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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 OF A JUDGMENT OF CONVICTION ENTERED IN LA
CROSSE COUNTY CIRCUIT CASE NUMBER 2020CT000071, THE
HONORABLE TODD W. BJERKE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Plaintiff-respondent State of Wisconsin (“the State”) agrees with defendant-appellant Adekola John Adekale (“Adekale”) that oral argument and publication is not warranted as the briefs should fully present the issues on appeal pursuant to Wis. Stats. §§809.22 and 809.23. This opinion cannot be published as it will be decided by one judge under Wis. Stat. §752.31(2). Wis. Stat. §809.23(1)(b)(4).

STATEMENT OF THE ISSUES

Did the circuit court erroneously deny Adekola John Adekale’s motion to suppress because Trooper Digre’s movement of Adekale to another location to do field sobriety tests was unreasonable?

The circuit court said that Trooper Digre’s decision to move Adekale was reasonable.

This court should affirm.

STATEMENT OF THE CASE

On February 16, 2020, Trooper Digre of the Wisconsin State Patrol observed a vehicle traveling above the posted speed limit and with a defective taillight. (R. 51 at 4:15-18). When Trooper Digre approached the vehicle after stopping it, he noticed 7 total people in the vehicle. (R.51 at 8:12-16). During the initial interaction, Trooper Digre attempted to speak to the driver but multiple people kept interrupting and chiming in. (R. 51 at 8:19-21). Throughout the initial interaction, numerous people questioned the trooper about the stop, including about whether Trooper could write a ticket for a defective headlight. (R. 66 at 00:04:13-00:04:20). While running Adekale’s information, the vehicle’s horn was honked. (R. 66 at 00:09:18-00:09:31).

After running Adekale’s information, Trooper Digre told the passengers that they were free to leave. (R. 66 at 0:14:35-0:14:50). The passengers then went into the motel next to where Adekale was parked. (R. 51 at 10:2-6). After the passengers leave, Trooper Digre decided to do field sobriety tests at a different location due to the potential disruptiveness of the passengers if they saw Trooper Digre and Adekale doing field sobriety tests. (R. 51 at 10:13-11:6-12). Adekale was told he was just being detained, and was placed in a squad vehicle. (R. 66 at 00:18:00-00:18:10). Trooper Digre drove him in a trip that took approximately one minute. (R. 66 at 00:19:15-00:20:05). The area was the other side of the motel behind a Pizza Hut (R. 51 at 12:15-20). The field sobriety tests were performed

there and Adekale was eventually arrested for Operating While Under the Influence.

Adekale moved to suppress the evidence in this case because he argues that Trooper Digre's decision to move Adekale was not reasonable and therefore amounted to an arrest without probable cause.

After considering the Trooper Digre's testimony and watching the squad video of the incident, along with the body camera footage from Officer Sherden of the La Crosse Police Department, the circuit court denied the motion in an oral ruling.

Adekale pled guilty to Operating While Under the Influence-2nd Offense, and the court sentenced to a \$1429 fine plus a \$35 blood draw fee, 10 days jail, a 12 month license revocation, a 12 month ignition interlock device requirement, and a requirement the Adekale complete an alcohol assessment and a driver safety plan. (R.44).

Adekale now appeals the circuit court's denial of the motion to suppress, advancing the argument that the circuit court's factual findings were clearly erroneous and Trooper Digre's decision to move Adekale in order to do field sobriety tests was unreasonable.

STANDARD OF REVIEW

Whether a warrantless search by law enforcement violates the Fourth Amendment presents a question of constitutional fact. *State v. Tomlinson*, 2002 WI 91, ¶ 19, 254 Wis. 2d 502, 648 N.W.2d 367. This Court defers to the circuit court's findings of evidentiary and historical fact, leaving them undisturbed unless clearly erroneous, but independently applies those facts to the law. *State v. Matalonis*, 2016 WI 7, ¶ 28, 366 Wis. 2d 443, 875 N.W.2d 567

ARGUMENT

Adekale's main argument is that Trooper Digre's movement of Adekale to the other side of the motel was unreasonable. A police officer may conduct an investigative stop and detention if the officer has reasonable suspects that criminal activity may be afoot. *Terry v. Ohio*, 392 U.S. 1, 30 (1968). Officers may extend an original *Terry* stop both in scope and duration, if they become aware of specific and articulable facts giving rise to reasonable suspicion of other crimes, thereby justifying the further detention and questioning in order to investigate. *State v. Hogan*, 2015 WI 76, ¶ 35, 364 Wis. 2d 167, 868 N. W. 2d 12

For an investigatory stop to pass constitutional muster, the detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop. *Florida v. Royer*, 460 U.S. 491, 500 (1983). Thus, a brief investigatory stop based on reasonable suspicion is permitted when the length and scope of the detention are reasonable under the totality of the circumstances. *State v. Wilkens*, 159 Wis. 2d 618, 625-26, 465 N.W.2d 206 (Ct. App. 1990). The crux of the constitutional inquiry is whether investigating officers acted reasonably. *State v. Colstad*, 2003 App 25, 260 Wis. 2d 406, ¶ 16, 659 N.W.2d 394.

