

FILED
09-21-2022
CLERK OF WISCONSIN
COURT OF APPEALS

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2022AP668-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KEVIN R. RADDEMANN,

Defendant-Appellant

APPEAL FROM THE JUDGMENT OF
CONVICTION AND ORDER OF THE
CIRCUIT COURT FOR WASHINGTON COUNTY,
HONORABLE SANDRA J. GIERNOTH, PRESIDING

BRIEF FOR PLAINTIFF-RESPONDENT

STEPHANIE L. HANSON
Assistant District Attorney
State Bar Number 1025050
Attorney for Plaintiff-Respondent

Washington County District Attorney
Post Office Box 1986
West Bend, WI 53095-7986
(262) 335-4311 (Phone)
(262) 335-4739 (Fax)
Stephanie.Hanson@da.wi.gov

TABLE OF CONTENTS

	<u>Page</u>
ISSUES PRESENTED	1
POSITION ON ORAL ARGUMENT AND PUBLICATION.....	2
STATEMENT OF THE CASE.....	2
STATEMENT OF FACTS.....	3
ARGUMENT	3
I. CONSTITUTIONAL CHALLENGE TO MUNICIPAL ORDINANCE WAS FORFEITED	3
II. IF COURT ADDRESSES, MUNICIPAL ORDINANCE IS CONSTITUTIONALLY VALID	5
III. OFFICER HAD REASONABLE SUSPICION TO EFFECT A TRAFFIC STOP OF RADDEMANN’S VEHICLE	8
CONCLUSION.....	14

CASES CITED

<i>City of Milwaukee v. K.F.</i> , 145 Wis. 2d 24, 426 N.W.2d 329 (1988)	<i>Passim</i>
<i>In re A.P.</i> , 2019 WI App 18, 386 Wis. 2d 557, 927 N.W.2d 560	4
<i>Kurtz v. City of Waukesha</i> , 91 Wis. 2d 103, 880 N.W.2d 757 (1979)	4

<i>State ex rel. Smith v. Oak Creek</i> , 139 Wis.2d 788, 407 N.W.2d 901 (1987)	5-6
<i>State v. Bollig</i> , 222 Wis. 2d 558, 587 N.W.2d 908 (Ct. App. 1998)	3
<i>State v. Courtney</i> , 74 Wis. 2d 705, 247 N.W.2d 714 (1976)	5
<i>State v. Hindsley</i> , 2000 WI App 130, 237 Wis. 2d 358, 614 N.W.2d 48	8
<i>State v. Iverson</i> , 2015 WI 101, 365 Wis. 2d 302, 871 N.W.2d 661	8
<i>State v. Post</i> , 2007 WI 60, 301 Wis. 2d 1, 733 N.W.2d 634	8
<i>State v. Richardson</i> , 156 Wis. 2d 128, 456 N.W.2d 830 (1990)	8
<i>State v. Taylor</i> , 60 Wis. 2d 506, 210 N.W.2d 873 (1973)	8-9
<i>Townsend v. Massey</i> , 2011 WI App 160, 338 Wis. 2d 114, 808 N.W.2d 155	3-4

WISCONSIN STATUTES

Wis. Stat. § 806.04	4
---------------------------	---

OTHER AUTHORITIES

Hartford Municipal Ord. Sec. 27.13(1)	1, 6, 10
Webster's New Universal Unabridged Dictionary 757 (1983)	6

STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2022AP668-CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

KEVIN R. RADDEMANN,

Defendant-Appellant

APPEAL FROM THE JUDGMENT OF
CONVICTION AND ORDER OF THE
CIRCUIT COURT FOR WASHINGTON COUNTY,
HONORABLE SANDRA J. GIERNOTH, PRESIDING

BRIEF FOR PLAINTIFF-RESPONDENT

ISSUES PRESENTED

- I. Is Hartford Municipal Ordinance Sec. 27.13(1)
unconstitutionally vague?
Circuit Court: Did not have an opportunity to answer.
- II. If constitutional challenge not forfeited, is Hartford
Municipal Ordinance Sec. 27.13(1) constitutionally valid?
Circuit Court: Did not have an opportunity to answer.

