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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appeal No. 2013AP000101-FT

COUNTY OF FOND DU LAC,
Plaintiff-Respondent,

v.

NATHAN M KOHLWEY,
Defendant-Appellant,

BRIEF OF PLAINTIFF-RESPONDENT
APPEALED FROM A JUDGMENT OF CONVICTION
AND ORDER
DENYING MOTION TO SUPPRESS EVIDENCE
ENTERED IN BRANCH II, CIRCUIT COURT,
FOND DU LAC COUNTY,
HONORABLE PETER L. GRIMM, PRESIDING
TRIAL COURT CASE NUMBERS 12 TR 3543, 12 TR 3545

Respectfully Submitted:
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ISSUE PRESENTED

Whether the detention after the stop was unreasonable.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is unnecessary in this case; we are not disputing the facts in this case.

ARGUMENT

- I. THE DETENTION AFTER THE TRAFFIC STOP WAS REASONABLE, UNDER THE CIRCUMSTANCES AND THE TRIAL COURT PROPERLY DENIED THE MOTION TO SUPPRESS.

The County concedes a passenger has standing to challenge a stop and detention.

To justify an investigatory seizure, “the police must have a reasonable suspicion grounded in specific articulable facts and reasonable inferences from those facts, that an individual is [or was] violating the law. State v. Gammons, 2001 WI App 36, ¶6. “The question of what constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or training and experience.” State v. Young, 212 Wis.2d 417. State v. Griffin, held that an officer may perform an investigatory stop

of a vehicle based on a reasonable suspicion of a non-criminal traffic violation. State v. Griffin, 183 Wis.2d 327, at 331-334.

“When an officer observes unlawful conduct, there is no need for an investigative stop: the observation of unlawful conduct gives the officer probable cause for a lawful seizure. It is not the law that police must have established probable cause to arrest before such a stop, and police are not required to rule out every possibility of innocent behavior before initiating a brief stop.” State v. Waldner, 206 Wis.2d 51. “Suspicious conduct by its very nature is ambiguous, and the principal function of the investigative stop is to quickly resolve the ambiguity.” State v. Anderson, 155 Wis.2d 77 at 84.

“When broadening the scope of a stop, that, too, is evaluated under the reasonableness of police conduct.” State v. Brock, 2005 WI App 88 at ¶ 11.

In this particular case, the police had an apparent traffic violation relating to license plates. (R33: 11, 33). Additionally, police had the report of a named witness of a possible intoxicated driver at this location, approximately one-half hour earlier, going on a dead-end road in an area with little traffic, few residences, and late at night. (R33: 5, 10, 18).

Further detention of the stopped vehicle was justified by the immediately apparent odor of alcohol from the interior of the vehicle, and to question the parties briefly about what

they were doing in the area at that particular time. (R33: 14, 36, 37). It was during this brief questioning period that the police discovered the passenger was the person who had been operating the vehicle called in earlier by the citizen witness, and had slurred speech, glassy eyes, and the odor of intoxicants on him. (R33: 37, 38).

Rather than being an unreasonable stop and detention, the record shows this was simply good police work, addressed toward suspicious conduct, which took only a matter of minutes to conclude. (R33: 20).

CONCLUSION

The detention after the traffic stop in this case was reasonable, because while the purpose of the stop was being addressed, sufficient indicators of additional suspicious conduct justified broadening the scope of that stop, which in a matter of minutes had resolved ambiguities and clarified that the police had located the suspected drunk driver originally reported by the named citizen witness. As such, the Circuit Court's findings are not clearly erroneous and the Court's denial of the suppression motion should be affirmed.

Dated this ____ day of March, 2013.

Scot Mortier
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FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c), Stats. as modified by the rules of expedited appeal. The length of this brief is 896 words.

Dated this ___ day of March, 2013.

Scot Mortier
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CERTIFICATION

The Plaintiff-Respondent hereby certifies that the Brief meets the requirements set forth in Rule §809.19(12)(f), and that the text of the electronic copy is identical to the text of the paper copy of the brief.

Respectfully submitted,

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