WISCONSIN COURT OF APPEALS
DISTRICT IV

CITY OF STEVENS POINT,

Appeal Case No. 2013 AP 538
Portage County Case Nos.
12 TR 2459 and 12 TR 2460

Plaintiff-Respondent,

v.

KATRINA L. SHURPIT,

Defendant-Appellant.

APPEAL FROM JUDGMENT OF THE CIRCUIT COURT, BRANCH I
PORTAGE COUNTY CASE NOS. 12 TR 2459 AND 12 TR 2460
HONORABLE THOMAS B. EAGON, PRESIDING

PLAINTIFF-RESPONDENT'S BRIEF
OF
City of Stevens Point

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STATEMENT OF THE ISSUE

I. WHETHER THE CITY MET ITS BURDEN OF SHOWING REASONABLE SUSPICION TO STOP AND DETAIN THE DEFENDANT FOR THE PURPOSES OF AN INVESTIGATORY STOP?

Trial Court Answered: **Yes.**

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The above-named Plaintiff-Respondent, City of Stevens Point, does not believe that oral argument is necessary in the above-entitled matter Pursuant to Rule 809.22(2)(b), Stats., since the briefs will fully develop and explain the issues. Therefore, oral argument would be of only marginal value and would not justify the expense of court time. The Plaintiff-Respondent recognizes that this appeal is a one-judge appeal and does not qualify under this Court's operating procedures for publication; and therefore, does not believe that the opinion of the Court of Appeals in this case should be published.

ARGUMENT

I. THE TRIAL COURT WAS CORRECT WHEN IT DETERMINED THAT OFFICER TROCHINSKI HAD REASONABLE SUSPICION TO STOP AND DETAIN MS. SHURPIT.

The City of Stevens Point ("City") contends that the collective knowledge doctrine should not be applied and that Officer Trochinski had reasonable suspicion to stop and detain Ms. Shurpit. Alternatively, even if the collective knowledge doctrine applies, Officer Trochinski nevertheless had reasonable suspicion to stop and detain Ms. Shurpit. The City does not take a position on whether Officer Trochniski had reasonable suspicion because another crime had been or was being committed.

The issue before the court is one of constitutional fact, and this court defers to the trial court's findings of fact unless they are clearly erroneous. *State v. Martwick*, 2000 WI 5 ¶ 18, 231 Wis. 2d 801, 604 N.W.2d 552. This court, however, independently reviews the trial court's application of constitutional standards to those facts. *Id.* at ¶ 20.

A. The totality of the circumstances provided Officer Trochinski with reasonable suspicion that Shurpit's vehicle was involved in the hit and run.

Ms. Shurpit cites the six-factor test identified by Professor LaFave for determining whether an officer has reasonable suspicion to perform a stop. 4 W. LAFAVE SEARCH AND SEIZURE, § 9.5(g), at 550-51 (4th

ed. 2004). The Wisconsin Supreme Court has adopted this text for assessing "reasonable suspicion." *State v. Guzy*, 139 Wis. 2d 663, 675, 407 N.W.2d 548 (1987), *State v. Harris*, 206 Wis. 2d 243, 260, 557 N.W.2d 245 (1996). The six factors are:

(1) The particularity of the description of the offender or the vehicle in which he fled;

(2) The size of the area in which the offender might be found, as indicated by such facts as the elapsed time since the crime occurred;

(3) The number of persons about in that area;

(4) The known or probable direction of the offender's flight;

(5) Observed activity by the particular person stopped; and

(6) Knowledge or suspicion that the person or vehicle stopped has been involved in other criminality of the type presently under investigation.

Furthermore, the Supreme Court of Wisconsin in *Guzy* added some additional factors to consider:

(1) Are alternative means of further investigation available, such as a license plate check, closer observation of the suspects, or obtaining additional information? If so, the reasonableness of the stop based on scant facts may well be questionable.

(2) Is there a possibility that if law enforcement officers do not act immediately the opportunity for further investigation would be lost? A minimal amount of facts may, under these circumstances, be given greater weight than if the opportunity to act in the future is not foreclosed.

(3) What actions would be necessary following the stop for law enforcement officers to determine whether to arrest or releases the suspected individual?

(4) Will the stop create the opportunity to corroborate a known physical feature of a suspect or clothing description with minimal intrusion on personal security?

Guzy, 139 Wis. 2d at 678-679.

The City will now discuss how these factors pertain to the instant case.

i. Particularity of the description.

Officer Trochinski was told the suspected vehicle was grayish or greenish in color. (R. 19, pp. 16, 44). The circuit court found that Shurpit's vehicle matched this color description. (R. 19, p. 47). Officer Trochinski was told the suspect vehicle had been involved in a hit-and-run. (R. 19, pp. 22, 43). When she approached Ms. Shurpit's vehicle, Officer Trochinski observed that it had fresh damage to the rear bumper. (R. 19, p. 46).

