COURT OF APPEALS
DECISION
DATED AND FILED

June 23, 2004

Cornelia G. Clark
Clerk of Court of Appeals

Appeal No. 04-0246-CR **Cir. Ct. No. 03CT000421**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT II

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

RAMON R. RODRIGUEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Fond du Lac County: PETER L. GRIMM, Judge. *Affirmed.*

¶1 BROWN, J.[1] We noted in ***State v. Quartana***, 213 Wis. 2d 440, 445 n.2, 570 N.W.2d 618 (Ct. App. 1997), that Wisconsin's statute relating to ***Terry***[2]

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[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2001-02). All references to the Wisconsin Statutes are to the 2001-02 version unless otherwise noted.

[2] ***Terry v. Ohio***, 392 U.S. 1 (1968).

stops, WIS. STAT. § 968.24, requires that "[s]uch detention and temporary questioning shall be conducted in the vicinity where the person was stopped." Ramon R. Rodriguez argues that when the officer transported him from the scene where his car was stopped to the police station to conduct field sobriety tests, the detention impermissibly extended beyond that which is permitted and graduated from a simple investigatory detention to a more invasive restraint of liberty tantamount to arrest. He concludes that because there was no probable cause to arrest at the time, his subsequent citation for operating a motor vehicle while under the influence was an illegal arrest. We agree with the State, however, that Rodriguez' argument ignores the trial court's finding that Rodriguez consented to going to the police station to avoid inclement weather and, therefore, a reasonable person in Rodriguez' position would not have believed he or she was under arrest. We affirm.

¶2 The facts are not disputed. A Fond du Lac county sheriff's deputy was dispatched to investigate a report that a vehicle with a lone, sleeping occupant was parked alongside a county road. The deputy arrived at the scene, observed that the report was accurate and noted that the vehicle was still running. She knocked on the window of the vehicle and then proceeded to open the driver's door. The deputy immediately detected the smell of alcohol. Rodriguez appeared to have urinated in his pants, had drool coming from the corner of his mouth, was very disoriented and lethargic, and his eyes were glassy and bloodshot. He admitted having had alcoholic drinks, did not know where he was and did not know if it was 6:00 p.m. or 6:00 a.m.

¶3 The winds were twenty to thirty-five miles per hour at the time and the deputy had just cleared a tree from a roadway prior to this investigation. There was a mist starting and a cloud of heavy rain was in the area. Due to these

weather concerns, the deputy offered to have field sobriety tests conducted at the station house rather than in the roadway. Rodriguez was informed that if he passed the field sobriety tests, she would give him a ride home. The deputy also told Rodriguez she believed field testing on the road would not be fair to him due to the high winds and heavy rain that was coming. She asked if it was okay with him that the testing be done at the station house and he agreed. While being transported, Rodriguez was not placed under arrest and when he got to the station house, he was taken to the lobby. The trial court found, in pertinent part, as follows:

> The weather situation was plain and evident to both the officer and to Mr. Rodriguez. The officer made it perfectly clear that because of the weather, field sobriety tests in high wind, which for this record would be up to 35 miles per hour, of such strength that a tree had already come down … a wall cloud approaching … that a reasonable person would have agreed that to do field sobriety tests in the open wind with heavy rains coming would not be a fair and safe place to do field tests.
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> He was explained that the purpose of the field sobriety tests would be either to verify his sobriety or low level of alcohol consumption and he would be given a ride home.… [I]f he didn't pass … he would then be subjected to a Breathalyzer test … and Mr. Rodriguez did agree to that.
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> He, in the officer's testimony, was not placed under arrest, and that means, to me, he wasn't handcuffed. He was simply in a squad car, given a ride. The distance wasn't great. He was taken to a public place, a lobby within the building … distinguished [from] other cases that have talked about rooms or private areas out of public view.

¶4 The trial court concluded from these factual findings that a reasonable person in the same situation as Rodriguez would not have "believed or perceived or felt" that he or she was under arrest.

¶5 It is, as the State observes, axiomatic that where consent is obtained such that a person agrees to be transported to another place by an officer, that person is not seized for purposes of arrest and neither an arrest warrant nor probable cause to arrest is required. *See* ***State v. McGovern***, 77 Wis. 2d 203, 211, 252 N.W.2d 365 (1977). This rule fits here. The idea behind wanting a ***Terry*** stop to be conducted "in the vicinity where the person was stopped" is to augment the proposition that questioning of the person under suspicion is only to either allay or confirm the suspicion and spiriting the suspect away to some other place is antithetical to the brief, narrowly focused stop that is contemplated by the law. But if a person agrees to go with the officer, especially if it is to get out of the rain and wind and to a place more conducive to fair sobriety testing, then it cannot be called anything other than what it is—a temporary stop removed to a safer and drier location for the benefit of both the suspect and the officer and with the consent of the suspect.

¶6 Rodriguez apparently claims that his consent to go to the police station should not enter into the equation. He seems to argue that because WIS. STAT. § 968.24 requires the stop to be conducted "in the vicinity where the person was stopped" this is meant to be a bright-line rule which can only be disregarded if police have "reasonable grounds for doing so." ***Quartana***, 213 Wis. 2d at 447. Even then, police conduct must be diligent such that it is the best means to either confirm or dispel their suspicions quickly. ***Id***. at 448. Because the station house was eight miles away and because the tests were conducted in the station house, Rodriguez insists that the police conduct amounted to a seizure. He contends that, in ***Quartana***, the defendant had consented to leaving his parents' home and going back to the scene where his vehicle had been abandoned. Yet, he claims that the

court in ***Quartana*** rested its decision not on the defendant's consent, but on the reasonableness of the police conduct.

¶7 We disgree with Rodriguez' reading of ***Quartana***. At no time did we say that Quartana voluntarily consented to a return to the scene. In fact, we related how Quartana was told that he would have to come back to the scene to talk with the investigating trooper. To this demand, Quartana asked if he could "ride with his parents." ***Id.*** at 444. Not only did the trooper refuse Quartana's request, the trooper kept Quartana's driver's license. ***Id***. We reject Rodriguez' interpretation of ***Quartana***. We affirm the trial court.

By the Court.—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.