

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

RECEIVED

10-13-2015

**CLERK OF COURT OF APPEALS
OF WISCONSIN**

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

Case No. 2013CM440

JOHN D. ARTHUR GRIFFIN,

Defendant-Appellant.

APPEAL No. 2015AP1271 CR

BRIEF OF PLAINTIFF-RESPONDENT

ON APPEAL FROM THE JUDGMENT OF CONVICTION
AND SENTENCE IN ROCK COUNTY CIRCUIT COURT,
THE HONORABLE KENNETH FORBECK PRESIDING.

DAVID J. O'LEARY
Rock County District Attorney

RICHARD J. SULLIVAN
Assistant District Attorney
State Bar No. 1026905

Attorneys for Plaintiff-Respondent

Rock County District Attorney's Office
51 South Main Street
Janesville, Wisconsin 53545
(608) 757-5615

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
STATEMENT ON PUBLICATION.....	1
STATEMENT ON ORAL ARGUMENT.....	1
STATEMENT OF THE FACTS	1
ARGUMENT	5
I. The original stop by Officer Paul Reed of the Defendant's vehicle was properly found to have been supported by a reasonable suspicion	6
II. Officer Reed did not extend the stop, but instead was concluding the stop in a reasonable manner, when the investigative circumstances changed.....	11
CONCLUSION	18
CERTIFICATION.....	19

TABLE OF AUTHORITIES

CASES CITED	Page
<u>Florida v. Royer</u> , 460 U.S. 491 (1983)	7
<u>Haase v Badger Mining Corp.</u> , 2004 WI 97, 274 Wis.2d 143, 682 N.W.2d 389	6
<u>State v. Betow</u> , 226 Wis.2d 90, 593 N.W.2d 499	15
<u>State v. Colstad</u> , 2003 WI App 25, 260 Wis.2d 406, 659 N.W.2d 394	7, 15, 16, 17
<u>State v. Gammons</u> , 2001 WI App 36, 241 Wis.2d, 625 N.W.2d 623	7
<u>State v. Griffith</u> , 2000 WI 72, 236 Wis.2d 48, 613 N.W.2d 72	7,8
<u>State v. Guzy</u> , 139 Wis.2d 663, 407 N.W.2d 548 (1987)	7
<u>State v. Kiefer</u> , 217 Wis.2d 531, 577 N.W. 352 (1998)	6
<u>State v. Williams</u> , 2002WI 94, 225 Wis.2d 1, 646 N.W.2d 834	12
<u>State v. Young</u> , 212 Wis.2d 417, 569 N.W.2d	8, 9,10
<u>Terry v. Ohio</u> , 88 S.Ct. 1868 (1968)	11, 13

STATEMENT ON PUBLICATION AND ORAL
ARGUMENT

The State does not request oral argument. The State believes that this matter rests on the application of well settled law, so the State does not request publication.

STATEMENT OF THE FACTS

By the admission of John D. Griffin, Defendant, on January 20, 2013, the Defendant, Antwann D. Griffin, and Leanthony Lilly drove to Wisconsin from Illinois, armed with handguns. (R: 1). When they arrived at the Silver Slipper Saloon in the Town of Beloit, Wisconsin, the Defendant put his .9 mm handgun on the front seat of his silver Impala, hiding it under a shirt, “just in case.” (Id.) The Defendant watched Antwann D. Griffin retrieve a .40 caliber handgun from the trunk of the Defendant’s car, load it, and place the loaded .40 caliber handgun in the interior of the silver Impala. (Id.) When the Defendant, Antwann Griffin, and Mr. Anthony left the Silver Slipper Saloon, Antwann Griffin shot multiple shots into a parking lot from that loaded .40 caliber handgun and the Defendant, driving the silver Impala, fled the parking lot. (Id.) Multiple people were struck by bullets and

were transported to Beloit Memorial Hospital for treatment.
(Id.)

On December 19, 2013, Officer Paul Reed of the South Beloit, Illinois Police Department testified at a Suppression Hearing in the above referenced case. Officer Reed testified that he initiated a traffic stop on a silver Impala with dark tinted windows in South Beloit, Illinois, just south of the Wisconsin state line, at approximately 2:00 a.m. on January 20, 2013. (R: 34 at 5, 10). Officer Reed learned, via monitoring radio traffic, that occupants of a silver Impala were involved in a shooting about five (5) miles away at the Silver Slipper Saloon in the Town of Beloit. (Id. at 6). Shortly after the radio transmission, Officer Reed noticed just such a vehicle. (Id. at 7). At the stop light at the intersection of Highway 251 and Prairie Hill Road, a back seat passenger exited the rear driver's side door and walked around the vehicle to the front passenger seat. (Id.) Due to the totality of the circumstances, including the allegation of a shooting, the opportunity to dispose of evidence, the time of day, and the lack of lighting, Officer Reed exited his squad, drew his duty weapon, and ordered the subject back into the vehicle for

officer safety. (Id. at 8). The light turned green and the Impala continued through the light. (Id.) Officer Reed then activated his overhead lights and initiated a traffic stop. (Id.)

