COURT OF APPEALS
DECISION
DATED AND FILED

April 9, 2014

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2013AP1808-CR **Cir. Ct. No. 2012CF228**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

MEGAN E. SCHNEIDER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Washington County: TODD K. MARTENS, Judge. *Affirmed*.

Before Brown, C.J., Neubauer, P.J., and Reilly, J.

¶1 PER CURIAM. A jury found Megan Schneider guilty of possessing narcotic drugs and drug paraphernalia. She appeals on the basis that

her pretrial motion to suppress the fruits of an illegal detention and search was erroneously denied. We disagree and affirm the judgment of conviction.

¶2 Schneider was a passenger in a car driven by Nathan Campbell when Village of Jackson police officer Kyle Henning stopped the vehicle for having a defective muffler, no front license plate, and a cancelled registration. Henning requested proof of insurance and "something … with the VIN" on it. Campbell glanced around and said he could find nothing. Henning suggested the glove box. Campbell "looked at [it] and … froze for a few moments." Schneider said it "didn't open." Henning obtained the VIN from the metal plate on the dashboard.

¶3 Henning observed that Campbell had bloodshot eyes, unequal pupils, "fresh and recent track marks on his arms," and body tremors "consistent with drug use." He decided to have Campbell perform field sobriety tests and requested backup. State trooper Christian Perales arrived about two minutes later, about six minutes into the stop. As Henning had Campbell get out of the vehicle to be tested, he saw Schneider take something from the driver's side and attempt to conceal it between her right leg and the passenger side door. A check of the pair's driver's licenses showed that both were suspended and that Campbell had a lengthy drug history and currently was on probation for narcotics possession. Henning frisked both parties. The patdowns revealed no weapons or contraband.

¶4 Based on the indications of Campbell's drug use and the duo's nervousness and hesitation towards the glove box, Henning suspected there probably were drugs in the car. He requested the assistance of Cedarburg K-9 officer Brian Emmrich. Meanwhile, he had Campbell perform the standard field sobriety tests plus a drug-recognition component. The testing showed the

"minimum amount of impairment … to provide probable cause for arrest." Campbell refused to consent to a search of his vehicle.

¶5 Emmrich arrived as Henning wrote out the citations.[1] The dog alerted on the vehicle's exterior.[2] Henning commenced a vehicle search and found that what Schneider had tried to conceal earlier was the vehicle's key. The dog alerted on the glove box. Henning unlocked the glove box with the key, noting that the locking mechanism "worked fine." Inside was a "heroin kit." Schneider said it was hers. Campbell denied it was his, but refused to name the owner. A "cooker" in the kit tested positive for heroin. Roughly thirty minutes had elapsed between initiation of the stop and discovery of the contraband.

¶6 The trial court denied Schneider's motion to suppress the fruits of the search. The jury found Schneider guilty. On appeal, she concedes the traffic stop was justified but contends that the length of the detention unreasonably exceeded the scope of the stop. We disagree.

¶7 A traffic stop is an investigative detention that triggers Fourth Amendment protections. ***State v. Arias***, 2008 WI 84, ¶¶29-30, 311 Wis. 2d 358, 752 N.W.2d 748. The stop is analyzed under a two-part test: was the stop initially justified and were the officer's actions "'reasonably related in scope to the circumstances which justified the interference in the first place.'" ***Id.*** (citing ***Terry v. Ohio***, 392 U.S. 1, 20 (1968)). "Scope" includes the purpose for which the stop

[1] The citations were for an unregistered vehicle, displaying a false registration plate, operating while suspended, and operating without insurance.

[2] A dog sniff of the exterior of a car incident to a lawful traffic stop is not a search. ***State v. Arias***, 2008 WI 84, ¶24, 311 Wis. 2d 358, 752 N.W.2d 748; *see also* ***Illinois v. Caballes***, 543 U.S. 405, 410 (2005).

was made and the public interest in protecting the personal safety of the officer within Fourth Amendment limits. *See* ***Arias***, 311 Wis. 2d 358, ¶30. Reasonableness requires a balancing between the public interest and the individual's right to be free from arbitrary interference by law officers. ***Id.***, ¶38.

