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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT II

Case No. 2025AP000183

FOND DU LAC COUNTY,

Plaintiff-Respondent,

v.

ANDREW JOSEPH LUDWIG,

Defendant-Appellant.

ON APPEAL FROM THE CONVICTION STATUS REPORT AND THE
COURT’S DENIAL OF THE DEFENDANT’S MOTION FOR SUPPRESSION
IN FOND DU LAC CIRCUIT COURT CASE NO. 2023TR006363, THE
HONORABLE DOUGLAS R. EDELSTEIN, JUDGE, PRESIDING

BRIEF OF PLAINTIFF-RESPONDENT

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ISSUE PRESENTED

Did Deputy Multer have reasonable suspicion to extend the traffic stop, and was moving the defendant from the roadside to an indoor setting reasonable under the Fourth Amendment?

The trial court answered these question yes and denied the defendant's motion to suppress. This Court should also answer this question yes.

STATEMENT ON ORAL ARGUMENT AND PUBLICATION

The State requests neither oral argument nor publication. This is a fact-specific question that can be resolved by applying the facts to established legal precedent.

INTRODUCTION

A sheriff's deputy conducted a traffic stop on the Ludwig's vehicle at approximately 2 a.m. for speeding, unsafe braking, and loss of traction during acceleration due to snowy road conditions. Deputies observed an open alcoholic container in the vehicle and noted several indicators of impairment by alcohol, and Ludwig admitted drinking six beers prior to driving. Ludwig consented to performing field sobriety testing. Due to sleet and slippery conditions on the roadway, the deputy asked if Ludwig would perform field tests in the garage at the sheriff's office, and Ludwig consented. Ludwig was transported unrestrained in the back of the squad vehicle to the sheriff's office garage where he performed field sobriety testing and was subsequently arrested for OWI, 1st offense.

Ludwig moved to suppress evidence arguing that the deputy transporting Ludwig to the sheriff's office garage for field sobriety testing was an unlawful detention and the functional equivalent of a custodial arrest, and that the deputy lacked probable cause to arrest Ludwig at that time. The trial court properly denied the motion, finding that the movement was done with Ludwig's consent and was reasonable under the circumstances.

STATEMENT OF THE CASE

On December 3, 2023, Deputy Krafft of the Fond du Lac County Sheriff's Department conducted a traffic stop around 2 a.m. in Fond du Lac County. The reason for the stop was unreasonable speed and failure to stop at a stop sign, with its tires spinning and losing traction. (R. 43:8-9, 11). The deputy noted that there was sleet falling, making the roadway potentially unsafe. (R.43:11, 33). In fact, it had been snowing for several hours prior to the traffic stop. (R. 43:28). The deputy met Ludwig as the driver of the vehicle, and called for another deputy due to the stop turning into an OWI investigation due to observations of slurred speech, glassy eyes, a very strong odor of alcohol coming from the vehicle, and an open beer in the vehicle. (R. 43:13). Deputy Krafft testified that department policy was for a backup deputy to be called to the scene prior to field sobriety testing for safety reasons. (R. 43:22-23). Approximately ten minutes after his initial encounter with Ludwig, Deputy Multer arrived at the scene of the traffic stop. (R. 43:18). Deputy Krafft briefed Deputy Multer on his observations up to that point so that Deputy Multer could take over the OWI investigation. (R. 43:17).

Deputy Multer then engaged with Ludwig and made similar observations of Ludwig, and Ludwig admitted to consuming six beers, the last of which was shortly before the traffic stop. (R. 43-28, 30-31). The deputy decided the next step in the investigation was to have Ludwig exit the vehicle for field sobriety testing, but believed that the roadside conditions were neither safe nor fair to Ludwig. (R. 43:29). Deputy Multer first inquired whether Ludwig was willing to perform field sobriety testing, and second, whether Ludwig was willing to do them at the Sheriff's Department; Ludwig, although first inquiring whether doing testing at his house was possible, affirmatively assented to both. (R. 43:31). The deputy noted that Ludwig was wearing a sweatshirt and jeans, but did not have a hat, gloves, or a coat. (R. 43:32).

