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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT IV

Case No. 2022AP001351 – CR

STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

ADEKOLA JOHN ADEKALE,

Defendant-Appellant.

On Appeal from a Judgment of Conviction Entered
in the Circuit Court for La Crosse County,
the Honorable Todd W. Bjerke, Presiding

BRIEF OF
DEFENDANT-APPELLANT

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ISSUES PRESENTED

Whether the state trooper who was conducting an investigative detention of Mr. Adekale transformed the stop into an arrest without probable cause by handcuffing him, placing him into the back of the squad car and unreasonably transporting him to a secluded location, out of sight of his passengers and the general public, to conduct field sobriety tests.

The circuit court concluded that Mr. Adekale was not under arrest and denied his suppression motion. This Court should conclude that Mr. Adekale was under arrest when the trooper transported him to another location to conduct field sobriety tests and suppress the resulting evidence.

POSITION ON ORAL ARGUMENT AND PUBLICATION

Neither oral argument nor publication is requested as the briefs should adequately set forth the arguments.

STATEMENT OF THE CASE AND FACTS

Following a traffic stop on February 16, 2020, the state charged Mr. Adekale with operating a motor vehicle while under the influence, second offense

(OWI 2nd), and operating with prohibited alcohol concentration, second offense.

Mr. Adekale filed a motion to suppress all evidence obtained as a result of his arrest, which he alleged was not supported by probable cause. (24:1). Specifically, Mr. Adekale argued that by placing him in handcuffs, patting him down, putting him in the back of a squad car, and transporting him to another location for an unreasonable purpose, the State Trooper who initiated the traffic stop had arrested him without a warrant and without probable cause. The circuit court held an evidentiary hearing on the suppression motion on November 23, 2021. (51:1-3).

The state called Wisconsin State Patrol Trooper Cody Digre. (51:3-4). The state began showing a video from Trooper Digre's squad camera, which was marked as exhibit one. (51:5). Between portions of the squad video being shown, Digre testified that after he activated his squad lights and siren, Mr. Adekale came to a stop in a hotel parking lot. (51:7). Digre radioed for backup and then approached the vehicle. (66:1, Exhibit 1 at 1:23-28, 2:20-25). Digre testified that the passengers all kept chiming in while he was trying to talk to Mr. Adekale and that he asked the passengers to exit the car. (51:8). Digre testified he was "kind of talking to all of them [Mr. Adekale and the passengers], but I was trying to talk to the driver." (51:9).

However, from the squad video shown during the hearing, Digre can be heard speaking with Mr. Adekale, immediately asking him why he did not pull over right away but instead proceeded to the hotel parking lot. (66:1, Exhibit 1 at 2:27-2:41). Digre can be heard asking for Mr. Adekale's identification, asking where he was from, again raising the issue of his failure immediately stop, repeatedly asking him to state and spell his full name (Adekola John Adekale), and ultimately telling him to stay in the car before asking questions about the car's registration. (66:1, Exhibit 1 at 2:40-4:00). It was only when Digre explained that he pulled Mr. Adekale over for having a headlight out that another person could be heard saying that there should not be a ticket for the headlight. (66:1, Exhibit 1 at 4:01-4:17).

After discussing the issue of Mr. Adekale driving into the hotel parking lot for a third time, Digre asked Mr. Adekale where he was coming from and whether he had had anything to drink. (66:1, Exhibit 1 at 4:28-5:34). In response, Mr. Adekale told Digre that he returned to the hotel parking lot in order to get everyone back to the hotel. (66:1, Exhibit 1 at 4:28-5:34). Digre then returned to his squad car without asking any of the passengers to leave. (66:1, Exhibit 1 at 5:35-5:45).

Trooper Digre testified that he smelled the odor of intoxicants, observed that "[h]is eyes were glossy[.]" "[h]is speech was somewhat slurred[.]" and "[h]e admitted to drinking." (51:9). He stated that he went back to his vehicle to conduct a record check of

Mr. Adekale and wait for a backup officer to arrive before conducting field sobriety tests. (51:9). While Digre was “doing some records check and checking some things,” an officer with the La Crosse Police Department arrived and spoke with Mr. Adekale. (51:9). Trooper Digre’s squad video shows that when the second officer arrived, he spoke with Digre and Digre informed him that Mr. Adekale and the passengers were “not too cooperative.” (66:1, Exhibit 1 at 9:30-10:08). The second officer can then be seen approaching the car and shining his flashlight in the windows while speaking with the occupants. (66:1, Exhibit 1 at 11:25-14:20).