Just prior to approaching the vehicle that Officer Reed just stopped, Officer Reed overheard radio traffic that the silver Impala involved in the shooting at the Silver Slipper possibly was a rental vehicle with Iowa registration. (Id. at 9). Officer Reed made contact with the occupants of the silver Impala and received identification for the occupants and learned that the backseat passenger switched seats as he was cramped in the backseat. (Id.) South Beloit Police Officer Sanders arrived for backup while Officer Reed returned to his squad. (Id. at 10). Officer Reed ran the occupants' identification and contacted the Rock County Dispatch Center to confirm that the information about the Iowa plates was from Rock County rather than from a different radio channel. (Id.) The dispatcher incorrectly stated that the silver Impala involved with the shooting had Iowa plates and was most likely a rental vehicle,¹ so Officer Reed told dispatch that he would let the vehicle go. (Id.)

¹ Per the criminal complaint, after Miranda warnings, Antwann Griffin admitted to being at the Silver Slipper Saloon and involved in the shooting.

Officer Reed testified that due to the chaos that erupted in the parking lot of the Silver Slipper Saloon and the amount of traffic leaving the parking lot right after a shooting incident, he believed that dispatch may have been incorrect and that he had actually stopped the silver Impala involved in the shooting. (Id. at 65).

While Officer Sanders stood outside the passenger side of the vehicle, Officer Reed returned to the silver Impala and informed Officer Sanders that he was going to let the Impala go and ask for permission to search the vehicle. (Id. at 11). Officer Reed testified that due to the inability to see all of the people in the vehicle and the difficulty of speaking with one person when having to watch three people, for officer safety, he asked Mr. Griffin to step from the vehicle in order to return Mr. Griffin's drivers license, inform Mr. Griffin he was free to go, and to request consent to search the vehicle. (Id. at 12). Almost immediately, in the time it took to go from the front of the vehicle to the back, Officer Sanders informed that he saw a handgun in plain view, through a lowered window, partially hidden in the pouch on the back of the front passenger seat of the car. (Id.) Officer Reed testified that he

later stood outside the rear passenger door and saw from the outside of the door, in plain view, the grip, slide, and entire rear portion of a firearm illegally carried in the little pocket in the rear of the passenger seat of the vehicle. (Id. at 13, 59-60). The investigative intent transformed from allowing the Defendants to leave and a request for consent to search, to the investigation of a criminal violation of the Illinois law barring concealed carry of a handgun. (Id. at 12). The Winnebago County State's Attorney's Office later did not pursue those charges solely because the Defendants admitted their conduct in the shooting at the Silver Slipper Saloon and the State of Wisconsin pursued more serious charges. (Id. at 67).

ARGUMENT

The Defendant argues that Judge Forbeck erred when he failed to suppress evidence that resulted from a stop of the Defendant's silver Impala that was involved in a shooting at the Silver Slipper Saloon on January 20, 2013. The Defendant claims that the original stop was not based on a reasonable suspicion. The Defendant claims that the return of the Defendant's drivers license extended the stop unlawfully. The Defendant claims that due to the illegality of the stop or

an extension of the stop, the discovery of the Defendant's gun, the discovery of the gun used by Antwann Griffin in the shooting, and both men's confessions should be suppressed. The Defendant's arguments are erroneous and Judge Forbeck correctly denied the Defendant's Motion to Suppress.

When reviewing a decision of a circuit court concerning suppression, an appellate court, "[W]ill uphold findings of evidentiary or historical fact unless they are clearly erroneous." State v. Kiefer, 217 Wis.2d 531, 541, 577 N.W.2d 352 (1998)(*citation omitted*). However, the constitutional question will be decided by the appellate court, "[B]enefiting from the analysis of the circuit court." Id. (*citation omitted*). "Because circuit courts are better positioned to decide the weight and relevancy of the testimony, we accord them substantial deference." Haase v. Badger Mining Corp., 204 WI 97 ¶17, 274 Wis.2d 143 (*citation omitted*).

