

FILED
05-08-2025
CLERK OF WISCONSIN
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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

Appeal Case No. 2024AP000898-CR

STATE OF WISCONSIN,
Plaintiff-Respondent,
v.
BRENDA L. ROSZINA,
Defendant-Appellant.

ON APPEAL FROM AN ORDER DENYING THE
DEFENDANT’S MOTION TO SUPPRESS PHYSICAL
EVIDENCE ENTERED IN THE CIRCUIT COURT FOR
MILWAUKEE COUNTY AND THE ORDER DENYING
THE DEFENDANT’S POST JUDGMENT MOTION BY
THE HONORABLE HANNAH C. DUGAN

BRIEF OF PLAINTIFF-RESPONDENT

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¹ In good faith, the State cites this case for persuasive value only (Wis. Stat. § 809.23(3)(b)), as this is an unpublished single judge opinion authored by Judge Higginbotham and correctly cites to Wis. Stat. § 752.31(2)(f) in the decision's first footnote; however, the opinion ends with a citation to § 809.23(1)(b)5. (per curiam) instead of 809.23(1)(b)4. (one court of appeals judge), which the State believes to be an oversight since the decision is not otherwise listed as such.

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BRIEF OF PLAINTIFF-RESPONDENT

ISSUE PRESENTED

Did the circuit court properly deny Ms. Roszina’s motion to suppress evidence, which challenged the propriety of the police officer’s decision to offer transport to Ms. Roszina back to the police station for the purpose of performing standardized field sobriety tests?

Circuit court answered: Yes, the circuit court found that Ms. Roszina's transportation back to the police station to perform standardized field sobriety tests did not function as an arrest, and thus, the circuit court denied Ms. Roszina's motion to suppress.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. The briefs in this matter can fully present and meet the issues on appeal and fully develop the theories and legal authorities on the issues. *See* Wis. Stat. (Rule) 809.22(1)(b). Further, as a matter to be decided by one judge, this decision will not be eligible for publication. *See* Wis. Stat. (Rule) 809.23(1)(b)4.

STATEMENT OF THE CASE

a. Facts of the Case

On August 3, 2018, Hales Corners Police Detective Christopher Heckman arrested Ms. Roszina for operating a motor vehicle while under the influence of an intoxicant (OWI-2nd offense). (R. 1:1-3.) Detective Heckman responded to a bar in the Village of Hales Corners after receiving information about an individual who was driving recklessly and was possibly under the influence of intoxicants. *Id.* At the bar, Detective Heckman spoke with Ms. Roszina and observed her stumbling. Ms. Roszina also exhibited blood shot eyes, slurred speech, and the odor of intoxicants. *Id.* Ms. Roszina admitted to drinking on the day of the incident. *Id.* Based on his observations, Detective Heckman had Roszina perform standardized field sobriety tests. *Id.*

Detective Heckman asked if Ms. Roszina wanted to perform the field sobriety tests in the parking lot of the bar or return to the Hales Corner Police Department. (R. 23:35-37.) Detective Heckman testified that he was concerned about conducting the field sobriety tests in the tavern's parking lot because of vehicles coming and going from the lot. *Id.* After being advised of these options, Ms. Roszina advised she would be okay conducting the standardized field sobriety tests in another location. (R. 23:11-12.) Based upon her response, Detective Heckman placed Ms. Roszina in the back of his squad

and told Ms. Roszina numerous times that she was not being placed under arrest. *Id.* Ms. Roszina was not placed in handcuffs while she was in the back of Detective Heckman's squad car. *Id.*

The distance from the tavern to the Hales Corner Police Department was just over one mile. *Id.* At the Hales Corner Police Department, Ms. Roszina performed the standardized field sobriety tests, exhibiting 6 of 6 clues of impairment on the horizontal gaze nystagmus test, 2 of 8 clues on the walk and turn test, and 3 of 4 clues on the one legged stand test. (R. 1:2-3.)

The criminal complaint alleged that Ms. Roszina submitted to a preliminary breath test, the results of which showed that Ms. Roszina's breath contained an ethanol concentration of .241 grams of ethanol per 210L of breath. An intoximeter test of Ms. Roszina within three hours of motor vehicle operation showed an ethanol concentration of .20 grams of ethanol per 210L of breath. Wisconsin Department of Transportation records alleged that Ms. Roszina's prior drunk driving conviction occurred on 4-19-2016 with a conviction date of 7-6-2016. (R. 1:3.)

b. Procedural History

On September 28, 2018, Ms. Roszina was charged with operating while under the influence (OWI), 2nd offense, and operating with a prohibited alcohol concentration (PAC), 2nd offense² (R. 1:1-3.) On January 6, 2020, Ms. Roszina filed a physical evidence suppression motion alleging that, in transporting Ms. Roszina to the Hales Corners Police Department for the purpose of conducting field sobriety testing, Detective Heckman had effectively placed Ms. Roszina under arrest. (R. 14:1-5.) The State did not file a written response to Ms. Roszina's motion to suppress. (R. 23:3.)