- III. Did the officer have reasonable suspicion to effect a traffic stop of Raddemann's vehicle?

Circuit Court answered: Yes.

POSITION ON ORAL ARGUMENT
AND PUBLICATION

Neither oral argument nor publication is necessary in that the issues raised can be resolved using well-established principles set forth in existing published case law.

STATEMENT OF THE CASE

On June 25, 2021, Officer Adam Albea of the Hartford Police Department arrested Kevin R. Raddemann for Operating While Intoxicated, Third Offense, and Operating with a Prohibited Alcohol Concentration, Third Offense. [R.1, R.2, R.4] The State of Wisconsin filed a criminal complaint. [R.4] On July 1, 2021, Raddemann had an initial appearance, and was released on a signature bond. [R.8]

On October 27, 2021, Raddemann filed a Motion to Suppress based upon Lack of Reasonable Suspicion to Detain the Defendant. [R.19] The issue, according to Raddemann's motion, was whether the officer had reasonable suspicion to believe that a crime had been committed. [R.19:8] While Raddemann's motion made reference to the constitutionality of the ordinance [R.19:5], at the November 19, 2021, Motion Hearing, the defense confirmed that the issue related to lack of reasonable suspicion for the initial detention. [R.49:3] After testimony, and admission of four (4) exhibits, the trial court determined that the officer had reasonable suspicion to effect a traffic stop of Raddemann's vehicle. [R.49:37-41]

On February 28, 2022, Raddemann filed a Motion for Reconsideration of the Court's Decision to Deny Defendant's Motion to Suppress Based upon Lack of Reasonable Suspicion to Detain. [R.36] In the Motion for Reconsideration, Raddemann argued that the ordinance was unconstitutional; and unconstitutionally vague as applied to him. [R.36] In a March 1, 2022, Decision and Order, the circuit court denied the Defendant's Motion for Reconsideration. [R.37] On March 23, 2022, Raddemann pled guilty to Operating While Intoxicated, Third Offense, and was sentenced by the court. [R.40] Raddemann appeals.

STATEMENT OF FACTS

Facts in addition to those set forth by Raddemann are contained in the Argument section as needed.

ARGUMENT

I. CONSTITUTIONAL CHALLENGE TO MUNICIPAL ORDINANCE WAS FORFEITED.

On appeal, Raddemann argues that the nexus between his driving behavior and some "wrongdoing" does not exist because "subsequent to the removal of the cemetery gates ... [the ordinance] is no longer objectively enforceable in a manner which provides proper notice to drivers of when its elements are violated." [App Br:11] Raddemann forfeited any constitutional challenge to the ordinance by failing to raise it in the circuit court. *See State v. Bollig*, 222 Wis. 2d 558, 564, 587 N.W.2d 908 (Ct. App. 1998). While Raddemann made general reference to the vagueness of the municipal ordinance, the forfeiture rule focuses on whether particular arguments have been

preserved. See *Townsend v. Massey*, 2011 WI App 160, ¶¶ 25-26, 338 Wis. 2d 114, 808 N.W.2d 155. By not allowing the circuit court the opportunity to address the constitutionality of the ordinance, Raddemann forfeited his constitutional vagueness challenge.

Moreover, Raddemann failed to provide requisite notice to either the municipality and/or the attorney general. Under § 806.04, Wis. Stat.,

[i]n any proceeding which involves the validity of a municipal ordinance or franchise, the municipality *shall* be made a party, and *shall* be entitled to be heard. If a statute, ordinance, or franchise is alleged to be unconstitutional, the attorney general *shall* also be served with a copy of the proceedings and be entitled to be heard....

