

FILED
04-12-2024
CLERK OF WISCONSIN
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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2017CT1573

STATE OF WISCONSIN,
Plaintiff-Respondent,

v.

ROXANNE RAE REICHERT
Defendant-Appellant.

APPEAL FROM THE CIRCUIT COURT FOR WAUKESHA
COUNTY THE HONORABLE JENNIFER DOROW
PRESIDING

BRIEF OF THE PLAINTIFF-RESPONDENT

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ISSUES PRESENTED

1. Did Officer Solberg have reasonable suspicion or probable cause to stop Ms. Reichert?

The circuit court answered, “Yes.”

This Court should answer, “Yes.”

2. Was Officer Solberg’s seizure of Ms. Reichert justified by the Community Caretaker exception to the warrant requirement?

The circuit court answered, “Yes.”

This Court should answer, “Yes.”

3. Did Officer Solberg unreasonably extend the traffic stop to investigate Ms. Reichert for driving under the influence?

The circuit court answered, “No.”

This Court should answer, “No.”

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication, as the arguments are fully developed in the parties’ briefs, and the issues presented involve the application of well-established principles to the facts presented.

STATEMENT OF THE CASE

I. Factual Background.

On November 26, 2021, Ms. Reichert informed Officer Solberg that she met with her ex-boyfriend, Brad Hardtke after work around 3:00 p.m. (R. 61:20). Officer Solberg testified to the information he received from Ms. Reichert at a motion hearing before the circuit court on November 30,

2022. (R. 61). Ms. Reichert and Mr. Hardtke went to Tally's Tap, where they had lunch and a couple drinks. (*Id.* at 20.) After this, the two went to Foxx View Lanes to have further drinks. (*Id.*) While at Foxx View Lanes, Ms. Reichert decided that she wanted to get her kids and take them away from her residence because her boyfriend, Victim A, was acting strange. (R. 30:5). Ms. Reichert had phone contact with her oldest son and told him to pack up all the kids' belongings because she planned to return to the residence and pick her kids up. (R. 61:22).

Ms. Reichert then returned home and Mr. Hardtke followed her in his pickup truck. (*Id.*) Ms. Reichert parked parallel to Victim A's vehicle when she arrived home. (R. 61:22-23). When Ms. Reichert returned to her vehicle from the inside of her residence with her three children and belongings, she noticed that Victim A had parked behind her Honda Pilot with his Chevy Malibu to try and block her into the driveway. (R. 61:23). Victim A later reported to law enforcement that he was doing this because Ms. Reichert had come home intoxicated and he was concerned and did not want her to drive drunk with her children. (R. 30:3-4).

Ms. Reichert and all three children got into her vehicle. (R. 30:4). Ms. Reichert tried to back her vehicle up and bumped into Victim A's Chevy Malibu. (*Id.*) Ms. Reichert then drove forward and into the neighbor's yard to drive away. (*Id.*) Victim A stated that he was trying to call the police non-emergency number and 911 throughout the entire incident. (*Id.*) (R. 30:4).

Victim A stated that Mr. Hardtke almost struck Victim A's Malibu when he arrived at the residence. (*Id.*) Victim A then pulled out of the driveway to get away from Mr. Hardtke. (*Id.*) Following this, Mr. Hardtke got out of his pickup truck and approached Victim A as he sat inside of his Malibu. (*Id.*) Mr. Hardtke was screaming at Victim A to get out of his car. (*Id.*) As Mr. Hardtke kept screaming, neighbors came

outside, including Victim A's sister and her boyfriend, who lived next door in the duplex. (*Id.*).

When Ms. Reichert began driving her vehicle with her children inside, Victim A followed and continued to try to call 911. (*Id.*) Victim A reported that Mr. Hardtke then followed Victim A in Mr. Hardtke's pickup truck. (*Id.*) All three vehicles went southbound on University Drive. (*Id.*)

As all of this was happening, Ms. Reichert's neighbor called 911 and reported the domestic incident. (R. 21:1). Specifically, she reported that her neighbor was being chased by her boyfriend in a car and that the caller believed that the cars may have hit each other. (*Id.*). The caller also reported that the male was in a silver Chevy Malibu and that the woman was in a purple Honda Pilot, and that there was at least one juvenile in the Honda Pilot. (*Id.*).

