

STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT II

Case No. 2012-AP-865
Circuit Court Case No. 2011 CT 206

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**CLERK OF COURT OF APPEALS
OF WISCONSIN**

COUNTY OF FOND DU LAC,
Plaintiff-Respondent,

v.

BLADE N. RAMTHUN,
Defendant-Appellant

BRIEF OF PLAINTIFF-RESPONDENT

AN APPEAL FROM A JUDGMENT OF CONVICTION ENTERED IN THE
CIRCUIT COURT FOR FOND DU LAC COUNTY, THE HONORABLE
RICHARD J. NUSS , PRESIDING

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STATUTES

§ 752.31(2) Stats.4

STATEMENT OF ISSUES

Was the investigative stop of the defendant for operating under the influence conducted in the vicinity of where he was stopped?

The trial court answered yes.

Was it reasonable for Deputy Volm to transport the defendant within the vicinity of the traffic stop.

The trial court answered yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The decision in this appeal is not eligible for publication, See § 752.31(2) Stats.

The issues in this appeal may be resolved through application of established law and the briefs should adequately address the arguments, therefore oral argument is not necessary in this appeal.

STATEMENT OF CASE AND FACTS

The trial court held an evidentiary suppression hearing on December 23, 2015 on two motions filed by the defendant: a motion to suppress breath results and a defense motion to suppress. The court relied exclusively on the testimony of Deputy Volm, (R.: 24) and specifically did not rely on a recording from Deputy's Squad Video (R; 17) which was only entered as an exhibit in support of the Stipulated Trial long after the motion hearing. (R: 16). Volm stopped the defendant for speeding on August 28, 2015 on US Hwy 45. (R: 24, 6-7). As Volm began speaking with the defendant he observed the defendant had glassy, bloodshot eyes, emitted

an odor of intoxicants from his breath, had slurred speech and admitted consuming five pints of rum and coke.. (R: 24 10). Volm was concerned the defendant was impaired by alcohol. (R 24: 10). Volm asked the defendant to exit the vehicle, that based on observations Volm wanted to make sure that he was okay to continue driving, (R: 24 10). There was steady rain, wet road conditions causing Volm to not want to conduct field sobriety tests on the road (R: 24 10). Volm asked the defendant if the defendant would be willing to allow Volm to transport the defendant to a nearby gas station to conduct field sobriety tests. (R: 24 11. The defendant agreed stating “you’re the officer, it’s your rules.(R: 24 11). Volm searched the defendant with consent, placed the defendant in the back of Volm’s squad, and transported him to where Volm conducted field sobriety testing. (r: 24 12). Volm drove three to four miles in about 7 minutes from a rural area(R: 24: 30); on hwy 67, and took one right turn, on a less hilly, curvy route than other possible locations to a gas station where the tests were performed. (R: 24 13) Volm concluded the defendant was under the influence based on his observations of the defendant, the defendant’s admissions and his lay and expert observations of the defendant’s poor balance, (R: 24 14 -16).

Judge Nuss found that the gas station where Volm transported the defendant was within the vicinity of the stop. (R: 24 43). Judge Nuss also found that the purpose in moving the suspect within the vicinity was reasonable. (r: 24 40-43).

STANDARD OF REVIEW

When reviewing the denial of a motion to suppress evidence, the circuit court's findings of fact will be upheld unless they are clearly erroneous. *State v. Pinkard*, 2010 WI 81, ¶12,

327 Wis. 2d 346, 785 N.W.2d 592. However, the application of constitutional principles to the facts is a question of law that the appellate court reviews de novo. *Id.*

ARGUMENT

THE STATION WHERE DEPUTY VOLM TRANSPORTED THE DEFENANT WAS WITHIN THE VICINITY OF THE TRAFFIC STOP.

"(T)he law permits the police, if they have reasonable grounds for doing so, to move a suspect in the general vicinity of the stop without converting what would otherwise be a temporary seizure into an arrest." *State v. Quartana*, 213 Wis. 2d 440, 446, 570 N.W.2d 610 (Ct. App. 1997).

The Court of Appeals set forth a two-factor test to determine whether an investigative stop has been converted into an arrest due to the movement of the suspect during the stop. *Id.* Under the two-factor the court must determine: (1) whether the suspect was moved within the "vicinity"; and (2) whether the purpose in moving the suspect within the vicinity was reasonable. *Id.*

the trial court's interpretation that the gas station where the testing took place was three to four miles from the stop, and changed the location from rural to a village where there was cover and adequate lighting...

In *State v. Doyle*, No. 2010AP2466-CR, unpublished slip op., ¶ 13, 2011 WL 4389143 (Wis. Ct. App. Sept. 22, 2011), in very similar circumstances found that four mile transportation was within "the outer limits of the definition of `vicinity, '" considering the distance travelled, whether the defendant was

transported to the nearest municipality from a rural area

Here the trial court found the gas station where the testing took place was three to four miles from the stop, and changed the location from rural to a village where there was cover and adequate lighting. The other nearest municipality was equi-distant from the location Volm chose (“a horse a piece”) but on a more easily travelled route. Based on the evidence the trial court’s finding that the location of the defendant was transported to was within the vicinity of the stop was not clearly erroneous.

VOLM’S PURPOSE IN TRANSPORTING THE DEFENDANT WITHIN THE VICINITY OF THE TRAFFIC STOP WAS REASONABLE.

The court must also determine whether the the purpose in moving the person reasonable. *Quartana*, at 446. Volm testified and the court found that the purpose in moving the defendant was plainly reasonable. The transport was from a dark, rural area with steady rain falling, Volm testified and the court found that the defendant was transported to a safer, brighter location, for the safety of the officer as well as the defendant.

The transport was to a location that was the nearest municipality from the location of the stop, on a fairly direct route that was less hilly and curvy than other alternatives an equal distance away. No evidence was presented to counter the opinion of Deputy Volm. The court found that the officer acted reasonably in transporting the defendant to a location that was both safer and more convenient for the deputy to administer field sobriety tests. The trial court’s determination based on the record was not clearly erroneous.

CONCLUSION

Deputy Volm transported the defendant to a location within the vicinity of the traffic stop. Deputy Volm's reasons for moving the defendant for performing field sobriety tests was plainly reasonable. The trial court so found. The trial court's decision should be affirmed.

Dated this 28th day of September, 2016.

Respectfully submitted,

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FORM AND LENGTH CERTIFICATION

I hereby certifies that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief with a proportional font. The length of this brief is 880 words; this total excludes the table of contents, table of authorities, footnote, and certifications.

Dated this 28th day of September, 2016.

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ELECTRONIC FILING CERTIFICATION

I hereby certify that I have submitted an electronic copy of this brief which complies with the requirements of s. 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. I further certify that a copy of this certificate has been served with the court and served on all opposing parties.

Dated this 28th day of September, 2016.

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