Digre testified that he then returned to the car and the passengers “went into the hotel.” (51:9-10). In the squad video, Digre can be seen walking back up to the vehicle and can be heard asking if the hotel was where everyone was going that night. (66:1, Exhibit 1 at 14:18-14:29). Mr. Adekale explained again that he pulled into the hotel parking lot because that was where the passengers were staying. (66:1, Exhibit 1 at 14:28-14:30). Only then did Digre tell the passengers that they could leave the vehicle and go into the hotel. (66:1, Exhibit 1 at 14:33-14:47). The passengers immediately began exiting the vehicle, and one passenger came back briefly to retrieve his phone. (66:1, Exhibit 1 at 14:45-15:45). The last passenger to exit the vehicle stuck around after a female passenger asked him not to walk inside with her and Digre began speaking to him. (66:1, Exhibit 1 at 15:40-16:15). The passenger had a brief exchange with Digre, both Digre and Mr. Adekale asked the passenger to go into the

hotel, and he walked away, out of sight of the dash camera. (66:1, Exhibit 1 at 15:50-16:15).

Digre then asked Mr. Adekale again about drinking that night, and told him that he would be moved to do some tests. (66:1, Exhibit 1 at 16:15-16:45). Digre stated, “So what we’ll do—I’m not going to do it here because obviously your friends are causing a scene.” (66:1, Exhibit 1 at 16:26-16:30). The second officer then walked up to the vehicle and told Mr. Adekola that his friend was asking that he drop the keys off at the front desk once he was done with them. (66:1, Exhibit 1 at 17:10-17:30). Next, Digre began to pat Mr. Adekola down and explained again that he was going to be moved because, “so like I said, your friends are making things a little worse than they should.” (66:1, Exhibit 1 at 17:45-17:50). None of the passengers returned to the vehicle. (66:1, Exhibit 1 at 16:25-19:20). While he was in the vehicle, Mr. Adekola asked Digre several times why he was being moved to another location. (66:1, Exhibit 1 at 19:00-20:20).

When asked why he did not complete the field sobriety tests at that point, Digre testified, “I made the decision to just do them at another location, just with how many occupants were in the car. They all seemed to be, at some point, drinking, so they all seemed a little [.]” and that “due to the numerous amount of occupants and that the friend was kind of lingering around, thought it was safer for officer safety just to do it at a separate location just -- cause further issues, so I informed Mr. Adekale three times that he was not under arrest, he was just being detained to do them at

another location, and that's why we did that there." (51:10-11). Digre testified that he patted Mr. Adekale down, put him in handcuffs, and put him in the backseat of the squad car. (51:11). He then took Mr. Adekale "around the corner" to another parking lot. (51:12).

Trooper Digre testified that none of the passengers pulled out any sort of weapon, or yelled obscenities or threats at him. (51:14). He also stated that all of the passengers left the parking lot and went into the hotel. (51:14). The last two passengers that were near the vehicle had been attempting to retrieve personal items from the vehicle—a phone and a set of keys—and they thanked the trooper before leaving. (51:15). Despite the passengers having left the parking lot and gone inside the hotel, Digre told Mr. Adekale that "the reason we're moving, is because during the initial contact, they were all being belligerent and acting out and loud. And so just to alleviate any issues, that's why I told him, that's why we're moving over there." (51:15-16). Digre further testified that none of the passengers had videotaped him, nor had they lunged at or come at him in any way. (51:17).

Trooper Digre acknowledged that patting down and placing handcuffs on a person in Mr. Adekale's position—"a younger African-American male"—would make him feel like he were being placed under arrest. He stated that he therefore informed Mr. Adekale he was not under arrest. He also stated that the purpose of moving Mr. Adekale was to move him away from the scene where his friends had been present. (51:20).

Defense counsel argued that the trooper's decision to move Mr. Adekale was not reasonable because the purpose for the transport was no longer occurring—namely, that none of the passengers were present at the time. (51:28-29). The circuit court found that the trooper tried to get the passengers to leave, which they did, that the trooper moved Mr. Adekale around the corner, and that it was department policy to put him in handcuffs and pat him down prior to placing him in the squad car. (51:32; App. 6). As to the reasonableness of moving Mr. Adekale, the court stated: “The defense argues that it’s -- it was not reasonable, but I didn’t see anything indicating that the officer’s testimony was to be disbelieved, and it’s the mind of the officer at the time under the totality of the circumstances.” (51:33; App. 7).