On February 13, 2020, an evidentiary motion hearing occurred before the Honorable Danielle Shelton. (R. 23:1.) Judge Shelton made an oral ruling denying Ms. Roszina's motion to suppress. (R. 23:36-37.) Judge Shelton found that Ms. Roszina was not placed under arrest when transported from the tavern to the Hales Corners Police Department. *Id.* Judge

² Contrary to Wis. Stats. §§ 346.63(1)(a) and (1)(b), respectively.

Shelton found that Ms. Roszina was moved within the vicinity of where the incident took place. *Id.* With these findings, Judge Shelton denied Roszina's motion to suppress. *Id.*

On May 18, 2022, Ms. Roszina had a court trial before the Honorable T. Christopher Dee. (R. 31:1-78.) Ms. Roszina was found guilty operating with a prohibited alcohol concentration, 2nd offense, and not guilty of operating while under the influence of an intoxicant, 2nd offense. *Id.*

After the verdict of guilt, Ms. Roszina first attempted to file a motion for post-conviction relief. (R. 33:1-5.) Judge Hannah Dugan ruled she did not have jurisdiction over the matter and denied the motion for post-conviction relief. (R. 36:1.) This appeal follows.

STANDARD OF REVIEW

Upon review of a motion to suppress, this Court upholds findings of historical fact unless they are clearly erroneous. *State v. Sykes*, 2005 WI 48, ¶12, 279 Wis. 2d 742, 695 N.W.2d 277. The application of constitutional principles to those facts is reviewed de novo. *Id.* Whether the location of an investigatory detention is within the vicinity of a stop is a question of law, subject to de novo review. *State v. Blatterman*, 2015 WI 46, ¶ 26 n.9, 263 Wis. 2d 138, 864 N.W.2d 26.

ARGUMENT

The Circuit Court Properly Denied Ms. Roszina's Motion to Suppress because Detective Heckman's transport of Ms. Roszina to the Hales Corners Police Station for field sobriety testing complied with Wis. Stat. § 968.24 and the Fourth Amendment.

A seizure must be reasonable to comply with the Fourth Amendment of the United States Constitution and Article 1, section 11 of the Wisconsin Constitution. *State v. Post*, 2007 WI 60, ¶10, n.2, 301 Wis. 2d 1, 733 N.W.2d 634. It is constitutional for a law enforcement officer to temporarily stop a person based on reasonable suspicion that a crime has been, is being, or is about to be committed. *See State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729 (citing *Terry v. Ohio*, 392 U.S. 1

(1968)). “An investigatory stop, though a seizure, allows police officers to briefly ‘detain a person for purposes of investigating possible criminal behavior even though there is no probable cause to make an arrest.’” *Id.* (citation omitted).

The Wisconsin legislature codified the *Terry* standard for an investigative stop in Wis. Stat. § 968.24. *Young*, 294 Wis. 2d 1, ¶20, n.7. Pursuant to Wis. Stat. § 968.24, a law enforcement officer must conduct that investigation “in the vicinity where the person was stopped.” Accordingly, during an investigatory detention, an officer may transport a suspect away from the immediate scene of the stop. However, the officer must have reasonable grounds to do so, and the transport distance must remain in the vicinity of the stop. Wis. Stat. § 968.24; *State v. Quartana*, 213 Wis. 2d 440, 446, 570 N.W.2d 618 (Ct. App. 1997) (citing *State v. Isham*, 70 Wis. 2d 718, 728, 235 N.W.2d 506. (1975); 4 Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment*, § 9.2(g) at 75-76 (3d ed. 1996)).

Wisconsin case law in *Quartana*, *Doyle*, and *Blatterman* supports the conclusion that the distance Detective Heckman transported Ms. Roszina was reasonably within “the vicinity where the person was stopped”, given the factual circumstances in this case.

In *Quartana*, this Court was “satisfied that the legislature’s use of the term ‘vicinity’ [in Wis. Stat. § 968.24] comports with the dictionary definition” and gave “vicinity” its ordinary meaning as “a surrounding area or district” or “locality.” *Quartana*, 213 Wis. 2d at 446-46 (citing Webster’s Third New International Dictionary; unabridged 2550 (1976)). In that case, police transported Quartana from his home to the scene of an accident that was one mile away. *Id.* at 443-44. This Court concluded that one mile was within the vicinity of Quartana’s home, which was where police stopped him. *Id.* at 447. The Court reasoned, however, that that was not the end of the inquiry. *Id.* at 448. The Court concluded that it also had to address the length of the stop, and “determine whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it was necessary to detain the person.” *Id.*

Years later, in *Doyle*, this Court addressed “vicinity” in the context of transporting an individual to a police station for field sobriety testing, concluding that Doyle remained within the vicinity of the traffic stop even though police transported him three to four miles to a police station. *State v. Doyle*, No. 2010AP2466-CR, 2011 WL 4389143, ¶ 13 (Wis. Ct. App. Sept. 22, 2011)(unpublished, persuasive value only). (R-State’s Appendix.) This Court further concluded that it was reasonable for the officer to transport Doyle to the police station even though an alternative location, a gas station, was closer because the difference in distance between the gas station and police station was minor, and the police station was more conducive to field testing. *Id.* (R-State’s Appendix.) This Court stated that three to four miles “is at the outer limits of the definition of ‘vicinity,’” though it did not explain why that was so. *Id.* (R-State’s Appendix.)

