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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Appellate Case No. 2021 AP 355-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,

-vs-

CALEB J. WATSON,
Defendant-Appellant.

APPEAL FROM A JUDGEMENT OF CONVICTION ENTERED IN THE
CIRCUIT COURT FOR SHEBOYGAN COUNTY, BRANCH 1, THE
HONORABLE L. EDWARD STENGEL PRESIDING,
TRIAL COURT CASE NO. 20-CT-4

BRIEF OF PLAINTIFF-RESPONDENT

STATE OF WISCONSIN

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Oral argument is not necessary. The parties' briefs will fully develop the issues presented.

Publication is also not necessary. The issue presented has been developed in the law and is not a complex issue demanding a published decision.

STATEMENT OF THE CASE

On January 4, 2020, at approximately 3:19 AM, Deputy Brock Peters of the Sheboygan County Sheriff's Department was dispatched to a residence in regards to a disturbance. (R. 3-4). The dispatch was in reference to a suspicious male pounding on a door and yelling. (R. 4:12-13). On his way to the dispatched location Deputy Peters observed a male in the middle of the roadway. (R. 4:21-25). The male was later identified as Caleb J. Watson. (R. 6:11-22). Watson flagged Deputy Peters down by putting both his arms up in the air. (R. 5:5-6). Deputy Peters was not certain whether Watson was involved in the disturbance. (R. 5:11-14). All he knew was that it was kind of odd that someone was in the middle of Highway 57, which was near the dispatched location. (R. 5:14-18).

Watson told Deputy Peters that he was coming from a friend's house in Kiel and had been walking for 10 to 15 minutes. (R. 5:21-22). Deputy Peters believed Watson was wearing pants, boots and a plaid shirt, like a flannel shirt. (R. 11:16-21). He saw mud on his boots and burrs on his back. (R. 6:1-2). The temperature for the day, according to the National Oceanic and Atmospheric Administration, was a low of 29 degrees Fahrenheit and a high of 33 degrees Fahrenheit. (R. 21-22).

Deputy Peters smelled a strong odor of intoxicants from Watson's breath. (R. 5-6). He also noted that Watson had a slight slur in his speech. (R. 14:19-21).

Watson denied having been involved in any banging or yelling at the dispatched location. (R. 5:22-24).

Deputy Peters told Watson that he would be able to give him a ride home, specifically to his residence in Plymouth, after he, Deputy Peters, went and checked the residence of the dispatched location to make sure everything was okay. (R. 6:4-7, 15:1-3). Watson got into Deputy Peters' vehicle after Deputy Peters frisked him for any kind of weapons. (R. 6:8-10). Watson was not placed in handcuffs. (R. 15:7-8).

While Deputy Peters was making contact with the complainant two other deputies arrived on scene. (R. 8:13-14). One of the assisting deputies observed a Chevy Malibu registered to Watson in the north ditch, east of the dispatched location. (R. 8:14-20). The vehicle was noted to be kind of odd because it was in the ditch line. (R. 8:16-17). An open 24-pack of alcohol or beer was observed inside the vehicle. (R. 8:22).

At some point Deputy Peters realized or had suspicions that Watson was operating while intoxicated based on his slurred speech, his location and his vehicle being in the ditch. (R. 9-10). As a result, he asked Watson to perform field sobriety tests. (R. 10:15-17). Watson consented to performing the tests. (R. 10:18-19). Prior to transport from the complainant's residence Deputy Peters asked Watson to step out of the squad car. (R. 17-18). Deputy Peters mentioned Watson lying to him, presumably about having been walking for 15 minutes. (R. 18:7-12). Watson was placed in handcuffs because he was being detained. (R. 19:10-15).

Initially, Deputy Peters intended to go to a local gas station in Plymouth to administer the standardized field sobriety tests but then Plymouth police officers told him that he could go to their Department and use it because there would not be anyone walking around or watching, just officers and Watson. (R. 12:1-6). Deputy Peters testified that he was

contacted and told to go to the Department and that Plymouth police officers preferred it because there would not be outside distractions of people walking around and watching. (R. 29:3-6). Deputy Peters selected the Plymouth Police Department for the location to administer the tests because it was his opinion that the Department was the best location to conduct the tests. (R. 12:7-10). The Department was 6.9 miles from the complainant's residence. (R. 25:15-17). The distance between the Department and gas station was 1.4 miles. (R. 29:18-21).

The tests were performed at the Department and not the scene due to the fact that it was January, there was "not too big of a shoulder" to even perform the tests on scene, to be able to video and audio record the performance of the tests and to give Watson the best opportunity to perform the tests in a controlled environment with no outside distractions and preferred lighting. (R. 10-11). This was the case even though Deputy Peters had squad video, which recorded with audio. (R. 24:9-12).

