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STATE OF WISCONSIN
COURT OF APPEALS DISTRICT I
CASE NUMBER 2024AP000898-CR

STATE OF WISCONSIN,
PLAINTIFF-RESPONDENT,
V.
BRENDA L. ROSZINA,
DEFENDANT-APPELLANT.

ON APPEAL FROM THE JUDGMENT OF CONVICTION DATED JULY 9, 2024 THE HONORABLE HANNAH C. DUGAN, MILWAUKEE COUNTY CIRCUIT COURT, PRESIDING AND THE DECISION OF THE CIRCUIT COURT DENYING THE POST CONVICTION MOTION ISSUED MAY 6, 2024 THE HONORABLE HANNAH C. DUGAN, MILWAUKEE CIRCUIT COURT PRESIDING

BRIEF OF DEFENDANT-APPELLANT

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BRIEF OF DEFENDANT—APPELLANT

STATEMENT OF THE ISSUE

Was the defendant denied due process of law when she was placed under arrest and driven to the police station to perform her field sobriety test prior to the police officer finding probable cause for the arrest?

Answered in the negative by the trial court.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The defendant appellant believes that the briefs filed by the parties to this

appeal, will adequately develop the issues involved and therefore, neither oral argument nor publication is requested.

STATEMENT OF CASE

On Friday, August 3, 2018, at approximately 6:30 PM Detective Heckman, from the Hales Corners Police Department, investigated a report of alleged reckless driving by a vehicle located at the Hale House, in Hales Corners, Wisconsin. Detective Heckman made contact with the defendant in the parking lot of the Hale House and subsequently identified her as the driver of the suspected vehicle. He noted that she was unsteady on her feet, that her eyes were bloodshot and that there was an odor of toxicants coming from her. Based upon his further conversation with the defendant, Detective Heckman decided to have the defendant perform field sobriety tests for intoxication. Detective Heckman then transported the Defendant 1.2 miles to the Hales Corners Police Department for the purpose of conducting field sobriety tests. The defendant was subsequently charged with operating a vehicle while intoxicated. On February 13, 2020, the defendant appeared before that branch of the Circuit Court for Milwaukee County presided over by the Honorable Danielle L. Shelton for a motion to suppress the arrest on grounds that the suspect was unlawfully arrested and transported to a police station to conduct the field sobriety tests prior to determining probable cause for the arrest. The Court denied the motion and the defendant subsequently lost her case at trial.

The defendant brought a motion for post-conviction relief pursuant to Wisconsin State Statute Section 809.30(2)(h) which was denied by the court. The defendant now appeals the denial of the motion to suppress.

ARGUMENT

The defendant was denied due process of law when she was placed under arrest and driven to the police station to perform her field test prior to the police officer finding probable cause for the arrest.

A. STANDARD OF REVIEW—ARREST

Wisconsin law uses an objective test for determining whether an arrest has occurred. This test inquires whether a reasonable person in the defendant's position would have considered himself or herself to be in custody given the degree of restraint under the circumstances. See **State v. Swanson**, 164 Wis. 2d 437, 446–47, 475 N.W. 2d 148, 152 (1991). She also **Berkemer v. McCarty**, 468 U.S. 420, 441–42 (1984). “The circumstances of the situation including what has been communicated by the police officers, either by their words or actions, shall be controlling under the objective test” **Swanson**, 164 Wis. 2d at 447, 475 N. W. 2d at 152. Because the test is an objective one, neither the belief of the person detained, nor the officer's belief are relevant and determining whether the defendant was placed in custody. **Id.** Wisconsin statute, section 968.24, Stats., envisions that the temporary questioning might not occur in the same location where the initial detention occurred. The statute says, “Such detention and temporary questioning shall be conducted in the vicinity where the person was stopped”.Wis. Stat. Section 968.24. In **State v. Quartana**, 213 Wis.2d 440, 570 N.W. 2d 618 (Ct. App.) review denied, 215 Wis.2d 426, 576 N.W. 2d 282 (1997), the court addressed the situation in which an OWI suspect was initially detained in his home, but then removed to the scene of the nearby accident which was under investigation. See **id.** at 443, 570 N.W. 2d at 621. After examining **Terry v. Ohio**, **392 US 1(1967)** and its progeny, the court said, “(I)t is clear that the law permits the police, if they have reasonable grounds for doing so, to move a suspect in the general vicinity of the stop without converting what would otherwise be a temporary seizure into an arrest.” **Id** at 446, 570 N.W. 2d at 621. In determining

