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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2013AP2803-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ELISA ESTRADA,

Defendant-Appellant.

On a Notice of Appeal from a Judgment of Conviction and
Sentence Entered in the Racine County Circuit Court, the
Honorable Allan B. Torhorst, Presiding

REPLY BRIEF OF
DEFENDANT-APPELLANT

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**CONSTITUTIONAL PROVISIONS
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ARGUMENT

- I. The Police Lacked Reasonable Suspicion to Prolong the Traffic Stop and Conduct a Protective Search of Ms. Estrada's Vehicle, and Therefore, the Evidence Obtained Must Be Suppressed.

Contrary to the State's argument, the collective knowledge doctrine does not save Officer Andersen's unconstitutional actions in this case. (*See* State's brief at 6-8). It is true that an officer may act upon a directive from another officer who has reasonable suspicion, even if the acting officer does not have personal knowledge of the facts. And an officer may use his or her own knowledge in addition to the knowledge of other officers. However, this is the case only if the other officer's knowledge was actually conveyed to the acting officer. "In the absence of underlying facts, the mere knowledge of the *suspicion of other officers* is not the sort of information courts may consider in determining whether the reasonable suspicion standard is met." *State v. Pickens*, 2010 WI App 5, 323 Wis. 2d 226, 779 N.W.2d 1 (emphasis added).

Where the information underlying a stop is from more than one source, the inquiry is whether the collective information among the officers is adequate to sustain the stop. *Id.* ¶ 11.

In this case, according to Officer Bodnar's testimony, the information he obtained from Rachel and conveyed over the radio was:

- That two women in a car were robbed. (28:4; App. 104)¹.
- A description of the vehicle and the driver, Ms. Estrada. (28:6; App. 106).
- That a gun was involved. (28:5; App. 105).
- That the suspects were two men on foot. (28:5, 9; App. 105, 109).
- That one of the suspects was a black man with a gray hoodie and black ski mask. (28:5; App. 105).
- That Rachel could not provide any description of the second man. (28:9; App. 109).

According to Officer Anderson, the information he *heard* from Officer Bodnar was:

- A description of the vehicle. (28:27-28; App. 127-28).
- That the suspects were *two* black men. (28:41-42, 48; App. 141-42, 148).
- That one of the men was wearing a black ski mask and gray sweatshirt and had a thin build. (28:41-42, 48; App. 141-42, 148).

Officer Bodnar interviewed the victim, Rachel, and specifically denied that she provided him with any physical description, whatsoever, of the second suspect. (28:9; App. 109). Thus, Officer Andersen either misheard Officer Bodnar or made an assumption that since one of the men was black, the other man must also have been black.

¹ Citations to “App” are to the Appendix attached to Ms. Estrada’s initial brief.

Officer Andersen also indicated that he was apprised of the other officers' *suspicions* about the situation. He heard the "radios going" in one of his ears and heard dispatch on the phone through his other ear. (28:38, 45-46; App. 138; App.145-46). He could not specifically testify to what either the officers or dispatch told him. (28:45-46; App. 145-46). He denied calling for back up and testified that the other officers came on their own. He also denied giving the order to search the car. (28:54-55; App. 154-55). When asked why the other officers believed he had the suspects, Officer Andersen said "you'll have to ask them" and "they started piecing things together." (28:51-52; App. 151-52).

The unspecified suspicions of the other officers are not "knowledge" and do not trigger the collective knowledge doctrine. *Pickens*, 2010 WI App 5, ¶ 11, 19. Even the circuit court acknowledged that the other officers seemed to be making guesses, stating, "the suggestion was that they were making guesses and hunches and things were going on, *is a legitimate observation*." (28:68; App. 168) (emphasis added). Officer Andersen's testimony about the other officers' guesses and hunches does not advance reasonable suspicion.

Upon a motion to suppress, it is the State's burden to prove that no Fourth Amendment violation occurred. *State v. Taylor*, 60 Wis. 2d 506, 519, 210 N.W.2d 873 (1973). The record in this case does not supply reasonable suspicion. *See Pickens*, 2010 WI App 5, ¶ 17 ("we do not know what the prosecutor could have presented...we only know that the prosecutor did not present such evidence").

The State mistakenly approaches reasonable suspicion from a subjective standpoint. The State asserts, "[w]hat 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.” (State’s response at 10) (emphasis added).

To the contrary, it does not matter whether Officer Andersen felt that his actions were justified. The test for reasonable suspicion is objective and centers on what a reasonable police officer would reasonably suspect in light of his or her training and experience. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681 (1996). In addition, “mere experience” does not “mean that an [officer's] perceptions are justified by the objective facts.” *State v. Young*, 212 Wis. 2d 417, 569 N.W.2d 84 (Ct. App. 1997) (internal citation omitted). In this case, Officer Andersen had been an officer for 3-and-a-half years total, and therefore, this Court should not place significant weight on this factor. (28:6, 27; App. 106-07).

The facts here fall far short of reasonable suspicion. Officer Andersen pulled over the vehicle and observed a white woman, two adult black men, and a child. He learned that he had pulled over the victim of an armed robbery that had occurred approximately an hour before. He knew that there were two male suspects in the robbery and that one of them was black and wearing a black ski mask and gray sweatshirt. He made an assumption that the other man was also black, even though Officer Bodner denied either having or giving him this information.

Officer Andersen shined his flashlight through the car, but neither man was wearing a ski mask or a gray hoodie. Both men had normal, innocuous demeanors. Officer Andersen’s only other observation was that there was a clothing item on the floor of the car, which appeared to be made of gray sweatshirt material. Ms. Estrada’s car was

disorganized, with paper and other clothing all over the floor. (28:24; App. 124). Had the car been clean except for the gray item, or had Officer Andersen been able to observe that the item had a hood, then perhaps this fact would carry more weight. But in a messy car, this ambiguous gray item of clothing is not significant.

It is undisputed that the police had some subjective hunch that Ms. Estrada was not a mere victim of the armed robbery. However, the Fourth Amendment demands that suspicion be objectively reasonable, *specific* and *articulable*. ***Terry v. Ohio***, 392 U.S. 1 (1968). None of the facts in this case, individually or taken together, supplied reasonable suspicion to prolong the stop to wait for back up and to search Ms. Estrada's vehicle without a warrant.

CONCLUSION

Officer Andersen violated Ms. Estrada's right to be free from unreasonable searches and seizures under the Fourth Amendment of the United States Constitution and Article I, § 11 of the Wisconsin Constitution. Ms. Estrada respectfully requests that this Court reverse the circuit court and order that the evidence obtained through this unlawful search and seizure be suppressed.

Dated this 5th day of May, 2014.

Respectfully submitted,

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CERTIFICATION AS TO FORM/LENGTH

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 1,205 words.

CERTIFICATE OF COMPLIANCE WITH 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 § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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 5th day of May, 2014.

Signed:

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