(Emphasis added). See also *Kurtz v. City of Waukesha*, 91 Wis. 2d 103, 117, 280 N.W. 2d 757 (1979). “A challenge to a statute is recognized even when the constitutional issue is collateral to or a preliminary step in the determination of the rights sought to be determined.” *Id.* This judicially created procedural rule applies when a party asserts an ordinance is unconstitutional as applied to his or her case, as well as when he or she argues an ordinance is unconstitutional on its face. See *In re A.P.*, 2019 WI App 18, ¶ 25, 386 Wis. 2d 557, 927 N.W.2d 560. Because neither the municipality nor the attorney general has been served, Raddemann’s constitutional challenge is precluded.

II. IF CONSTITUTIONAL CHALLENGES ARE DEEMED NOT FORFEITED, HARTFORD MUNICIPAL ORDINANCE SEC. 27.13(1) IS CONSTITUTIONALLY VALID.

On appeal, Raddemann contends that the Hartford Municipal Ordinance is unconstitutionally vague. The concept of vagueness rests on the “constitutional principle that procedural due process requires fair notice and proper standards for adjudication.” *City of Milwaukee v. K.F.*, 145 Wis. 2d 24, 32, 426 N.W.2d 329 (1988) (quoted source omitted). The ordinance need not attain the precision of mathematics or science, but it must be sufficiently definite so that potential offenders who wish to abide by the law are able to discern when the region of proscribed conduct is neared and those who are charged either with enforcing or applying it are not relegated to creating their own standards of culpability instead of applying the standards prescribed in the law. *See State v. Courtney*, 74 Wis. 2d 705, 711, 247 N.W.2d 714 (1976). All that is required to uphold a statute or ordinance is a fair degree of definiteness. *K.F.*, 145 Wis. 2d at 33. “[A] statute or regulation will not be voided merely by showing that the boundaries of the area of proscribed conduct are somewhat hazy.” *Id.* (quoted sources omitted).

The Wisconsin Supreme Court has held that

Prior to embarking upon an analysis of the ordinance upon vagueness grounds, [the] court must first determine whether the appellants’ conduct is clearly proscribed by the ordinance because ‘a plaintiff whose conduct is clearly proscribed by the statute in question cannot complain of the vagueness of a law as applied to others; the law must be impermissibly vague in all of its applications.’

Id. at 33-34 (quoting *State ex rel. Smith v. Oak Creek*, 139 Wis. 2d 788, 802-03, 407 N.W.2d 901(1987)). “[A] challenger whose conduct was clearly prohibited by the terms of a statute or ordinance does not have standing to challenge the vagueness of a statute or ordinance as hypothetically applied to the conduct of others.” *K.F.*, 145 Wis. 2d at 34. Therefore, the analysis of the challenge to the vagueness of the ordinance must necessarily commence with consideration of whether the ordinance, as applied to the appellant, clearly proscribed his conduct. *Id.* at 35.

The Hartford Municipal Ordinance at issue provides:

27.13 RULES FOR PUBLIC USE. The following regulations apply to the municipal cemeteries:

(1) Entering; Closing Hours. No person shall enter or leave the cemeteries except through the gates. No person other than cemetery employees or other police officers shall be within the cemetery except during daylight hours.

[R.24] Raddemann focuses on the “except through the gates” language, and claims the signage does not expressly advise where the entrance is located. Raddemann’s claims fail.

The stone structures at the Highway 60 entryway in question constitute a gate. The common meaning of the term “gate” as defined in Webster’s New Universal Unabridged Dictionary 757 (1983) is “a movable framework or solid structure, especially one that swings on hinges, controlling entrance or exit through an opening in a fence or wall; an opening providing passageway through a fence or wall, with or without such a structure; gateway; any means of entrance or exit....” See *K.F.*, 145 Wis. 2d at 38 (for nontechnical terms, we refer to a

recognized dictionary to ascertain the common and approved usage of the term). The stone structures – regardless of whether additional moveable or swinging barriers had been removed – unequivocally constitute the gate to the cemetery, that is an opening in a wall, and/or a means of entrance or exit. *See* R.25.

