STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT IV

CITY OF PLATTEVILLE,

Plaintiff-Appellant,

v.

TRAVIS JON KNAUTZ,

Defendant-Respondent.

Appeal Nos. 2024AP001291 & 2024AP001292

Circuit Court Case Nos. 2024TR000215 & 2024TR000450

BRIEF OF DEFENDANT-RESPONDENT

Appeal from the Circuit Court for Grant County,
The Honorable Craig R. Day, Presiding

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

ISSUE PRESENTED

Does an officer have reasonable suspicion to perform a traffic stop on a vehicle that is parked in the parking lot of a business that is closed?

The circuit court answered "no."

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

Neither publication of this court's opinion nor oral argument is necessary in this case. The parties' briefs will adequately address the issues in this case and, therefore, oral argument will not assist the court. The court will likely decide the case based on controlling precedent, and the court will not have any reason to question, qualify, or distinguish that precedent. See § 809.23(1)(b)3.

STATEMENT OF FACTS

Travis John Knautz was cited by the City of Platteville for an OMVI 1st following a traffic stop in the City on January 26, 2024. (R. 1) He filed a suppression motion, which the court heard on May 23, 2024. (R. 6) At that hearing, the City offered testimony by Sergeant Matthew Froiseth. The portions of Sergeant Froiseth's testimony, which are relevant here, are as follows:

As Sergeant Froiseth was approaching the intersection of Mineral Street and Business Hwy 151 in Platteville, Grant County, Wisconsin, he noticed the Knautz vehicle parked in the Rosemeyer Jones Chiropractic parking lot with its lights on and facing the building. (R. 14, p. 7) Sergeant Froiseth remained at the intersection even the though the light had turned green to observe the vehicle. (R. 14, p. 9). Sergeant Froiseth, rather than driving to the parking lot of the Rosemeyer Jones Chiropractic building instead drove through the intersection across Business Highway 151 and entered the parking lot of the U-Haul store, turning off his lights and parking behind some of the rental vehicles. (R. 14, p. 17) He continued to observe the Knautz vehicle and acknowledges that it was unlikely due to the distance and the fact that his lights were off that anyone in the vehicle would have seen him. Once the vehicle left the parking lot of the Rosemeyer Jones building and proceeded onto Business Highway 151 South, he followed it for a period of time until it entered onto the ramp for State Highway 151 where he pulled the vehicle over. Sergeant Froiseth acknowledged that the Business Highway 151 corridor is a fairly busy thoroughfare in the City of Platteville. He further acknowledged that there is a rear parking lot to the building which would not be visible to Business Highway 151.

We should note it was January 26, 2024, a Friday night at 11:50 p.m. when Sergeant Froiseth first noticed the Knautz vehicle. Sergeant

Froiseth's vehicle was unmarked and did not have a light bar on top of the vehicle. As of January 26, 2024 when the traffic stop was made, Sergeant Froiseth testified that he was aware of the burglaries which had occurred over the last thirteen years; however, he had to go back to research to make a list prior to his testimony. (R.14, p. 23)

STANDARD OF REVIEW

Whether reasonable suspicion existed for an investigatory stop is a question of constitutional fact, to which a two-part standard of review applies. *State v. Williams*, 2001 WI 21, 241 Wis.2d 631, 623 N.W.2d 106 (2001). In reviewing a motion to suppress, the appeal court will uphold the circuit court's findings of fact unless clearly erroneous. Whether those facts constitute reasonable suspicion is a question of law independently decided by the appeal court. *State v. Young*, 2006 WI 98, 717 N.W.2d 729 (2006) and *State v. Dubose*, 2005 WI 126.

ARGUMENT

I. POLICE DID NOT HAVE REASONABLE SUSPICION TO STOP THE CAR TRAVIS KNAUTZ WAS DRIVING BASED ON THE INFORMATION KNOWN TO THE OFFICER AT THE TIME OF THE TRAFFIC STOP.

"A traffic stop is a form of seizure triggering Fourth Amendment protections from unreasonable searches and seizures." *State v. Gammons*,

2001 WI App 36, ¶6, 241 Wis. 2d 296, 625 N.W.2d 623. For a traffic stop to comport with the Fourth Amendment, "[t]he police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is violating the law." *Id*. "Determining whether there was reasonable suspicion requires [this court] to consider the totality of the circumstances." *State v. Allen*, 226 Wis. 2d 66, 74, 593 N.W.2d 504 (Ct. App. 1999). WISCONSIN STAT. § 968.24, which codifies *Terry v. Ohio*, 392 U.S. 1, 13 (1968) permits a police officer to temporarily detain and question a person in a public place when the officer reasonably suspects that the person is committing or is about to commit an offense. "The question of what constitutes reasonable suspicion is a common sense test: under all the facts and circumstances present, what would a reasonable police officer reasonably suspect in light of his or her training and experience." *State v. Young*, 212 Wis. 2d 417, 424, 569 N.W.2d 84 (Ct. App. 1997).