A description of a vehicle that includes its color and its involvement in a hit-and-run is sufficiently particular to make this a strong factor in favor of the City. In fact, it was particular enough for Officer Trochinski to exclude the only other vehicle she saw while searching for the suspect vehicle, a red car travelling southbound on North Second Street. (R. 19, pp. 23-24, 46). In her brief, Ms. Shurpit stresses how important it is for a description to provide this "selectivity" factor. She quotes the Wisconsin Supreme Court's holding that "the most important consideration concerning a physical description 'is whether the description is sufficiently unique to permit a reasonable degree of selectivity unique (sic) to permit a reasonable degree of selectivity from the group of all potential suspects." *Guzy*, *supra*, 139 Wis. 2d at 680; *State v. Harris*, 206 Wis. 2d 243, 260, 557 N.W.2d 245 (1996). The color description *alone* was sufficiently particular to exclude the only other vehicle Officer Trochinski saw. Combined with the hit-and-run element, the color description provided to Officer Trochinski was quite particular and strongly supports a finding that she had reasonable suspicion to stop Ms. Shurpit.

ii. Size of the area and lapse of time.

To further explain this factor, Professor LaFave states: "the time and spatial relation of the stop to the crime is an important consideration in determining the lawfulness of the stop. The elapsed time indicates the maximum distance it would be possible for the offender to have covered

since the crime, and this in turn supplies the radius of the area in which he might be found." 4 W. LAFAVE, *supra* at 561.

The circuit court found that Mr. Gawlik last saw the suspect vehicle near the corner of 4th Avenue and Second Street. (R. 19, p.42). Officer Trochinski stopped Ms. Shurpit on the two to three-hundred block of Fourth Avenue, which is about five to six blocks from where Mr. Gawlik lost sight of it. (R. 19, p. 46). Between Mr. Gawlik losing sight of the suspect vehicle and Officer Trochinski stopping Ms. Shurpit, about five minutes elapsed. (R. 19, p. 47). Five minutes is more than enough time for a vehicle to travel five or six blocks. The stop clearly occurred within the radius indicated in Professor LaFave's comment, and this factor favors a finding that Officer Trochinski had reasonable suspicion to perform the stop.

iii. Number of persons about.

Officer Trochinski observed only two vehicles in the area while searching for the suspect vehicle: the aforementioned red car which was excluded based on the color description, and Ms. Shurpit's car. The small number of vehicles operating in the area further increases the reasonableness of Officer Trochinski's suspicion that a vehicle matching the color description with fresh damage to its bumper was the suspect vehicle from the hit-and-run.

iv. Probable direction of flight.

Mr. Gawlik lost sight of the suspect vehicle when it was near the corner of Fourth Avenue and Second Street. (R. 19, pp. 16, 44). Officer Trochinski stopped Ms. Shurpit's vehicle on Fourth Avenue only five or six blocks from where Mr. Gawlik last saw the suspect vehicle. To arrive at the location where Ms. Shurpit was stopped, the suspect vehicle would only have to make one left turn and drive for a few blocks. Officer Trochinski reasonably suspected that the suspect vehicle may have fled from where it was last seen to where the stop occurred.

v. Observed activity by the particular person stopped.

While Ms. Shurpit did not attempt to flee or hide upon Officer Trochinski's approach, her vehicle was running with its taillights lit and was parked facing away from the last known location of the suspect vehicle. (R. 19, pp. 28-29, 36). Officer Trochinski could have reasonably concluded that Mr. Shurpit was driving shortly before the stop occurred, further enhancing her reasonable suspicion that Ms. Shurpit's vehicle had been involved in the hit-and-run.

vi. *Guzy* factors.

While alternative means of investigation may have been available, the stop was not based on scant facts. As noted above, the Ms. Shurpit's vehicle matched the color description, had damage commensurate with the hit-and-run report, was located very near the last known location of the

suspect vehicle, was facing the direction the suspect vehicle likely would have been traveling, and was running. Under those circumstances, Officer Trochinski's most fruitful means of gathering further information was likely to talk to the driver of the vehicle regarding the source of the damage to her bumper, which is precisely what the officer did.

Because Officer Trochinski was responding to a hit-and-run call, she knew the suspect vehicle had already fled the scene of an accident, and therefore reasonably concluded that the suspect vehicle may flee again. Had she paused to further investigate before activating her emergency lights and commencing the stop, she reasonably believed the suspect vehicle might flee and the opportunity for further investigation would be lost.

