

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**December 23, 2014**

Diane M. Fremgen  
Clerk of Court of Appeals

**NOTICE**

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2014AP1751-FT**

**Cir. Ct. No. 2014CV514**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT II**

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**CITY OF BROOKFIELD,**

**PLAINTIFF-RESPONDENT,**

**V.**

**CASSANDRA L. GISSAL,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Waukesha County:  
DONALD J. HASSIN, JR., Judge. *Affirmed.*

¶1 BROWN, C.J.<sup>1</sup> Cassandra L. Gissal raises a new issue on appeal that was not raised in the trial court. She has forfeited her right to raise the new issue. We affirm the trial court.

¶2 Gissal was charged with violating a City of Brookfield ordinance adopting WIS. STAT. § 946.41, entitled “Resisting or obstructing officer.” This charge grew out of the following facts. Three friends were in a parking lot outside of a bar. They observed a woman, later identified as Gissal, walk out of the bar with two males. One of the men got into the driver’s seat of a maroon SUV, and Gissal got into the passenger’s seat. The whereabouts of the second male were not observed. The SUV backed out and struck a parked automobile. Then, the SUV just “took off.”

¶3 The license plate of the SUV was written down. One of the friends went back to the bar to call 911 and let the owner of the damaged car know what had occurred. The other two friends gave chase in a truck. At one point, the two friends observed the SUV stop, at which time the driver and passenger changed places. The friends were in constant communication with police dispatch during this time. The general location of the SUV being known, City of Brookfield police found it in the rear of a strip mall and saw a male and female walking away from the SUV.

¶4 One officer began asking questions of Gissal while investigating the hit-and-run. In particular, the officer was trying to discern who was operating the vehicle, both at the crash scene and to the location. He asked Gissal, and she said

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(b) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

she was not driving and that there was no crash. The officer continued to inquire, and Gissal continued to deny knowledge of who was driving the SUV at any point in time. She continued to deny that she was driving and denied that she switched places with the male. She was subsequently arrested for obstructing, which led to the ordinance citation.

¶5 There was a bench trial. At trial, the officer who was investigating the hit-and-run and questioning Gissal testified. The prosecutor asked the officer to state what Gissal said in response to a question from him. At this point, Gissal's attorney objected and stated:

The evidence is at this point that the defendant was being detained and that this was essentially a custodial interrogation. She did not feel like she was free to leave. No reasonable person would feel they were free to leave under these circumstances and there was no evidence she was ever read her Miranda rights.

¶6 The trial court overruled the objection, holding that this was a *Terry*<sup>2</sup> stop. The court found that the questions were of an investigatory nature. The trial continued, and the court—sitting as trier of fact—heard the questions asked of Gissal and her responses to the officer and subsequently found her guilty of obstructing.

¶7 On appeal, Gissal has abandoned the custodial interrogation issue she raised at trial. Instead, she raises a whole different issue which, quite frankly, is hard to follow. She starts with the unremarkable proposition that the Fifth Amendment privilege against self-incrimination applies to both criminal and civil trials. So far, so good. Then she refers to the Wisconsin Municipal Judge

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<sup>2</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

Benchbook, which discusses situations where the prosecutor calls the defendant adversely. The benchbook apparently counsels that, even when called adversely, the defendant maintains the right to assert a Fifth Amendment privilege. The reference to the benchbook is puzzling because Gissal was not called adversely, and we fail to see the point she is trying to make. Then, she claims that the City cannot simply call an officer to testify and recite his version of the defendant's incriminating statements. Seemingly, Gissall is arguing that it is a violation of her Fifth Amendment privilege to allow the officer to relate to the court what he asked and what she said in response. She sums this argument up by contending that, even though she took the stand in her own defense, she would not have done so if the officer had been prohibited from telling the court what she said to him. Aside from the fact that she cites absolutely no authority, and aside from the fact that she had lost her custodial interrogation challenge at trial—thus paving the way for the City to put in this testimony—and aside from the fact that she is wrong about the law, this is simply a new issue. The failure to have made this argument at trial forfeits her right to raise this issue now on appeal. *State v. Caban*, 210 Wis. 2d 597, 605-06, 563 N.W.2d 501 (1997). And although we may, in our discretion, decide to address an issue that has been forfeited, this court will not do so here because the issue, so far as it is understood by this court, has no merit.

*By the Court.*—Judgment affirmed.

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