Moreover, the ordinance is clear that no person is permitted in the cemetery after daylight hours other than cemetery employees or police officers. This prohibition applies whether one enters on foot or by vehicle.

According to the testimony of Officer Adam Albea of the Hartford Police Department, Raddeman was driving his vehicle within the cemetery near the intersection with another cemetery road, specifically it was in the first intersection within the cemetery off of Highway 60, on the left side on the roadway depicted in Exhibit 4, traveling northbound. [R.49: 10, 21-22; R.27] Raddemann's claim that somehow an individual would not know whether they were within the cemetery or outside the cemetery, especially at this location with a speed bump and street signs, is absurd.

It is uncontested that at the time of the traffic stop, Raddemann was not a cemetery employee, Raddemann was not a police officer, and it was after daylight hours. [R.49:8, 10, 20, 23] Because Raddemann was one of the regulated persons and he was involved in conduct in a place unambiguously proscribed by the ordinance, the ordinance was not vague in its application to Raddemann. Therefore, Raddemann does not have standing to challenge the ordinance as unconstitutionally vague. *See K.F.*, 145 Wis. 2d at 39.

III. OFFICER HAD REASONABLE SUSPICION TO EFFECT A TRAFFIC STOP OF RADDEMANN'S VEHICLE.

Raddemann previously argued that the officer did not have reasonable suspicion to stop his vehicle. When the Court of Appeals reviews a motion to suppress, the Court upholds the circuit court's findings of fact unless those findings are clearly erroneous. *See State v. Hindsley*, 2000 WI App 130, ¶ 22, 237 Wis. 2d 358, 614 N.W.2d 48. The Court of Appeals independently determines whether the facts found by the circuit court satisfy the applicable constitutional principles. *See Id.*

To conduct an investigatory stop, a law enforcement officer must reasonably suspect, in light of the officer's experience, that some sort of criminal activity is occurring. *See State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990). To determine whether a stop is supported by reasonable suspicion, the Court of Appeals considers whether “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant the intrusion of the stop.” *State v. Post*, 2007 WI 60, ¶ 10, 301 Wis. 2d 1, 733 N.W.2d 634 (quoted sources omitted). “The reasonableness of a stop is determined based upon the totality of the facts and circumstances” in the case. *Post*, 2007 WI 60 at ¶ 13.

The question presented is whether the facts and circumstances of the case would warrant a reasonable law enforcement officer, in light of the officer's training and experience, “to suspect that the individual has committed, was committing, or is about to commit a crime.” *Id.* “[R]easonable suspicion that a non-traffic-related law has been broken may also justify a traffic stop.” *State v. Iverson*, 2015 WI 101, ¶ 52, 365 Wis. 2d 302, 871 N.W.2d 661 (quoted source omitted). The State

has the burden of establishing that an investigative stop was reasonable. *State v. Taylor*, 60 Wis. 2d 506, 519, 210 N.W.2d 873 (1973).

On appeal, Raddemann frames the issue as: “Did the observations made by Officer Albea – premised upon his belief that the cemetery “gate” should now be construed to be the stone pylons at the entryway despite the actual gate’s earlier removal – justify a detention of Mr. Raddemann’s vehicle under the Fourth Amendment?” [Brief of Appellant:10-11] Raddemann’s argument ignores (1) the obvious fact that the stone pylons constitute the cemetery gate, (2) the testimony of the officer, and (3) the circuit court’s findings of fact that the officer stopped the vehicle for being within the cemetery after hours in violation of the municipal ordinance. At no time did the officer articulate the basis for the traffic stop as Raddemann not entering the cemetery properly, nor did the circuit court so find. Raddemann does not contest or even address the circuit court’s findings of fact. Raddemann’s focus on “the gates” being the basis for the traffic stop is factually unsupported, and simply, misplaced. If this Court rejects Raddemann’s belated constitutionality challenge, Raddemann effectively concedes on appeal the circuit court’s factual determination that the officer had reasonable suspicion to stop his vehicle.