Officer Solberg was on duty with the Waukesha Police Department on this date and time and responded to the emergency dispatch upon receiving it. (R. 61:8). Officer Solberg testified that as he was on his way to the area dispatch had relayed, he was informed that the driver of the silver Chevy Malibu (Victim A) had called dispatch and was willing to return to the residence to meet with officers. (*Id.* at 9). Officer Solberg then began looking for the purple Honda Pilot. (*Id.*). Officer Solberg testified that he was looking for this vehicle to check on the well-being of the individuals in the vehicle based on the information he had received. (*Id.*).

Officer Solberg testified that he began responding to the call right away as it was coming through dispatch. (*Id.* at 12). Officer Solberg received information that the vehicles had been driving southbound on North University. (*Id.* at 11). He further testified that as he approached North University and Northview he saw what appeared to be a dark colored SUV driving southbound on North University and then turn right to go westbound on Northview Road. (*Id.*). Officer Solberg

testified that he suspected that this may be the vehicle in question as it was a dark colored SUV in the “expected vicinity and area traveling the expected direction at the expected time” based on the information from dispatch. (*Id.* at 15-16).

Based on this suspicion, Officer Solberg decided to follow the vehicle for about three minutes and was able to determine that it was a purple Honda Pilot. (*Id.* at 13, 33-34). Officer Solberg ran the plate but did not know who the registered owner of the vehicle was at this time. (*Id.* at 35). Officer Solberg decided to conduct a traffic stop of Ms. Reichert because he believed this to be the vehicle involved in the domestic incident and possible hit and run and he wanted to check on the safety and well-being of the individuals in the vehicle. (*Id.* at 15).

This traffic stop of Ms. Reichert was conducted around 8:35 p.m. at Meadowbrook and Summit in the City of Waukesha, Waukesha County, Wisconsin. (R. 30:4). After stopping the purple Honda Pilot, Officer Solberg made contact with Ms. Reichert, her three children, who ranged in age from 9 years old to 15 years old, as well as a dog. (R. 30:4).

After identifying himself as an officer, Officer Solberg asked whether Ms. Reichert had been involved in a domestic dispute with her boyfriend and also promptly asked whether she and the children were okay or needed an ambulance. (R. 61:18). Ms. Reichert confirmed she had just been in an incident with her boyfriend and reported not needing an ambulance, and stated her children were okay. (R. 30:4-5). Officer Solberg testified that he was able to quickly confirm that everyone in the vehicle was okay. (R. 61:37). Ms. Reichert was then asked to get out of her vehicle and speak with Officer Solberg on the sidewalk.

Officer Solberg next began asking Ms. Reichert about what occurred before the stop because there were a couple of possible crimes that had occurred. (*Id.* at 19). Officer Solberg

testified that as a police officer, he was mandated to investigate both the domestic abuse incident and the hit and run and vehicle crash with individuals inside the vehicle. (*Id.*). He further testified that, as an officer, he is mandated by state law to make an arrest for a domestic abuse incident that reaches the level of a crime, and they must arrest the predominant aggressor. (*Id.* at 25). Therefore, it was necessary for Officer Solberg to ask questions to ascertain who the primary aggressor was. (*Id.*). At this time, Officer Solberg was aware that other officers were also investigating this incident back at the residence with Victim A. (*Id.* at 19).

While asking Ms. Reichert questions about the incident, Officer Solberg testified that Ms. Reichert admitted to drinking alcohol earlier that day before driving. (*Id.* at 20). Officer Solberg testified that Ms. Reichert admitted to having several drinks at two locations and her speech was a little more drawn out and thick. (*Id.* at 24). Officer Solberg also stated that he did not smell the odor of intoxicants, but said that was likely attributable to environmental factors. (*Id.*).

Later, Officer Solberg made phone contact with Officer Lincoln who was at Ms. Reichert's residence (the initial scene of the domestic incident) with Victim A. (*Id.* at 30). This phone conversation occurred about 27 minutes after the initial stop as it took a while for Officer Solberg to obtain the necessary information from Ms. Reichert. (*Id.* at 23-24). Officer Lincoln relayed to Officer Solberg that Victim A reported he was trying to stop Ms. Reichert from driving because she was impaired. (*Id.*). When Officer Solberg asked Ms. Reichert about this, she stated that it was not what had occurred. (*Id.* at 31).

