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

2016AP279-CR

State of Wisconsin v. Marvin D. Belknap (L. C. No. 2014CT102)

Before Seidl, J.¹

Marvin Belknap appeals a judgment of conviction for third-offense operating a motor vehicle while intoxicated (OWI). Belknap challenges the constitutionality of the traffic stop that led to his arrest and argues the circuit court erred by denying his motion to suppress evidence.

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

Based upon our review of the briefs and record, we conclude this case is appropriate for summary disposition, and we summarily affirm. *See* WIS. STAT. RULE 809.21.

Belknap was charged with third-offense OWI and later charged in an amended criminal complaint with third-offense operating with a prohibited alcohol concentration. Belknap moved to suppress the evidence that was obtained after the arresting officer stopped the vehicle he was driving. Belknap argued a lawful stop cannot be based on a mistake of law, which he contended was the basis for the traffic stop in this case. He also argued the criminal complaint did not contain any specific or articulable facts that “would lead one to believe that this was an investigatory stop.”

At the suppression hearing, Wisconsin State Patrol trooper J. J. Marcelin testified that on November 1, 2014, he observed Belknap driving a Dodge Durango with the registration stickers improperly displayed on the vehicle’s license plate. According to Marcelin, the month sticker was affixed to the right side of the license plate when it should have been on the left side, and the year sticker was affixed to the left side of the plate, when it should have been on the right side. Marcelin testified he stopped Belknap for violating WIS. STAT. § 341.15(1m)(a), which states, “Except as provided in par. (b),^[2] any registration decal or tag issued by the department shall be placed on the rear registration plate of the vehicle in the manner directed by the department.”

The circuit court received into evidence, without objection, a printout from the official Wisconsin Department of Transportation, Division of Motor Vehicles website, which directs light truck owners to place the month sticker in the lower left corner of the license plate and the

² The exceptions in WIS. STAT. § 341.15(1m)(b) are not relevant to this appeal.

year sticker in the lower right corner. The court determined the improper placement of the registration stickers on the vehicle Belknap was driving amounted to a violation of WIS. STAT. § 341.15(1m)(a). However, the court identified the main issue at the suppression hearing to be whether a penalty was associated with § 341.15(1m)(a) to make it a traffic violation for which Belknap could be stopped. The court provided the parties time to brief the issue further.

At a subsequent hearing, the circuit court determined the “catch-all provision” in WIS. STAT. § 939.61³ provides a penalty for WIS. STAT. § 341.15(1m)(a). In the alternative, the court determined Marcelin was engaged in a community caretaker role, given Marcelin’s testimony that he was going to provide Belknap with new stickers to correct the error. The court concluded Marcelin’s decision to stop Belknap was constitutionally permissible on either basis and denied Belknap’s motion to suppress evidence. Belknap pled guilty to third-offense OWI. He now appeals the denial of his suppression motion. *See* WIS. STAT. § 971.31(10).

On appeal, Belknap relies on *State v. Longcore*, 226 Wis. 2d 1, 594 N.W.2d 412 (Ct. App. 1999), *aff’d by an equally divided court*, 2000 WI 23, 233 Wis. 2d 278, 607 N.W.2d 620, *and overruled by State v. Houghton*, 2015 WI 79, 364 Wis. 2d 234, 868 N.W.2d 143. He contends that, under *Longcore*, a lawful stop cannot be predicated on a mistake of law and a “[m]istake of law is the only basis for the traffic stop in this case.” In particular, he argues he did

³ WISCONSIN STAT. § 939.61(1) provides, “If a person is convicted of an act or omission prohibited by statute and for which no penalty is expressed, the person shall be subject to a forfeiture not to exceed \$200.”

not violate WIS. STAT. § 341.15(3),⁴ and under § 341.15(3) “there is no express financial or criminal penalty for inversion of registration stickers.”

Review of an order denying a motion to suppress evidence presents a question of constitutional fact to which we apply a two-step standard of review. *State v. Robinson*, 2010 WI 80, ¶22, 327 Wis. 2d 302, 786 N.W.2d 463. “First, we review the circuit court’s findings of historical fact under a deferential standard, upholding them unless they are clearly erroneous. Second, we independently apply constitutional principles to those facts.” *Id.* (citations omitted).

Even if we assume Marcelin did not have reasonable suspicion to stop Belknap for a violation under WIS. STAT. § 341.15(3), Belknap ignores the two grounds upon which the circuit court denied his suppression motion. In particular, Belknap fails to make any argument refuting the circuit court’s conclusions that the “catch-all provision” in WIS. STAT. § 939.61 provides a penalty for § 341.15(1m)(a) and that Marcelin was engaged in a community caretaker role.

⁴ WISCONSIN STAT. § 341.15(3) provides:

Any of the following may be required to forfeit not more than \$200:

- (a) A person who operates a vehicle for which a current registration plate, insert tag, decal or other evidence of registration has been issued without such plate, tag, decal or other evidence of registration being attached to the vehicle, except when such vehicle is being operated pursuant to a temporary operation permit or plate or displays a historical plate under s. 341.265(1m) or 341.266(2)(dm);
- (b) A person who operates a vehicle with a registration plate attached in a non-rigid or non-horizontal manner or in an inconspicuous place so as to make it difficult to see and read the plate;
- (c) A person who operates a vehicle with a registration plate in an illegible condition due to the accumulation of dirt or other foreign matter.

Additionally, the State, consistent with the court's ruling, argues Marcelin had reasonable suspicion to stop Belknap for a § 341.15(1m)(a) violation. Belknap did not file a reply brief in response to this argument.

“Failure to address the grounds on which the circuit court ruled constitutes a concession of the ruling's validity.” *West Capitol, Inc. v. Village of Sister Bay*, 2014 WI App 52, ¶49, 354 Wis. 2d 130, 848 N.W.2d 875 (citing *Schlieper v. DNR*, 188 Wis. 2d 318, 322, 525 N.W.2d 99 (Ct. App. 1994)), *review denied*, 2014 WI 122, 358 Wis. 2d 605, 855 N.W.2d 696. “This is especially so where the respondent raises the grounds relied upon by the [circuit] court, and the appellant fails to dispute these grounds in a reply brief.” *Schlieper*, 188 Wis. 2d at 322. As a result, we deem conceded the circuit court's rulings regarding WIS. STAT. § 341.15(1m)(a) and the community caretaker exception.

Further, Belknap's reliance on *Longcore* is misplaced. On July 14, 2015, the supreme court overruled *Longcore* and held “an objectively reasonable mistake of law by a police officer can form the basis for reasonable suspicion to conduct a traffic stop.” *Houghton*, 364 Wis. 2d 234, ¶52. The State, citing *Houghton*, argues that, to the extent Marcelin was mistaken regarding the law, his mistake of law was objectively reasonable. Again, Belknap did not file a reply brief in response to the State's argument. We therefore deem the State's argument conceded. See *Charolais Breeding Ranches, Ltd. v. FPC Sec. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments are deemed conceded). Therefore,

IT IS ORDERED that the judgment of the circuit court is summarily affirmed.

Diane M. Fremgen
Clerk of Court of Appeals