The officer here lacked reasonable suspicion to seize Knautz. The circumstances on January 26, 2024 observed by the officer are insufficient to establish a reasonable belief that Knautz was engaged in criminal activity. At the motion hearing, Officer Froiseth identified three things that made him suspicious enough to stop Knautz's vehicle. The first was a vehicle being parked in the parking lot of a closed business late at night. (R14:12; A-App.14). The second was that the officer thought that Knautz

backed out of the parking space and left the business parking lot because he may have seen the officer's patrol vehicle. Id. The third was the history of burglaries in that area. Id.

In its brief the City points to three unpublished cases as persuasive authority that an officer may seize a driver who is located in the parking lot of a closed business, *State of Wisconsin v. Scott W. Able*, No. 2009AP2777, unpublished op., (2010 WI App 71) (citable as persuasive authority per Wis. Stat. § 809.23(3)), *State of Wisconsin v. Lisa K. Beckman*, No. 2010AP2564, unpublished op., (2011 WI App 114) (citable as persuasive authority per Wis. Stat. § 809.23(3)), and *State of Wisconsin v. Diane C. Parker*, No. 2012AP245, unpublished op., (2012 WI App 97) (citable as persuasive authority per Wis. Stat. § 809.23(3)). (Brief of Appellant, 12-17). All three of these unpublished cases were addressed and distinguished properly by the trial court in its oral decision. (R14:28-29; A-App. 30-31).

These three unpublished cases involved at least one additional factor that supplied additional reasonable suspicion, which is not present in the current case. This was acknowledged and explained by the trial court in its correct analysis of reasonable suspicion. (R14:31; A-App.33). In *State v. Parker*, the officer observed a vehicle pull into a parking lot after hours of business and then the driver exited the vehicle and then get into a different vehicle. No. 2012AP245, unpublished op., (2012 WI App

97) (citable as persuasive authority per Wis. Stat. § 809.23(3)) (A-App. 50). The court identified this fact as sufficient to transform what may have only been a hunch in to reasonable suspicion. *Id.* at ¶ 14. In its brief the City acknowledges this difference from the current case but does not explain why this fact is not essential to the determination of reasonable suspicion. (Brief of Appellant, 17). Instead the City simply states that "the overall conclusions are the same" even without that fact or a similar additional fact present in Knautz's case. Id.

In another unpublished decision of *State v. Able*, there was reasonable suspicion for a stop when an officer observed a vehicle drive into a closed business lot and park over several spaces and turn its lights off and then the vehicle drove through the lot with its lights off. No. 2009AP2777-CR, unpublished op., (2010 WI App 71) (citable as persuasive authority per Wis. Stat. § 809.23(3)) (A-App. 38). In *Able*, the business was a fitness center, which had victims of a series of burglaries at their sister location. *Id.* at ¶ 7. The City of Brookfield Police Department was actively investigating this string of burglaries at the time Able was stopped. *Id.* The City of Platteville believes that this business actually being a victim of several burglaries at its sister locations subject to an ongoing investigation by the local police is the same as the burglary history that was presented in the current case. (Brief of Appellant, 14). At the motion hearing, the City did not identify any specific type of

businesses that were victims of the burglaries that Officer Froiseth was familiar with. Instead, the officer agreed that he had investigated 20 to 30 burglaries of businesses over a 14-year period along the Business 151 corridor, which is a couple miles long through Platteville. (R14:10, 22; A-App. 12, 24). There was no mention of an active investigation into similar burglaries or any reason for heightened suspicion for this type of circumstance. The officer was not aware that this particular business had ever been burglarized. (R14:12; A-App. 14). There is obviously a big difference between the ongoing investigation into burglaries at other businesses conducting the same type of business and being owned by the company, which was the case in *Able*, and an officer who was aware of other burglaries, which were not necessarily recent, or in a similar location or a similar type of business. Able had also parked awkwardly and turned his headlights off, which are additional suspicious activities not present in Knautz's case. *State v. Able*, at ¶ 7, (R14:18-19; A-App. 20-21).

In another unpublished case, *State v. Beckman*, there was reasonable suspicion to initiate a seizure when a driver at 11:40 pm on a Sunday drove into the parking lots of two different closed businesses. No. 2010AP2564-CR, unpublished op., (2011 WI App. 114) (citable as persuasive authority per Wis. Stat. § 809.23(3)) (A-App. 43). These other factors are not present in this case. Knautz's vehicle had its lights on, no one was observed outside the vehicle, and his activity was restricted to

one parking lot. Knautz was also parked in front of the building near a busy road, which is less suspicious than the conduct in these other cases.

