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DISTRICT IV

March 10, 2014

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You are hereby notified that the Court has entered the following opinion and order:

2013AP914-CR State of Wisconsin v. Jody E. Larson (L.C. # 2012CF95)

Before Blanchard, P.J., Lundsten and Kloppenburg, JJ.

Jody Larson appeals a felony conviction for operating a motor vehicle with a prohibited alcohol concentration. The sole issue on appeal is the denial of Larson's suppression motions. *See* WIS. STAT. § 971.31(10) (2011-12)[1] (authorizing appellate review of suppression determinations notwithstanding the subsequent entry of a plea). Specifically, Larson contends that evidence of intoxication that was gathered during his traffic stop should have been

[1] All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

suppressed because police lacked sufficient grounds to make the stop and they detained him longer than was constitutionally permissible. After reviewing the briefs and record, we conclude at conference that this case is appropriate for summary disposition pursuant to WIS. STAT. RULE 809.21. We affirm.

According to ***Terry v. Ohio***, 392 U.S. 1 (1968), the reasonable suspicion necessary to detain a suspect for investigative questioning must be based on specific and articulable facts, together with rational inferences drawn from those facts, sufficient to lead a reasonable law enforcement officer to believe that criminal activity may be afoot and that action would be appropriate. *See* ***id.*** at 21-22. An investigative detention "must be temporary and last no longer than is necessary to effectuate the purpose of the stop." ***Florida v. Royer***, 460 U.S. 491, 500 (1983). "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. Jackson***, 147 Wis. 2d 824, 834, 434 N.W.2d 386 (1989).

The stop at issue here was based on information provided by a citizen informant who called to report an incident he had, while doing repair work on a truck, witnessed in Dodge County on the evening of March 9, 2012. A Dodge County dispatch log categorized the call as "family trouble" with a notation made at 8:52 p.m. stating:

> BROWN OLDS POSSIBLY 474TFA, HUSBAND/WIFE/UNCLE/DAUGHTER, NO EMS NEEDED, SHIT THROWN AROUND, HITTING WALLS, CALM NOW, MALES LEFT, OTHERS ARE STILL AT RESIDENCE, GUNS IN HOUSE, 22/SHOTGUN, NO THREAT OF USE

The log further indicated that the caller had given his own name, phone number and address, as well as the address of the incident.

At 8:53 p.m., Columbia County Sheriff's Deputy Jason Lichucki spotted a maroon Buick with license plate number 474TFA. Lichucki pulled in behind the vehicle in a gas station parking lot at 8:54 p.m. based solely on the dispatch directing officers to locate a person in a vehicle with that license plate "that was supposedly involved in a disturbance on Canada Island Road," without knowing any details of the incident beyond what dispatch had relayed. Lichucki approached the vehicle, identified the driver as Larson, and asked Larson whether he had been on Canada Island Road earlier. Before Larson could answer, a dog in Larson's passenger seat became agitated and began barking at another dog being walked by a passerby. Lichucki asked Larson to remain in his car and to roll up his window so the dog could not get out, and the deputy returned to his squad car, without asking any additional questions, to await the arrival of someone from the Dodge County Sheriff's office.

Sergeant Craig Freitag from the Randolph Police Department arrived at the gas station shortly after Lichucki. While Lichucki was waiting in his squad car, he saw Freitag speak with Larson through the window of Larson's vehicle. Lichucki did not know the content of that conversation, and Freitag did not testify at the suppression hearing.

Meanwhile, also at 8:53 p.m., Dodge County Sheriff's Deputy Scott Petrack was sent to the residence on Canada Island Road to investigate the incident. Petrack was in Fox Lake, three or four miles from Canada Island Road, when he received the call, and he arrived at the residence at 9:01 p.m. Petrack interviewed a mother and daughter at the residence who told him

that Larson had been "intoxicated" and "inebriated" and slamming doors during an argument that did not involve any physical contact or property damage, before he drove off in a car.

