COURT OF APPEALS
DECISION
DATED AND FILED

September 26, 2013

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP538 **Cir. Ct. Nos. 2012TR2459, 2012TR2460**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

CITY OF STEVENS POINT,

PLAINTIFF-RESPONDENT,

V.

KATRINA L. SHURPIT,

DEFENDANT-APPELLANT.

APPEAL from judgments of the circuit court for Portage County: THOMAS B. EAGON, Judge. *Affirmed*.

¶1 LUNDSTEN, J.[1] Katrina Shurpit appeals her convictions on citations for operating a motor vehicle with a prohibited alcohol concentration and

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

operating a motor vehicle while under the influence of an intoxicant. Her only challenge to her convictions is a challenge to the investigative stop that led to them. Shurpit argues that the "collective knowledge" doctrine should be applied in her favor to impute certain information to the police officer who stopped her. She also argues that, even if the doctrine is not applied, the circuit court erred in concluding that there was reasonable suspicion for the stop. I reject Shurpit's arguments, and affirm.

Background

¶2 The City of Stevens Point police officer who stopped Shurpit testified at the suppression hearing, and the circuit court credited that testimony. I rely on that testimony for background.

¶3 The officer received a dispatch call around 2:20 a.m. that there was a report of a hit and run in the officer's general location. Dispatch relayed a description of the hit-and-run vehicle to the officer as gray or green.

¶4 In responding to the call, the officer did not look at the computer in her vehicle. If she had, she would have seen that the reporting witness provided the dispatcher with additional identifying information about the hit-and-run vehicle: it was an SUV. For shorthand, I refer to this information as the "SUV information."

¶5 Dispatch relayed to the officer that the hit-and-run vehicle initially headed west from the accident location on Centerpoint Drive and was last seen about three blocks north of that road. The officer, who was on Centerpoint Drive, turned north in order to head toward the hit-and-run vehicle's last known location. As the officer continued on Second Street, she observed a vehicle coming toward

her, but the vehicle was red, so she passed it by. The officer then turned west and saw taillights, then brake lights, on a vehicle that was ahead of her. There was little traffic in the area; the only other vehicle the officer had seen en route was the red vehicle.

¶6 As the officer approached the vehicle ahead of her, she could see that the vehicle was gray or silver and that it had what the officer described as "fresh" damage on its rear bumper. The vehicle was parked on the side of the road. It was not an SUV.

¶7 The officer initiated an investigative stop of the vehicle. Shurpit was the driver.

¶8 The circuit court concluded that the officer reasonably suspected that Shurpit's vehicle was the hit-and-run vehicle based on the information known to the officer. The court also addressed whether, under the "collective knowledge" doctrine, knowledge of the SUV information should be imputed to the officer. The court stated that its analysis under that doctrine presented a question that was "a bit more troubling," but concluded that reasonable suspicion was still present.

Discussion

¶9 In reviewing a suppression decision, this court upholds a circuit court's findings of fact unless those findings are against the great weight and clear preponderance of the evidence. ***State v. Guzy***, 139 Wis. 2d 663, 671, 407 N.W.2d 548 (1987). The legality of an investigative stop, however, is a question of law for de novo review. ***Id.*** The question of what constitutes reasonable suspicion justifying an investigative stop 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.'" ***State v. Colstad***, 2003 WI App 25, ¶8, 260 Wis. 2d 406, 659 N.W.2d 394 (quoted source omitted).

¶10 Shurpit argues that the "collective knowledge" doctrine should be applied in her favor to impute the SUV information to the police officer who stopped her. She also argues that, even if the doctrine is not applied, the circuit court erred in concluding that there was reasonable suspicion for the stop.

Collective Knowledge Doctrine

¶11 I begin with Shurpit's reliance on the collective knowledge doctrine. "Under the collective knowledge doctrine, there are situations in which the information in the hands of an entire police department may be imputed to officers on the scene to help establish reasonable suspicion or probable cause." ***State v. Orta***, 2000 WI 4, ¶20, 231 Wis. 2d 782, 604 N.W.2d 543.

