

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 26, 2016

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. 2016AP825

Cir. Ct. Nos. 2015TR8206
2015TR8208

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT II**

COUNTY OF FOND DU LAC,

PLAINTIFF-RESPONDENT,

V.

BLADE N. RAMTHUN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Fond du Lac County: RICHARD J. NUSS, Judge. *Affirmed.*

¶1 NEUBAUER, C.J.¹ Blade N. Ramthun appeals from a judgment entered after a stipulated trial finding him guilty of operating a motor vehicle

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(c) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

while under the influence of an intoxicant (OWI) and operating a motor vehicle with a prohibited alcohol concentration (PAC), both as first offenses.² Ramthun contends that the circuit court should have suppressed evidence recovered during an illegal detention. Specifically, he argues that when a deputy sheriff transported him from the scene of the traffic stop to a gas station three or four miles away in order to administer field sobriety tests, the temporary seizure was transformed into an illegal arrest. We disagree and affirm.

¶2 At a suppression hearing, the following testimony was adduced: on August 29, 2015, at approximately 1:00 a.m., Alexander Volm, a deputy sheriff with the Fond du Lac County Sheriff’s Department, was near the intersection of Highway 45 and Highway 67 when he observed a vehicle heading southbound on Highway 45 that appeared to be going in excess of the fifty-five mile-per-hour speed limit.³ Volm activated the radar on his squad car and received a reading of sixty-eight or sixty-nine miles per hour. As the vehicle passed Volm, he pulled behind it, activating his emergency lights. The driver, Ramthun, pulled over, and Volm approached the vehicle. As Volm spoke with the Ramthun, he noticed that his eyes were glassy and bloodshot, he smelled of intoxicants, and his speech was slurred. Volm asked Ramthun how much he had to drink that night, and he responded that he drank five drinks of rum and Coca-Cola. Volm asked if the

² Ramthun was sentenced on the PAC.

³ A video of the traffic stop was not entered into evidence until the stipulated trial. Nevertheless, “we are not limited to the facts as presented at the suppression hearing and may examine pertinent trial evidence as well.” *State v. Truax*, 151 Wis. 2d 354, 360, 444 N.W.2d 432 (Ct. App. 1989).

drinks were “big ones or the small ones,” and Ramthun said they were small ones.⁴ Ramthun said he had been drinking since 10:30 p.m.

¶3 At the time of the stop, the weather was “somewhat bad.” Although it was sixty or seventy degrees, it was a “steady downfall of rain.” Given the rain and wet road, Volm told Ramthun that he was not going to conduct field sobriety tests on the road. Volm asked Ramthun if he would be willing to come with him to a gas station to take the field sobriety tests. Ramthun answered something to the effect, “you’re the officer, it’s your rules.” Volm explained that the area where the traffic stop occurred was rural with “fields, farms, some residences,” and so he decided to drive Ramthun to a gas station in the Village of Campbellsport. The gas station was about three or four miles away or about a seven-minute drive. Volm could not think of any place that was closer. There may have been places a similar distance away, but the drive to the gas station in Campbellsport was “an easy drive.”

¶4 Volm conducted a search of Ramthun and then placed him in the back of his squad car without handcuffs. Once in the squad car, the officer had to let Ramthun out—a passenger could not exit it of his own volition. They arrived at the gas station, and Volm conducted field sobriety tests under the overhang on a dry, level surface. At the conclusion of the field sobriety tests, Volm concluded that Ramthun was intoxicated. Volm then conducted a breath test on Ramthun

⁴ Volm testified that Ramthun answered that the glass size was “big ones,” which Volm took to mean pint-sized glasses, but he acknowledged that if the video indicated that Ramthun answered “small ones,” he had no reason to disagree. The video indicates that Ramthun answered, “small ones,” and Volm said, “small ones, so pints? Ok.”

which produced a result of .18 percent. Volm placed Ramthun under arrest for OWI.

¶5 The circuit court denied Ramthun’s motion to suppress the evidence based on an illegal detention. The court concluded that “a vicinity issue was [not] breached.” It was 1:08 a.m. in the morning, and while there was no testimony about whether the moon was out, given that it was raining, it was probably cloudy and, thus, “probably pretty dark.” This was potentially a “tragic situation” because Ramthun could have lost his balance and ended up in the roadway where he could have been struck by a car. In addition, in a dry and lighted condition, Ramthun’s performance on the field sobriety tests would not be compromised as it might be on a dark, wet roadway. Thus, the court concluded that Volm transported Ramthun as a “courtesy,” for both their safety, and so that Ramthun’s rights would not be compromised.

¶6 The question of whether a defendant’s right to be free from unreasonable searches and seizures was violated, contrary to the Fourth Amendment to the United States Constitution and article I, section 11 of the Wisconsin Constitution, is a question of constitutional fact. *See State v. House*, 2013 WI App 111, ¶4, 350 Wis. 2d 478, 837 N.W.2d 645. The circuit court’s findings of facts following the suppression hearing will be upheld unless clearly erroneous, but the application of constitutional principles to those facts is reviewed de novo. *See State v. Blatterman*, 2015 WI 46, ¶26 n.9, 362 Wis. 2d 138, 864

N.W.2d 26; *State v. Vorburger*, 2002 WI 105, ¶32, 255 Wis. 2d 537, 648 N.W.2d 829.⁵

¶7 Under *Terry v. Ohio*, 392 U.S. 1, 22 (1968), “a police officer may, under certain circumstances, temporarily detain a person for purposes of investigating possible criminal behavior even though there is not probable cause to make an arrest.” *Blatterman*, 362 Wis. 2d 138, ¶18. WISCONSIN STAT. § 968.24 is a codification of the *Terry* standard, and it provides that the police may temporarily detain and question an individual “in the vicinity where the person was stopped.” Thus, when a person is temporarily detained for investigation under *Terry* and, as here, is moved to another location, there is no constitutional violation if the person was moved within the vicinity of the stop, and the purpose in moving the person was reasonable. *Blatterman*, 362 Wis. 2d 138, ¶24; *State v. Quartana*, 213 Wis. 2d 440, 446, 570 N.W.2d 618 (Ct. App. 1997).

