COURT OF APPEALS
DECISION
DATED AND FILED

March 12, 2015

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2014AP463-CR **Cir. Ct. No. 2013CF44**

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

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

DUSTIN A. CARSTENSEN,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Iowa County: WILLIAM ANDREW SHARP, Judge. *Affirmed*.

Before Blanchard, P.J., Lundsten and Sherman, JJ.

¶1 PER CURIAM. The State appeals the circuit court's order suppressing evidence police obtained during a traffic stop of defendant Dustin Carstensen. The State argues that police acted lawfully in initiating contact with Carstensen and in attempting to verify Carstensen's license and registration, and

asserts that the police conduct was constitutionally reasonable and did not warrant suppression of the evidence obtained during the stop. We conclude that the police conduct exceeded the scope of a lawful stop, and thus the circuit court properly suppressed the evidence. We affirm.

¶2 The State charged Carstensen with multiple drug crimes based on a traffic stop in the early morning hours of March 6, 2013. Carstensen moved to suppress the evidence obtained during the traffic stop, contending that the evidence was obtained in violation of his right against unreasonable seizures under the Fourth Amendment to the United States Constitution.

¶3 At the suppression hearing, the arresting officer, Deputy Sheriff David Sabot, testified to the following. Sabot was on duty in an unmarked pickup truck during the early morning hours of March 6, 2013. At 3:25 a.m., Sabot was driving westbound on U.S. Highway 14 in the Town of Arena. As Sabot passed through the intersection of Highway 14 and Blynn Road, he noticed a white truck come to a stop at the intersection and remain fully stopped for at least ten seconds, despite the absence of any other traffic. The truck then proceeded onto Highway 14 behind Sabot.

¶4 Sabot pulled into a gas station, and the white truck passed by. Sabot was unable to determine if there was a license plate on the rear of the vehicle. Sabot then followed the white truck, turning onto County Trunk Highway C. Sabot determined that there was no license plate on the truck's rear bumper.

¶5 At that point, the white truck pulled over on its own. The shoulder of the road was not accessible because there had been a recent snowstorm and the roads had not yet been plowed. Sabot pulled behind the truck and activated his emergency lights.

¶6 Sabot exited his vehicle and approached the truck. As he did so, he shined his flashlight on the truck and discovered that there was a temporary tag from Colorado displayed in the rear windshield.

¶7 Sabot then made contact with the driver of the truck, who was alone in the vehicle. Sabot explained his observations and why he had stopped behind the truck. Sabot identified the driver as Carstensen by Carstensen's Wisconsin driver's license. Sabot asked Carstensen why he had stopped so long at the stop sign, and Carstensen stated he had dropped a cigarette. Sabot asked Carstensen where he had bought the vehicle, and the two "discussed that a little bit."

¶8 Sabot then asked Carstensen whether he had any paperwork to support his claim that he had recently purchased the truck. Carstensen stated that he was not sure, and began to look through an armrest. When Carstensen opened the armrest, Sabot observed an open wine cooler and a glass pipe. Sabot asked Carstensen if he had any marijuana, and Carstensen admitted that he did.

¶9 The circuit court granted the motion to suppress. The court determined that Sabot's reasonable suspicion that Carstensen's truck was missing a rear license place was dispelled prior to Sabot making contact with Carstensen, upon Sabot viewing the temporary tags in Carstensen's rear windshield while approaching the truck. The court determined that, at that point, Sabot could have either walked back to his squad car and left without making contact with Carstensen, or could have made contact with Carstensen for the limited purpose of explaining his mistake. The court determined that Sabot's actions exceeded what was reasonable under the circumstances. The State appeals.

¶10 The Fourth Amendment to the United States Constitution provides: "The right of the people to be secure in their persons, houses, papers, and effects,

against unreasonable searches and seizures, shall not be violated ….” The Fourth Amendment does not prohibit police from detaining and temporarily questioning a suspect, without arrest, for investigative purposes, so long as the detention is reasonable. *See* ***State v. Gruen***, 218 Wis. 2d 581, 589-90, 582 N.W.2d 728 (Ct. App. 1998).

¶11 When we review a circuit court’s decision as to a motion to suppress based on a claimed Fourth Amendment violation, we uphold factual findings unless those findings are clearly erroneous. ***State v. Eckert***, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). Whether facts satisfy the constitutional requirement of reasonableness presents a question of law, subject to our de novo review. ***State v. Richardson***, 156 Wis. 2d 128, 137-38, 456 N.W.2d 830 (1990).

¶12 The State argues that Sabot had reasonable suspicion to detain Carstensen based on Sabot’s mistaken belief that Carstensen’s truck failed to display a rear license plate in violation of WIS. STAT. § 341.15 (2011-12).[1] In support, the State cites ***State v. Reierson***, No. 2010AP596-CR, unpublished slip op. (WI App Apr. 28, 2011), as persuasive authority. *See* WIS. STAT. RULE 809.23(3)(b) and (c). In ***Reierson***, we held that “the officer had probable cause to stop Reierson for operating with an expired registration, contrary to WIS. STAT. § 341.04(1), based on the officer’s reasonable, good-faith mistake of fact in misreading Reierson’s license plate number.” ***Reierson***, No. 2010AP596-CR, ¶11. We noted that, “as a general rule, courts decline to apply the exclusionary rule

[1] All further references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

where an officer makes a reasonable, good-faith factual mistake." ***Id.***, ¶9 (citing ***United States v. Cashman***, 216 F.3d 582, 587 (7th Cir. 2000)).