The actions necessary following the stop for Officer Trochinski to determine whether to arrest or release Ms. Shurpit were to determine whether Ms. Shurpit's vehicle was the vehicle involved in the hit-and-run. Stopping a hit-and-run suspect to inquire about the damage to her vehicle is a reasonable step to take under the totality of the circumstances. Had Ms. Shurpit not shown signs of intoxication, she would have likely been free to go once Mr. Gawlik confirmed that hers was not the vehicle he saw flee the scene of an accident.

While the stop did not provide the opportunity to corroborate a known physical or clothing characteristic of the suspect, such opportunity is not essential to a finding of reasonable suspicion.

B. The collective knowledge doctrine should not apply, but even if it does, Officer Trochinski had reasonable suspicion to perform the stop.

i. The collective knowledge doctrine should not apply in the manner suggested by Ms. Shurpit.

Ms. Shurpit argues that the collective knowledge doctrine imputes to Officer Trochinski the knowledge that the suspect vehicle was an SUV, therefore precluding a finding that the officer had reasonable suspicion to perform the stop. However, Ms. Shurpit offers no basis in statute or case law for extending the collective knowledge doctrine in this manner. Instead, Ms. Shurpit offers only policy arguments, such as the possibility of police departments "omit[ting] important descriptive details in communicating with their officers, so as to cast as wide a net as possible for potential suspects." (Defendant-Appellant's Brief p.13)

While it is worth noting that the record contains zero evidence that a deliberate omission occurred in this case, the more important point is that there are substantial policy reasons for *not* extending the collective knowledge doctrine in the manner Ms. Shurpit suggests. For example, suppose a police officer witnesses a hit-and-run incident, not unlike the one

in this case. The officer calls dispatch and provides a description of the vehicle including the make, model, and color. However, in the heat of the moment, the officer neglects to mention that the suspect vehicle has a spoiler on the trunk. Another officer hears the description over radio, and shortly afterward stops a vehicle that matches the make, model, and color, but does not have a spoiler. As a result of that stop, an OWI arrest occurs.

One could argue persuasively that the officer who witnessed the hit-and-run had knowledge that the suspect vehicle had a spoiler. A spoiler is a large, plainly obvious, and distinct characteristic of a vehicle. If the collective knowledge doctrine applies in the manner Ms. Shurpit suggests, the presence of a spoiler would be imputed to the second officer, thereby precluding that officer's reasonable suspicion to stop the vehicle that very nearly matches the description of the suspect vehicle. This would put police in the awkward position of having to exhaustively list every minute detail they could describe about a suspect or suspect vehicle, lest some distinguishable characteristic be inadvertently left out and spoil reasonable suspicion to stop a person or vehicle that closely, but not perfectly, matches the description.

ii. Even if the collective knowledge doctrine applies, Officer Trochinski still had reasonable suspicion to stop Ms. Shurpit.

If Officer Trochinski is imputed all of the knowledge about the suspect vehicle within the department's possession, she still had reasonable suspicion to stop Ms. Shurpit. Mr. Gawlik was unable to determine the license plate number or the precise make and model of the vehicle. (R. 19, p.5). Mr. Gawlik identified the vehicle to dispatch as a Honda CR-V or Toyota RAV-4. (R. 19, p. 41-42). The Honda CR-V is described as "a compact SUV . . . loosely derived from the Honda Civic." *Honda CR*-V, Wikimedia Foundation, Inc., http://en.wikipedia.org/wiki/Honda_CR-V (last visited July 29, 2013). The Totota RAV-4 is "the smallest of Toyota's large family of SUVs" and "hits that sweet spot between car-based station wagons and truck-based SUVs." *Toyota RAV4 Review*, Edmunds.com Inc., http://www.edmunds.com/toyota/rav4/ (last visited July 29, 2013).

Because the RAV-4 and CR-V straddle the line between a car and a full-sized SUV, even if Officer Trochinski is imputed the knowledge that Mr. Gawlik had identified the vehicle as a small SUV, it would have been reasonable for Officer Trochinski to conclude that his identification of the suspect vehicle as such could have been in error. The vehicle she stopped may have not exactly matched that particular aspect of the description known to the department as a whole, but it matched the color, location, and damage likely sustained by the suspect vehicle. Officer Trochinski would have had reasonable suspicion to stop Ms. Shurpit even if she had known Mr. Gawlik reported the suspect vehicle to be a small SUV.

CONCLUSION

WHEREFORE, the City respectfully requests this Court to uphold the decision of the circuit court denying Ms. Shurpit's motion to suppress.

Respectfully submitted this _____ day of July, 2013.

_____
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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Section 809.19(8)(b) and (c) for a brief produced with a new roman font, 13 point font with 11 point font for quotes; double spaced; 1.5 inch margin on the left and 1 inch margin on all other sides. This brief is __2,701___ words in length.

Dated this _____ day of July, 2013.

_____

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