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OF WISCONSIN**

STATE OF WISCONSIN
COURT OF APPEALS

DISTRICT II

Case No. 2013AP2803-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ELISA ESTRADA,

Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING THE
MOTION TO SUPPRESS ENTERED IN THE RACINE
COUNTY CIRCUIT COURT, THE HONORABLE
ALLAN B. TORHORST PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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BRIEF OF PLAINTIFF-RESPONDENT

ISSUE PRESENTED

Whether law enforcement officers had a reasonable and articulable suspicion that justified their continued detention of Estrada during a traffic stop to investigate a recent armed robbery?

Trial court answered: Yes (28:68-69, 71).

Whether law enforcement officers had a reasonable and articulable suspicion to justify their protective search of Estrada's car, which lead to the recovery of a handgun?

Trial court answered: Yes (28:71-72).

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State believes that neither oral argument nor publication is necessary. The parties have fully developed the arguments in their briefs and the issues presented involve the application of well-settled legal principles to the facts.

STATEMENT OF THE CASE AND FACTS

The state will supplement the defendant-appellant Elisa Estrada's statement of the case and facts as appropriate in its argument.

ARGUMENT

THE TRIAL COURT PROPERLY DENIED ESTRADA'S MOTION TO SUPPRESS EVIDENCE.

A. Introduction

Estrada asserts that the trial court erred in denying her motion to suppress evidence obtained as a result of a search of her vehicle. Estrada's brief at 15. Specifically, she argues that the officers' continued detention of Estrada and subsequent protective search were predicated on an unreasonable and unsupported hunch. Estrada's brief at 12.

The state disagrees. Officer Chad Andersen had probable cause to stop Estrada's car for a registration violation. Further, during the traffic stop, Andersen developed a reasonable and articulable suspicion that supported his continued detention of Estrada and her associates for the purpose of investigating a recently committed armed robbery. Finally, based upon the information officers developed, they had a reasonable and articulable suspicion to conduct a protective search of Estrada's car for a handgun. As such, neither Andersen's detention of Estrada nor the officers' protective search of her vehicle violated Estrada's constitutional right to be free from an unreasonable search or seizure.

B. Constitution Provisions
Interpreted.

The Fourth Amendment to the United States Constitution, and Article I, Section 11 of the Wisconsin Constitution, protect "the right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures." U.S. Const. amend. IV; Wis. Const. art. I, § 11. The Wisconsin Supreme Court has consistently conformed its "interpretation of Article I, Section 11 and its attendant protections with the law developed by the United States Supreme Court under the Fourth Amendment." *See State v. Rutzinski*, 2001 WI 22, ¶ 13, 241 Wis. 2d 729, 623 N.W.2d 516.

C. Standard of Review.

Whether police conduct violates the guarantee against unreasonable searches and seizures presents a question of constitutional fact. On review, an appellate court decides constitutional questions independently, benefiting from the analysis of the circuit court. In reviewing an order deciding a suppression motion,

appellate courts will uphold findings of evidentiary or historical fact unless they are clearly erroneous. *State v. Kieffer*, 217 Wis. 2d 531, 541, 577 N.W.2d 352 (1998). “A finding is clearly erroneous if ‘it is against the great weight and clear preponderance of the evidence.’” *State v. Arias*, 2008 WI 84, ¶¶ 11-12, 311 Wis. 2d 358, 752 N.W.2d 748 (2008) (citations omitted).

D. Officer Andersen lawfully stopped and detained Estrada.

1. Officer Andersen had probable cause to stop Estrada’s car for a registration violation.

An officer possesses the authority to arrest a person without a warrant for violating a “traffic regulation” if the officer has reasonable grounds to believe that the person is violating a traffic regulation. Wis. Stat. § 345.22. For purposes of Wis. Stat. § 345.22, a traffic regulation includes any “provision of chs. 194 or 341 to 349 for which the penalty for violation is a forfeiture or an ordinance enacted in accordance with s. 349.06.” Wis. Stat. § 345.20(1)(b). “Implicit in the authority to arrest for a traffic violation is the authority to stop the vehicle where the officer has reasonable grounds to believe the violation has occurred.” *State v. Baudhuin*, 141 Wis. 2d 642, 648, 416 N.W.2d 60 (1987).