¶13 The State then contends that, once Sabot legally initiated the traffic stop, it would have been unreasonable for Sabot to leave without making contact with Carstensen. The State again cites ***Reierson***, this time for the proposition that "it would have been unreasonable under these circumstances for the officer to have returned to his vehicle and simply driven off without making contact with [the driver] to explain to him the reason for the stop." ***Id.***, ¶11 n.4. The State points out that we rejected Reierson's argument that, once the officer discovered his mistake in misreading the license plate while walking toward Reierson's vehicle, the officer should have walked back to his squad car, re-run the number, and left if there was no reason for the stop. *See* ***id.*** Instead, we agreed with the circuit court that a "'reasonable officer under th[ese] circumstances would not simply get back in the car and drive away. That would not be the way we would want a[n] ... officer to act.'" ***Id.*** Rather, we would expect that the officer "'would then approach the ... stopped [driver], and, if nothing else, apologize and explain what in the world is going on ... and why [the driver was] stopped instead of [the officer] just going away.'" ***Id.***

¶14 Finally, the State contends that Sabot's conduct subsequent to his initial contact with Carstensen, leading to the discovery of incriminating evidence, was within the scope of the initial legal detention. The State cites ***State v. Griffith***, 2000 WI 72, ¶38, 236 Wis. 2d 48, 613 N.W.2d 72, for the proposition that, following an initially lawful seizure, a claim that the detention was unlawfully continued requires a balancing of the public interest against the resulting incremental liberty intrusion. The State contends that Sabot did no more than follow standard police procedure for a traffic stop in attempting to verify

Carstensen's license and registration. The State argues that here, as in ***Griffith***, "the public interests are substantial and the interference with private liberty interests is *de minimis*." *See* ***id.***, ¶63.

¶15 Carstensen responds that Sabot extended Carstensen's detention longer than necessary to investigate whether Carstensen failed to display a rear license plate. Carstensen cites ***Gruen*** for the proposition that, for a ***Terry***[2] stop to pass constitutional muster, the "'detention must be temporary and last no longer than is necessary to effect the purpose of the stop [and] the investigative methods employed should be the least intrusive means reasonably available to verify or dispel the officer's suspicion in a short period of time.'" ***Gruen***, 218 Wis. 2d at 590 (quoted source and internal quotation marks omitted). "'In assessing a detention for purposes of determining whether it was too long in duration, a court must consider whether the police diligently pursued a means of investigation that was likely to confirm or dispel their suspicions quickly, during which time it is necessary to detain the suspect.'" ***Id.*** at 590-91 (quoted source and internal quotation marks omitted). Carstensen argues that, under ***Gruen***, Sabot's investigation was complete when Sabot discovered that Carstensen's truck displayed temporary tags in the rear windshield, before Sabot even made contact with Carstensen. Carstensen argues that, when an officer discovers that a stop was based on a mistake of fact, the only reasonable contact with the driver is for the officer to explain the mistake, thank the driver, and let the driver leave.

¶16 Carstensen also argues that ***Griffith*** does not dictate the outcome urged by the State here. He contends that ***Griffith*** is distinguishable because,

[2] ***Terry v. Ohio***, 392 U.S. 1 (1968).

there, police had not completed their initial investigation when they questioned Griffith, which led to further investigation. Carstensen contends that none of the reasons supporting the further questioning in ***Griffith*** are present here, and that the police conduct in this case was unreasonable under the Fourth Amendment. We agree with Carstensen.

¶17 We conclude that, when Sabot asked Carstensen for paperwork showing that he had purchased the truck, Sabot unreasonably extended Carstensen's detention.[3] In reaching this conclusion, we first examine ***Griffith*** and determine that it is distinguishable on its facts. We then determine that the facts of this case did not justify extending the police investigation to the point at which Sabot asked for proof that Carstensen had purchased the truck.

¶18 In ***Griffith***, police stopped a vehicle because they knew that the owner of the vehicle did not have a driver's license. ***Griffith***, 236 Wis. 2d 48, ¶¶9-10. An officer made contact with the vehicle and discovered that the owner was a passenger; while the officer spoke with the passenger, the officer looked at the driver and recognized him as well, and asked the driver when he had obtained a driver's license. ***Id.***, ¶12. The driver responded that he had "'lost them.'" ***Id.*** Shortly after that interaction, the officer asked Griffith, a passenger in the back seat, for his name and date of birth. ***Id.***, ¶13. Griffith provided obviously false information. ***Id.***

[3] Because we conclude that the police conduct in asking for the truck's purchase paperwork was unlawful, we need not address the parties' arguments as to the legality of the earlier police conduct.