Based on the information from Officer Lincoln, Ms. Reichert's admission to drinking earlier in the day, and her slightly slow speech, Officer Solberg decided to investigate Ms. Reichert for a possible OWI offense. (*Id.* at 31-32). He decided to conduct standardized field sobriety tests to ensure

that Ms. Reichert was okay to drive away with her three kids and dog. (*Id.* at 43-44).

Officer Solberg offered Ms. Reichert the option of doing the fields at the scene or at a nearby Citgo gas station, and Ms. Reichert ultimately decided to go to the Citgo. (R. 41:27:50). Based on Ms. Reichert's performance, she was asked to provide a breath sample and ultimately was arrested. (R. 30:5). Ms. Reichert's blood test indicated that she had a blood alcohol concentration of 0.105. (*Id.*).

II. Procedural History.

On November 29, 2021, Ms. Reichert was charged with operating a motor vehicle while under the influence, first offense, with a minor child in the vehicle. Ms. Reichert filed a motion to suppress on March 23, 2022. That motion was heard by the circuit court on June 22, 2022, and November 30, 2022. The circuit court denied Ms. Reichert's motion to suppress in an oral decision at the end of the motion hearing on November 30, 2022.

In this case, the circuit court found that there was a bona fide community caretaker function which justified the traffic stop of Ms. Reichert. (R. 61:70). The circuit court distinguished the current case from the case cited by Appellant, *State v. Brooks*, 2020 WI 60, 392 Wis. 2d 402, 944 N.W.2d 832. (R. 61:65). Specifically, the court noted that in *Brooks*, "there was no property or person in need or protection, no crisis, and no problem that did not have an apparent and available solution." (R. 61:65). Rather, "[that case] was simply a man in a car on the side of the road making arrangements for someone to take him home where the police decided to impound the vehicle." (R. 61:65). Additionally, the circuit court stated that it believed *Adams v. Williams*, 407 U.S. 143 (1972) supports the community caretaker function. (R. 61:69).

The circuit court found that there was an extension of the traffic stop to investigate the OWI, but that this extension was a permissible extension based on reasonable suspicion. (R. 61:68). The circuit court further found that there was reasonable suspicion for conducting the standardized field sobriety tests. (*Id.*). Under the circumstances present in this case, the circuit court did not find the amount of time the stop took to be unreasonable. (*Id.* at 66-67).

Finally, the circuit court noted that it did not think that it was necessary to address whether there was an independent basis for the traffic stop. However, it stated that the record is clear that there were two traffic infractions that were observable on the squad video. (R. 61:69). One traffic violation for crossing the centerline pursuant to Wis. Stat. 346.13(3)¹, and one traffic violation for violating the yellow traffic signal pursuant to Wis Stat. 346.37(1)(b). (R. 61:69).

Ms. Reichert entered a guilty plea on May 19, 2023, and was sentenced to 5 days of jail with Huber privileges on May 23, 2023. Ms. Reichert now appeals and her sentence was stayed pending the resolution of this appeal.

STANDARD OF REVIEW

The denial of a suppression motion is analyzed under a two-part standard of review: the circuit court's findings of fact are upheld unless they are clearly erroneous, and this Court independently reviews whether those facts warrant suppression. *State v. Scull*, 2015 WI 22, ¶16, 361 Wis. 2d 288, 862 N.W.2d 562. "Whether there is probable cause or reasonable suspicion to stop a vehicle is a question of constitutional fact," *State v. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. This Court reviews *de novo* the ultimate question of "whether the facts as found by the

¹ All references to the Wisconsin State Statutes are to the 2023-2024 version

[circuit] court meet the constitutional standard.” *State v. Hindsley*, 2000 WI App 130, ¶22, 237 Wis. 2d 358, 614 N.W.2d 48.

ARGUMENT

I. Officer Solberg conducted a lawful traffic stop of Ms. Reichert’s vehicle.

The Fourth Amendment of the United States Constitution and Article I, Section 11 of the Wisconsin Constitution protect individuals against unreasonable searches and seizures.

