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DISTRICT IV

November 7, 2019

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

2019AP119-CR

State of Wisconsin v. Todd Dewitt Rugg (L.C. # 2017CF445)

Before Blanchard, Kloppenburg, and Nashold, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. Rule 809.23(3).

Todd Rugg appeals a judgment of conviction for a fourth intoxicated driving offense. Rugg argues that the officer who stopped his vehicle lacked reasonable suspicion for the stop.

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(1) (2017-18).¹ We affirm.

The sole witness at the suppression hearing was the officer. The circuit court credited his testimony and therefore we rely on it here.

While driving his marked squad at around 1:13 a.m. in a residential area, the officer noticed a vehicle stopped at a stop sign. The vehicle remained stopped for what the officer perceived to be an unreasonable amount of time. When the vehicle started driving, it made a “wide” left turn. The officer turned around and followed the vehicle after it passed his location. As he got closer to the vehicle, the operator pulled over and turned off the vehicle lights.

The officer drove past the vehicle and ran its plates. He learned that the vehicle’s registered owner was Rugg. The officer also discovered that Rugg “had a .02 restriction.” This restriction indicated to the officer that Rugg had prior intoxicated driving offenses, and the officer was aware that the .02 limit could be attained after consuming approximately one alcoholic beverage. In running the vehicle’s plates, the officer additionally discovered that Rugg lived about five to six blocks away from the area in which the officer observed Rugg’s vehicle.

The officer parked some distance away from where the vehicle had pulled over. From his parked location, the officer was not in a position to view the vehicle. After a period of time, up to four minutes, the officer observed Rugg’s vehicle drive past him. The officer followed the vehicle again. The officer noted that it was driving on side roads that, the officer believed based

¹ All references to the Wisconsin Statutes are to the 2017-18 version unless otherwise noted.

on his experience, were used by drivers at that time of night to avoid law enforcement detection. The operator pulled over a second time as if starting to park. The officer activated his emergency lights and initiated a stop of the vehicle. Rugg was the driver, and further investigation led to Rugg's arrest.

Rugg argues that the officer lacked reasonable suspicion for the stop. We disagree.

Reasonable suspicion is a common-sense test that permits an investigatory stop if an officer reasonably suspects that unlawful activity may be afoot. *State v. Williams*, 2001 WI 21, ¶21, 241 Wis. 2d 631, 623 N.W.2d 106. The question is, “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). Reasonable suspicion must be grounded in specific, articulable facts, and reasonable inferences from those facts, that an individual was engaging in unlawful conduct. *State v. Waldner*, 206 Wis. 2d 51, 55-56, 556 N.W.2d 681 (1996). Whether a given set of facts constitutes reasonable suspicion is a question of law that appellate courts review de novo. *See id.* at 54.

Here, considering all of the circumstances, we conclude that the officer reasonably suspected that Rugg was driving his vehicle while impaired or with a prohibited alcohol concentration. These factors included the time of night, the vehicle's registration to Rugg, the officer's knowledge that Rugg was subject to a .02 blood alcohol limit, the officer's reasonable belief that Rugg had prior intoxicated driving offenses, and the various driving behaviors that the officer observed. Several of those behaviors could be reasonably interpreted as attempts to avoid police scrutiny.

In arguing that reasonable suspicion was lacking, Rugg contends that we should disregard the officer's observations prior to the time that the officer lost sight of the vehicle. Rugg contends that, if the officer thought that the vehicle was suspicious at that time, the officer should have taken action other than parking in a location where he could no longer see the vehicle. Rugg states that the "main crux" of his argument is that "the slate must be wiped clean" once the officer made the decision to "drive away" and park.

Rugg's argument misconstrues the test for reasonable suspicion. As we have said, the test requires that we consider the totality of the circumstances. Further, it does not require that the police do everything possible to confirm that ambiguous conduct is unlawful before initiating a stop. "Suspicious conduct by its very nature is ambiguous, and the principal function of the investigative stop is to quickly resolve that ambiguity." *Id.* at 60; *see also State v. Newer*, 2007 WI App 236, ¶7, 306 Wis. 2d 193, 742 N.W.2d 923 ("[T]he requirement of reasonable suspicion is not a requirement of absolute certainty.") (quoted source omitted).

That the officer lost sight of Rugg's vehicle for up to four minutes in a residential area near Rugg's residence is a relevant factor in our analysis. It is possible, albeit unlikely, that the driver of the vehicle changed during that time. Regardless, the ambiguity as to who was driving the vehicle does not tip the balance in favor of Rugg when we consider all of the circumstances.

Rugg makes other arguments that are similarly unpersuasive because they do not take into account the totality of the circumstances. We need not and do not discuss those arguments. The discussion that we have already provided disposes of the arguments.

Therefore,

IT IS ORDERED that the circuit court's judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21(1).

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Sheila T. Reiff
Clerk of Court of Appeals