¶19 In examining whether the police questioning of Griffith was lawful, the court noted that "questioning can transform a reasonable seizure into an unreasonable one if it extends the stop beyond the time necessary to fulfill the purpose of the stop." ***Id.***, ¶54. Thus, "[t]o determine whether the stop was unreasonably prolonged, the court must consider the law enforcement purposes to be served by the stop and the time reasonably needed to accomplish those purposes." ***Id.*** The ***Griffith*** court "noted that the record d[id] not establish that the investigation of the traffic violation was complete when the questions were posed to the back seat passenger." ***Id.***, ¶55. In any event, however, "even if the officers had already obtained all of the necessary information to establish the traffic violation, it is clear that the time needed to ask the identification questions was very brief." ***Id.***

¶20 The court acknowledged that the police questioning of Griffith was an intrusion on his liberty interest. ***Id.***, ¶44. The court explained that, "[t]o determine whether this intrusion was unreasonable, [the court] must weigh the relevant public and private interests." ***Id.*** The court then concluded that "permitting law enforcement officers to request identifying information from passengers in traffic stops serves the public interest in several ways that are reasonably related to the purpose of a traffic stop." ***Id.***, ¶45. The court explained that "there is a public interest in completing the investigation of the traffic violation that justified the stop in the first place" and that "[t]he record d[id] not support Griffith's assertion that the police had already completed their investigation when they asked the back seat passenger for his name or date of birth." ***Id.***, ¶46. Thus, the court noted, "the officers may have wished to obtain information from the rear passenger to complete the investigation that justified the stop in the first place." ***Id.*** Additionally, even if police had obtained information

to establish a violation had occurred, other public interests supported allowing police to ask the rear seat passenger his name and date of birth: first, since it appeared that neither occupant in the front seat had a license, "[t]here is a public interest in determining whether [the] car must be towed at public expense or may be driven away by a private party"; second, "there is a general public interest in attempting to obtain identifying information from witnesses to police-citizen encounters." ***Id.***, ¶¶47-48. The court weighed these public interests against the minor incremental intrusion of asking the rear seat passenger to identify himself while he was already legally detained in the vehicle, and determined "that the identification questions did not transform the reasonable search into an unreasonable one under the circumstances of this case." ***Id.***, ¶¶62-63.

¶21 We agree with Carstensen that ***Griffith*** is inapposite. As set forth above, there were several significant facts expressly relied on by the ***Griffith*** court that are not present here: (1) police were apparently still investigating the original reason for the stop—reasonable suspicion that the driver of the vehicle did not have a valid license—when they asked the rear seat passenger for his name and date of birth, ***id.***, ¶¶9-13; (2) asking the rear seat passenger for identifying information served other public interests related to the stop, that is, determining whether the car would need to be towed and obtaining witness identification, ***id.***, ¶¶47-48; and (3) "[t]he only change in the passenger's circumstances that resulted from the questioning is that rather than sitting silently while being temporarily detained, he had to decide whether to answer the officer's questions," ***id.***, ¶62. Here, in contrast: (1) the investigation of the original reason for the stop—whether Carstensen's truck displayed a rear license plate—was completed before Sabot asked Carstensen for paperwork to establish Carstensen had purchased the truck; (2) the State has not identified any public interest related to the stop served

by Sabot's continuing investigation, beyond asserting that Sabot was following standard procedure; and (3) the continuing questioning in this case resulted in Carstensen's continued detention, when he otherwise would have been free to leave. Based on these significant factual differences, we are not persuaded by the State's assertion that ***Griffith*** dictates that Sabot's conduct was constitutionally reasonable in this case.

¶22 We need not delineate, in this opinion, the exact point at which Sabot's conduct crossed the line of reasonableness under the Fourth Amendment. We conclude that, at a minimum, Carstensen's detention was transformed into an unreasonable seizure after all of the following had occurred: (1) Sabot discovered that Carstensen's vehicle displayed temporary tags in the rear windshield; (2) Sabot made contact with Carstensen and verified that Carstensen had a valid driver's license; (3) Sabot informed Carstensen why he had initiated the traffic stop, and obtained an explanation as to why Carstensen had stopped for a full ten seconds at the stop sign; and (4) Sabot and Carstensen engaged in a conversation as to where Carstensen had purchased his truck. By at least at that point, if not earlier, Sabot had completed his investigation related to the reasons for the initial detention, and observed no signs of distress or criminal activity. *See* ***id.***, ¶¶26, 44-63; *see also* ***Gruen***, 218 Wis. 2d at 590-91. Sabot's subsequent conduct in asking Carstensen for paperwork related to his purchase of the truck was outside the scope of the initial lawful detention, constituted an additional intrusion on Carstensen's liberty interest by extending the duration of the detention, and served no public interest related to the initial detention. *See* ***Griffith***, 236 Wis. 2d 48, ¶¶26, 44-63. Accordingly, the circuit court properly ordered the evidence suppressed. We affirm.

By the Court.—Order affirmed.

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