Prior to transport, Ludwig consented to a search of his person, and was seated in the back of the squad vehicle. (R. 43:32). At this point, Ludwig was buckled in

but otherwise unrestrained. (R. 43:32). Ludwig was then driven by Deputy Multer approximately two to three miles to the parking garage of the sheriff's department, access to which is controlled by a key fob and not publicly accessible. (R. 43:21, 30). They arrived at the sheriff's department garage approximately 15 minutes and 55 seconds after Deputy Multer's arrival at the scene of the traffic stop. (R. 43:33). At no point prior to field sobriety testing was Ludwig's freedom of movement restrained, nor did any law enforcement officer place him under arrest. (R. 43:34). During the entire interaction with Ludwig, there were three uniformed deputies and two marked squad vehicles; no other displays of authority occurred apart from the emergency lights during the initiation of the traffic stop. (R. 43:36-37). The videos from Deputy Krafft's squad vehicle as well as body-worn camera videos from both Deputy Krafft and Deputy Multer were admitted as exhibits. Ludwig then stipulated to facts and circumstances that would support a finding of impairment by alcohol, the qualifications of the phlebotomist, the timeliness and manner of the blood draw, and the blood test results. (R. 43:39-40).

The Court found that the poor driving behavior in wintery road conditions prior to the traffic stop around 2 a.m. created reasonable suspicion to stop the vehicle. (R. 44:4-5). Next, the Court found that there was minimal delay in calling for a backing deputy, which was done in furtherance of the purpose of the traffic stop. (R. 44:6). Then, the Court found that Ludwig consented to field sobriety testing and to performing those tests at the Sheriff's Department, and was never restrained or placed under arrest. (R. 44:9-10). The Court concluded that Ludwig was moved within the vicinity of the traffic stop (both in respect to time and distance) within the meaning of Wisconsin Statute 968.24. (R. 44:11). Next, the Court found that the transportation to the Sheriff's Department was reasonable under the circumstances due to adverse weather conditions that would likely impact performance on field sobriety testing alongside Ludwig's consent, and denied Ludwig's motion to suppress. (R. 44:12). Finally, taking into account the stipulations, the Court found

by clear, satisfactory, and convincing evidence that Ludwig was guilty of OWI, 1st offense. (R. 44:16-17).

STANDARD OF REVIEW

Whether a defendant's Fourth Amendment rights have been violated is a question of constitutional fact. The resolution of a constitutional fact is a two-step process. First, the trial court's findings of historical fact are to be upheld unless they are clearly erroneous, and the application of these facts to constitutional principles are reviewed *de novo*. *State v. Hogan*, 2015 WI 76, ¶ 32, 364 Wis. 2d 167, 868 N.W.2d 124.

ARGUMENT

A. Controlling legal principles.

A trial court's factual finding is clearly erroneous if it is against the great weight and clear preponderance of the evidence. *State v. Arias*, 2008 WI 84, ¶ 12, 311 Wis. 2d 358, 752 N.W.2d 748. A trial court's factual findings shall not be set aside unless clearly in error, and due regard should be given to the trial judge's opportunity to judge the credibility of the witnesses. *Lessor v. Wangelin*, 221 Wis. 2d 659, 667, 586 N.W.2d 1 (1998). A trial court's finding of fact is clearly erroneous if the reviewing court is left with the definite and firm conviction that a mistake has been made. Special deference is given to the fact that the trial court heard the testimony and observed the witnesses at the suppression hearing. *United States v. Lewis*, 608 F.3d 996, 999 (7th Cir. 2010).

Controlling precedent in Wisconsin Statute 968.24 and *State v. Quartana*, 213 Wis. 2d 440 (Ct. App. 1997), and *State v. Blatterman*, 2015 WI 46, require that the detention and temporary questioning in a traffic stop occur in the vicinity of the stop, explicitly approving of short distance movements when the police have reasonable grounds to do so. *Quartana*, 213 Wis. 2d at 446. This creates a two-part test: first, was the person moved within the vicinity, and second, was the purpose in

moving the person reasonable? *Id.* In *Blatterman*, the Wisconsin Supreme Court concluded that a ten-mile movement was too far to be within the vicinity, though declining to prescribe the precise outer limits. 2015 WI 46, ¶ 26.

