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DISTRICT II

April 16, 2014

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

2012AP2684-CR	State of Wisconsin v. Glenn A. Purlee (L.C. # 2011CF111)
2012AP2685-CR	State of Wisconsin v. Glenn A. Purlee (L.C. # 2011CF467)
2012AP2686-CR	State of Wisconsin v. Glenn A. Purlee (L.C. # 2011CF623)

Before Brown, C.J., Reilly and Gundrum, JJ.

In these consolidated cases, Glenn A. Purlee appeals from three judgments of conviction, including a judgment for operating a motor vehicle while intoxicated (OWI) as a fourth offense within five years, which was entered upon his no contest plea after the trial court denied his

motion to suppress.[1] Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2011-12).[2] We affirm.

While on patrol, State Trooper Matthew J. Barlar saw a car operating with expired license plates and executed a traffic stop. The driver, Glenn Purlee, informed Barlar that his driver's license was invalid because his operating privileges had been revoked for alcohol-related offenses. With Purlee's window rolled down, Barlar smelled a slight odor of intoxicants and noticed that Purlee's eyes were red and glassy. Purlee admitted that he had consumed one alcoholic beverage. Due to the cold weather and after verifying that Purlee's operating privileges were revoked for OWI-related reasons, Barlar decided to transport Purlee one mile to a nearby police station in order to conduct field sobriety testing. At the station, Purlee failed the sobriety tests and was arrested for OWI as a fourth offense within five years, operating after an OWI-related revocation, and bail jumping.

Purlee filed a suppression motion in the trial court arguing that Barlar's decision to move him to a new location and administer field sobriety tests "was not reasonably related in scope to

[1] Though the three above-captioned appeals were consolidated for appellate review, the only issue addressed on appeal was the denial of Purlees's motion to suppress evidence in the trial court case underlying appeal No. 2012AP2684-CR. We ordered appointed counsel to consult with Purlee and inform this court how he wished to proceed given that neither of the other matters was impacted by the suppression issue or addressed in the appellant's brief. We pointed out that absent further action, the remaining two appeals would be deemed abandoned and their underlying judgments would be summarily affirmed. Appointed counsel responded that Purlee's "only interest in appeal regards the denial of his suppression motion in appeal No. 2012AP2684-CR. He has no issues with the decisions and the proceedings in the other two cases and does not object to affirmation of the circuit court judgments in those cases."

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

the circumstances which justified the original stop" and constituted an unlawful detention. After hearing the arresting officer's testimony, the trial court attempted to clarify the grounds for Purlee's motion, pointing out as "the elephant in the room" that at the time Barlar extended the seizure "either in terms of [its] time or in terms of the means," he possessed probable cause to arrest Purlee for the criminal offense of operating after revocation, OWI related. The trial court stated: "That in and of itself is probable cause to arrest him, handcuff him, put him in the squad and bring him to the jail which would certainly extend the stop." Purlee argued that Barlar nonetheless needed to possess reasonable suspicion that Purlee was operating while intoxicated in order to change the focus of the investigation and administer field sobriety tests. The trial court determined that aside from Barlar's probable cause to arrest, the totality of the circumstances provided reasonable suspicion of intoxicated driving sufficient to justify the transportation of Purlee to the station to administer sobriety tests.

Whether a seizure passes constitutional muster presents a question of constitutional fact. ***State v. Malone***, 2004 WI 108, ¶14, 274 Wis. 2d 540, 683 N.W.2d 1. We defer to the trial court's findings of historical fact but determine independently whether those facts satisfy constitutional principles. ***Id***. Officers may extend the duration and scope of a lawful stop if they become aware of additional facts giving rise to a reasonable suspicion that another crime has been committed. ***Id***., ¶¶3-4, 24.