The Wisconsin Supreme Court invoked both *Quartana* and *Doyle* in *Blatterman*, 362 Wis. 2d 138 ¶ 25, 864 N.W.2d 26, 36. There, the police transported Blatterman ten miles to his hospital of choice due to some health concerns, and later conducted field sobriety tests at that hospital. *Id.* ¶9-10. The Supreme Court refused to define the “precise outer limits” of what is meant by “vicinity”, but the Supreme Court concluded that ten miles exceeded those limits. *Id.* ¶26. The Wisconsin Supreme Court’s analysis of the scope of the vicinity did not include a discussion of closer alternative locations, suggesting that “vicinity” is a geographic area dependent on distance alone. The Supreme Court did note that there was a closer location in that case but suggested that the existence of a closer location informs the reasonableness analysis. *Blatterman*, 362 Wis. 2d 138, ¶¶26, 28, n.10.

Since *Blatterman*, this Court has addressed the “vicinity” question related to transports for field sobriety testing in two unpublished, one-judge opinions (persuasive value only). See *Cty. Of Dodge v. Unser*, No. 2016AP2172, 2017 WL 1287559 (Wis. Ct. App. April 6, 2017) (unpublished); *State v. McKeel*, No. 2016AP884-CR, 2017 WL 663206 (Wis. Ct. App. Feb. 16, 2017) (unpublished). (R-State’s Appendix.) In both cases, this Court rejected the “outer limits” language in *Doyle* and the contention that “vicinity” is defined by distance alone or can be reduced to a firm number that applies in every case. *Unser*, 2017

WL 1287559, ¶¶11-12; *McKeel*, 2017 WL 663206, ¶¶12, 19. (R-State’s Appendix.) Rather, this Court concluded that the determination of vicinity “involves considering related relevant facts, such as the rural or urban environs of the transport” and whether there is “no location that is closer where the officer can reasonably conduct field sobriety tests.” *McKeel*, 2017 WL 663206, ¶12; *Unser*, 2017 WL 1287559, ¶11 (R-State’s Appendix.)

While *Doyle*, *Unser*, and *McKeel* provide only persuasive guidance to this Court, all support the conclusions that (1) “the vicinity” involves a totality-of-the-circumstances assessment that cannot be defined by distance alone, including the nature of the locale and whether there were reasonable available alternative locations; and that (2) Detective Heckman transported Ms. Roszina within the vicinity of the stop in this given circumstance.

Thus, Judge Shelton appropriately denied Roszina’s motion to suppress. (R. 23:36.) Judge Shelton found that transporting Ms. Roszina from the scene of the incident back to the Hales Corner Police Department did not constitute an arrest. *Id.* Before Detective Heckman even got to this point, he asked Ms. Roszina if she would be okay performing the standardized field sobriety tests in another location due to concerns regarding traffic in the tavern parking lot. (R. 23:11-12.) After Ms. Roszina indicated that she was okay with conducting the standardized field sobriety tests in another location, Detective Heckman advised her that she would be placed in the back of his squad vehicle, but that she was not under arrest. *Id.* Ms. Roszina was verbally informed that she was not being placed under arrest nor was she placed into handcuffs. *Id.* Judge Shelton appropriately applied the above case law and Wis. Stat. § 968.24 when she determined that the transportation of Ms. Roszina from the scene of the incident to the Hales Corners Police Department did not constitute an arrest. *Id.*

Judge Shelton also appropriately denied Ms. Roszina’s motion to suppress after holding that the performance of the standardized field sobriety occurred within the vicinity of the original incident (R. 23:36.) Although the testimony varied a bit, the record reflects that Detective Heckman transported Ms. Roszina the distance of approximately one mile from the tavern

to the Hales Corners police department. *Id.* Detective Heckman explained his preference of conducting the standardized field sobriety tests in another location due to the ongoing traffic at the tavern. (R. 23:11-12.) Ms. Roszina was asked, and she agreed to the alternative location. *Id.*

CONCLUSION

This Court should affirm the circuit court's oral decision denying Ms. Roszina's motion to suppress evidence.

Dated this 1st day of May, 2025.

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 word count of this brief is 2850.

Dated this 1st day of May, 2025.

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CERTIFICATE OF EFILE/SERVICE

I certify that in compliance with Wis. Stat. § 801.18(6), I electronically filed this document with the clerk of court using the Wisconsin Appellate Court Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 1st day of May, 2025.

Electronically signed by:

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