The other factor suggested by the officer to establish reasonable suspicion was the fact that he was aware of burglaries in the area. The trial court appeared reluctant to call this area a high crime area, but was willing to refer to it as an area that merits attention. (R14:31; A-App. 33). Even if this area were actually a high crime area, an individual's presence in a high-crime area standing alone is insufficient to give rise to reasonable suspicion. See *State v. Gordon*, 2014 WI App 44, ¶15, 353 Wis. 2d 468, 846 N.W.2d 483. The State cannot justify a warrantless search or seizure with nothing more than a recitation that the person was in a "high-crime" area. Additionally, this factor was underdeveloped at the motion hearing. The officer suggested that he was aware of some 20-30 burglaries, which took place on this road in the 14 years that he worked as a Platteville Police Officer. (R14:10; A-App. 12). However, the relevance of relying on this information is questionable since it amounts to about 1 or 2 burglaries per year and there is little to suggest a connection between the burglaries that Officer Froiseth was aware of and potentially suspicious activity at the Rosemeyer building parking lot after business hours. None of these burglaries referenced by Officer Froiseth took place at the Rosemeyer building. (R14:12; A-App. 14). The area described by Officer Froiseth included several miles of the main road through Platteville. (R14:22; A-

App. 24).

"Reasonable suspicion requires that a police officer possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot." *State v. Young*, 2006 WI 98 ¶21, 294 Wis.2d 1. This is "an objective test that examines the totality of circumstances." *State v. VanBeek*, 2021 WI 51, ¶52, 397 Wis.2d 311, 960 N.W.2d 32. "A mere hunch that a person has been, is, or will be involved in criminal activity is insufficient" to establish reasonable suspicion. *Young*, 294 Wis.2d 1, ¶21. While it is true that conduct, which may have an innocent explanation, may also give rise to a reasonable suspicion of criminal activity, the inference of unlawful conduct must be reasonable. See *State v. Waldner*, 206 Wis.2d 51, 57, 556 N.W.2d 681 (1996).

In the trial court's oral ruling, the judge found the speculation that Knautz was attempting to evade Officer Froiseth to not be well-founded. (R14:30; A-App. 32). The trial court reasoned that it was unlikely that Knautz would have seen Officer Froiseth's vehicle. Id. The officer's vehicle had its headlights off, was an unmarked patrol vehicle, and Knautz was parked across several lanes of traffic facing the opposite direction. *Id.* See also (R. 10). The trial court's determination that Knautz was not leaving the lot to evade the officer's observation cannot be said to be clearly erroneous. It is based on the officer's testimony and applying common sense to the facts presented. This determination eliminates one

of the officer's stated reasons justifying the seizure of Knautz.

A decision that an officer does not have reasonable suspicion to seize a driver simply because they are located in the parking lot of a closed business does not require that an officer ignore their hunch that something is odd or unusual. An officer in the position of Officer Froiseth would still be free to initiate voluntary contact with the driver and their vehicle. What that officer may potentially observe while engaging in voluntary contact based on their hunch that something is off could provide reasonable suspicion to execute a seizure and investigate further. At that point this would be a situation on point with *County of Grant v. Vogt*, 2014 WI 76, 356 Wis.2d 343, 850 N.W.2d 253. That case has similar facts with a deputy making contact with a car that pulled into the parking lot next to a closed park and boat landing on the Mississippi. The deputy did not observe any traffic violations but thought the driver's conduct was suspicious. *Id.* at ¶ 4. That case eventually turned on the issue of whether the driver was seized by the officer and the Wisconsin Supreme Court found that the deputy's initial actions were not a seizure and he was permitted to contact the driver to learn more about a potentially suspicious situation. *Id.* at ¶ 51. In that case, the parties agreed that the deputy would not have had reasonable suspicion to seize the driver after observing the driver pull into the parking lot of a closed park and boat landing. *Id.* at 39. The court was in agreement that the deputy did not have reasonable

suspicion to seize the driver initially. *Id.* at ¶ 29. The court ultimately decided in favor of the County in that case, but had the driver initially been seized based on the fact that his car was in the parking lot of a closed park and boat landing, it would have been decided differently. *Id.* Officer Froiseth could have engaged in voluntary contact as was acknowledged by the trial court when it stated "…it is critical that this was not a voluntary contact." (R14:32; A-App. 34). Law enforcement in this situation could have engaged in voluntary contact or further observation to establish probable cause if there was actually some criminal activity afoot.

CONCLUSION

Based on the totality of the circumstances, the officer's decision to perform a traffic stop on Knautz's vehicle was based only on a hunch and not reasonable suspicion. A reasonable officer would not have believed that it was reasonable to conclude that Knautz was involved with criminal activity.

This Court should affirm the trial court's decision to suppress the traffic stop and all evidence obtained as a result of the unreasonable seizure.

CERTIFICATION AS TO FORM/LENGTH

I hereby certify that this brief conforms to the rules contained in Section 809.19(8)(b), (bm), and (c) for a brief. The length of this brief is 2,629 words.

Dated this 30th day of October, 2024.

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