¶8 Vicinity means “‘a surrounding area or district’ or ‘locality.’” *Blatterman*, 362 Wis. 2d 138, ¶25 (citing *Quartana*, 213 Wis. 2d at 446 (quoting WEBSTER’S THIRD NEW INTERNATIONAL DICTIONARY: UNABRIDGED 2550 (1976))). We have previously concluded that “three to four miles is at the outer limits of the definition of ‘vicinity’ ... where the stop occurred in a rural area, and the suspect was transported to the nearest municipality at which the investigation could reasonably take place under the circumstances.” *State v. Doyle*, No.

⁵ When the evidence consists of disputed testimony and a video recording, we apply the clearly erroneous standard of review when reviewing the circuit court’s findings of fact based on testimony and the recording. *State v. Walli*, 2011 WI App 86, ¶17, 334 Wis. 2d 402, 799 N.W.2d 898.

2010AP2466-CR, unpublished slip op. ¶13 (WI App. Sept. 22, 2011).⁶ Such was the case here. Volm transported Ramthun from a highway in a rural area to a gas station about a seven-minute drive or three to four miles away. *See id.* Volm testified that there were no other places that were closer; rather, there were places a similar distance away but not as easy a drive. Thus, under these circumstances, we conclude that the gas station was in the vicinity of the stop.

¶9 As for whether there were reasonable grounds to move Ramthun, we have previously noted that “courts have held that the police may move a suspect for reasons of security and safety ... [and] for comfort or convenience.” *Quartana*, 213 Wis. 2d at 447 n.3 (citations omitted); *see State v. Krahn*, No. 2009AP2406-CR, unpublished slip op. ¶¶11-12 (WI App. Feb. 3, 2010) (concluding that hazardous road and weather conditions necessitated a move to a suitable location to conduct field sobriety tests and for safety). The circuit court concluded that it was reasonable to move Ramthun for his safety and that of Volm, as a courtesy to Ramthun, and to ensure that the field sobriety tests were fairly administered.

¶10 Ramthun complains that the circuit court’s finding that Ramthun was transported as a safety measure was clearly erroneous because there was no proof about the lighting conditions at the stop, the traffic, or the size of the road’s shoulder. But, as we have noted, we have reviewed the video. We can see that the road on which Ramthun was stopped appears to have one lane of travel running in

⁶ *State v. Doyle*, No. 2010AP2466-CR, unpublished slip op. ¶1 (WI App. Sept. 22, 2011), is an unpublished opinion issued after July 1, 2009, that is authored by a single judge under WIS. STAT. § 752.31(2), and, thus, it may be cited for its persuasive value. *See* WIS. STAT. § 809.23(3)(b).

each direction. There is a shoulder on the side of road where Volm pulled over Ramthun. The shoulder is slightly wider than the width of Ramthun's vehicle. There are no street lights near the stop. An occasional car can be seen passing. The weather, as Volm testified to and we have observed in the video, was a steady downfall of rain. To administer field sobriety tests, such as a walk-and-turn test, under these conditions with a suspect who appeared intoxicated could have posed a danger to Ramthun and Volm. *See generally* WIS. STAT. § 346.072(1m)(b) (recognizing the danger posed to an emergency or road side service worker by requiring that where there is only one lane of traffic, vehicles passing an emergency or roadside service vehicle are required to travel at a reduced speed).

¶11 Thus, given the conditions of the road and the weather, the apparent intoxicated condition of Ramthun, and the tests to be administered to him, the record supports the circuit court's factual finding that Ramthun was transported as a safety measure and, thus, that finding is not clearly erroneous. *See State v. Wheat*, 2002 WI App 153, ¶16, 256 Wis. 2d 270, 647 N.W.2d 441. Since safety and security are valid reasons to move a suspect, Volm did not act unreasonably. In any event, even if we agreed with Ramthun, given the weather and road conditions, it was reasonable for Volm to move Ramthun so that the field sobriety tests might be fairly administered to him. *See Doyle*, No. 2010AP2466-CR, unpublished slip op. ¶15.

¶12 Based on the foregoing, we conclude that Ramthun was still within the vicinity of the traffic stop when Volm moved him to a gas station three or four miles away, and it was reasonable for Volm to move Ramthun. Therefore, Ramthun was not illegally detained, and the circuit court properly denied Ramthun's motion to suppress.

¶13 We affirm.⁷

By the Court.—Judgment affirmed.

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

⁷ Given our conclusion, we need not address Ramthun's remaining contentions that Volm lacked probable cause to arrest him when he transported Ramthun to the gas station or that Ramthun did not give voluntary consent to be transported.