Estrada appropriately concedes the lawfulness of the initial traffic stop. Estrada’s brief at 11. Independent of the armed robbery investigation, Officer Andersen observed Estrada’s Chevy Impala at a Speedway gas station and ran a record check, which revealed that the car’s registration had been suspended (28:28). Wisconsin Statute § 341.03(1) prohibits persons from operating a motor vehicle with a suspended revocation. Because this is a forfeiture offense, it constitutes a “traffic regulation”

for which an officer may make an arrest. Accordingly, Andersen had probable cause to stop the Chevy Impala and its driver, Estrada, for operating a vehicle with suspended registration. As the state will demonstrate below, during this traffic stop, Andersen developed a reasonable and articulable suspicion that justified (a) the officers' extension of Estrada's detention to investigate the recent armed robbery, and (b) their performance of a protective search of the Chevy Impala for a handgun.

2. Officers had a reasonable and articulable suspicion that justified their continued detention of Estrada during the traffic stop to investigate a recent armed robbery.

In *Terry v. Ohio*, 392 U.S. 1 (1968), the United States Supreme Court held that officers may stop and briefly detain a person for the purpose of investigating possible criminal behavior. "An investigatory stop is constitutional if the police have reasonable suspicion that a crime has been committed, is being committed, or is about to be committed." *State v. Young*, 2006 WI 98, ¶ 20, 294 Wis. 2d 1, 717 N.W.2d 729; *see also* Wis. Stat. § 968.24 (legislative codification of the *Terry* standard). An officer has reasonable suspicion if the officer possesses "specific and articulable facts that warrant a reasonable belief that criminal activity is afoot." *Young*, 294 Wis. 2d. 1, ¶ 21.

The question of whether reasonable suspicion exists is a common-sense test under all the facts and circumstances present. *State v. Amos*, 220 Wis. 2d 793, 798, 584 N.W.2d 170 (Ct. App. 1998). The police are not required to rule out the possibility of innocent behavior before initiating a brief stop. *Young*, 294 Wis. 2d. 1, ¶ 59. In determining whether there is sufficient reasonable suspicion to justify a stop, the facts known to the officer at

the time of the stop must be taken together with any rational inferences, and considered under the totality of the circumstances. *State v. Richardson*, 156 Wis. 2d 128, 139-40, 456 N.W.2d 830 (1990). Said another way, a reviewing court must “examine the facts leading up to the stop to determine whether these historical facts, viewed from the standpoint of an objectively reasonable police officer, amount to reasonable suspicion.” *Young*, 294 Wis. 2d 1, ¶ 58.

In assessing whether an officer possessed reasonable suspicion justifying a detention, a reviewing court may also consider information known to other officers. Under the collective knowledge doctrine, officers may rely and act on the basis of the knowledge of other officers without themselves knowing the underlying facts, so long as reasonable suspicion underlies the collective knowledge of the other officers. *State v. Pickens*, 2010 WI App 5, ¶¶ 11-13, 323 Wis. 2d 226, 779 N.W.2d 1. Thus, an “officer with knowledge of facts amounting to reasonable suspicion may direct a second officer without such knowledge to stop and detain a suspect.” *Id.* ¶ 12. In deciding whether reasonable suspicion exists to justify a stop, courts consider information available to other law enforcement personnel as well as the officer who initiated the stop. *State v. Rissley*, 2012 WI App 112, ¶ 19, 344 Wis. 2d 422, 824 N.W.2d 853 (court considered information available to dispatcher as well as detaining officer in upholding stop).

Contrary to Estrada’s assertion, the officers did not act on an inchoate and unparticularized hunch. Estrada’s brief at 14. Rather, Judge Torhorst found that Officer Andersen acted on reasonable suspicion (28:68). At the time of his initial contact with Estrada, Estrada received a call from the dispatcher regarding the earlier robbery. Estrada handed her telephone to Andersen and Estrada was identified to Andersen as one of the robbery victims (28:67). “Andersen’s observations at that point become more keen, more astute and the situation goes from one of

an obvious traffic stop . . . to one where he begins to become suspicious.” (28:67-8). “[N]ot only does he now have the phone call at this point but he’s also listening with his ear monitor to other officers” (28:68). Judge Torhorst found that Andersen developed reasonable suspicion as he started walking back to his vehicle (28:68). At that point, Andersen knew that “he then had one of the persons involved in the earlier robbery” (28:68). “[I]t’s a short time but several miles from the location. He’s got two males. His observation was as he described as he flashed around with his light in the car . . . saw the piece of clothing. . .” (28:68). Judge Torhorst’s findings are not clearly erroneous.

In assessing whether Officer Andersen had reasonable suspicion to detain Estrada, this court should also consider the information that Officer Theodore Bodnar obtained from the armed robbery victim, Rachel, prior to the traffic stop.

