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COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

Case No. 2021AP001302

STATE OF WISCONSIN,
Plaintiff-Appellant,

v.

RODNEY J. OFTE,
Defendant-Respondent.

APPEAL FROM AN ORDER SUPPRESSING EVIDENCE, ENTERED IN
THE CIRCUIT COURT FOR VERNON COUNTY, THE HONORABLE
DARCY J. ROOD, PRESIDING

REPLY BRIEF OF THE PLAINTIFF-APPELLANT

JASMINE M. BETANCOURT
Assistant District Attorney
State Bar #1102839
Attorney for Plaintiff-Appellant

Vernon County District Attorney's Office
400 Courthouse Square, Suite 200
Viroqua, WI 54665-0468
(608) 637-5357
(608) 637-3828 (fax)
Jasmine.betancourt@da.wi.gov

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ARGUMENT

The reason the State did not address Knapp in its brief is because the defendant's reliance upon Knapp is simply incorrect. Thus, this Court should reverse the circuit court's order, founded upon its reliance on Knapp.

A. Knapp Does Not Apply Because Ofte Was Not in Custody Until He Was Formally Arrested.

In Knapp, a law enforcement officer, armed with an arrest warrant, made contact with Knapp. State v. Knapp, 2005 WI 127, ¶ 7, 285 Wis. 2d 86, 90, 700 N.W.2d 899, 901–02. Based upon the arrest warrant, Knapp was taken into custody, but was never read his *Miranda* warnings. Id. All parties involved in Knapp acknowledge the same and all parties agreed and the officer even testified at a motion hearing that he knew Knapp was in custody and intentionally subverted *Miranda* so as to keep Knapp in conversation. Id. at ¶ 13-14.

The facts of the present case are in stark contrast to those of Knapp. Ofte was not in custody at the time that Deputy Paulson asked investigatory questions. The fact that Deputy Paulson voiced at the motion hearing that he knew he would be arresting Ofte, does not transform the investigative stage of an operating while intoxicated incident, into the custodial stage. Law enforcement officers routinely know that they will be arresting a subject, especially in operating while intoxicated scenarios, just based on their training and experience and most importantly their observations of the subject. Here, Ofte was found behind the wheel of his vehicle slumped over. (R. 55: 7-8). When Deputy Paulson made contact with Ofte, he observed that Ofte was slurring his words, had bloodshot eyes, and emitted the odor of intoxicants. (R. 55: 9). Based on the totality of the circumstances, Deputy Paulson knew Ofte was intoxicated and knew that based upon his observations, he would be arresting Ofte.

However, simply because Deputy Paulson knew that an arrest was going to be made on scene, does not negate that Deputy Paulson also knew that he would have to run Ofte through the standardized field sobriety tests (SFSTs) to verify Probable Cause, as evidenced by the fact that he in fact did run Ofte through SFSTs. (R. 55: 22). After the SFSTs and the preliminary breath test were performed, Ofte was then and only then, formally arrested. (R. 55: 23).

The reason that Knapp does not apply here is because Ofte was not in custody therefore, Miranda warnings did not apply, and there was no intentional circumvention of Miranda. At no point did Deputy Paulson's contact with Ofte transform into a custodial setting until Ofte was formally arrested.

Deputy Paulson having Ofte sit in his squad car after transferring Ofte from the ambulance, again, did not transform the contact from investigation to custody. The door was open, the conversation with Ofte was ongoing, Ofte was not restrained, not in handcuffs and the tone remained conversational. (R. 55: 11).

At some point, Deputy Paulson does in fact close the squad car door, but that is solely to move Ofte from point A to point B to perform SFSTs on a more level surface, so as to make the SFST's easier for Ofte to perform. (R. 55: 46-47). Ofte was informed of the reason for the location change. (R. 55: 46-47). Case law allows a law enforcement officer to move people from point A to point B to allow them a safer and better environment to perform SFST's without transforming the investigation into custody. The plain language of Wisconsin Statutes § 968.24, allows for the removal of a suspect from one location to another, so long as it is in the same "vicinity." In support of that assertion, in State v. Quartana, 213 Wis. 2d 440, 570 N.W.2d 618 (1997), the Wisconsin Court of Appeals made clear that the statute expressly authorizes law enforcement to, "move a suspect short distances during the course of a temporary investigation. The Statute states that the police may temporarily detain and question an individual, 'in the vicinity where the person was stopped.'" State v. Quartana, 213 Wis. 2d 440, 446, 570 N.W.2d 618, 621 (Ct. App. 1997). Therefore, the Court opined that it was clear that the law allows law enforcement, if they have reasonable grounds to do so, to move a suspect to an area within the general vicinity of the stop without converting what would otherwise be a temporary seizure into an arrest. *Id.*

The Defendant and the court's reliance upon Knapp is clearly erroneous and this court should reverse the court's decision to suppress the evidence of the stop.

CONCLUSION

This Court should reverse the circuit court's order granting Ofte's motion to suppress and remand the case for further proceedings.

Dated this 8th day of March 2022.

Respectfully submitted,

Electronically signed by:

Jasmine M. Betancourt
JASMINE M. BETANCOURT
Assistant District Attorney
State Bar #1102938

Attorney for Plaintiff-Appellant

Vernon County District Attorney's Office
400 Courthouse Square, Suite 200
Viroqua, WI 54665-0468
(608) 637-5357
(608) 637-3828 (fax)
Jasmine.betancourt@da.wi.gov

FORM AND LENGTH CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § (Rule) 809.19(8)(b), (bm) and (c) for a brief produced with a proportional serif font. The length of this brief is 1,123 words.

Dated this 8th day of March 2022.

Electronically signed by:

Jasmine M. Betancourt
JASMINE M. BETANCOURT
Assistant District Attorney

CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 8th day of March 2022.

Electronically signed by:

Jasmine M. Betancourt
JASMINE M. BETANCOURT
Assistant District Attorney