Officer Albea testified that on June 25, 2021, at approximately 9:30 p.m., he was traveling eastbound from Walmart on Highway 60, when he noted off to his right at the Pleasant Hill Cemetery that a dark colored truck was traveling northbound through the cemetery which is located in the City of Hartford, Washington County, Wisconsin. [R.49:6-7, 8-9] Officer Albea testified that he was aware that a Hartford municipal ordinance prohibits people from being in the cemetery after dark. [R.49:7] Officer Albea testified that he conducted

a traffic stop of this vehicle, and identified Raddemann as the driver of the vehicle. [R.49:8-9]

The Hartford Municipal Ordinance at issue provides:

27.13 RULES FOR PUBLIC USE. The following regulations apply to the municipal cemeteries:

(1) Entering; Closing Hours. No person shall enter or leave the cemeteries except through the gates. No person other than cemetery employees or other police officers shall be within the cemetery except during daylight hours.

[R.24] The Pleasant Hill Cemetery is operated by the City of Hartford underneath the Department of Public Works Park and Rec Department. [R.49:18]

Officer Albea testified that by 9:30 p.m., the sun had set, and it was after dusk where there was no visible sunlight. [R.49:10, 23] Officer Albea testified that there are two (2) entrances/exits for vehicle access, one on Highway 60, and one off of Pond Road; it is not a one-way road in and out of the cemetery. [R.49:10, 11] Officer Albea testified that the entry exit way off of Highway 60 is similar to any other driveway except it is decorated with a stone arch, so you have to go in between stone pylons and underneath the arch. The Pond Road entrance does not have a decorative stone arch. [R.49:11; R.25]

Officer Albea testified that at both entrances, there are postings after the entrances right as you pull in. There are signs on poles that indicate no vehicle entry after dark. [R.49:12, 31-32] The signs are visible from a vehicle. [R.49:13] The top of the signs provide road names, "Arlington Av," and "Memorial Av." The posted signs read: "Private drive not a through street," and "Cemetery is closed after daylight hours." [R.26; R.27] The cemetery is also equipped with a

speed bump on Arlington Avenue which is visible in the photographs.
[R.25; R.27]

Officer Albea also testified to his familiarity as a Hartford officer with the vehicles associated with the City as well as the city employees, and the practice of employees utilizing municipal vehicles while working for the City of Hartford. [R.49: 25-27, 30-31, 32-33] Officer Albea testified that the Public Works Park and Rec Department had approximately three full-time employees, and they employed various part-timers when needed, and the department operated with three vehicles. [R.49:18, 19] Officer Albea testified that the department utilized a white truck, a red truck, and a white-panel van with each displaying a small circular emblem on the driver side depicting the City of Hartford, and all three have municipal plates. [R.49:19, 29-30]

Officer Albea testified that when he first observed Raddemann's vehicle, it was in the first intersection within the cemetery off of Highway 60, specifically, on the left side on the roadway depicted in Exhibit 4 traveling northbound. [R.49: 10, 21-22; R.27] Officer Albea observed the truck come to a stop before entering onto Highway 60, so he pulled off into an industrial business, Helgesen, which is the next driveway after the vehicle was coming out. [R.49:7, 22, 23] Officer Albea testified that he observed the vehicle in his rearview mirror turn right out of the cemetery heading eastbound past his location. [R.49:7-8, 24] Officer Albea testified that as the vehicle went past, he observed it was a darker colored red truck, and that it did not have municipal plates. [R.49:8] Officer Albea then attempted to stop the vehicle after he confirmed it had traveled through the cemetery after dark, and did not have municipal plates. [R.49:8] Officer Albea testified that the

vehicle he observed in the cemetery after daylight hours did not appear to be the white or red municipal pickup trucks, it did not appear to be any police vehicle within our county, and he confirmed there was not a municipal plate. [R.49:20] The vehicle traveled approximately one city block, and then turned into a driveway on the other side of Helgesen, the industrial building. [R.49:8] Raddemann was identified as the driver of the vehicle. [R.49:9]