When conducting investigatory stops, *Terry v. Ohio*, 392 U.S. 1 (1968) established the standard of reasonable suspicion as justification. This reasoning was later extended by the U.S. Supreme Court to include traffic stops. *Berkemer v. McCarty*, 468 U.S. 420 (1984). In *Berkemer*, the Court stated that a police officer, “who lacks probable cause but whose ‘observations lead him to reasonably suspect’ that a particular person has committed, or is committing, or is about to commit” a violation may conduct a traffic stop to “investigate the circumstances that provoke suspicion.” *Id.* at 439.

Reasonable suspicion is defined in *Terry* as “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion” – a lower standard than probable cause. *Terry*, 392 U.S. at 21. But, it “must be based on more than an officer’s ‘inchoate and unparticularized suspicion or ‘hunch.’” *State v. Post*, 2007 WI 60, ¶ 10, 301 Wis. 2d 1, 8, 733 N.W.2d 634, 637.

When determining reasonableness, a common sense test is used. *State v. Waldner*, 206 Wis. 2d 51, 56, 556 N.W.2d 681, 684 (1996). Under this test, one considers what a “reasonable police officer [would] reasonably suspect in light of his or her training and experience.” *Id.* Whether a stop is reasonable is determined based on the “totality of the facts and circumstances.” *Post*, 302 Wis. 2d 1, ¶ 13. Additionally,

“officers are not required to rule out the possibility of innocent behavior before initiating a brief stop.” *Waldner*, 206 Wis. 2d at 59. (citing *State v. Anderson*, 155 Wis. 2d 77, 84, 454 N.W.2d 763, 766 (1990)).

A. Officer Solberg had reasonable suspicion to conduct the traffic stop based on the traffic violations committed by Ms. Reichert.

When there is “reasonable suspicion that a traffic law has been or is being violated,” an officer is always justified in making a traffic stop. *State v. Houghton*, 2015 WI 79, ¶ 30, 364 Wis. 2d 234, 250, 868 N.W.2d 143, 151. Additionally, the subjective rationale possessed by the officer is irrelevant in analyzing the stop. *Whren v. United States*, 517 U.S. 806, 813, 116 S. Ct. 1769, 1774, 135 L. Ed. 2d 89 (1996).

As further explained by the Wisconsin Supreme Court:

As long as there was a proper legal basis to justify the intrusion, the officer’s subjective motivation does not require suppression of the evidence or dismissal. The officer’s subjective intent does not alone render a search or seizure of an automobile or its occupants illegal, as long as there were objective facts that would have supported a correct legal theory to be applied and as long as there existed articulable facts fitting the traffic law violation.

State v. Baudhuin, 141 Wis. 2d 642, 651, 416 N.W.2d 60, 63 (1987). At the motion hearings before the circuit court, an exhibit of the squad camera footage from Officer Solberg was offered and accepted as evidence, hereinafter referred to as “Exhibit 1” (R. 41). In this case, Exhibit 1 depicts significant weaving within the lane starting at the media player timestamp of 06:20. (R. 41: 06:20). Additionally Exhibit 1 depicts two traffic law violations which provide an objective basis for a traffic stop. (R. 41). The first occurs at media player timestamp 6:41 when the defendant’s vehicle crosses the center yellow line as she enters the turn lane in violation of Wis. Stat. § 346.13(3). (*Id.* at 6:41). The second occurs at

media player timestamp 6:48 when the traffic signal turns yellow and the defendant fails to stop before entering the intersection when she was a sufficient distance from it to conduct a stop safely, in violation of Wis. Stat. § 346.37(1)(b). (*Id.* at 6:48)

During the November 30, 2022, motion hearing in the circuit court, Officer Solberg testified that he did not remember if he saw these traffic violations or not. (R. 61:34). Officer Solberg also testified that his main reason for conducting the traffic stop was, “first and foremost to check the well-being of the individuals involved in the call.” (*Id.* at 9). However, this subjective intent of Officer Solberg does not negate these traffic violations which provide an objectively reasonable basis for conducting a traffic stop of Ms. Reichert. Therefore, Officer Solberg had reasonable suspicion based on these traffic violations to conduct the traffic stop of Ms. Reichert.

B. Officer Solberg was justified in stopping Ms. Reichert in order to maintain the status quo and obtain more information on the 911 call.

