King***, 175 Wis. 2d 146, 150 (Ct.

App. 1993); WIS. STAT. § 968.24. An officer may perform an investigatory stop of a vehicle based on a reasonable suspicion of a non-criminal traffic violation. ***State v. Colstad***, 2003 WI App 25, ¶11, 260 Wis. 2d 406, 659 N.W.2d 394.

¶6 For a stop to be constitutionally valid, the officer's suspicion must be based upon "specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion" on a citizen's liberty. ***Terry***, 392 U.S. at 21. It is a common-sense test; what is reasonable in a given situation depends upon the totality of the circumstances. ***State v. Anderson***, 155 Wis. 2d 77, 83-84, 454 N.W.2d 763 (1990).

¶7 In reviewing the denial of a motion to suppress, we will uphold the trial court's finding of fact unless they are clearly erroneous. ***State v. Sykes***, 2005 WI 48, 279 Wis. 2d 742, 750, 695 N.W.2d 277. However, whether a stop passes constitutional muster is a question of law which we review independently. ***State v. Richardson***, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990).

¶8 In reviewing the record here, this court concludes that the officers had reasonable suspicion to conduct the investigatory stop. Officer Utecht had observed three traffic violations: (1) Rodriguez-Luis ran the solid red light at East Kenwood Boulevard and North Lake Drive, in violation of WIS. STAT. § 346.37(1)(c)1; (2) Rodriguez-Luis was exceeding the speed limit, in violation of WIS. STAT. § 346.57(2); and (3) Rodriguez-Luis ran a second red light, the flashing red at East Kenwood Boulevard and North Downer Avenue. Those traffic violations provided the officers with reasonable suspicion to conduct the ***Terry*** stop.

¶9 Rodriguez-Luis argues that because the officers did not actually see whether the westbound traffic signal at East Kenwood Boulevard and North Lake

Drive, that the officers acted on a mistake of law and therefore, the pursuit and observation of the other two traffic violations should never have occurred. This court cannot agree.

¶10 Officer Utecht testified that he believed the westbound signal had the red right at the same time the eastbound signal had the red light. Even if Officer Utecht was mistaken, such mistake constitutes a mistake of fact, not law. There is no suggestion that Officer Utecht believed it to be illegal to drive through the intersection on a green light—he acted with the correct knowledge that the law prohibits driving through a red light. Accordingly, the question of fact was whether the light *was* red. Thus, although it may be error for an officer who proceeds on an erroneous interpretation of the law, *see e.g.*, ***State v. Longcore***, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), an officer's interpretation of the facts does not need to be correct. It only needs to be reasonable.

¶11 Here, Officer Utecht knew the eastbound traffic light at that intersection was red. Based on this knowledge, it was reasonable for him to believe the westbound light was also red. It was reasonable for him to pursue the vehicle that had sped through the intersection. During that pursuit, Officer Utecht observed the additional law violations. By the time the stop occurred, Officer Utecht had both reasonable suspicion and probable cause to believe that Rodriguez-Luis had committed traffic violations. Accordingly, this court affirms the ruling of the trial court.

¶12 This court is further not persuaded by Rodriguez-Luis's contention that it was unreasonable for Officer Utecht to pursue him for several blocks before activating the squad's emergency lights. Officer Utecht testified that he did not immediately activate his emergency lights because Rodriguez-Luis was travelling

at a high rate of speed and Officer Utecht believed Rodriguez-Luis might flee. Under these circumstances, it was reasonable for the officer to delay the activation of the emergency lights.[3]

*By the Court.*—Judgment and order affirmed.

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

[3] This court summarily rejects Rodriguez-Luis contention that the pursuit constituted a seizure or that it constituted an illegal pretext for the stop. Both contentions are without merit. Rodriguez was not "seized" during the time Officer Utecht was following his vehicle. Thus, reliance on ***Florida v. Royer***, 460 U.S. 491 (1983) is misplaced. Similarly, there was no "pretext" present here. Pretext would occur if the officer was investigating Rodriguez-Luis for some other investigation and followed him until he committed a traffic violation so he could stop him to gain evidence for the other investigation. Such did not occur here.