Thus, for example, in *Wilkens*, this court held that the investigatory detention of a rape suspect for “an hour to an hour and twenty minutes did not ripen into an illegal arrest,” because police were diligently pursuing their criminal investigation throughout. *Wilkens*, 159 Wis. 2d at 628. Similarly, in *Colstad*, an investigatory detention of 30 to 45 minutes was reasonable, because the police were providing medical assistance to an injured child, while also investigating, marking, and photographing a complex crime scene. *Colstad*, 260 Wis. 2d 406, ¶¶ 17-19.

In the context of drunk driving investigations, this court set forth the controlling and relevant legal principles in *State v. Quartana*. *Quartana*, 213 Wis. 2d 440, 445-51, 570 N.W.2d 618, 622 (Ct. App. 1997). In *Quartana*, this court held that it was not unlawful for the police to move a suspect approximately one mile from his home to the scene of a one-car accident to investigate his involvement in the matter. *Id.*

In *Quartana*, this court assumed, without deciding, that no probable cause existed to arrest the defendant. *Id.* at 445. Notwithstanding the lack of probable cause, however, this court determined that under the express language of Wis. Stat. § 968.24—the statute which codifies *Terry* in Wisconsin—the police may temporarily detain and question an individual “in the vicinity where the person was stopped,” without converting what otherwise would be a temporary seizure into an arrest. *Quartana*, 213 Wis. 2d at 446.

Quartana thus held that the statute expressly authorizes the police to move a suspect “short distances” during the course of a temporary investigation, so long as police have “reasonable grounds” for doing so. *Id.* It is a two part test to determine the reasonableness of moving an individual. First, was the person moved with the vicinity? Second, was the purpose in moving the person within the vicinity reasonable? *Id.*

One mile is considered within the vicinity. *See id.* Vicinity includes surrounding area or locality, and area within walking distance of the original stop is within the vicinity. *Id.* In *State v. Wortman*, driving an individual 100 yards is also considered within the vicinity. *Wortman*, 2017 WI App 61, ¶ 10, 378 Wis. 2d 105, 113, 902 N.W.2d 561, 564. Trooper Digre moved Adekale much less than one mile and therefore should be considered within the vicinity.

Contrary to Adekale's assertions, officers can move individuals to private areas in order to conduct field sobriety tests. *See State v. Doyle*, 2011 WI App 143, 337 Wis. 2d 557, 806 N.W.2d 269 (unpublished but citable). A private police station is a place where an individual can be moved. *See Id.* The State disputes that this was a private area. The area is still a parking lot. There are multiple vehicle parked near the area where the tests are conducted. (R. 66 at 00:20:05). Even though moving to police stations are allowed, Trooper Digre did not move Adekale to a private area. There was no evidence given that this area of the parking lot was not open to the public so the State is unsure how this area is not public in nature.

Adekale seems to conflate whether it was movement was necessary with the reasonableness of the movement. Necessity is not the test under the Fourth Amendment. The test is whether the movement was reasonable under the totality of circumstances.

Quartana provides numerous reasons why a movement could be reasonable. *See Quartana*, 213 Wis. 2d at fn. 3. Officer safety is a reason to allow a movement of an individual. *See Royer*, 460 U.S. at 504–05. Comfort or convenience can be another reason to move someone. *See United States v. Richards*, 500 F.2d 1025, 1028–29 (9th Cir.1974). Adekale attempts to argue that once the other individuals in the vehicles had left, Trooper Digre had no more reason to fear for his safety or believe that the other individuals might return. That argument was specifically rejected by the circuit court. (R. 32:2-10). That factual finding is not erroneous. The court found that it is reasonable for Trooper Digre to believe that individuals could come back and disrupt the process. (R. 51 at 32:2-10). The individuals were disruptive during the initial stop by questioning the stop and by honking the horn. They could have easily looked out the window when they realized Adekale was taking longer than the time it would normally take to write a ticket and come back to disrupt the OWI investigation. Those individuals did cause Trooper Digre to have reasonable officer safety concerns. Trooper Digre also wanted to make sure he could do field sobriety tests without being interrupted

which would make it more convenient and comfortable for both Trooper Digre and Adekale.

The court specifically found the officer to be credible and was concerned for his safety and his ability to do the test without being interrupted. (R. 51 at 33:7-10). That factual finding is not clearly erroneous.

Trooper Digre also told Adekale that he was not under arrest multiple times and that he was just being detained. (R. 66 at 00:18:00-00:18:10). At no point did Trooper Digre communicate, either through words or actions that Adekale was under arrest. Trooper Digre specifically states that “if everything checks out” or in other words he passes the field sobriety tests, that Adekale would just be getting a ticket. (R. 66 at 00:17:50-00:17:59). Appellant’s brief never addresses how a reasonable person in Adekale’s shoes would believe that he was under arrest.

CONCLUSION

For the foregoing reasons, the State respectfully requests that this Court affirm the judgment of conviction.

Date this 29th day of December 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 §809.19 (8) (b), (bm), and (c) for a brief. The length of the brief is 2013 words.

Signed: Electronically signed by Gideon Wertheimer

Gideon Wertheimer
Assistant District Attorney

CERTIFICATE OF COMPLIANCE WITH RULE 809.19(12)

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, 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.

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

Signed: Electronically Signed by Gideon Wertheimer

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