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DISTRICT II

October 21, 2020

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

2020AP14-CR

State of Wisconsin v. Daniel T. Lesniewski (L.C.# 2017CF1042)

Before Neubauer, C.J., Gundrum and Davis, 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).

Daniel T. Lesniewski appeals from a judgment of conviction from the circuit court. Upon reviewing the briefs and the 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.

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

Lesniewski was charged with one count of operating while intoxicated (OWI) and one count of operating with a prohibited alcohol concentration, both offenses tenth or subsequent. *See* WIS. STAT. § 346.63(1)(a), (b). The circuit court denied Lesniewski's motion to suppress evidence from the traffic stop. Lesniewski then pled no contest to the OWI charge and was sentenced to five years' initial confinement and four years' extended supervision. On appeal, Lesniewski argues that the circuit court erred in its suppression ruling because reasonable suspicion did not support the traffic stop.

The underlying facts, though established at a contested evidentiary hearing, are largely undisputed. Matthew Vanderboom is a deputy sergeant with the Waukesha County Sheriff's Department. Vanderboom was on patrol in his squad car when he heard a radio dispatch: his lieutenant had received a phone call from a supervisor at the local Huber facility² advising that an apparently intoxicated male driver had dropped off his passenger at the facility and was driving away. The driver's vehicle was described as "a brown F150." Vanderboom, being nearby, immediately drove in the direction of the Huber facility and saw a vehicle matching that description in the facility driveway.

The Huber facility driveway exits onto a four-lane road, with two lanes running in each direction. Vanderboom observed the brown vehicle leave the driveway, but "[t]he vehicle didn't slow down at all." Instead, the vehicle drove into the first two lanes of traffic and "[s]topped in traffic. Kind of sat there for a few seconds" (that is, the vehicle was perpendicular to and blocking any oncoming traffic). Vanderboom did not know why the vehicle stopped. After

² A Huber facility is an unlocked county correctional facility housing inmates meeting statutory placement criteria. *See* WIS. STAT. § 303.09.

several seconds, the vehicle turned left, and Vanderboom followed. Vanderboom initiated a traffic stop based on “a combination” of the information received from the Huber facility and the driver’s apparent and inexplicable traffic violation (stopping in traffic). When face-to-face with Lesniewski, Vanderboom smelled a strong odor of alcohol and saw that Lesniewski was having considerable trouble taking his license out of his wallet. Vanderboom administered field sobriety and preliminary breathalyzer tests, which Lesniewski failed. Vanderboom then placed Lesniewski under arrest.

Vanderboom was the only witness at the suppression hearing, and the circuit court accepted his version of events as true. The court found that both the information provided by the Huber facility and Vanderboom’s own observations of “bad driving” provided reasonable suspicion that the driver was operating while intoxicated. In the circuit court’s view, the tip from the Huber facility was reliable: Huber facility staff worked in cooperation with the sheriff’s department and were trained to determine when someone was under the influence of drugs or alcohol. The court also rejected Lesniewski’s argument that Vanderboom may not, in fact, have observed him committing a traffic violation and that Lesniewski could have simply been yielding to oncoming traffic before turning. The court pointed out, “In the deputy’s estimation, there wasn’t any reason for [Lesniewski] to stop at that point. It was unknown why he would stop in the lane of traffic.” Thus, Vanderboom had “objectively reliable information” from officials at the Huber facility that the driver of the “brown F150” vehicle was intoxicated, coupled with evidence that “objectively ... there was something about the driver that also suggested impairment in the way he [was] driving.” The court concluded that these facts combined gave Vanderboom reasonable suspicion to stop Lesniewski.

An officer may conduct a traffic stop where, under the totality of the circumstances, he or she has reasonable suspicion that a crime or traffic violation has been, is being, or is about to be committed. See *State v. Young*, 2006 WI 98, ¶20, 294 Wis. 2d 1, 717 N.W.2d 729; *State v. Popke*, 2009 WI 37, ¶23, 317 Wis. 2d 118, 765 N.W.2d 569. “Reasonable suspicion requires that a police officer possess specific and articulable facts that warrant a reasonable belief that criminal activity is afoot.” *Young*, 294 Wis. 2d 1, ¶21. On review, we uphold the circuit court’s findings of fact unless clearly erroneous, but we review de novo whether these facts meet the “reasonable suspicion” standard. *Id.*, ¶17.

To begin, we note that all the evidence in the record indicates that Lesniewski likely committed a traffic violation by stopping in the road. As Vanderboom observed this maneuver, he would have been justified in stopping the vehicle on that basis alone. See *Popke*, 317 Wis. 2d 118, ¶23. Because Vanderboom then saw obvious signs of Lesniewski’s intoxication, he would have had grounds to extend the stop and investigate, even without having received the tip from the Huber facility. See *State v. Bons*, 2007 WI App 124, ¶13, 301 Wis. 2d 227, 731 N.W.2d 367. However, although the circuit court appeared to implicitly accept that Lesniewski committed a traffic violation, it did not find as much on the record. Therefore, for thoroughness, and because our analysis does not depend on finding that Lesniewski violated traffic law, we consider whether the dual circumstances of the tip from the Huber facility and the “bad driving” were sufficient to create reasonable suspicion.

Lesniewski argues that the information relayed by the unknown employee at the Huber facility was insufficiently reliable to justify a traffic stop. Lesniewski would have us treat this caller as an anonymous informant whose tip to police must contain “sufficient indicia of reliability to provide reasonable suspicion to make the investigatory stop.” See *State v.*

Williams, 2001 WI 21, ¶31, 241 Wis. 2d 631, 623 N.W.2d 106 (citation omitted). But a Huber employee is not a typical anonymous tipster. We agree with the circuit court that some presumption of reliability should attach to information provided by a corrections officer or similar professional, trained to recognize signs of intoxication, to those in law enforcement with whom that person works. In any case, even under the standard Lesniewski proposes, his argument fails. Vanderboom did not merely see a vehicle leaving the Huber facility that matched the tip's description, but, in fact, saw direct corroborating evidence of drunk driving (as well as a potential traffic violation in its own right) when Lesniewski stopped for no apparent reason in the middle of the road. This supported the tip's reliability, giving Vanderboom reasonable suspicion to stop Lesniewski.

A tip from a reliable source enabled Vanderboom to identify a potential drunk driver. Lesniewski's driving issues both corroborated possible impairment and, in all likelihood, provided an independent basis for the stop. We need not determine whether the tip or the questionable driving practices alone was sufficient to justify the stop. It is enough to say that, taken together, the totality of these facts amply supports the conclusion that Vanderboom had reasonable suspicion to pull over Lesniewski's vehicle. We affirm the judgment of conviction.

Therefore,

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

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

Sheila T. Reiff
Clerk of Court of Appeals