¶8 We review a seizure that is lawful at its inception and that does not encompass an arrest through the prism of whether (1) the continued investigative detention lasted no longer than necessary to achieve the purpose of the stop and (2) the officer used the least intrusive investigative means reasonably available in the continued seizure to verify or dispel his or her suspicion. ***Id.***, ¶32. The totality of the circumstances, not some hard-and-fast time-limit rule, assists in determining when a detention was too long and therefore unreasonable. ***Id.***, ¶34. To be reasonable, the officer's suspicion must be based on "specific and articulable facts which, taken together with rational inferences from those facts reasonably warrant that intrusion" on the citizen's liberty. *See* ***Terry***, 392 U.S. at 21.

¶9 The circuit court found that Henning had a reasonable basis for conducting the stop, that Henning called Perales "almost immediately," that Campbell's physical appearance justified the field sobriety tests, which took ten to fifteen minutes to complete, that the dog arrived twenty to twenty-five minutes into the stop, that the dog sniff took one to two minutes, that there was no evidence that Henning artificially lengthened the stop by filling out the citations more slowly than he otherwise would do, that overall the traffic stop was "relatively short," and that preventing the flow of narcotics is of significant public interest. These findings of fact are not clearly erroneous. The court concluded that under the totality of the circumstances the objectives of the stop and the public interest to be served outweighed the added intrusiveness on Schneider's liberty occasioned by her removal from the car and the frisk.

¶10 Schneider disputes the court's legal conclusion. She contends that Henning unnecessarily prolonged the investigative detention by asking Campbell to produce the VIN when the number was easily accessible through the windshield and by having both occupants exit the car and by frisking them. We disagree.

¶11 Henning testified that he checks the VIN during a traffic stop when, as in this instance, the license plate does not match the vehicle to which it is affixed. Although a VIN can be found on a vehicle's dashboard, asking for something bearing the VIN was not, as Schneider argues, "a completely unnecessary task." Henning testified that the number can be difficult to read on an older car and, further, a printed VIN is "nice to have instead of me having to write it down." We take judicial notice that a VIN has seventeen unique characters. Henning took down the number as he radioed Perales. Schneider has not shown that accessing the VIN unreasonably protracted the stop.

¶12 She likewise fails to show that it was unreasonable to remove her and Campbell from the car. On a lawful traffic stop, an officer may order the driver and the passengers to exit the vehicle without violating the Fourth Amendment's prohibition against unreasonable seizures. ***Maryland v. Wilson***, 519 U.S. 408, 415 (1997). Here, Henning already had decided to have Campbell perform sobriety tests, which required that Campbell exit the car. Schneider's effort to conceal something also reasonably supported having her exit. "[D]anger to an officer from a traffic stop is likely to be greater when there are passengers in addition to the driver in the stopped car." ***Id.*** at 414.

¶13 Similarly, an officer may frisk an occupant of a lawfully stopped car if the officer has a reasonable suspicion that the person may be armed. ***State v. Johnson***, 2007 WI 32, ¶23, 299 Wis. 2d 675, 729 N.W.2d 182. The facts of each

case determine the reasonableness of the frisk. ***Terry***, 392 U.S. at 30. "[D]ue weight must be given … to the specific reasonable inferences which [the officer] is entitled to draw from the facts in light of his [or her] experience." ***Id.*** at 27.

¶14 In the course of this valid traffic stop, one thing led to the next: signs of drug use, Schneider's untruthful claim that the latch of the glove box did not work, her surreptitious effort to conceal what proved to be the key to the locked glove box, the dog alerting outside the car. Henning also was struck by Campbell's and Schneider's nervous behavior, especially in regard to the glove box. *See* ***State v. Kyles***, 2004 WI 15, ¶54, 269 Wis. 2d 1, 675 N.W.2d 449 ("[U]nusual nervousness is a legitimate factor to consider in evaluating the totality of the circumstances."). On these facts, a concern for his and Perales' safety was reasonable and Henning was justified in performing the frisks.

¶15 The dog then alerted at the glove box. The accumulation of information gave rise to an objective, articulable suspicion that criminal activity was afoot. Henning was not obliged to terminate the encounter simply because his further investigation went beyond the scope of the initial stop. *See* ***State v. Betow***, 226 Wis. 2d 90, 94-95, 593 N.W.2d 499 (Ct. App. 1999).

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5. (2011-12).