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COURT OF APPEALS **CLERK OF COURT OF APPEALS
OF WISCONSIN**

DISTRICT III

STATE OF WISCONSIN,

Plaintiff-Respondent,

Circuit Court Case No.
2013CM000156

-VS-

RACHEL L. HUCK,

Appeal Case No.
14-AP-2120 CR

Defendant-Appellant.

APPEAL FROM JUDGMENT OF CONVICTION
ENTERED IN THE CIRCUIT COURT FOR BARRON COUNTY,
THE HONORABLE J. MICHAEL BITNEY, PRESIDING

BRIEF PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

Does the Fourth Amendment allow a police officer to ask a driver if he has a driver's license when the officer knew the owner of the vehicle was suspended and the officer was able to determine the owner was not the driver when the officer made contact with the driver at the stopped vehicle.

The Circuit Court upheld the officer's actions.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State does not request oral argument. Because this is a one judge appeal, it may not be published.

STATEMENT OF THE CASE AND FACTS

Village of Turtle Lake Police Officer Nicholas Raiolo was eastbound on Highway 8 in the Village of Turtle Lake, Barron County, Wisconsin, on April 27, 2013, at approximately 12:08 a.m.

There was a vehicle traveling in front of Raiolo's squad, not doing anything unusual or illegal.

Raiolo ran a license plate check on the vehicle. The plate came back to Rachel Huck. Raiolo ran Rachel Huck, and her driver's license status came back suspended. Raiolo stopped the vehicle. (42:4-7)

Raiolo could not see who was driving or how many people were in Huck's vehicle until he walked up to the driver's side door and made contact with the occupants. (42:6-7)

Raiolo had never met driver Brandon Schultz or passenger Rachel Huck before making contact with them during this traffic stop. (42:7-9)

The total time from the stop of the Huck vehicle until Raiolo made contact with driver Schultz was 43 seconds. (18 at .53-1:36)

The time it took Raiolo to first address driver Schultz until learning driver Schultz did not possess a valid license was only 10 seconds.

During that brief 10-second time period, Raiolo advised Schultz of the reason for the stop and asked Schultz if he had a driver's license. Schultz said he did not. (18 at 1:36-1:46)

It is this 10-second time period, which is the basis for defendant's appeal.

ARGUMENT

I. OFFICER RAIOLO DID NOT VIOLATE THE FOURTH AMENDMENT BY ASKING DRIVER SCHULTZ IF HE HAD A DRIVER'S LICENSE.

A. Standard of Review.

The State agrees with Defendant-Appellant the issue in this case is a question of constitutional fact and an appellate court upholds a circuit court's Findings of Facts, unless they are clearly erroneous, but applies the constitutional standards to those facts without deference. State v. Popke, 317 Wis.2d 118, 765 N.W.2d 569, 2009 WI 37, ¶10.

B. The initial stop of Huck's vehicle was lawful.

The State agrees with the defense that the initial stop of Huck's vehicle was lawful. It is well settled in Wisconsin when an officer observes a vehicle on the road and knows the owner of the vehicle is not validly licensed, the officer may draw a reasonable conclusion the owner is driving, and doing so illegally. State v. Newer, 306 Wis.2d 193, 742 N.W.2d 923, 2007 WI App 236, ¶¶5-7.

C. The Officer had the right to ask the driver of the vehicle if he had a valid driver's license in a brief 10-second contact with the driver after the vehicle was lawfully stopped.

Wisconsin Statute Sec. 343.18(1) states, "Every licensee shall have his or her license document, including any special restrictions cards issued under S.343.10(7)(d) or S.343.17(4), in his or her immediate possession at all times when operating a motor vehicle and shall display the same upon demand from any judge, justice or traffic officer.

In State v. Ellenbecker, 159 Wis.2d 97-98, 464 N.W.2d 430, the officer's request for Ellenbecker's license was found to be reasonable because of S.343.18(1). It was determined requesting the license and running the check was a very minimal intrusion on the driver.

Ellenbecker involved a motorist's assist where a vehicle had been disabled.

In State v. Williams, 258 Wis.2d 395, 655 N.W.2d 462, 2002 WI App. 306 (2002), a vehicle was stopped on reasonable suspicion the driver may be a person who had committed domestic abuse. It was found reasonable to require that individual to provide identification when the vehicle he was operating was stopped.

The Court in Williams concluded it was reasonable for the officer in that case to make a report of the incident, even if she had already decided the driver was not the person being sought, and for that purpose it was

reasonable for her to ask William's name and identification. (Williams, ¶22).