Should the court find that no traffic violations occurred, or that they did not give rise to reasonable suspicion, Respondent believes that Officer Solberg nonetheless conducted a lawful stop of Ms. Reichert. Law enforcement officers are not required to allow evidence or witnesses to be lost when potential criminal activity has occurred, generally. The Supreme Court of the United States has outlined that brief stops are allowable to not only determine a suspicious individual’s identity, but can also be reasonable when used to maintain the status quo momentarily while obtaining more information. *Adams*, 407 U.S. at 145–46.

Appellant asserts that Officer Solberg’s belief that he was stopping the correct vehicle was “little more than a savvy hunch.” (Appellant Brief page 11). However, this is not the case. Officer Solberg was able to articulate his reasons for

conducting the stop through his testimony at the November 30, 2022 motion hearing. (R. 61).

As previously laid out, Officer Solberg testified that he had around six years of experience with the City of Waukesha Police Department, that he is familiar with the City of Waukesha, and that he had patrolled this area before (R. 61:6,13). Officer Solberg received an emergency call about a domestic disturbance around 8:25 p.m. on November 26, 2021. (*Id.* at 8). Officer Solberg testified that he knew the female was in a purple Honda Pilot and that he was attempting to locate that vehicle as the incident could have resulted in injury, there was some type of threat of a gun involved, and there was a possible crash that had occurred with at least one child in the vehicle. (*Id.* at 9).

Officer Solberg testified that he began responding to the call right away as it was coming out through dispatch (*Id.* at 12). He was informed that the female was driving southbound on North University and when he approached the intersection of North University and Northview, he saw what appeared to be a dark colored SUV driving in the direction consistent with the information he received. (*Id.* at 11). Officer Solberg testified that he suspected that this may have been the vehicle in question as it was a dark colored SUV in the correct vicinity at the approximate timeframe that you would expect the vehicle to be there. (*Id.* at 13).

Additionally, Officer Solberg testified that after he began to follow the vehicle, he was able to confirm that it was the correct color, make, and model of vehicle he was looking for, a purple Honda Pilot. (*Id.*). He described there being very little to almost no traffic and did not remember seeing any other dark SUVs at this point in time. (*Id.*). Officer Solberg testified that he ran the plate of the vehicle prior to stopping it but he did not know who the registered owner of the vehicle was and could not tell who was driving (*Id.* at 35). He further testified he stopped the vehicle because his main concern was the well-

being of the individuals inside the vehicle but he also conducted the stop to investigate the domestic incident and potential hit and run (*Id.* at 16, 34).

This is not “little more than a savvy hunch.” Additionally, “the ultimate touchstone of the Fourth Amendment is ‘reasonableness.’” *Riley v. California*, 573 U.S. 373, 381 (2014). “To be reasonable is not to be perfect, and so the Fourth Amendment allows for some mistakes on the part of government officials, giving them ‘fair leeway for enforcing the law in the community’s protection.’” *Heien v. North Carolina*, 574 U.S. 54, 60–61 (2014) (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)).

Based on the information that was available to Officer Solberg, it was reasonable for him to suspect that this was the vehicle he was looking for. This is more than a savvy hunch and this stop was justified in order to maintain the status quo and obtain more information in line with what Officer Solberg testified he had a duty to investigate. (R. 61:25-27).

C. The community caretaker exception provides yet another justification for the stop of Ms. Reichert and it is appropriately applied in this case.

Officer Solberg’s stop could also be justified under the community caretaker function in this case which provides an exception to the Fourth Amendment requirement that all seizures be made on probable cause or reasonable suspicion. *State v. Kramer*, 2009 WI 14, ¶¶ 19-21, 315 Wis. 2d 414, 425–28, 759 N.W.2d 598, 604–06. In regard to this doctrine, the Wisconsin Supreme Court has adopted a three-component test used for evaluating potential community caretaker function. *State v. Blatterman*, 2015 WI 46, ¶ 42, 362 Wis. 2d 138, 167–68, 864 N.W.2d 26, 39. When the State asserts a community caretaker function as the basis for a seizure, the circuit court must determine: “(1) that a seizure within the meaning of the [F]ourth [A]mendment has occurred; (2) if so, whether the police conduct was [a] bona

fide community caretaker [function]; and (3) if so, whether the public ... interest outweigh[s] the intrusion [on] the privacy of the individual.” *Id.*, ¶ 42.(quoting *State v. Anderson*, 142 Wis. 2d 162, 169, 417 N.W.2d 411 (Ct.App.1987)). The burden is on the State to prove that the officer's conduct fell within the scope of a reasonable community caretaker function.” *Kramer*, 315 Wis. 2d 414, ¶ 17.