Watson consented to going to the gas station to perform the tests. (R. 19:16-23). Later, Deputy Peters informed Watson that they would be going to the Plymouth Police Department. (R. 19:18-20). It was Deputy Peters' recollection that he told Watson they would be going to the Plymouth Police Department for audio and video recording and to give Watson a better opportunity to perform the tests. (R. 12:13-16). Watson agreed to be transported to the Department. (R. 12:19-20).

Deputy Peters did not use a different, closer police department because no one was working at it at the time so he did not have access to it. (R. 27:5-8). He also did not have access to that jurisdiction's fire department. (R. 27:16-17). Similarly, he did not select another business in the closer town because to his knowledge they were closed at the time. (R. 27:18-20).

ARGUMENT

I. Watson’s transport to the Plymouth Police Department was in accord with *Quartana*.

Police officers are able to detain a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest. *State v. Quartana*, 213 Wis. 2d 440, 570 N.W.2d 618 (Ct. App. 1997). As stated in Wis. Stat. § 968.24, such detentions and temporary questioning “shall be conducted in the vicinity where the person was stopped.” Wis. Stat. § 968.24 (*Wisconsin Statutes 2019-20*). When a person is subject to such a stop and is moved from one location to another there is a two-part inquiry. *Id.* First, was the person moved within the “vicinity” and second was the purpose for moving the person within the vicinity reasonable? *Quartana*, 213 Wis. 2d at 446.

As noted in *Quartana*, “vicinity” is commonly understood to mean “a surrounding area or district” or “locality.” *Quartana*, 213 Wis. 2d. at 446 (citing Webster’s Third New International Dictionary: Unabridged 2550 (1976)). This dictionary definition of “vicinity” comports with the legislature’s use of the term in Wis. Stat. § 968.24. *Id.* at 447.

When it comes to evaluating whether moving a person was reasonable courts are to “guard against police misconduct through overbearing or harassing techniques that tread upon people’s personal security without the objective evidentiary justification the Constitution requires.” *Quartana*, 213 Wis. 2d at 448 (citing *Terry v Ohio*, 392 U.S. 1 (1968)). Such detentions must at all times be temporary and last no longer than necessary to effectuate the purpose of a stop. *Id.* When it comes to evaluating the length of a stop, courts must determine whether police diligently pursued a means of investigation likely to confirm or dispel suspicions quickly during which time it was necessary to detain a person.

Id. Such decisions are to be made without unrealistic second-guessing, with consideration of the totality of the circumstances or the whole picture and without a hard and fast rule because the concept is not readily or usefully reduced to a set of legal rules. *State v. Wilkens*, 159 Wis. 2d 618, 465 N.W.2d 206 (Ct. App. 1990).

The facts in *Quartana* involve Quartana having lost control of his vehicle sometime after 2 AM on January 7, 1996, driving into a ditch and immediately leaving the scene, walking to his parents' home approximately one mile away. *Quartana*, 213 Wis. 2d at 443-44. A State Trooper took control of the accident scene. *Id.* After learning that Quartana owned the vehicle involved in the accident and lived nearby, a City of Brookfield Officer was sent to Quartana's residence. *Id.* The Officer found Quartana at the residence. *Id.*

The Officer asked to see Quartana's driver's license and about the accident. *Quartana*, 213 Wis. 2d at 444. Quartana admitted that he had been driving at the time of the accident. *Id.* His eyes were observed to be "sort of" bloodshot and glassy. *Id.* His breath smelled of intoxicants. *Id.*

When informed that he needed to return to the accident scene to talk with the trooper investigating the accident, Quartana asked if he could ride with his parents. *Quartana*, 213 Wis. 2d at 444. He was told that he needed to go with the officer because the officer needed to keep an observation on him and because he was being detained in reference to the accident investigation. *Id.* The officer kept Quartana's driver's license. *Id.* He drove Quartana to the scene in the rear of a squad car. *Id.*

At the scene of the accident the trooper was given Quartana's driver's license. *Quartana*, 213 Wis. 2d at 444. The trooper immediately interviewed Quartana and then had him perform several field sobriety tests. *Id.* Quartana failed the tests and afterwards refused to submit to a

preliminary breath test. *Id.* He was arrested and transported to a police station for further questioning. *Id.*

The court in *Quartana* found that it was reasonable for police to have detained Quartana and transported him to the scene of the accident for continued investigation. *Quartana*, 213 Wis. 2d at 448. The court noted that officers had reasonable grounds to investigate further and determine if Quartana's intoxication contributed to the accident. *Id.* They also found that it was reasonable for him to be transported the short distance to the accident scene to continue the investigation since the trooper was in charge of the investigation and the transport was the quickest way for the police to confirm or dispel their suspicions. *Id.* at 449.