I. The original stop by Officer Paul Reed of the Defendant's vehicle was properly found to have been supported by a reasonable suspicion.

The Defendant argues that Officer Reed either violated his Fourth Amendment rights at the point of the initial stop or

once Officer Reed returned to the Defendant's vehicle to give the Defendant back his license and allow him to leave. Case law, however, displays that at no time did Officer Reed violate any Fourth Amendment rights and that the circuit court correctly denied the Defendant's Motion to Suppress.

The Wisconsin Supreme Court noted that, "A traffic stop is a form of seizure triggering Fourth Amendment protections from unreasonable searches and seizures." State v. Gammons, 2001 WI App 36, ¶6, 241 Wis.2d 296, 625 N.W.2d 623 (Ct. App. 5th Dist. 2001)(citing State v. Guzy, 139 Wis.2d 663, 675, 407 N.W.2d 548 (1987)). Further:

In order to justify an investigatory seizure, "[t]he police must have reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts that an individual is [or was] violating the law." "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 her training and experience." Before initiating a brief stop, an officer is not required to rule out the possibility of innocent behavior.

State v. Colstad, 2003 WI App. 25, ¶8, 260 Wis.2d 406, 659 N.W.2d 394 (Ct. App. 6th Dist. 2001)(*internal citation omitted*). "[A]n investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop." Florida v. Royer, 460 U.S. 491 (1983). The

Wisconsin Supreme Court noted that, “[W]hen a passenger has been seized pursuant to a lawful traffic stop, the seizure does not become unreasonable...simply because an officer asks the passenger for identification during the stop.” State v. Griffith, 2000 WI 72, ¶65, 236 Wis.2d 48, 613 N.W.2d 72.

In the case at bar, the Defendant claims that a reasonable suspicion did not exist, but that is simply patently false. The Defendant relies on State v. Young, 212 Wis.2d 417, 569 N.W.2d 84 (Ct. App. 5th Dist. 1997), to argue that the facts were not sufficient for Officer Reed’s stop of the silver Impala. However, as the facts of the case at bar clearly show, Officer Reed’s action of stopping the silver Impala that contained a shooter from a shooting only five (5) miles away, was more than reasonable. Unlike Young, where an officer made contact only after two (2) people had short-term contact in daytime hours in a known drug area, Officer Reed knew of an actual criminal shooting that was already committed, rather than just the possibility of a crime as in Young. The facts of the initial traffic stop certainly display that Officer Reed had reasonable and articulable suspicions, as Defendant

Antwann Griffin conceded² and Judge Forbeck stated on the record. (R: 34 at 35). Very quickly after a shooting only five (5) miles away, a silver Impala matching the description of the suspect vehicle entered a geographically contiguous jurisdiction. It was very early in the morning as a person exited the vehicle in a suspicious though not expressly illegal manner. Based on the location where the person suspiciously exited the vehicle, Officer Reed was aware that it would have been easy to dispose of evidence from the shooting. (Id. at 29-30). On the way to the Defendant's car after the traffic stop was initiated, Officer Reed heard more information concerning the possibility of an Iowa license plate on the silver Impala fleeing the scene of the shooting, but as the Wisconsin Supreme Court recognized, the request for identification did not make the seizure unreasonable. It is clear from the record that at least to the point of the return to the squad after initial contact with the occupants of the Impala, no Fourth Amendment violation occurred.

The Young court recognized that even innocent conduct, based on the totality of the circumstances, can be

² MS. PESHEK: Certainly, his initial stop was reasonable based on the initial description that he got, but this was an evolving situation. (R: 34 at 43).

sufficient to cause police conduct. The Court of Appeals noted that:

If a reasonable inference of unlawful conduct can be objectively discerned, the officers may temporarily detain the individual to investigate, notwithstanding the existence of innocent inference which could be drawn...It is also true that a series of acts, each of which are innocent in themselves may, taken together, give rise to a reasonable suspicion of criminal conduct.

Young, 212 Wis.2d at 430 (*internal citation omitted*).