Raddemann argued that Officer Albea should have called the Parks and Recreation Department to see if anyone was supposed to be in the cemetery before stopping Raddemann's vehicle; and that because the "gates" had been removed there is no reasonable suspicion that Raddemann was even in the cemetery because he had not been past that sign [depicted in the photographs]. [R.49:36-37] The circuit court rejected Raddemann's arguments. [R.49:38-41]

The circuit court specifically found that on June 25, 2021, around 9:30 p.m., it was after dark, when Officer Albea observed a vehicle being operated by Raddemann *inside* the Pleasant Hill Cemetery. [R.49:38] The circuit court noted that Officer Albea observed the vehicle *exit* the cemetery, turn on to Highway 60, and effected a traffic stop on Raddemann's vehicle. [R.49:38]

The circuit court found that Officer Albea made several key observations which fall within reasonable suspicion:

- He looked at the vehicle, noticed it was a dark red truck that in no way is described as being consistent with anything close to a law enforcement vehicle.
- He recognized it as not being consistent with any vehicle he is familiar with to be utilized by the City of Hartford Department of Public Works which he knows is the entity that is responsible for maintenance and the like activities for the cemetery.
- He observed the plates on the vehicle and noted it did not bear any municipal plates, and that in his experience as an officer

with the City of Hartford, the Hartford city vehicles in fact bear those municipal plates.

[R.49:38-39]

The circuit court rejected any claim that Officer Albea acted on a hunch. [R.49:40] The circuit court found Officer Albea's testimony to be credible as to his general knowledge of the city vehicles, the maintenance vehicles, what they look like, what plates they should have, and the emblems on the vehicles. [R.49:40] The circuit court found there was nothing about Raddemann's vehicle that was consistent with either a law enforcement vehicle, or a municipal vehicle. [R.49:40] The circuit court found that Officer Albea took all those steps to analyze Raddemann's vehicle before he conducted a traffic stop thereby eliminating other plausible explanations that would be exceptions to the ordinance before he conducted the traffic stop. [R.49:40] Based on these findings of fact, the circuit court held that Officer Albea had reasonable suspicion to believe Raddemann's vehicle was violating the Hartford ordinance, that is he had particularized an objective basis to believe that a violation had occurred. [R.49:39, 41]

The circuit court specifically rejected Raddeman's claim that Raddemann was not even in the cemetery when observed by Officer Albea, as well as Raddemann's argument that Officer Albea needed to act further before stopping his vehicle. The circuit court's factual findings as to these points is clearly supported both by the testimony of the officer, as well as the photographs. Based upon the circuit court's findings of fact, which were not clearly erroneous, Officer Albea had reasonable suspicion to conduct a traffic stop of Raddmann's vehicle. Therefore, the judgment and order should be affirmed.

CONCLUSION

For all of the reasons given, it is respectfully submitted that both the order denying reconsideration and judgment of conviction be affirmed.

Respectfully Submitted,
Electronically signed by:

Stephanie L. Hanson
Stephanie L. Hanson
Assistant District Attorney
State Bar Number 1025050

Washington County District Attorney
Post Office Box 1986
West Bend, Wisconsin 53095-7986
Stephanie.Hanson@da.wi.gov
(262) 335-4311 (Phone)
(262) 335-4739 (Fax)

CERTIFICATION

I hereby certify that this brief conforms to the rules contained in § 809.19(8)(b) and (c), Wis. Stat., for a brief produced with a proportional serif font. The length of this brief is 3879 words.

Electronically signed by:

Stephanie L. Hanson
STEPHANIE L. HANSON
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH § 809.19(12), Wis. Stat.

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), Wis. Stat.

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 certification has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Electronically signed by:

Stephanie L. Hanson
STEPHANIE L. HANSON
Assistant District Attorney