This appellate court in the unpublished case of State v. Seehafer, 332 Wis.2d 317, 797 N.W.2d 935, 2011 WI App. 244 (2011), being submitted here for its analysis and persuasive value, also concluded it was perfectly legitimate for an officer, after determining the driver was not the person being looked for, to make a report of the incident, and for that purpose it was reasonable for the officer to ask for the individual's name and identification. Seehafer cites Williams in its analysis.

This Court, in Seehafer, using Williams, ruled that because the arresting officer had a reasonable suspicion to stop the vehicle, "It was reasonable...to make a report of the incident...and for that purpose it was reasonable for her (the officer) to ask for Williams' name and identification." (citing Williams ¶22, material in parentheses added)

In the present case, Officer Raiolo lawfully stopped defendant's vehicle. When he made contact with driver Schultz and passenger defendant Huck, he did not know either one of those individuals, having never met them before.

At that point, Raiolo had no idea what the relationship was between the individuals in the vehicle and ownership of it. He had every right to inquire as to the identity of the occupants of the vehicle. He asked driver

Schultz if he had a driver's license, and Schultz immediately advised he did not.

In the present case it made perfect sense for Officer Raiolo to advise the occupants of the stopped vehicle as to why he made the stop and to at least gather their names so he could fill out a report of the incident.

Defendant would suggest to the Court once Officer Raiolo walked up to the vehicle and found a male driver, although he didn't know who the male driver was, and had not met the female passenger, he should do an about face and walk away without any explanation or communication with those individuals.

Apparently, if the car was being stolen, defendant would have the officer simply walk away, not even knowing who the driver of the car was. This makes absolutely no sense.

D. The Minimal 10-second intrusion which involved asking the driver if he had a valid license, does not constitute an unreasonable search or seizure.

The trial court in this case, relying heavily on State v. Griffith, 236 Wis.2d 48, 613 N.W.2d 72, 2000 WI 72 (2000), to support the right officers have to ask for identification, specifically found the brief 10-second communication with the defendant in part for that purpose was not unreasonable under the balancing test presented in Griffith.

The trial court, in determining the constitutionality of the seizures, weighed the gravity of the public concerns served by the seizure, the

degree to which the seizure advanced the public interest, and the severity of the interference with the individual liberty (43:14) in determining whether inquiring the identity of an individual in a vehicle balanced a number of factors to compare the intrusion with the importance of acquiring the information. At ¶45 that court said,

“On the public interest side, we conclude that permitting law enforcement officers to request identifying information from passengers in traffic stops serves the public interest in several ways that are reasonably related to the purpose of a traffic stop.

“To begin with, there is a public interest in completing the investigation of the traffic violation that justified the stop in the first place.”

Griffith also used, in its balancing analysis, the general public interest in attempting to obtain identifying information from witnesses to police-citizen encounters. It was felt that information might be important at future times. (Griffith at ¶47.)

Griffith felt obtaining such information serves the public interest; permitting officers to request passengers to voluntarily provide an identification serves the public interest. (¶47)

In Griffith a brief contact with the passenger was ruled to be such a minimal intrusion into the passenger’s life, it did not outweigh the public interest in completing reports related to the traffic stop. (¶51)

As in Griffith, the intrusion in the present case is so minimal (10 seconds in length), that the intrusion does not come close to violating the Fourth Amendment.

E. Because the initial contact and brief conversation with driver Schultz was valid, Officer Raiolo performed a valid “Badger Stop.”

Because Officer Raiolo had every right to ask driver Schultz if he was validly licensed in the brief 10-second communication with Schultz, defendant’s argument that since the inquiry to Schultz was illegal, therefore, the “Badger Stop” the officer performed was illegal as well, does not fly.

As already stated, the initial inquiry in Raiolo’s contact with driver Schultz was valid. Since that contact was valid, the officer had every right to proceed as he did in performing the “Badger Stop” inquiry to Ms. Huck after issuing her citation.

Since there was no “primary taint” by defendant, Officer’s Raiolo’s clear compliance with requirements of State v. Lawrence A. Williams, 255 Wis.2d 1, 646 N.W.2d 834, 2002 WI 94 (2002) is clear.

Defendant does not argue the actions taken by Raiolo during the “Badger Stop” were invalid, simply that they were invalid because of initial alleged “taint” wherein Raiolo communicated with driver Schultz and asked if he was valid.

CONCLUSION

For the foregoing reasons, the State respectfully requests the Court affirm the trial court and deny defendant's request the Judgment be vacated.

Dated at Barron, Wisconsin, this 9th day of December, 2014.

RESPECTFULLY SUBMITTED,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in §809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 2,209 words.

Dated this 9th day of December, 2014.

Russell E. Berg
Assistant District Attorney

CERTIFICATE OF COMPLIANCE **WITH RULE 809.19**

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 9th day of December, 2014.

Signed:

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