Quartana also asserted that the conditions under which he was transported amounted to an arrest rather than a brief detention. *Quartana*, 213 Wis. 2d at 449. The court disagreed. *Id.* It noted that a restraint of liberty is not ipso facto proof of an arrest and that law enforcement having kept his driver's license did not equate to an arrest. *Id.* The court concluded that a reasonable person in Quartana's position at the time and under the totality of the circumstances would not have believed he was under arrest. *Id.* at 449-50. Considerations noted by the court included that Quartana was not transported to a more institutional setting, the length of time he was held having been no longer than necessary to confirm suspicions and Quartana having had to have been aware that his detention was only temporary and limited in scope, including his having been told that he was being temporarily detained for purposes of the investigation. *Id.* at 450.

It should be noted that use of handcuffs does not necessarily transform an investigative stop into an arrest. *State v. Vorburger*, 2002 WI 105, ¶ 64, 255 Wis. 2d 537, 648 N.W.2d 829. Further, "[i]n the absence of anything to the contrary, the clear implication of such a request [to perform

standardized field sobriety tests] is that if one passes the test, he or she will be free to leave.” *State v. Swanson*, 164 Wis. 2d 437, 448, 475 N.W.2d 148 (1991) *rev’d other grounds by State v. Sykes*, 2005 WI 48, 279 Wis. 2d 742, 695 N.W.2d 277.

The totality of the circumstances are significant when evaluating Watson’s claims. It was after 3:19 AM with a temperature between 29 and 33 degrees Fahrenheit, in January with Watson wearing a flannel shirt, pants and boots when the need to perform standardize field tests arose. The roadway, according to Deputy Peters, had a shoulder that was not conducive to Watson performing the tests. Instead, Deputy Peters wanted Watson to have the best opportunity to perform the tests, including a location free of distractions.

Surrounding businesses were closed. A different police department a bit closer to the scene was unavailable to the Deputy. A fire department in the area was also unavailable. While there were surrounding roads, they would have presented the same temperature issue for Watson, who was dressed in boots, pants and a flannel shirt with temperatures between 29 and 33 degrees Fahrenheit. Given the time, the Plymouth Police Department was an available, appropriate location within the vicinity. The Department was also in the same jurisdiction as Watson’s home, which is where Deputy Peters was going to transport him after Watson waived him down.

The question next becomes whether the purpose in moving Watson was reasonable. As Deputy Peters testified, the reason he moved Watson was to give him the best opportunity to perform the tests. There is no evidence and there was no suggestion during the motion hearing that the location was an attempt to harass or gain some law enforcement advantage. There was nothing about the transport or its location that suggested an overbearing act. There is also no evidence that there was any delay in the

investigation. There also is no evidence that Deputy Peters failed to act in a reasonable time to confirm or deny his suspicion that Watson was operating while impaired.

Rather than showing any police misconduct, the use of the Department for field tests gave Watson an advantage. The Department had temperature, light and other environmental controls to remove distractions or impairments to his performance of the tests. The location was even better than a gas station in that Distractions from citizens, cars, lights, the temperature, etc. were not in play, at least to the same degree. The Department also provided audio and video recording to benefit Watson in accurately recording his performance.

As for his status, Watson was not under arrest. His initial contact with Deputy Peters was voluntary. He came into contact with Deputy Peters not out of a typical traffic stop or call for assistance but from his own waiving down Deputy Peters to get his attention. Although Deputy Peters thought the circumstances odd, he was not certain if Watson was involved in the call he was responding to or not. Watson entered Deputy Peters' squad car with the understanding that Deputy Peters would take him home and that there would be a stop along the way as Deputy Peters responded to a call for service.

Thereafter, Deputy Peters learned about the location of Watson's vehicle and became suspicious that Watson had been operating his vehicle while intoxicated. While he may have confronted Watson about lying due to the claim he had been walking for 10 to 15 minutes, Watson was asked if he would submit to standardized field sobriety tests and consented to doing so. He was placed in handcuffs but returned to the same vehicle he voluntarily entered previously for a ride home. He was told that the transport for testing was to allow him a better opportunity to perform the

tests. This language does not suggest that he was in custody, but that his performance on the tests would matter.

There is no evidence that law enforcement used any show of force, other than use of handcuffs, for example there were no threats, promises, statement about being under arrest or other actions to demonstrate an arrest. There was no evidence presented during the motion hearing suggesting that Watson was in custody for whatever happened at the dispatched location or that what happened there was even a crime. Watson's act of voluntarily waiving down a responding officer and accepting a ride even after learning the officer was continuing to a call for service in the area does not suggest that he thought he did anything illegal at the dispatched residence or was concerned about being arrested. He voluntarily accepted a ride and then consented to transport for tests. He was not under arrest but subject to a temporary detention.

CONCLUSION

This Court should affirm the circuit court's decision.

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 2689 words.

Electronically signed by Joel Urmanski

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