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DISTRICT I

November 16, 2021

To:

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Circuit Court Judge
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Clerk of Circuit Court
Milwaukee County Courthouse
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You are hereby notified that the Court has entered the following opinion and order:

2019AP2262-CR State of Wisconsin v. Jean A. Placke (L.C. # 2018CF3876)

Before Brash, C.J., Donald, P.J., and Dugan, J.

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).

Jean A. Placke appeals a judgment convicting her of one count of operating a vehicle while intoxicated, as a fourth offense. Placke argues that the police violated her rights under the Fourth Amendment because the community caretaker exception to the warrant requirement did not apply and the police lacked a reasonable suspicion to believe that she was under the influence of an

intoxicant. We conclude at conference that summary disposition is appropriate. *See* WIS. STAT. RULE 809.21 (2019-20).[1] Upon review, we affirm.

The Fourth Amendment protects against unreasonable searches and seizures by the government. ***State v. Pinkard***, 2010 WI 81, ¶13, 327 Wis. 2d 346, 785 N.W.2d 592. "'Subject to a few well-delineated exceptions, warrantless searches [and seizures] are deemed per se unreasonable under the Fourth Amendment.'" ***Id.*** (citations omitted). One such exception occurs when the police are serving in their role as a community caretaker. ***State v. Matalonis***, 2016 WI 7, ¶30, 366 Wis. 2d 443, 875 N.W.2d 567.

A police officer functions as a community caretaker when he or she acts to help a member of the public who needs assistance. ***Pinkard***, 327 Wis. 2d 346, ¶18. To determine whether the community caretaker exception to the warrant requirement justifies a warrantless search or seizure, a court must consider whether the police officer's action was a "bona fide community caretaker activity" and, "if so, whether the public need and interest outweigh the intrusion upon the privacy of the individual." ***State v. Kramer***, 2009 WI 14, ¶21, 315 Wis. 2d 414, 759 N.W.2d 598 (citation omitted).

At the suppression hearing, Police Officer Robert Utech testified as follows. He was dispatched to check on an occupied silver vehicle parked near the end of a dead-end road. A person had called the police with concerns about the car and asked the police to check on it. The car had been parked for about fifteen minutes at 2:30 p.m. in an area where there were no houses or walking paths and which was known as an area where drug activity occurred. Officer Utech

[1] All references to the Wisconsin Statutes are to the 2019-20 version unless otherwise noted.

arrived at the scene and approached the car to see whether the occupant was "fine, not having some kind of medical condition, or doing something illegal."

Officer Utech noticed that the car engine was running and a woman was in the car talking on a cell phone. He knocked on her driver's side window but she did not notice him. He knocked again and moved slightly to get her attention. After she noticed him, he motioned for her to roll down her window. She responded in a slow and lethargic manner. It took her approximately ten to twelve seconds to find the button and roll down the window. Officer Utech noticed that she was visibly upset. He smelled alcohol and noticed that her eyes were glassy and bloodshot, and droopy as if she were very tired. He then asked her to step out of the car because he suspected that she was driving under the influence of an intoxicant.

Placke first argues that the police were not engaging in a bona fide community caretaker activity when they checked on her because Officer Utech testified that he was checking on the car, in part, to see if illegal activity was occurring.

A police officer may have law enforcement concerns and still be engaging in a valid community caretaker activity. ***Pinkard***, 327 Wis. 2d 346, ¶31. The Wisconsin Supreme Court has explained that "the nature of a police officer's work is multifaceted," so a police officer may simultaneously wear "his law enforcement hat [and his] community caretaker hat." ***Kramer***, 315 Wis. 2d 414, ¶32. Here, Officer Utech was dispatched to check on Placke's vehicle because a citizen had called the police with concerns and he testified that he wanted to make sure that the person in the vehicle was not in distress or having medical problems. As such, he was acting as a bona fide community caretaker when he checked with Placke to see if she needed assistance, even though he acknowledged that he also was checking to see if illegal activity was occurring.

Moreover, Officer Utech's intrusion was minimal—he simply asked Placke to roll down the window so he could speak to her. Assuming for the sake of argument that Officer Utech detained Placke when he asked her to roll down her window, we conclude that his conduct fell within the community caretaker exception to the warrant requirement.

Placke next argues that Officer Utech violated the Fourth Amendment when he asked her to step out of the car because he did not have a reasonable suspicion to believe that she was under the influence of an intoxicant. "In order to justify an investigatory seizure, 'the police must have a reasonable suspicion, grounded in specific articulable facts and reasonable inferences from those facts, that an individual is [or was] violating the law.'" ***State v. Colstad***, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (citation and brackets omitted).

Officer Utech testified that he smelled alcohol, that Placke's eyes were bloodshot, glassy and droopy, that her actions were lethargic, and that it took her ten to twelve seconds to respond when he asked her to roll down her window. Based on these observations, we conclude that Officer Utech had a reasonable suspicion that Placke had been driving under the influence of an intoxicant. *See* ***id.*** ("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." (citation omitted)). Placke contends that Officer Utech's investigatory detention was not justified because there were facts that mitigated against a reasonable suspicion that she was intoxicated; that is, she had been crying, it was 2:30 p.m., which is not a time usually associated with drinking alcohol, and there was no testimony that she had slurred speech. Regardless of whether there were facts that tended to suggest an innocent explanation for the circumstances, the standard for assessing whether the detention violated the constitution in this situation remains whether the police had a reasonable suspicion that illegal

behavior was afoot. *See* ***State v. Felton***, 2010 WI App 114, ¶10, 344 Wis. 2d 483, 824 N.W.2d 871 (innocent behavior does not negate the reasonable suspicion standard). Here, we conclude that under the facts and circumstances presented, the police had a reasonable suspicion to detain Placke.

Upon the foregoing,

IT IS ORDERED that the judgment of the circuit court is 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