1. Seizure and bona fide community caretaker function

Looking at the first component of the test, there is no dispute that a seizure within the meaning of the Fourth Amendment occurred here. Therefore, the next question is whether Officer Solberg was engaged in a bona fide community caretaker function. Appellant misapplies the law with regard to this component of the test by stating that Officer Solberg’s interests in investigating the domestic incident and possible hit and run completely negate any bona fide exercise of the community caretaker function. (Appellant Brief page 12-14).

The language cited by Appellant originates from *Cady v. Dombrowski*, 413 U.S. 433, 441 (1973):

Local police officers, unlike federal officers, frequently investigate vehicle accidents in which there is no claim of criminal liability and engage in what, for want of a better term, may be described as community caretaking functions, *totally divorced* from the detection, investigation, or acquisition of evidence relating to the violation of a criminal statute.

(emphasis added). However, this language has since been analyzed by the Wisconsin Supreme Court and the court has “rejected the contention that community caretaker functions must be totally independent from the detection, investigation, or acquisition of evidence relating to the commission of a crime.” *Blatterman*, 362 Wis. 2d 138, ¶ 44; see also *Kramer*,

315 Wis. 2d 414, ¶ 30 (finding that “the ‘totally divorced’ language from *Cady* does not mean that if the police officer has any subjective law enforcement concerns, he cannot be engaging in a valid community caretaker function.”).

The Wisconsin Supreme Court has stated that interpreting “totally divorced” to mean “that an officer could not engage in a community caretaker function if he or she had any law enforcement concerns would, for practical purposes, preclude police officers from engaging in any community caretaker functions at all.” *Kramer*, 315 Wis. 2d 414, ¶ 34. The court found that such a result would be neither “sensible nor desirable.” *Id.*

The Wisconsin Supreme Court has held that officers “may base their actions simultaneously on law enforcement and community caretaker functions.” *Blatterman*, 362 Wis. 2d 138, ¶ 47. Whether there is a bona fide community caretaker function is evaluated by examining the totality of the circumstances as they existed at the time of the police conduct. *Kramer*, 315 Wis. 2d 414, ¶ 30. Thus, the community caretaker exception can be upheld when there is an objectively reasonable basis for that function based on the totality of the circumstances, despite subjective law enforcement concerns the officer might have had. *Id.*

Looking at the totality of the circumstances here, Officer Solberg had been dispatched in emergency fashion for the report of a domestic disturbance between a man in a silver Malibu and a woman in a purple Honda Pilot. (R. 61:8). Dispatch also reported the vehicles had possibly crashed and there was at least one child in the Honda Pilot. (*Id.* at 9). When Officer Solberg observed a purple Honda Pilot in the area, Officer Solberg conducted a traffic stop. (*Id.* at 15-16).

The first conversation with the Ms. Reichert is whether she was okay, and whether anyone needed an ambulance which demonstrates that Officer Solberg was engaged in a

bona fide community caretaker function. (R. 61:18). However, again, despite having an insight into the subjective intention of Officer Solberg, the objective totality of the circumstances must provide a reasonable basis for this function as well. *Kramer*, 315 Wis. 2d 414, ¶ 30. Given the information known at the time of the stop, the circumstances would lead any officer to conclude that the stop was necessary to check the wellbeing of the passengers, and that is exactly what Officer Solberg did. Anything less, and the officer would have been derelict in his duties.

Additionally, Officer Solberg's testimony that he was partially motivated to stop the vehicle to investigate the domestic and potential hit and run does not negate the fact that Officer Solberg was engaged in a bona fide community caretaker function.

2. Reasonableness balance

Finally, it must be determined whether Officer Solberg's exercise of a bona fide community caretaker function was reasonable. This component is considered by "balancing a public interest or need that is furthered by the officer's conduct against the degree of and nature of the restriction upon the liberty interest of the citizen." *Id.*, ¶ 40.