Judge Forbeck found such a series of acts. Judge Forbeck found that the vehicle driven by the Defendant matched the description of the silver Impala involved in the shooting “very closely.” (R: 35 at 3, 7). The contact occurred at 2:00 a.m. in an isolated area. (Id. at 7). The passenger suspiciously moved around to a different position in the car. (Id. at 3, 7). Judge Forbeck found that Officer Reed exited his squad, pulled his gun, and told the passenger to get back into the silver Impala. (Id. at 3-4). The vehicle did not stay at the side of the road, but rather drove off. (Id. at 4). The vehicle windows were so darkly tinted that officers could not see into the vehicle. (Id.) Judge Forbeck found that the totality of the circumstances supported that stop, noting, “And I think this officer under the facts and circumstances did what he should have done and what I would hope he

would do as a police officer and stop the car and get some identification.” (Id. at 7). Even with the confusion over the license plate, after a review of Terry v. Ohio, 88 S.Ct. 1868 (1968), the court found that Officer Reed’s identification process met constitutional muster. The court found that Officer Reed was in the process of releasing the Defendant until a gun was observed in plain view, transforming the investigative intent. (R: 35 at 8).

II. Officer Reed did not extend the stop, but instead was concluding the stop in a reasonable manner, when the investigative circumstances changed.

The Defendant repeatedly points to the length of the contact after Officer Reed learned that the Rock County Dispatch Center stated in error that the Defendants’ Impala was not involved in the shooting at the Silver Slipper Saloon and the discovery of the firearm concealed illegally in the Impala. However, the record is quite clear that the traffic stop was extremely temporary and lasted only as long as necessary to effectuate the purpose of the stop, investigation of a shooting and the suspicious behavior at the stop light. Upon return to his squad, Officer Reed initiated contact with the Rock County Dispatch Center to ensure that the information

concerning the Iowa registration was from Rock County and not from the other radio channels that the officer was monitoring. As soon as Officer Reed learned that the vehicle was not wanted in Wisconsin, he informed both the dispatcher and Officer Sanders that he would let the Impala go. Officer Reed testified that he only intended to return Defendant John Griffin's drivers license and ask for consent to search, a procedure that the Wisconsin Supreme Court recognizes as, "standard, accepted investigative law enforcement devices and are not in any general sense constitutionally suspect." State v. Williams, 2002 WI 94, ¶19, 225 Wis.2d 1, 646 N.W.2d 834. The length of time questioned by the Defendant is the time that it took to travel from the squad to the Defendants' Impala added to the time it took to travel with the Defendant from the driver's door to the back of the Impala. In other words, the time was de minimis at best and well within the period needed to disengage.

The return of the drivers license to the Defendant was not an extension of the contact, but rather an appropriate termination from the traffic stop. Judge Forbeck found that the vehicle windows, "were very darkly tinted and you

couldn't see into the vehicle at the place and time and position the vehicle was in when the officers were there at the scene.” (R: 35 at 4). Further, Judge Forbeck found it reasonable that Officer Reed asked the Defendant to step from the car, “because it was hard to watch three people at the same time. Especially with -- when the vehicle had tinted windows.” (Id. at 5)

The United States Supreme Court recognized that:

[T]here is the more immediate interest of the police officer in taking steps to assure himself that the person with whom he is dealing is not armed with a weapon that could unexpectedly and fatally be used against him. Certainly it would be unreasonable to require that police officers take unnecessary risks in the performance of their duties. American criminals have a long traditions of armed violence, and every year in this country many law enforcement officers are killed in the line of duty, and thousands more are wounded. Virtually all of these deaths and a substantial portion of the injuries are inflicted with guns and knives.

Terry, 88 S.Ct. at 1881. “According to FBI Law Enforcement Officers Killed and Assaulted reports, 62 officers were killed during traffic stops from 2003 to 2012...In 2012, 4,450 officers were wounded or assaulted in various manners during traffic stops.” Ruben Rosario, *Despite Police Training, “Routine” Stops Can Go Awry in an Instant*, The St. Paul Pioneer Press/www.twincities.com (8/7/2014), http://www.twincities.com/localnews/ci_26296892/despite-

police-training-routine-stops-can-go-awry. Officer safety is a legitimate concern and ensuring that officers can go home to their families does not violate the constitution.

Officer Reed had the right to protect himself by the least intrusive means necessary. After Officer Reed testified that he intended to return the Defendant's drivers license and release the Defendant's vehicle, Officer Reed testified that he returned to the silver Impala and asked the Defendant to exit the vehicle in order to return his drivers license. Officer Reed explained why he made that request. "It's very difficult to speak to one person when you have to try to watch three people especially when I couldn't -- I couldn't see in the back of the vehicle at all being that the windows were dark." (R: 34 at 12). Officer Reed also explained,

My feeling was that I knew there was a lot of traffic leaving that location, and that if there was just a shooting, there was a lot of confusion going on, and that it very well could have been the (silver Impala involved in the shooting). The dispatcher saying it was Iowa registration and everything, I -- I wanted to make sure that that was actually the case. I didn't -- I believed there was possibly confusion on the description of the vehicle, I guess, is what I'm saying.