The circuit court specifically found that “there w[ere] no threats being made or anything like that” (51:33; App. 7). However, the court again concluded, “But whether it was reasonable or not is what I have to determine. [And] I can’t find that there’s anything to show I have to disregard the officer’s determination that it was reasonable to move” (51:34; App. 8). Therefore, the court denied Mr. Adekale’s motion.

On March 22, 2022, Mr. Adekale pleaded no contest to count 1, OWI 2nd. (44:1; 50:1, 14; App. 3). This appeal follows.

ARGUMENT

The trooper transformed the temporary detention to an arrest without probable cause when he unreasonably transported Mr. Adekale to a more secluded location to conduct field sobriety tests.

The question of whether an individual's right to be free from unreasonable searches and seizures was violated, contrary to the Fourth Amendment to the United States Constitution and Article I, Section 11 of the Wisconsin Constitution, is a question of constitutional fact. *See State v. House*, 2013 WI App 111, ¶4, 350 Wis. 2d 478, 837 N.W.2d 645. The circuit court's findings of fact following a suppression hearing will be upheld unless clearly erroneous, but the application of constitutional principles to those facts is reviewed de novo. *See State v. Blatterman*, 2015 WI 46, ¶26 n.9, 362 Wis. 2d 138, 864 N.W.2d 26; *State v. Vorburger*, 2002 WI 105, ¶32, 255 Wis. 2d 537, 648 N.W.2d 829.

Pursuant to *Terry v. Ohio*, 392 U.S. 1 (1968), a police officer may, under certain circumstances, temporarily detain a person for purposes of investigating possible criminal behavior even though there is not probable cause to make an arrest. *Id.* at 22; *State v. Chambers*, 55 Wis. 2d 289, 294, 198 N.W.2d 377 (1972). The Wisconsin Legislature codified the *Terry* constitutional standard in Wis. Stat. § 968.24. Accordingly, courts rely on *Terry* and the cases following it to interpret § 968.24. *State v.*

Jackson, 147 Wis. 2d 824, 830-31, 434 N.W.2d 386 (1989). A temporary detention under *Terry* is a seizure within the meaning of the Fourth Amendment and Article I, Section 11 of the Wisconsin Constitution. See *State v. Arias*, 2008 WI 84, ¶29, 311 Wis. 2d 358, 752 N.W.2d 748; *State v. Williams*, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106.

A temporary detention must last no longer than is necessary to effectuate the purpose of the stop. See *Florida v. Royer*, 460 U.S. 491, 500 (1983). “[T]he police [may not] seek to verify their suspicions by means that approach the conditions of arrest.” *Id.* at 499. Pursuant to Wis. Stat. § 968.24, law enforcement may question a suspect “in the vicinity where the person was stopped.” Reasonable grounds must exist for law enforcement to “move a suspect in the general vicinity of the stop without converting what would otherwise be a temporary seizure into an arrest.” [rephrase] *State v. Quartana*, 213 Wis. 2d 440, 446, 570 N.W.2d 618 (Ct. App. 1997).

In *Quartana*, this Court established a two-part inquiry that asks: “First, was the person moved within the ‘vicinity’ [of the stop]? Second, was the purpose in moving the person within the vicinity reasonable?” *Id.* The court referred to a dictionary definition of vicinity to mean “a surrounding area or district” or “locality.” *Id.* (quoting Webster’s Third New International Dictionary: Unabridged 2550 (1976)). *Quartana* concluded that when an officer transported the defendant from his home to the scene of an accident

one mile away, they had moved him within the vicinity and the purpose of the transport was reasonable.

As to the reasonableness of moving Quartana, the court noted that a police officer who was assisting the state trooper conducting the crash investigation had gone to Quartana's residence. Because the trooper was at the scene of the accident, and it would be "unreasonable to expect the trooper to leave the scene unattended or require the assistance of yet another trooper to preserve the scene while she was away[.]" the court concluded that it was "reasonable for the officer to transport Quartana the short distance to the accident scene . . ." *Id.* at 449. The court further concluded, "Given the fact that the trooper was in charge of the investigation, transporting Quartana to the accident scene was the *quickest way for the police to confirm or dispel their suspicions.*" *Id.* (emphasis added). The court also reasoned that Quartana's detention was not an arrest because he was moved back to the scene of the accident where he had been earlier, and his detention was "brief in duration and public in nature." *Id.* at 450 (internal quotation omitted).

