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WISCONSIN COURT OF APPEALS
110 EAST MAIN STREET, SUITE 215
P.O. BOX 1688
MADISON, WISCONSIN 53701-1688
Telephone (608) 266-1880
TTY: (800) 947-3529
Facsimile (608) 267-0640
Web Site: www.wicourts.gov

DISTRICT II

December 23, 2020

To:

Hon. Karen L. Seifert
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Hon. Teresa S. Basiliere
Circuit Court Judge
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

Melissa M. Pingel
Clerk of Circuit Court
Winnebago County Courthouse
P.O. Box 2808
Oshkosh, WI 54903

William J. Donarski
The Law Office of William J. Donarski
2221 S. Webster Ave., #166
Green Bay, WI 54301

Christian A. Gossett
District Attorney
P.O. Box 2808
Oshkosh, WI 54903-2808

John W. Kellis
Wisconsin Department of Justice
P.O. Box 7857
17 W. Main St.
Madison, WI 53707-7857

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

2019AP2428-CR State of Wisconsin v. Katie E. Davis (L.C. #2018CF589)
2020AP24-CR State of Wisconsin v. Katie E. Davis (L.C. #2018CF799)

Before Reilly, P.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).

Katie E. Davis appeals from judgments of conviction, entered upon her pleas, for operating a motor vehicle with a restricted controlled substance, fourth offense; possession of cocaine, second and subsequent offense; and bail jumping. She contends the circuit court erred in denying her motion to suppress evidence flowing from a temporary investigative detention

that ultimately led to the convictions. 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 (2017-18).[1] We affirm.

Background

As relevant to this appeal, following her arrest, Davis moved to suppress evidence on the basis that the arresting deputy lacked reasonable suspicion or probable cause to temporarily detain/seize her for investigative purposes. The deputy was the only witness to testify at the evidentiary hearing on Davis' motion, and her relevant testimony was as follows.

While on duty and stopped for gas at a Kwik Trip, the deputy was approached by a citizen who "asked [the deputy] to check on the male and female in the red minivan" at a nearby gas pump because the citizen believed they were "either intoxicated or on something." The deputy confirmed with the citizen as to which vehicle he was referring. The deputy recognized the vehicle from three prior contacts she had had with it and the driver, Davis, at various Kwik Trips. Those prior contacts related to the deputy having been asked "to do a welfare check on the driver … because the driver had been passed out at either the pumps or at a parking stall for several hours." In the deputy's prior encounters with Davis, she had observed Davis on those occasions to be "groggy" and "ha[ve] slurred speech."

The deputy waited for Davis to return to the vehicle, and when she did, she "got in the driver's side." The deputy approached, made "initial observations" that Davis was "groggy" and

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

had "slurred speech," advised Davis that she (the deputy) was performing a traffic stop, and asked Davis to perform field sobriety tests, which tests ultimately led to her arrest.

The circuit court denied Davis' suppression motion. The court observed that with regard to the "citizen report" that Davis was "either intoxicated or on something," it was "not like the officer had to go somewhere, the report was made regarding an incident or a situation that was at hand." The court also noted that "this officer has on more than one occasion had prior contacts with this defendant, with this vehicle, with Kwik Trip, of a very similar nature." "So it's not a random contact with an unidentified citizen witness that is involving a defendant that this officer has never dealt with. There were things that provided a different level of I guess reliability in that the vehicle was right there, the officer could see it and could observe what happened after that …." Finding that "there was definitely a basis for the … contact with Ms. Davis," the court denied her suppression motion. Davis ultimately pled to OWI fourth offense, possession of cocaine second and subsequent offense, and bail jumping and now appeals.

Discussion

Davis' appeal is based solely on her contention that "there were no specific and articulable facts to support the traffic stop." She is mistaken.

We apply a two-step analysis in reviewing a circuit court's determination that an officer had reasonable suspicion to initiate an investigative stop. ***State v. Post***, 2007 WI 60, ¶8, 301 Wis. 2d 1, 733 N.W.2d 634. We will uphold the circuit court's factual findings unless they are clearly erroneous; however, we review de novo the application of those facts to constitutional standards. ***Id.***

We agree with the circuit court that the deputy had reasonable suspicion to perform a traffic stop. While it is not entirely clear from the record if the deputy observed Davis' grogginess and slurred speech in this case before or after she informed Davis that Davis was being subjected to a traffic stop, and thus seized, reasonable suspicion existed for the seizure even without these additional facts.

It is longstanding law that because "[f]ew individuals arrive at adulthood without having had frequent occasions to see … persons under the influence," "the average citizen can properly express an opinion as to whether another person is inebriated." *See* ***Cullen v. State***, 26 Wis. 2d 652, 659, 133 N.W.2d 284 (1965). In this case, the citizen informant approached the deputy in a public area to inform the deputy of the citizen's concern that Davis was "either intoxicated or on something." In doing this, the citizen readily exposed himself to the deputy, and thus, the deputy could reasonably believe the citizen was genuinely concerned and not just a "prankster." *See* ***State v. Williams***, 2001 WI 21, ¶35, 241 Wis. 2d 631, 623 N.W.2d 106 ("[I]f 'an informant places his [or her] anonymity at risk, a court can consider this factor in weighing the reliability of the tip.' Risking one's identification intimates that, more likely than not, the informant is a genuinely concerned citizen as opposed to a fallacious prankster." (second alteration in original; citation omitted)); *see also* ***State v. Bunn***, No. 2019AP2127-CR, unpublished slip op. ¶¶4, 13 (WI App Sept. 9, 2020) (where a woman "personally approached" an officer to express concern about two occupants of a nearby blue pick-up truck, which the woman pointed out to the officer, engaging in oral sex in sight of children in the area, the officer reasonably stopped the vehicle as it pulled away in significant part because the witness "potentially expos[ed] her identity" to the officer, making "[i]t … reasonable for [the officer] to conclude that the witness acted out of concern for public welfare"). Furthermore, the citizen's report was immediately corroborated by

the deputy's own knowledge of her prior interactions with Davis where Davis was found on those prior occasions to be "groggy," "ha[ve] slurred speech," and be "passed out at either the pumps or at a parking stall for several hours." Thus, the citizen informant's tip in this case was consistent with every interaction the deputy previously had with Davis, making the citizen's tip particularly believable and reliable.

For the foregoing reasons, we conclude that Davis has failed to demonstrate that the circuit court erred in denying her suppression motion. *See* ***Gaethke v. Pozder***, 2017 WI App 38, ¶36, 376 Wis. 2d 448, 899 N.W.2d 381 ("[O]n appeal 'it is the burden of the appellant to demonstrate that the [circuit] court erred.'" (second alteration in original; citation omitted)).

Upon the foregoing reasons,

IT IS ORDERED that the judgments of conviction are summarily affirmed. *See* 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