COURT OF APPEALS
DECISION
DATED AND RELEASED

March 7, 1996

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

NOTICE

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

No. 95-2707

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

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

PAUL R. STANFA,

Defendant-Appellant.

APPEAL from a judgment of the circuit court for Dane County: STUART SCHWARTZ, Judge. *Affirmed*.

EICH, C.J.[1] Paul Stanfa appeals from a judgment convicting him of operating a motor vehicle while intoxicated (first offense). The issue is whether the arresting officer had grounds to stop Stanfa's vehicle.[2] We conclude that he did and therefore affirm the judgment.

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[1] This appeal is decided by one judge pursuant to § 752.31(2)(c), STATS.

[2] Stanfa moved to suppress evidence of his arrest on grounds that the officer lacked

The facts are found in the testimony of the arresting officer, Steven Maeder of the University of Wisconsin Police Department.

After testifying as to his training and experience in the field, Maeder described the stop. His testimony was brief. He said he was traveling eastbound on West Johnson Street in the City of Madison, approaching the intersection with North Park Street. As he approached the intersection, the traffic light facing him turned green and he proceeded through. As he did so, he saw Stanfa's car, which was traveling southbound on Park Street, come to a stop, lurching backwards and forwards, and coming to rest with "approximately ... half the length of the vehicle" extending over the "stop" line marked on the pavement. Maeder turned around and followed Stanfa's car, stopping him a short distance away for what he described as an "improper stop" at the intersection. Stanfa's arrest for operating while intoxicated came after Maeder had the opportunity to observe his conduct after the stop.

Stanfa's argument on appeal is equally brief. Citing the statute governing stopping at intersections with traffic lights,[3] he argues simply that

(..continued)
reasonable grounds to stop his vehicle in the first instance. The motion was denied and, preserving his suppression arguments for appeal, he was convicted of driving while intoxicated after a stipulated trial. *See* ***County of Racine v. Smith***, 122 Wis.2d 431, 362 N.W.2d 439 (Ct. App. 1984).

[3] Section 346.37(1), STATS., provides as follows:

> (1) Whenever traffic is controlled by traffic control signals ... the following colors shall be used and shall indicate and apply to operators of vehicles ... as follows:
>
> ....
>
> (b) *Yellow.* When shown with or following the green, traffic facing a yellow signal shall stop before entering the intersection unless so close to it that a stop may not be made in safety.
>
> (c) *Red.* Vehicular traffic facing a red signal shall stop before entering the ... intersection or at such other point as may be indicated by a clearly visible ... marking and shall remain standing until green ... is shown.

"[t]here is nothing in these facts to show that [he] did anything wrong in stopping as he did." He emphasizes that there was no evidence as to either (a) "the nature of the traffic light cycle" or Maeder's "familiarity with it," or (b) the speed of Maeder's car or "any distances involved." As a result, says Stanfa, "[i]t is impossible ... to determine time sequences from the evidence ... and, thereby, impossible to determine ... that the defendant should have been able to stop sooner than he did ...." And he challenges as "speculative" the trial court's conclusion that the stop was valid.

The test of the reasonableness of an investigatory stop is whether the officer has an articulable suspicion that the person has committed or is about to commit an offense. ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968). The focus of the test is on reasonableness: "It is a common sense question .... [The essence of the inquiry is] whether the action of the law enforcement officer was reasonable under all the facts and circumstances present." ***State v. Jackson***, 147 Wis.2d 824, 831, 434 N.W.2d 386, 389 (1989).

The trial court, citing the portion of § 346.37(1)(c), STATS., requiring vehicles facing a red light to stop at the pavement line, concluded that the facts as testified to by Maeder were adequate to give rise to a reasonable suspicion that Stanfa had "engaged in illegal conduct" when his vehicle passed that line.

Stanfa, citing us to a specific page of the hearing transcript, argues that the trial court's conclusion that "the defendant's vehicle had `a significant amount of time to note the light change for the direction that [he] was going'" is mere speculation. The quotation, however, is not the trial court's; it is taken from the prosecutor's closing argument to the court.

We agree with the State that Maeder's observations were sufficient to give rise to an articulable suspicion that Stanfa had violated § 346.37, STATS. Observing his own light turn green and, at the same time, observing Stanfa's vehicle come to a lurching stop beyond the marked line on the pavement gave

Maeder a reasonable, common-sense suspicion that a violation of the statute had occurred.[4]

By the Court.—Judgment affirmed.

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

[4] Stanfa argues for the first time in his reply brief that the trial court's "focus on subsection (c) of the statute" was improper and "misleading," and that the proper emphasis is on the language of subsection (b) indicating that a person should stop before entering a signaled intersection "unless so close to it that a stop may not be made in safety." He contends that his actions in coming to the stop were far from illegal, but were in fact those of "a prudent and responsible driver," which should not place him at any disadvantage.

We have often held that raising arguments for the first time in a reply brief violates the Rules of Appellate Procedure and will not be considered. ***Northwest Wholesale Lumber, Inc. v. Anderson***, 191 Wis.2d 278, 294 n.11, 528 N.W.2d 502, 508 (Ct. App. 1995). Doing so "thwart[s] the purpose of a brief-in-chief, which is to raise the issues on appeal, and the purpose of a reply brief, which is to reply to arguments made in a respondent's brief." ***Verex Assurance, Inc. v. AABREC, Inc.***, 148 Wis.2d 730, 734 n.1, 436 N.W.2d 876, 878 (Ct. App. 1989). The "new" arguments raised by Stanfa in his reply brief do not respond to any arguments advanced by the State in its brief, and we see no reason to depart from our long-held rule in this case.