¶12 Other than a passing reference to ***United States v. Hensley***, 469 U.S. 221 (1985), involving a police flier, Shurpit does not cite any case law applying the collective knowledge doctrine. She acknowledges that the doctrine is typically used to *uphold* a determination of reasonable suspicion. She asserts that the doctrine should also be applied when it undercuts reasonable suspicion because, otherwise, "police departments might be encouraged to omit important descriptive details in communicating with their officers, so as to cast as wide a net as possible for potential suspects." This limited policy argument is not logical, at least not as applied here, because the police plainly had an interest in quickly locating the correct suspect. In other words, there is no reason to think that the dispatcher would have had any incentive to deliberately omit the SUV information, or that the officer would have had any incentive to deliberately ignore it. Absent

additional, more developed argument on the topic, I decline to apply the collective knowledge doctrine.

¶13 The question remains whether the officer reasonably suspected Shurpit's vehicle was the hit-and-run vehicle based on the facts actually known to the officer.

Reasonable Suspicion Based On Facts Known To Officer

¶14 I agree with the circuit court and the City that the facts known to the officer support a reasonable suspicion that Shurpit's vehicle was the hit-and-run vehicle. As the circuit court found, Shurpit's vehicle matched the color description that dispatch had provided to the officer, her vehicle had damage to the rear bumper, the officer encountered her vehicle in the same general area as the hit-and-run vehicle, the encounter occurred within about five minutes of the hit-and-run vehicle's last sighting, and there were virtually no other vehicles in the area.

¶15 Shurpit cites factors from ***Guzy*** that courts consider in addressing reasonable suspicion. *See* ***Guzy***, 139 Wis. 2d at 676-79. She argues that application of those factors shows that the officer could not reasonably suspect that Shurpit's vehicle was the hit-and-run vehicle. Rather than discuss each factor at length, I focus on those that are most pertinent given Shurpit's main arguments.

¶16 Shurpit argues that the description of the hit-and-run vehicle as grayish or greenish in color was so non-specific that any number of vehicles could have matched it. *See* ***id.*** at 677 (particularity of description is a factor). That may be true as a general proposition, but this argument fails to acknowledge the totality

of the circumstances, including that Shurpit's vehicle was damaged and that there were virtually no other vehicles in the area.

¶17 Shurpit argues that the hit-and-run vehicle would have been farther from the scene than her vehicle because five minutes had elapsed since the hit-and-run vehicle's last sighting. *See* ***id.*** (size of area in which suspect might be found, as indicated by such facts as how much time has elapsed since crime occurred, is a factor). That may be one reasonable inference, but it is not the only one, especially given that Shurpit's vehicle was parking or parked when the officer first saw it. The officer could have reasonably inferred from this and the other circumstances that Shurpit's vehicle and the hit-and-run vehicle were one and the same, and that the vehicle was still in the immediate area because it had pulled over or parked one or more times after leaving the scene. *See* ***State v. Anderson***, 155 Wis. 2d 77, 84, 454 N.W.2d 763 (1990) (officer may draw any reasonable inference of wrongful conduct that "can be objectively discerned, notwithstanding the existence of other innocent inferences that could be drawn").

¶18 Based on additional ***Guzy*** factors, Shurpit argues that the stop was unreasonable because the officer had other means of investigating Shurpit, such as a license plate check or a radio call to dispatch to reconfirm the vehicle description. She argues that there was no risk in the delay this might have caused because there was no indication that her vehicle might flee when the officer encountered it. The City responds that, because the officer was investigating a hit and run, the officer reasonably believed that Shurpit's vehicle might flee and that further opportunity for investigation would be lost if the officer delayed before initiating an investigative stop. The City's argument is more persuasive. Although there may have been other means of investigation available to the

officer, it is plain that the officer was more likely to get to the bottom of the matter quickly through a brief investigative stop of Shurpit's vehicle.

¶19 Finally, Shurpit takes issue with the officer's testimony and the circuit court's finding that there was "fresh" damage to Shurpit's vehicle. Shurpit argues that there is nothing in the officer's testimony to support a finding that the damage was "fresh." Shurpit points out that the officer did not testify that she was an automotive expert, did not testify as to how many times she had viewed accidents in the past, and gave no testimony on how to distinguish between fresh and old damage. Assuming without deciding that the officer's testimony does not support a finding that the damage was "fresh," I do not see this point as significant. At a minimum, the officer's testimony shows that the officer had no reason to believe that the damage was *not* fresh. There is no dispute that the officer observed that some damage was present and, absent evidence that this damage was *not* fresh—such as evidence of rust in the area—the damage to Shurpit's vehicle can only contribute to, not detract from, reasonable suspicion.

Conclusion

¶20 For the reasons stated above, I agree with the circuit court that the officer had reasonable suspicion to stop Shurpit. I therefore affirm.

By the Court.—Judgments affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)4.