(Id. at 65). When the possibility of the presence of guns involved in a recent shooting and the inability to see the occupants of the car merged, it was a clear danger to officer

safety. The decision to end the contact by requesting that the Defendant remove himself a short distance from that possibly dangerous situation in order for Officer Reed to hand back the Defendant's drivers license was clearly reasonable.

The contact only continued when Officer Sanders, positioned in a place that any citizen could lawfully be positioned, saw in plain view the illegally concealed weapon. At that point, investigative intent changed based on the continuing criminal violation. Courts have long held that:

If, during a valid traffic stop, the officer becomes aware of additional suspicious factors which are sufficient to give rise to an articulable suspicion that the person committed or is committing an offense or offenses separate and distinct from the acts that prompted the officer's intervention in the first place, the stop may be extended and a new investigation begun. The validity of the extension is tested in the same manner, and under the same criteria, as the initial stop.

State v. Betow, 226 Wis.2d 90, 94-95, 593 N.W.2d 499 (Ct. App. 6th Dist. 1999).

The legality of Officer Reed's actions is analogous to the actions of the officer in Colstad, 2003 WI App. 25. In Colstad, the defendant's pickup truck struck a child, who later died. The responding officer spoke with the defendant for a brief time and told him to remain on scene as the officer tended to the injuries of the child and photographed the scene.

The responding officer made contact a second time with the defendant forty-five minutes later and smelled the odor of intoxicants coming from the defendant. The responding officer put the defendant through field sobriety testing, eventually arresting the defendant for Homicide by Operating While Intoxicated. The Court of Appeals found that the initial investigatory detention occurred when the responding officer told the defendant to stay. The Court of Appeals also found that the investigatory detention was reasonable based on a possible civil violation. The investigatory intent transformed to criminal when the responding officer returned to the defendant and recognized the odor of intoxicants on the defendant's breath. The defendant argued that a defacto arrest without probable cause occurred due to the forty-five minute delay between officer contacts, and, therefore, a violation of the defendant's Fourth Amendment rights occurred. The Court of Appeals disagreed. Reviewing the reasonableness of the length and scope of a brief investigatory detention, the Court noted that:

For the stop of a person to pass constitutional muster as investigatory, the detention must be temporary and last no longer than is necessary to effect the purpose of the stop. "Similarly, the investigative methods employed should be the least intrusive means reasonably available

to verify or dispel the officer's suspicion in a short period of time." A hard and fast time limit rule has been rejected. In assessing a detention for purposes of determining whether it was too long in duration, a court must consider "whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it is necessary to detain" the suspect. In making this assessment, courts "should not indulge in unrealistic second-guessing." In assessing a detention's validity, courts must consider the "totality of the circumstances—the whole picture," because the concept of reasonable suspicion is not "readily, or even usefully, reduced to a neat set of legal rules."

Colstad, 2003 WI App. 25 at ¶16. The Court of Appeals found the officer discovered information subsequent to the initial stop which, when combined with information already acquired, provided reasonable suspicion that the defendant engaged in criminal activity.

Colstad shows that in the case at bar, Officer Reed's actions pass constitutional muster. Though the Defendant noted that Officer Reed testified that he had a hunch that in the confusion of automobiles scattering from the Silver Slipper Saloon that Rock County Dispatch incorrectly identified the Impala as having Iowa plates, at no time did Officer Reed act upon a hunch to search the silver Impala. Instead, Officer Reed transformed the investigative intent from release and a request for a consent search to a probable cause based detention established on the reasonable and

articulable fact of a plain view observation of the crime of carrying a concealed weapon. Rather than violate the constitutional rights of the Defendants, Officer Reed's actions amounted to good police work.

CONCLUSION

For the forgoing reasons, the State respectfully requests that this Honorable Court uphold the denial of the Defendant's Motion to Suppress.

Dated this 13th day of October, 2015.

Respectfully submitted,

David J. O'Leary
District Attorney

Richard J. Sullivan
Assistant District Attorney
State Bar #1026905

Attorneys for Plaintiff-Respondent

Rock County District Attorney's Office
51 S. Main Street
Janesville, Wisconsin 53545
(608)757-5615

CERTIFICATION

I certify 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 points for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line. The length of the brief is 3935 words, as counted by the Microsoft Word Word Count feature.

Richard J. Sullivan
Assistant District Attorney

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 13th day of October, 2014.

Richard J. Sullivan
Assistant District Attorney