Petrack then drove to the gas station where Larson was being detained, taking a somewhat indirect "long route." On his way, Petrack spoke with Freitag, who related that he believed Larson had been drinking. Petrack arrived at the gas station at 9:41 p.m., about 47 minutes after Lichucki had stopped Larson.

Larson does not dispute that Petrack had sufficient information to have Larson perform field sobriety tests by the time Petrack made contact. However, Larson contends the initial stop was not supported by reasonable suspicion because: (1) Lichucki did not observe Larson commit any traffic violations or erratic driving; (2) the initial dispatch did not mention alcohol or state that any physical violence or property damage had occurred; (3) Lichucki did not have any physical description of the suspect; and (4) the make and color of Larson's car did not match the description of the suspect vehicle. We disagree.

We first observe that the stop did not need to be based upon the personal observations or personal knowledge of the stopping officer. The police may reasonably deem information provided by a citizen informant to be reliable when the citizen has identified himself or herself, as was the case here. *See* ***State v. Sisk***, 2001 WI App 182, ¶¶7-11, 247 Wis. 2d 443, 634 N.W.2d 877. Moreover, under the collective knowledge doctrine, officers can rely and act on the knowledge of other officers without themselves knowing the underlying facts, so long as reasonable suspicion underlies the collective knowledge of all of the officers. *See* ***State v. Pickens***, 2010 WI App 5, ¶¶12-15, 323 Wis. 2d 226, 779 N.W.2d 1 (WI App 2009).

Here, although the initial dispatch did not specify whether any physical violence or property damage had occurred, either possibility could be reasonably suspected from the known information that things were thrown around and walls were hit during a family disturbance. Furthermore, the described actions in and of themselves could constitute disorderly conduct.

It would also be reasonable to infer, based on the dispatch—since the situation involved a husband, wife, daughter, and uncle, and was calm after the "males" had left, and since a description of a vehicle was given—that the husband and/or uncle had been the one(s) throwing and hitting things and had left in the described vehicle. When a suspect has left in a vehicle shortly before a dispatch has been issued, a description of that vehicle may well be more useful in quickly locating the suspect than details about a suspect's physical characteristics.

Additionally, we are satisfied that it was reasonable to consider a vehicle with a license plate matching that given in the dispatch to be a potential match to the suspect's vehicle, notwithstanding the discrepancy over its make and color. The different makes and colors were similar enough that they could have been confused at night. The purpose of an investigative stop is to gather additional information to either confirm or dispel the suspicion of criminal activity, which would certainly include determining whether the driver of the stopped vehicle was in fact the person who had been involved in the reported incident.

We turn then to the length of the detention. This issue turns on whether it was reasonable for Lichucki to have Larson sit in his car for 47 minutes until Petrack arrived before proceeding to question him. Given the timing and location of the events, we conclude that it was reasonable.

This was a fluid situation in which officers from multiple departments were simultaneously responding to a citizen's report of a domestic disturbance and a suspect who had

left the scene. The stop was made in a county adjacent to where the incident had occurred before police even had an opportunity to investigate what had happened. It made sense for the Columbia County deputy to wait for the Dodge County deputy who interviewed the witnesses to conduct the questioning of the suspect, because the Dodge County deputy would then be in a better position to know what questions to ask and how to evaluate the answers.

While Larson was being detained, police were gaining additional information that strengthened their suspicions that Larson was engaged in criminal activity—although the nature of their suspicions shifted from the domestic incident to impaired driving. This additional information included Freitag's belief that Larson had been drinking, as well as the opinions of the two witnesses that Larson was "intoxicated" and "inebriated." Although the length of the wait may have been shorter if all of the events had occurred in a single urban setting, we are not persuaded that 47 minutes was an inordinate amount of time for the investigating officer to first drive several miles to the residence, then interview two witnesses, and then drive to the gas station in an adjacent county.

IT IS ORDERED that the judgment of conviction is summarily affirmed under WIS. STAT. RULE 809.21(1).

Diane M. Fremgen
Clerk of Court of Appeals