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DISTRICT IV

January 6, 2023

To:

Hon. Ramona A. Gonzalez
Circuit Court Judge
Electronic Notice

Sonya Bice
Electronic Notice

Kelly Goyette
Clerk of Circuit Court
La Crosse County Courthouse
Electronic Notice

Colleen Marion
Electronic Notice

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

2022AP593-CR

State of Wisconsin v. Peter C. Koziara (L.C. # 2021CF820)

Before Kloppenburg, Fitzpatrick, 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).

The State of Wisconsin appeals an order suppressing evidence in a criminal case. Based upon our review of the briefs and record, we conclude that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2019-20).¹ We also conclude that reasonable suspicion existed to initiate and extend the traffic stop of the vehicle driven by defendant Peter Koziara. Therefore, we reverse the suppression order and remand.

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

Koziara was charged with operating while intoxicated and with a prohibited blood alcohol content, as a fifth or sixth offense, and with possession of drug paraphernalia. He moved to suppress evidence on the ground that the initiation and extension of the traffic stop occurred without reasonable suspicion. The circuit court held an evidentiary hearing and granted his motion. The court concluded that the stop was initiated with reasonable suspicion of a traffic violation, but that the officer appeared to have “abandoned” the purpose for the stop, and instead it became a “pretext to the OWI investigation.” The State appeals under WIS. STAT. § 974.05(1)(d)2.

The parties agree that we should apply well-established case law, which we need not repeat here, that requires reasonable suspicion to initiate or extend a traffic stop. The parties also agree that we must accept the circuit court’s findings of historical fact unless they are clearly erroneous, and that we apply the law to those facts without deference to the circuit court.

In their briefs on appeal, the parties disagree about the nature of the legal analysis that was used by the circuit court. These disagreements are irrelevant on appeal because, as the parties recognize, the legal analysis is a question of law that we decide without deference to the circuit court. Accordingly, we focus here on only the legal analyses argued by the parties.

The State argues that the evidence showed that the officer’s extension of the traffic stop to conduct field sobriety tests was based on reasonable suspicion. Koziara disagrees, and also argues for an alternative ground to affirm the suppression order, namely, that the officer lacked reasonable suspicion to initiate the traffic stop. In reply, the State argues that the stop was properly based on reasonable suspicion. We address these issues in the chronological order that they are presented by the facts.

Koziara argues that the State failed to prove that there was reasonable suspicion to initiate the traffic stop because the State did not identify any specific traffic law that he was suspected of violating. He points out that, at the hearing, the State and the officer used the phrase “unnecessary acceleration,” but did not refer to any statute or explain the elements of any suspected offense.

In reply, the State acknowledges that at the hearing the parties did not address the legal details of the suspected traffic violation. However, the State also observes that Koziara’s own suppression motion asserted that, quoting the motion, the officer “initiated the traffic stop because of an alleged unnecessary acceleration in violation of WIS. ADMIN. CODE § TR[ANS] 101.02(2)(j).”

That code provision requires the Department of Transportation to assess demerit points against a driver when the driver is convicted of an offense “under the state traffic laws, a local ordinance,” or other laws. WISCONSIN ADMIN. CODE § TRANS 101.02 (2)(j) (June 2015) provides that four points shall be assessed for “unnecessary acceleration.” The State infers from this citation in Koziara’s suppression motion that the parties were in agreement at the hearing that the traffic stop was initiated based on a suspected violation of the City of La Crosse ordinance against intentionally causing tires to emit loud noise or throw gravel by excessive or unnecessary acceleration. The State provides a citation to that ordinance and quotes from it.

We are satisfied on this record that the legal basis for the traffic stop was established. The administrative code citation in Koziara’s motion, together with the use of the phrase “unnecessary acceleration” during the hearing, shows that Koziara was aware of the legal basis being claimed for the stop. He did not dispute that a violation of this provision could be the legal

basis for a stop, either in his motion or at the hearing. Instead, he claimed in his motion that it was not reasonable to believe that his acceleration was “unnecessary.” Although he argues on appeal that it is not clear whether that phrase was being used colloquially or as a legal term at the hearing, the context makes it sufficiently clear that it was used as a legal term.

Beyond that, we do not understand Koziara to be arguing on appeal that the officer’s testimony about Koziara’s conduct failed to establish reasonable suspicion that Koziara violated this ordinance. Therefore, we reject his argument that the circuit court’s suppression order may be affirmed on the basis that the traffic stop itself was unlawful.

The parties also dispute on appeal whether the officer had reasonable suspicion to extend the traffic stop by asking for field sobriety tests. The State argues that reasonable suspicion was present based on the specific, articulable facts that the officer testified to observing. These included the time of day (1:18 a.m) and that Koziara: (1) was leaving a bar parking lot; (2) accelerated unnecessarily; (3) showed evidence of alcohol use such as slurred speech, red and glassy eyes, and a strong odor of alcohol; and (4) admitted to having four drinks, and specifically identified them.

In response, Koziara points out that the circuit court did not expressly make findings that he had red, glassy eyes or emitted a strong odor of alcohol. However, this testimony by the officer was not controverted. Therefore, we include these observations as part of the legal analysis.

Koziara also points out that there was no finding that his speech was slurred, and he asserts that, despite the officer’s testimony, the body camera video admitted into evidence shows that Koziara was not obviously slurring. Having reviewed the video, we agree that his speech

does not appear to be notably slurred. Therefore, we omit this observation from our legal analysis.

Koziara argues that, considering the totality of the circumstances, reasonable suspicion was not present here. He focuses in particular on the evidence suggesting that he was not impaired, such as the absence of difficulties while walking, pulling the vehicle over, speaking, or retrieving his driver's license and insurance information. However, the availability of an inference that Koziara was not impaired does not make the inference of impairment unreasonable, under the totality of circumstances present here. Koziara was observed to have several physical indicators that are commonly associated with intoxication, and he admitted to significant alcohol consumption, at a time of day and location in which the likelihood of intoxication is elevated. That is sufficient to establish reasonable suspicion to extend the traffic stop for field sobriety tests.

IT IS ORDERED that the order appealed from is summarily reversed and remanded 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