Here, the purpose in moving Mr. Adekale within the vicinity was unreasonable. The circuit court erred when it applied the wrong standard in considering this question. The court failed to analyze whether the purpose was unreasonable, and instead considered whether there was anything in the record "to show I have to disregard the officer's determination that it was reasonable to move . . ." (51:34; App. 8). The

court believed that it would have to “disbelieve[]” the trooper’s testimony in order to find the purpose unreasonable because, the question was “the mind of the officer at the time under the totality of the circumstances.” (51:33; App. 7). As a result, the circuit court failed to apply the correct standard and this Court should conclude that the trooper’s purpose in moving Mr. Adekale was unreasonable.

The situation in this case differs significantly from that in *Quartana*. Here, the it was the investigating officer who transported Mr. Adekale to another location, not an officer assisting the investigating officer. Therefore, patting Mr. Adekale down, handcuffing him, placing him in the back of a squad car and moving him to another location was not “the quickest way for the police to confirm or dispel their suspicions.” *Cf. Quartana*, 213 Wis. 2d at 449.

Also unlike *Quartana*, the trooper did not move Mr. Adekale back to a location at which he had previously been, or to a public location. There was no testimony that Mr. Adekale was familiar with the back parking lot where the trooper moved him or that he had previously been there. And instead of moving him to a more public location, the trooper’s purpose was actually to move Mr. Adekale to a secluded location where his friends would not be able to see or find him. Trooper Digre actually testified that he decided to transport Mr. Adekale away from where Mr. Adekale’s passengers had been, and then took him to a parking lot behind several buildings. (51:11, 17-18, 20). As a result, Mr. Adekale’s detention was

not “public in nature.” *Cf. Quartana*, 213 Wis. 2d at 450.

In addition, the trooper’s purpose in moving Mr. Adekale to another location was unreasonable because the issue no longer existed at the time of the transport. Trooper Digre testified that the passengers had all left the parking lot and had most likely returned to the hotel. (59:10, 14-15, 16, 18). The trooper also testified that none of Mr. Adekale’s friends had actually posed a threat to officer safety. (51:16-18). The dash camera video shows that the passengers exited the vehicle and walked away in less than two minutes after they were told they could go to the hotel. (66:1, Exhibit 1 at 14:33-16:15). In *Quartana*, it would have posed a logistical issue not to move *Quartana* back to the scene of the accident. Here, the trooper’s decision to move Mr. Adekale instead *created* a logistical issue.

Nor was the location of the stop inherently dangerous. Mr. Adekale had parked the car in a hotel parking lot, and there did not appear to be any threat to officer safety due to the location. They were not on a busy road and there were no other onlookers. Furthermore, the trooper had already called for and received backup. Therefore, there were two squad vehicles parked in the immediate vicinity, and a second law enforcement officer was actively assisting. Digre was not alone or vulnerable at the original location such that Mr. Adekale needed to be moved for safety reasons. If it were not for the trooper’s unreasonable fear of Mr. Adekale’s passengers, who

had left the parking lot quickly and with very little issue, Mr. Adekale would not have been patted down, handcuffed, placed in the back of a squad car and moved to a secluded location.

Given the unreasonableness of the trooper's purpose, this Court should hold that Mr. Adekale's transport to another location transformed his detention into an arrest without probable cause. *See Quartana*, 213 Wis. 2d at 446.

CONCLUSION

For the reasons set forth above, Mr. Adekale respectfully requests that this Court vacate his judgment of conviction and order that all evidence obtained during or after his transport be suppressed.

Dated this 29th day of November, 2022.

Respectfully submitted,

Electronically signed by

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CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in S. 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 2,992 words.

CERTIFICATION AS TO APPENDIX

I hereby certify that filed with this brief is an appendix that complies with s. 809.19(2)(a) and that contains, at a minimum: (1) a table of contents; (2) the findings or opinion of the circuit court; (3) a copy of any unpublished opinion cited under s. 809.23(3)(a) or (b); and (4) portions of the record essential to an understanding of the issues raised, including oral or written rules or decisions showing the circuit court's reasoning regarding those issues.

I further certify that if this appeal is taken from a circuit court order or judgment entered in a judicial review or an administrative decision, the appendix contains the findings of fact and conclusions of law, if any, and final decision of the administrative agency.

I further certify that if the record is required by law to be confidential, the portions of the record included in the appendix are reproduced using one or more initials or other appropriate pseudonym or designation instead of full names of persons, specifically including juveniles and parents of juveniles, with a notation that the portions of the record have been so reproduced to preserve confidentiality and with appropriate references to the record.

Dated this 29th day of November, 2022.

Signed:

Electronically signed by

Laura M. Force

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