In *State v. Doyle*, 2011 WI App. 143 (unpublished), the police moved a defendant out of adverse weather conditions (including snow, sleet, wind, and cold that created slippery conditions) into a police station for field sobriety testing. *Id.* at ¶ 2. In that case, the police told Doyle that he would be taken to the police station to do the field sobriety tests, and he stated simply that he understood; Doyle was not handcuffed nor placed under arrest. *Id.* at ¶ 4. He was patted down for weapons, then transported uncuffed in the back of the squad vehicle three to four miles to the police station. *Id.* at ¶ 5-6. The court held that the police station was within the vicinity of the stop, and that under *Quartana*, the purpose was “plainly reasonable” – but going further, that it would have been unreasonable to remain at the scene under those extreme conditions. *Id.* at ¶ 14-15.

In *State v. Adrian*, 2014 WI App. 45 (unpublished), the defendant was moved from the site of a traffic stop approximately one and a half blocks via police cruiser into the police station sally port (access to which was restricted) to get out of conditions described as bad, cold, windy, and icy. *Id.* at ¶ 2. There, the court rejected the argument that the conditions of transport and destination would lead a reasonable person to believe he or she was under arrest. *Id.* at ¶ 10-11. Adrian argued a number of conditions, including a pat down, movement in a locked squad vehicle, transport to a non-public sally port, and confinement in the law enforcement location, though these were ultimately rejected. *Id.* at ¶ 13.

In *State v. McKeel*, 2017 WI App. 21 (unpublished), the Court of Appeals found that an eight-mile, thirteen-minute transport of the uncuffed defendant on rural roads to the police department was reasonable due to the cold, windy, icy, and snowy conditions present at the scene of the stop, and that the police department was in the vicinity of the stop. *Id.* at ¶ 4, 27, 29.

In *County of Dodge v. Unser*, 2017 WI App. 34 (unpublished), the defendant was moved out of cold and blowing snow and snowy/icy roads to a hospital six miles away. *Id.* at ¶ 3. The court found that this location was within the vicinity of the stop. *Id.* at ¶ 12. The court also rejected the defendant's argument that the police should have investigated other suitable locations at which to perform the field sobriety tests. *Id.* at ¶ 13.

B. The Court properly found that the sheriff's department was within the vicinity of the traffic stop.

In this case, the Sheriff's Department was two to three miles away from the scene of the traffic stop, and within the City of Fond du Lac. This is substantially closer than the ten-mile distance found not to be within the vicinity of the stop in *Blatterman*, and even less than the eight, six, and four miles *McKeel*, *Unser*, and *Doyle*, respectively. Therefore, the Sheriff's Department is within the vicinity of the traffic stop, and the Court's finding is not clearly erroneous.

C. The Court properly found that the movement to the sheriff's department garage was reasonable under the circumstances.

In this case, Ludwig affirmatively consented to performing field sobriety testing at the Sheriff's Office. Further, the outside road conditions were objectively terrible, and in Deputy Multer's opinion, would have been unfair to Ludwig due to ongoing precipitation and cold – when Ludwig did not have a coat, hat, or gloves. Conversely, the Sheriff's Department garage was well-lit, warm, and shielded from the outside weather conditions, and largely provided for Ludwig's comfort and to give him the best opportunity to prove lack of impairment. The length of the delay in transport was minimal – approximately two to three miles covered at a reasonable and safe speed. Further, Ludwig was not cuffed or otherwise restrained in a way functionally equivalent to custodial arrest. Therefore, the transportation was reasonable, and the Court's finding is not clearly erroneous.

CONCLUSION

For all the foregoing reasons, the State asks this Court to affirm the trial court's denial of Ludwig's motion to suppress and resulting conviction.

Dated this 19st day of June, 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), (bm), and (c) for a brief produced with a proportional serif font. The length of this brief is 2,051 words.

Dated this 19th day of June, 2025.

Electronically signed by Zander C. Angle

ZANDER C. ANGLE
Assistant District Attorney

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 Court of Appeals Electronic Filing System, which will accomplish electronic notice and service for all participants who are registered users.

Dated this 19th day of June, 2025.

Electronically signed by Zander C. Angle

ZANDER C. ANGLE
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