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DISTRICT IV

September 6, 2024

To:

Hon. Raymond S. Huber
Circuit Court Judge
Electronic Notice

Yvette Kienert
Clerk of Circuit Court
Waupaca County Courthouse
Electronic Notice

Hector Salim Al-Homsi
Electronic Notice

Robert A. Kennedy Jr.
Electronic Notice

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

2023AP1142-CR State of Wisconsin v. Billy Joe Garcia (L.C. 2021CF120)

Before Kloppenburg, P.J., Nashold, and Taylor, 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).

Billy Joe Garcia appeals a judgment of conviction for operating while intoxicated (OWI) as a seventh offense. Garcia contends that the circuit court erred by denying his motion to suppress evidence obtained during a traffic stop when Garcia failed to stop at a stop sign. Based on 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 (2021-22).[1] We summarily affirm.

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

Garcia was charged with OWI, seventh offense, based on evidence obtained when he was stopped for failing to stop at a stop sign. Garcia moved to suppress the evidence obtained during the traffic stop, arguing that the arresting officer lacked reasonable suspicion for the stop because the stop sign did not meet the lateral offset placement requirement of the Wisconsin Manual on Uniform Traffic Control Devices (WMUTCD).

At the suppression hearing, the officer testified as follows as to the events leading up to Garcia's stop for failing to stop at the stop sign. The officer had received complaints that motorists were failing to stop at a particular stop sign, so he was monitoring the stop sign for violations.[2] The officer had stopped about six motorists for failing to stop at the stop sign and issued them warnings before stopping Garcia. There was nothing unusual about the placement of the stop sign to the officer, and it appeared "very visible" and unobstructed. The officer relied on his general knowledge and experience in conducting traffic stops which, at the time he stopped Garcia, did not include knowledge as to the traffic sign placement requirements under the WMUTCD.

The circuit court assumed, for purposes of the suppression motion, that the placement of the stop sign was not compliant with the WMUTCD. However, the court determined that the officer's belief that the stop sign was properly placed was reasonable. The court therefore denied

[2] The officer's police report indicates that he monitored the stop sign for a total of eighty-one minutes before stopping Garcia.

the suppression motion. Garcia pled no-contest to OWI as a seventh offense and was sentenced to three years of initial confinement and three years of extended supervision.[3]

As an initial matter, Garcia concedes that, if the facts are viewed only as a "snapshot" at the time of the stop, the stop was supported by reasonable suspicion. For example, Garcia does not dispute that the officer observed him failing to stop at the stop sign. *See* ***State v. Popke***, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569 (under the Fourth Amendment, police may conduct an investigative traffic stop if they have reasonable suspicion that a traffic violation has been committed). Moreover, Garcia does not dispute that it was reasonable for the officer to believe that the stop sign was properly placed because it was installed by the Department of Transportation. *See* ***Heien v. North Carolina***, 574 U.S. 54, 60-61 (2014) (reasonable suspicion may be based on reasonable mistakes of fact or law); ***State v. Zick***, 44 Wis. 2d 546, 551, 171 N.W.2d 430 (1969) (noting that the "common-law presumption that public officials have complied with all statutory requirements in performing their duties is well established in this state"). Rather, Garcia argues that the stop violated his due process rights because the officer stopped him pursuant to a broader "enforcement policy" that the officer enacted by monitoring the stop sign, and that the officer was required to verify that the stop sign was placed in compliance with the WMUTCD before stopping any motorists pursuant to that policy. We conclude that Garcia has failed to sufficiently develop this due process-based argument, and we affirm on that basis.

[3] Garcia appeals the order denying his suppression motion pursuant to WIS. STAT. § 971.31(10).

Garcia argues, in a conclusory fashion and without citation to authority, that "when a law enforcement program predetermines an enforcement plan … [t]here is an obligation to verify a traffic sign is bona fide before starting the enforcement plan." However, Garcia fails to explain what constitutes an "enforcement plan" or why he believes that the officer's monitoring of the stop sign in this case amounted to such an "enforcement plan." Moreover, he cites no legal authority to support the proposition that an "enforcement plan," if one were established, would place additional verification requirements on police that do not otherwise exist.[4]

This court need not consider arguments that are unsupported by adequate factual and legal citations or are otherwise undeveloped. *See* ***Dieck v. Unified Sch. Dist. of Antigo***, 157 Wis. 2d 134, 148 n.9, 458 N.W.2d 565 (Ct. App. 1990) (unsupported factual assertions); ***State v. Pettit***, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (undeveloped legal arguments). Here, Garcia has failed to develop, factually or legally, his argument that he was stopped pursuant to an "enforcement plan" that rendered the stop constitutionally unreasonable. We affirm the circuit court on that basis.

[4] Garcia acknowledges that there is no authority for his "enforcement policy" argument when he asserts: "This case [raises] an issue of first impression in Wisconsin. When a government policy violates due process, is evidence obtained pursuant to that policy subject to Fourth Amendment suppression?" Garcia appears to argue that he was entitled to suppression under the Fourth Amendment because the purported "enforcement policy" here violated his due process rights, based on ***Commonwealth v. Long***, 485 Mass. 711, 715, 152 N.E.3d 725 (2020). He asserts: "Massachusetts was particularly concerned about the context of traffic stops." However, Garcia fails to address the facts of ***Long***—which held that, under Massachusetts law, "[a] defendant seeking to suppress evidence based on a claim that a traffic stop violated principles of equal protection bears the burden of establishing, by motion, a reasonable inference that the officer's decision to initiate the stop was motivated by race or another protected class"—or to explain how that case supports his contention that he was stopped pursuant to an "enforcement policy" that required the officer to first verify the setback of the stop sign in order to satisfy due process. ***Id.*** at 713.

Therefore,

IT IS ORDERED that the judgment is summarily affirmed pursuant to 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