whether such a move is permitted, the court makes two inquiries. First, it examines whether the temporary stop and questioning was within the “vicinity” where the person was stopped. See *id.* Second, it inquires where the purpose in moving the person within the vicinity was reasonable. See *id.* In *Quartana*, the court adopted the dictionary definition of “vicinity” and concluded that the term “surrounding area or district” or “locality.” See *id.*

B. THE DEFENDANT WAS UNDER ARREST ONCE SHE WAS PLACED IN THE DETECTIVE’S VEHICLE

As noted above, Wisconsin law uses an objective test for determining whether an arrest has occurred, which inquires whether a reasonable person in the defendant’s position would have considered himself or herself to be in custody given the degree of restraint under the circumstances, *State v. Swanson*, 164 Wis. 2d 437, 446– 47, 475 N.W. 2d 148, 152 (1991). The facts brought forth in the motion hearing demonstrate that the defendant was placed in the backseat of Detective Heckman’s squad car, prior to performing any field tests whatsoever, and transported directly to the Hales Corners police station:

Q. So you asked her if she would be more comfortable performing those standardized field sobriety test at the Hales Corners police station?

A. Yes.

Q. And what was the response of the defendant?

A. She agreed that she would.

(Motion Transcript page 11)

Under cross examination Detective Heckman stated that he may have been able to find a place in the parking lot to perform the field sobriety test.

Q. OK so this particular incident, you made the decision to transport Ms. Roszina to the police station to do the field sobriety test, correct?

A. I asked if she would be more comfortable performing them there, yes.

Q. OK. And it wasn't because of the weather, correct?

A. No

Q. It was what? 80° and sunny?

A. Yeah.

Q. It wasn't particularly dangerous, correct?

A. Well, there would be a danger with people parking, backing out of parking spaces; things like that.

Q. But you said you could find a place in that parking lot. I mean, this is a vast parking lot. You could have found a place in that parking lot where you could perform this field sobriety test, correct?

A. I may have been able to.

(Motion Transcript page 16)

In addition, the officer testified at trial it would have been safe to perform the field to body tests in the vicinity in which the stop occurred. This is an excerpt from the trial transcript:

Q. So would it have been safe to have performed the field society tests in the parking lot?

A. I suppose we could have attempted that, yeah.

Q. OK. So, in other words, it would have been safe – you could have made it safe to do the field sobriety tests; is that correct?

A. It may have been, yeah.

Q. Is that a yes?

A. I can't say whether it would or wouldn't have been safe. I know there were other vehicles and people around so we would have to keep an eye on the vehicles and the people –

Q. But could you have performed the field sobriety tests?

A. We could have attempted it there, yes.

(Trial transcript page 55–56)

If the officer was able to find a safe spot to perform the field sobriety test there was no reason for the defendant to be placed in the back of a police car and taken to a police station to perform field sobriety tests.

The court in its decision to deny the defendants motion said this:

“The next question in **Quartana** was, was it reasonable to moving the suspect within the vicinity. **Quartana** – court – the Court in **Quartana** went on to say that courts must guard against police misconduct through overbearing or harassing techniques that tread upon people’s personal security without the objective evidentiary justification that constitution requires. And that, again, is taken from **Terry**.

The police may not seek to verify their suspicions by means that approach the conditions of arrest. That’s from **Royer**, 460 US at 499. The detention must at all times be temporary and last no longer than then is necessary to effectuate the purpose of the stop. **Quartana** concluded that it was reasonable for the police to detain and transport **Quartana** to the scene of the accident in order to continue their investigation.

Quartana had bloodshot eyes—bloodshot, glassy eyes, smelled of intoxicants, and admitted to driving at the time of the accident. Therefore, the officer had reasonable suspicion to investigate further in order to determine if **Quartana** is intoxication contributed to the accident.