We conclude that Barlar possessed a reasonable suspicion that Purlee was driving while intoxicated sufficient to justify further investigation by way of field sobriety testing at the nearby

police station.[3] Barlar testified that he smelled a mild odor of intoxicants, Purlee was the only person in the car, and Purlee's eyes were red and glassy. Purlee admitted to having a drink earlier and Barlar testified based on his training and experience that drivers tend to underreport the amount of alcohol consumed prior to a traffic stop. Based on Purlee's license revocation, Barlar was aware that he had at least one prior OWI conviction. *See* ***State v. Lange***, 2009 WI 49, ¶33, 317 Wis. 2d 383, 766 N.W.2d 551 (prior OWI convictions are a permissible factor in determining the existence of probable cause for an intoxicated driving offense); *see also* ***State v. Goss***, 2011 WI 104, ¶22 n. 19, 338 Wis. 2d 72, 806 N.W.2d 918 (clarifying that ***Lange*** applies outside the context of a probable cause determination and that "regardless of the quantum of evidence needed to satisfy a given standard, a prior conviction may be taken into consideration."). The totality of these circumstances adds up to a reasonable suspicion of drunk driving. Though Barlar did not observe erratic driving or slurred speech, this does not negate his observation of other indicia sufficient to support a reasonable suspicion determination. Police officers are not required to rule out the possibility of innocent behavior before initiating or extending a stop. ***State v. Waldner***, 206 Wis. 2d 51, 60, 556 N.W.2d 681 (1996).

[3] We agree with the trial court that "the elephant in the room" is the fact that at the time Barlar transported Purlee to the station to administer sobriety testing, he had ample probable cause to arrest him for the crime of operating after revocation. Purlee does not point to any authority addressing the quantum of proof necessary to administer field sobriety tests to an arrestee but instead relies on cases which specifically address the continuation of a lawful traffic stop in the absence of probable cause to arrest. *See, e.g.*, ***State v. Arias***, 2008 WI 84, ¶32, 311 Wis. 2d 358, 752 N.W.2d 748 ("[W]hen a seizure that was lawful at its inception *and does not encompass an arrest* is reviewed, the scope of the continued investigative detention is examined to determine whether it lasted no longer than is necessary to effectuate the purpose of the stop … and whether the investigative means used in the continued seizure are the least intrusive means reasonably available to verify or dispel the officer's suspicion.") (emphasis added; citations omitted). However, we conclude that in the present case, Barlar possessed an articulable reasonable suspicion of intoxicated driving sufficient to justify the continued investigation.

Further, Barlar's decision to transport Purlee to a nearby indoor location for testing was perfectly legitimate. *See* ***State v. Quartana***, 213 Wis. 2d 440, 446-47, 570 N.W.2d 618 (Ct. App. 1997) (pursuant to WIS. STAT. § 968.24, provided there is a reasonable purpose, an officer is permitted to move a defendant a short distance in the vicinity of the stop without converting the temporary seizure into an arrest). It was twenty degrees outside, a legitimate reason to move the investigation indoors, and the station was one mile away, or, in the "vicinity" of the traffic stop. *See* ***Quartana***, 213 Wis. 2d at 446. Purlee was neither handcuffed nor told he was under arrest. The two-minute drive to a warmer location was a minimally intrusive and reasonable method for Barlar to quickly verify or dispel his suspicion. *See* ***State v. Colstad***, 2003 WI App 25, ¶16, 260 Wis. 2d 406, 659 N.W.2d 394.

Finally, because Purlee has not raised any error in connection with the circuit court cases underlying Nos. 2012AP2685-CR or 2012AP2686-CR, any potential claim is forfeited, waived or abandoned, and we affirm the judgments of conviction. *See* ***Waushara County v. Graf***, 166 Wis. 2d 442, 451, 480 N.W.2d 16 (1992) (appellate courts need not and ordinarily will not consider or decide issues which are not raised on appeal); ***State v. Johnson***, 184 Wis. 2d 324, 344, 516 N.W.2d 463 (Ct. App. 1994) (issues raised in the trial court but not briefed or argued on appeal are deemed abandoned).

Upon the foregoing reasons,

IT IS ORDERED that the judgments of the circuit court are summarily affirmed pursuant to WIS. STAT. RULE 809.21.

Diane M. Fremgen
Clerk of Court of Appeals