- Rachel was a passenger in Estrada’s car when two males approached the car. She could only provide a partial description of one of the assailants as a darker skinned black male who was wearing a black ski mask over his face and a long sleeved gray shirt or hoodie. This person was armed with a handgun and demanded Rachel to turn over her purse (1:2; 28:6).
- Rachel stated Estrada was crying hysterically. After driving around for a few minutes, Estrada dropped Rachel at home (1:2-3).
- Rachel subsequently reported the incident to the police, providing Officer Bodnar with a limited description of the assailants, including the stature and clothing of one of the assailants (28:4-5, 9).
- Bodnar was following up on his investigation by attempting to locate Estrada. At the time Andersen stopped Estrada, Estrada received a call from dispatch

indicating that Bodnar had requested dispatch to contact Estrada (28:30).

- According to Andersen, Bodnar had relayed a description of the two assailants, two black males, one of whom was wearing a gray sweatshirt (28:31).
- At the time Andersen had stopped Estrada, Bodnar considered it suspicious that Estrada had never contacted the police regarding the robbery, and that two males were involved in the robbery and two males happened to be with Estrada in the car (28:6, 14).

While Andersen initially stopped Estrada's Chevy Impala for conduct unrelated to the armed robbery, Andersen acquired information justifying Estrada's detention for the purpose of investigating the armed robbery complaint.

- Approximately thirty five minutes later, and within two and a half miles of the original robbery, Officer Andersen stopped a Chevy Impala for a registration violation (1:3; 28:28, 40).
- At the time Andersen first engaged Estrada during the traffic stop, Estrada received a telephone call from the Racine Police Department dispatcher regarding the robbery (28:29). The dispatcher was attempting to locate Estrada for Bodnar who wanted to speak with her regarding the earlier robbery (28:30-35). Estrada reported to Andersen she had earlier been on the receiving end of a robbery. Estrada handed the phone to Andersen who spoke to the dispatcher (28:42).
- Meanwhile, Andersen heard information over his radio earpiece regarding the robbery, including information that two males were involved in the robbery and a clothing description involving a gray sweatshirt. Andersen observed two males in the car, and observed a gray sweatshirt behind the driver's seat (28:52-55). Further, other officers were advising Andersen that he may have the suspects with him (28:30-31).

In a very short period of time, Officer Andersen had rapidly acquired information that rose to the level of reasonable suspicion. Based upon the totality of circumstances, it was certainly reasonable for Andersen and Bodnar to believe that Estrada may have been involved in the armed robbery and that the other participants were present in Estrada's car (28:16, 22, 31, 41-42, 47-48). Due to the violent nature of the armed robbery Rachel recently reported, the fact that Andersen was outnumbered, and the possibility that a handgun was present in Estrada's vehicle, Andersen acted reasonably in temporarily freezing the situation for the purpose of awaiting the arrival of other officers (28:32).

From the standpoint of an objectively reasonable officer, the totality of these facts amounted to reasonable suspicion warranting Andersen's continued detention of Estrada and her associates for the purpose of investigating the armed robbery.

Estrada suggests that any number of innocent explanations may have accounted for failing to report the robbery. Estrada's brief at 13. Officers are not required to rule out innocent explanations before engaging in or continuing a *Terry* stop. Indeed, the essence of a *Terry* stop is to allow an officer to temporarily freeze a situation so as to allow the officer to confirm or dispel his suspicions. *Arias*, 311 Wis. 2d 358, ¶ 32. Thus, while Estrada offers possible innocent explanations for her behavior, the alignment of facts that presented themselves to the officers supported their reasonable suspicion that Estrada was involved in the robbery and that the other assailants were present in her car.

Likewise, Estrada suggests that it was not suspicious that a gray sweatshirt was in the vehicle. Estrada's brief at 13. Viewed in isolation, this may well be true. However, an assessment of reasonable suspicion is based upon the totality of the circumstances. *Richardson*, 156 Wis. 2d at 139. Estrada also suggests

that the officer observed a sweatshirt, not a hoodie. Estrada's brief at 13. A hoodie is nothing more than a hooded sweatshirt. That Officer Andersen was unable to ascertain whether the gray sweatshirt was a hoodie at the time of the contact is of little consequence. What matters is whether Andersen thought it was reasonable, based upon the totality of circumstances, that the presence of the gray sweatshirt along with two males in the Impala supported the inference that Estrada may have participated in the robbery.