In doing so, the court has cited four relevant factors to determine whether the public need and interest outweigh the intrusion on privacy:

- (1) the degree of public interest and exigency of the situation,
- (2) the attendant circumstances surrounding the seizure, including time, location, the degree of overt authority and force displayed,
- (3) whether an automobile is involved, and
- (4) the availability, feasibility, and effectiveness of alternatives to the type of intrusion actually accomplished.

Id., ¶ 41 (citing *In re Kelsey C.R.*, 2001 WI 54, 243 Wis. 2d 422, 626 N.W.2d 777).

Looking first at the degree of public interest and exigency of the situation, “an individual’s physical and mental health status is an issue of public interest and presents an exigency when an officer reasonably determines that physical or mental health could be in jeopardy.” *Blatterman*, 362 Wis. 2d 138, ¶ 49. Here, the wellbeing of the individuals in the vehicle was the motivating factor of Officer Solberg in conducting the stop. (R. 61:9). Officer Solberg’s concerns for the individuals wellbeing were reasonable based on the information that he had at the time. Therefore, an exigency was present and this factor favors the conclusion that Officer Solberg reasonably performed his community caretaker function.

Next, the attendant circumstances surrounding the seizure need to be considered. This factor considers whether the “time, location and degree of authority and force displayed” by Officer Solberg were “appropriate under the circumstances.” *Blatterman*, 362 Wis. 2d 138, ¶ 53. The relevant information in making this assessment is the “information available to the officer at the time of the investigatory stop and observations by the officer subsequent to the stop.” *Id.* In *State v. Pinkard*, 2010 WI 81, ¶ 49, 327 Wis. 2d 346, 373, 785 N.W.2d 592, 606, the Wisconsin Supreme Court noted that the officers did not control the time of day or location as they were responding to a phone call. Similarly here, Officer Solberg’s stop of Ms. Reichert’s vehicle stems from being dispatched in response to the domestic incident and potential hit and run. Officer Solberg was not acting unprompted. Additionally, the degree of authority and force were appropriate under the circumstances given Officer Solberg’s concerns for the wellbeing of the individuals in the vehicle. Thus, this factor also favors the conclusion that Officer Solberg reasonably performed his community caretaker function.

The third factor simply addresses whether the seizure took place while the individual was in a vehicle. *Blatterman*, 362 Wis. 2d 138, ¶ 56. This is a consideration because, “citizens have a lesser expectation of privacy in an automobile.” *Id.* (citing *State v. Ziedonis*, 2005 WI App 249, ¶ 31, 287 Wis. 2d 831, 707 N.W.2d 565). Here, Ms. Reichert was subject to a traffic stop in her vehicle. Therefore, this factor also favors the conclusion that Officer Solberg reasonably performed his community caretaker function.

The last factor to consider is whether there were feasible and available alternatives to the seizure. *Blatterman*, 362 Wis. 2d 138, ¶ 57. The Wisconsin Supreme Court has previously stated that “[p]rinciples of reasonableness demand that we ask ourselves whether ‘the officers would have been derelict in their duty had they acted otherwise.’” *Id.*, ¶ 58 (citing *Pinkard*, 327 Wis. 2d 346, ¶ 59). Additionally, the Wisconsin Supreme Court has found it irrelevant in considering available alternatives whether the individual subject to the seizure actually ends up being injured. *Blatterman*, 362 Wis. 2d 138, ¶ 58. In this case, Officer Solberg testified that he did run the plate of the purple Honda Pilot but did not know who the registered owner of the vehicle was and was unsure of who was driving. (R. 61:35). However, Officer Solberg was reacting in the moment based on the exigency presented by the circumstances and his concerns for the individuals’ safety. Based on the circumstances relevant to this inquiry, the fourth factor also weighs in favor of concluding that the officer reasonably exercised his community caretaker function.

Thus, Officer Solberg was engaged in a bona fide community caretaker function and he exercised the community caretaker function reasonably under the totality of the circumstances. Therefore, the stop of Ms. Reichert was a lawful community caretaker function.

