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

REPLY BRIEF OF DEFENDANT-APPELLANT

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ARGUMENT

The state's brief misrepresents several of Mr. Adekale's arguments, confuses legal conclusions for factual findings, and invents a new requirement for the *Quartana*[1] test. The state argues that Mr. Adekale "seems to conflate whether [ ] movement was necessary with the reasonableness of the movement[;]" and "[n]ecessity is not the test under the Fourth Amendment." (Response Brief at 7). However, nowhere in Mr. Adekale's brief-in-chief does he argue that necessity is the applicable test. Rather, Mr. Adekale's brief analyzes the reasonableness of the officer's stated justifications for moving Mr. Adekale.

The state, on the other hand, provides no analysis of the reasonableness of moving Mr. Adekale for the purpose of officer safety. Instead of analyzing the circumstances that existed at the time of the officer's decision to move Mr. Adekale, the state relies on the circuit court's legal conclusions—which are afforded no deference—and calls them factual findings. (*See* Resp. Br. at 7 (citing 51:32)). The state cites to the circuit court's statement that it did not know all of the facts. (*See* 51:32). Specifically, the court stated, "we don't know for sure that the people went in the hotel, and if they did, they may have windows on that side, and if they see the officer doing something other than paperwork, which is what field sobriety

[1] *State v. Quartana*, 213 Wis. 2d 440, 446, 570 N.W.2d 618 (Ct. App. 1997).

tests are, the people could have returned to the scene." The state apparently takes this as a factual finding that the officer *reasonably* feared that Mr. Adekale's passengers would return and jeopardize his safety. But reasonableness is the ultimate legal question.

Here, the circuit court's legal conclusions are reviewed de novo. 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. Therefore, the circuit court's reasoning is not relevant to the issue at hand.

The state also disputes that a detention must be brief and public in nature, to satisfy the test in *State v. Quartana*, 213 Wis. 2d 440, 456, 570 N.W.2d 618 (Ct. App. 1997). (*See* Resp. Br. at 7). For support, the state cites *State v. Doyle*, No. 2010AP2466-CR, unpublished slip op. (Wis. Ct. App. Sept. 22, 2011),[2] for the proposition that a police station is a private location. However, nothing in *Doyle* suggests that a police station is a private location, or that this Court intended to curtail *Quartana*. Here, it is undisputed that the officer moved Mr. Adekale in order to take him to a more secluded or private location—away from where his friends might be able to see or find him. (*See* 51:10-11). The state's argument is inapposite.

[2] Pursuant to Wis. Stat. § (Rule) 809.23(3)(b), this case may be cited for its persuasive value.

In addition, the state's argument that Trooper Digre reasonably feared for his safety is conclusory. The extent of the argument is that someone honked the car's horn, the passengers could have come back, and "Those individuals did cause Trooper Digre to have reasonable officer safety concerns." (Resp. Br. at 7). The state seemingly concludes that because the circuit court found the trooper's testimony to be credible, it was reasonable per se. (Resp. Br. at 8).

However, the reasonableness of the purpose for moving a person is not a subjective test. *See Quartana*, 213 Wis. 2d at 446, 449-450. Courts must consider the facts and circumstances of the transport to determine whether it was reasonable. Here, as Mr. Adekale argued, the circuit court applied the incorrect test when it concluded that it would have to second guess the officer's testimony regarding the purpose for moving Mr. Adekale. The reasonableness of the purpose for moving the person is the relevant inquiry for the court. And, as Mr. Adekale further argued, the trooper's fear of the passengers in this case was unfounded, as they remained in the vehicle when they were supposed to and left when they were allowed to leave.

Moreover, there was no reason to believe that any of the passengers would have come back and caused a scene or endangered the officers had they known Mr. Adekale was being subjected to field sobriety tests. In fact, Trooper Digre alerted them to the possibility that he was investigating Mr. Adekale

for an OWI by asking whether he had had anything to drink that night. (*See* 66:1, Exhibit 1 at 5:22-5:35). Given that Mr. Adekale admitted to having had three shots, it would not have been surprising that the trooper later asked him to complete field sobriety tests. (*See* 51:9; 66:1, Exhibit 1 at 5:22-5:35). If Trooper Digre believed that the passengers would harm him for conducting an OWI investigation, he would not have openly asked about Mr. Adekale's alcohol consumption.

The state now claims that "comfort or convenience can be another reason to move" a detained individual. (Resp. Br. at 7). For support, the state cites *United States v. Richards*, 500 F.2d 1025, 1028-29 (9th Cir. 1974). There, the 9th Circuit Court of Appeals considered whether Richards had been unlawfully detained due to "some show of force" to prevent him from departing the scene. *Id.* The court also considered the voluntariness of Richards's consent to search a package and in the context of that specific inquiry, noted that Richards was "seated comfortably" when he was informed of his right to withhold consent. *Id.* at 1030. Richards does not support the state's argument that "comfort or convenience" justify moving an individual under *Quartana*.

The argument that the trooper moved Mr. Adekale for "comfort" demonstrates that officer safety was not a reasonable purpose for moving him. The trooper was simply "uncomfortable" with the passengers, several of whom were young black men. But again, these passengers had left the scene and

gone into the hotel before the trooper told Mr. Adekale that he was going to be moved. In addition, it was actually inconvenient to move Mr. Adekale. Moving him to another location required the trooper to pat down, handcuff, and explain why Mr. Adekale was being moved. None of this would have occurred had Trooper Digre simply began conducting the tests. Therefore, it was unreasonable to move Mr. Adekale for either convenience or comfort.

Last, the state seems to imply that a defendant must satisfy a third requirement to meet the two-part *Quartana* test. The state argues that Mr. Adekale's brief "never addresses how a reasonable person in [Mr.] Adekale's shoes would believe that he was under arrest." (Resp. Br. at 8). However, as *Quartana* makes clear, "when a person under investigation pursuant to a *Terry*[3] stop is moved from one location to another, there exists a two-part inquiry." *Quartana*, 213 Wis. 2d at 446. If the purpose for the move was unreasonable, the stop was converted into an arrest. *See id.*

Further, the discussion of whether a reasonable person in the defendant's position would have considered himself or herself to be in custody in *Quartana* arose in the context of Quartana's separate argument that "the conditions of his transportation amounted to an arrest"—not whether the purpose of the transport was reasonable. *Id.* at 449-50. Thus, it is not relevant to the Court's inquiry

[3] Referring to *Terry v. Ohio*, 392 U.S. 1, 22 (1968).

in this case, where Mr. Adekale does not contend that he was under arrest due to the degree of restraint.

The trooper's purpose in moving Mr. Adekale was unreasonable. Therefore, 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 13th day of January, 2023.

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 1,308 words.

Dated this 13th day of January, 2023.

Signed:

Electronically signed by
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