I believe this is similar to **Quartana** and that I don’t believe that Roszina was under arrest. I don’t believe that – – just by the fact that she was in the back of the squad car, she was unhandcuffed, she was told that she was not under arrest. That they – – she was asked whether she would be more comfortable and transported to the police station in order to continue their investigation.

They got right to it. They took about 5 to 10 minutes to get to the police

station. They then did the – there’s no indication that they didn’t do anything other than go right into doing the field sobriety test, which detective testified took about 20 minutes. So, all in all, she was detained about 30 minutes prior to the officer making the decision to the effectuate the arrest based on what he observed.

I also find that she was moved within the vicinity because it was just a mile away. And that comports with **Quartana**. And I also find that the second prong, whether it was reasonable, it’s just like **Quartana**. She had glassy, bloodshot eyes, she had slurred speech, she was unsteady on her feet. The police officer believe she was intoxicated. So, it was reasonable to investigate further in order to determine whether Ms. Roszina wasn’t intoxicated, and whether there were grounds for arrest.

So based on that – – based on the fact found by the court, based on the principles of the law as applied to the facts found by the court, the court concludes that as a matter of law, the detention was – – that this was not an arrest, that the detention was reasonable, and therefore the defenses motion is denied.”

(Motion Transcript p.35-37)

This reasoning by the court ignores the objective test which inquires whether a reasonable person in the defendant’s position would have considered himself or herself to be in custody given the degree of restraint under the circumstances as found in **Swanson**. It cannot, under any circumstances, be said that a reasonable person in the position of the defendant would feel herself free to leave after she had been removed from the vicinity of her own vehicle, placed in the backseat of a squad car and taken directly to the police station instead of a closer and more neutral location.

Courts have held that police may move a suspect for a variety of reasons that are considered reasonable grounds. There were no victim identification concerns, see **People v. Davidson**, 127 A.D. 2d 680, 681–82 (1987), security or safety reasons, see **Florida v. Royer**, 460 U.S. 491, 504–05 (1983), or

requirement of an on-the-scene identification, see **State v. Flynn**, 190 Wis. 2d 31, 42, 527 N.W. 2d 343, 347 (Ct. App. 1994). With the detective's statement that he could have safely performed the field sobriety tests on the scene, that would negate any reason to transport the defendant to the police station. Therefore, the facts and circumstances surrounding the defendant's detention in this matter inexorably compel the conclusion that she was under arrest at the time of her transfer to the Hales Corners Police Station.

It is clear from the Court's statement that the detective made the decision to arrest the defendant prior to having her perform any field sobriety test, based on her "glassy, bloodshot eyes, she had slurred speech, she was unsteady on her feet."

The defendant conceded that these facts would have justified the officer in asking the defendant to perform field sobriety tests in order to attempt to develop probable cause for an arrest. However, those facts, standing by themselves, are simply not legally sufficient grounds for an arrest. **State v. Seibel**, 163 Wis. 2d 164, 180–83, 471 N.W. 2d 226, 233–35, Cert. denied, 502 U.S. 986 (1991).

The fact that the detective asked the defendant to perform field tests after placing her under arrest does not remedy this deficiency. The defendant has been unable to find any cases which allow post arrest findings to bootstrap themselves into providing probable cause for an otherwise invalid arrest.

The detective, therefore, lacked probable cause to arrest the defendant at the time that she was actually placed under arrest in this case. Because the defendant was placed under arrest at the time when the detective lacked probable cause to arrest her, the evidence resulting from the improper arrest should have been suppressed.

CONCLUSION

For all the above reasons, the defendant requests this court to find that the court lacked probable cause for the arrest and reverse the decision of the trial court.

Respectfully submitted this 27th day of February 2025.

Electronically signed by Mark A. Schoenfeldt

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CERTIFICATION

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 2882 words.

Electronically signed Mark A. Schoenfeldt

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CERTIFICATION

I hereby certify that filed with this brief, either as a separate document or as a part of 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 rulings 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 of 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.

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