II. The traffic stop of Ms. Reichert was not impermissibly extended.

Appellant next contends that even if the stop was permissible, the stop was impermissibly extended beyond its intended purpose to investigate the OWI and the standardized field sobriety tests were done without reasonable suspicion.

Exhibit 1 makes clear that officers were trying to determine what occurred at the residence and where the other actor, Mr. Hardtke, went for the first 23 minutes and 30 seconds of their interaction with the defendant. (R. 41). At media player timestamp of 23:27 Officer Solberg can be heard on the phone with officers who are at the residence with Victim A. (*Id.* at 23:27). Officer Solberg relays the information that the defendant had given him at the scene of the traffic stop and inquires about criteria for “a domestic,” and the whereabouts of Mr. Hardtke. (*Id.*).

The seizure thus far is made reasonable under the need for officers to freeze the scene in order to determine what traffic or domestic criminal law violations may have occurred, as was outlined above under *Adams*, 407 U.S. at 145–46.

At media player timestamp 27:10 Officer Solberg is off the phone and speaking with the defendant again. (R. 41: 27:10). Presumably based on information he was given during the phone call, Officer Solberg asks the defendant if Victim A had tried to prevent her from leaving because she was drunk and had the kids in the car. (*Id.*) At timestamp of 27:50 Officer Solberg makes his intentions clear to do standardized field sobriety testing with the defendant. (*Id.* at 27:50). He offers the option of doing the fields at the scene or at a nearby Citgo gas station, and the defendant ultimately decides to go to the Citgo. (*Id.*).

A detention for standardized field sobriety tests must be supported by reasonable suspicion. *State v. Colstad*, 2003

WI App 25, ¶ 19, 260 Wis. 2d 406, 420, 659 N.W.2d 394, 400–01. This assessment must take into account the totality of the circumstances, and can include tips received by police. *State v. Williams*, 2001 WI 21, ¶ 22, 241 Wis. 2d 631, 644–45, 623 N.W.2d 106, 112

Law enforcement must evaluate both the content of the tip and its degree of reliability. *Id.* In this case, Respondent submits it was reasonable for Officer Solberg to rely on statements attributable to Victim A as relayed by other law enforcement that the defendant was intoxicated and driving with children in the car.

The case at hand does not deal with an anonymous informant, rather a known witness, Victim A, who subjected himself to any consequences which might follow from providing false information to law enforcement. As explained by the Wisconsin Supreme Court, this is significant in determining a tip’s reliability. “This threat of potential arrest, the Court explained, could lead a reasonable officer to conclude that the informant would not provide a false tip; in other words, the officer could presume that the informant’s tip was reliable.” *State v. Rutzinski*, 2001 WI 22, ¶ 20, 241 Wis. 2d 729, 740, 623 N.W.2d 516, 522.

The circuit court recognized in its oral ruling on the motion to suppress that this tip was not just any tip, but rather a witness account. The circuit court noted, “now you have someone providing information who knows that person, who had contact with that person, who says, I had a concern concerning her state of intoxication, leaving with the kids. That is why I did some of the things that I did.” (R. 61:67). The court further upheld Officer Solberg’s reliance on this tip from Victim A. Specifically, the court stated:

Now, in those moments, do officers need to be a hundred percent right? They do not. They need to act reasonably. And I would say that not only was it appropriate, right,

but we expect our law enforcement officers to be able to really evolve their investigation. And that's exactly what happened here.

(R. 61:67-68). This factual finding made by the circuit court is not clearly erroneous. Therefore, this Court should find the same.

During the contact with Ms. Reichert, Officer Solberg observes that her speech is thick and slow and Ms. Reichert admits to drinking earlier in the day. (R. 61:67). The "tip" or witness account from Victim A, coupled with the fact that the defendant had already admitted she had been drinking alcohol to Officer Solberg supplied the necessary reasonable suspicion for Officer Solberg to transform the seizure from an information gathering venture into an OWI investigation. The circuit court describes Officer Solberg as having "clear reasonable suspicion" to do field sobriety tests, and that finding should be upheld here. (R. 61:68).

CONCLUSION

This Court should affirm the circuit court's order denying Reichert's motion to suppress.

Dated this 12th day of April, 2024.

Respectfully submitted,

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 5,967 words.

Dated this 12th day of April, 2024.

Electronically signed by Abbey L. Nickolie
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