Confronted with the facts and circumstances as they presented themselves, Officer Andersen acted reasonably when he detained Estrada and her associates for the purpose of further investigating the armed robbery. Under the circumstances, it would have been poor law enforcement work if Andersen had allowed Estrada and her associates to continue on without further inquiry. *See State v. Guzy*, 139 Wis. 2d 663, 682, 407 NW2d 548 (1987)).

- E. Officers had a reasonable and articulable suspicion to justify their protective search of Estrada's car, which led to the recovery of a handgun.

As part of an investigatory stop, an officer may conduct a limited protective search for concealed weapons if "he has reason to believe that he is dealing with an armed and dangerous individual, regardless of whether he has probable cause to arrest the individual for a crime." *Terry*, 392 U.S. at 27. *See also* Wis. Stat. § 968.25 (codifying *Terry's* protective search rules). Whether a protective search (or *Terry* frisk) exceeds the scope of an investigatory stop depends on its reasonableness given the totality of the circumstances. *Terry*, 392 U.S. at 29.

The United States Supreme Court has recognized the authority of officers to extend *Terry* type protective searches to vehicles. In *Pennsylvania v. Mimms*, 434 U.S. 106, 111 n.6 (1977) (per curiam), the United States Supreme Court established a per se rule allowing officers to remove a person from a vehicle who has been lawfully detained for a traffic violation. In *Michigan v. Long*, 463 U.S. 1032 (1983), the court held that an officer may conduct a protective search of a vehicle's passenger compartment if the officer reasonably believes that the person is "dangerous and . . . may gain immediate control of weapons" that may have been placed or hidden in the passenger compartment. *Id.* at 1049. The court grounded these holdings in its recognition that "[i]nvestigative detentions involving suspects in vehicles are especially fraught with danger to police officers." *Id.* at 1047; *see also Mimms*, 434 U.S. at 110-11.

The Wisconsin Supreme Court has also acknowledged "the serious risks law enforcement officers must undertake whenever they initiate contact with a suspect seated in a vehicle." *State v. Johnson*, 2007 WI 32, ¶ 25, 299 Wis. 2d 675, 729 N.W.2d 182. In *State v. Moretto*, 144 Wis. 2d 171, 179, 423 N.W.2d 841 (1988), the court extended the principles of protective searches to vehicles when an "officer has reasonable grounds to believe that the individual is dangerous and may be harboring a weapon in his or her vehicle." Under these circumstances, a protective search is justifiable as a preventative measure to ensure that those detained could not reenter the vehicle and obtain access to weapons that could be used against the officers. *Id.* at 187.

In this case, the same reasons that supported the officers' detention of Estrada and her passengers—i.e., suspicion that the occupants were involved in a recently reported armed robbery—also justified the officers' protective search of the car. Here, Rachel complained to the police that she had been the victim of an armed robbery in which one of the assailants had brandished a handgun (1:2). Within an hour of the armed robbery,

Officer Andersen located the Chevy Impala in which Rachel was riding when she was robbed (28:28). Estrada was driving the car and coincidentally received a call from dispatch regarding the robbery as Andersen made contact with her (28:29). Andersen also observed two males in the car, the same number of assailants that Rachel described to Officer Bodnar (28:29-31). Andersen also noticed a gray sweatshirt in the car, consistent with the description of a piece of clothing one assailant wore (28:41-43).

Based upon the information available to him, Andersen returned to his squad and waited for other officers to arrive so that he could conduct a felony stop (28:32). Andersen reasonably recognized the danger to himself and the potential that the gun used in the robbery may be present in the vehicle. "In the robbery there was a mention of a gun. And its my duty to go home safely, so in order for us—for me to go home safely I wanted to make sure other officers arrived on the scene so we can look for the gun if we had to" (28:32).

Once additional officers arrived, officers directed Estrada and her associates to leave the vehicle in a methodical manner (28:33, 38). No weapons were found as officers searched these individuals. At that point, officers could reasonably conclude that a firearm was in the Chevy Impala and appropriately extend their protective search to it (28:71). During this search of the passenger compartment, officers recovered the handgun from under a child's seat, a place certainly within the proper scope of places where officers may conduct a vehicular protective sweep (1:3).

Based upon the totality of circumstances, officers possessed a reasonable and articulable basis that justified their protective sweep of the passenger compartment for a weapon while investigating an armed robbery that had occurred in the same vehicle within an hour of the stop.

CONCLUSION

For the above reasons, the State respectfully requests this court affirm Estrada's judgment of conviction.

Dated this 21st day of April, 2014.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 3,063 words.

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CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 21st day of April, 2014.

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