COURT OF APPEALS
DECISION
DATED AND FILED

September 22, 2011

A. John Voelker
Acting Clerk of Court of Appeals

Appeal No. 2010AP2466-CR **Cir. Ct. No. 2009CT91**

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

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

DANIEL R. DOYLE,

DEFENDANT-APPELLANT.

APPEAL from a judgment and an order of the circuit court for Green County: THOMAS J. VALE, Judge. *Affirmed*.

¶1 HIGGINBOTHAM, J.[1] Daniel R. Doyle appeals a judgment of conviction for operating a motor vehicle while intoxicated (OWI), second offense,

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2009-10). All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

pursuant to WIS. STAT. § 346.63(1)(a) (2009-10),[2] and a circuit court order denying his motion to suppress evidence. On appeal, Doyle contends that the police transport of him to the nearest police department for purposes of conducting field sobriety tests converted a lawful ***Terry***[3] detention into an illegal custodial arrest. He also contends questions the deputy asked him during the transport to the police department constituted an unlawful custodial interrogation without required ***Miranda***[4] warnings. We reject Doyle's arguments and affirm the judgment and order.

Background

¶2 The pertinent facts are taken from the hearing on Doyle's motion to suppress and are not in dispute. During the early evening hours on Saturday, March 28, 2009, Village of Belleville police officer Molly Hultine responded to a call to assist the Green County Sheriff's Department at the scene of a one-car motor vehicle accident in a field in the town of Exeter. It was snowing and sleeting heavily at the time, with winds of twenty to twenty-five miles per hour. It was very cold. The roads were snow and ice-covered and "extremely slippery." Upon her arrival, the officer observed the vehicle had been abandoned in the field. Shortly thereafter, Daniel Doyle arrived in a work van driven by a coworker. Doyle told the officer that the vehicle in the field was his, but said he did not know what had caused the vehicle to go off the road and into the field. Doyle also

[2] All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

[3] ***Terry v. Ohio***, 392 U.S.1, 88 (1968).

[4] ***Miranda v. Arizona***, 384 U.S. 436 (1966).

admitted he "had had a few drinks" that night. The officer observed that Doyle's speech was slightly slurred, he was unsteady on his feet, and that his eyes were bloodshot.

¶3 Approximately ten minutes later, Green County Sheriff's Deputy Andrew Jagdfeld arrived at the accident scene and was advised by the officer that Doyle had admitted to drinking and had claimed not to know how his vehicle went off the road. When the deputy contacted Doyle, the deputy also observed Doyle's bloodshot eyes and slurred speech, and Doyle admitted to the deputy that he had been drinking at a bar. The deputy then decided to administer field sobriety tests to Doyle.

¶4 The police officer testified she offered the deputy use of the Belleville police station to conduct the field sobriety tests because of the inclement weather and, in part, because the station's conference/interview room was equipped with a camera. The deputy informed Doyle that because of the weather conditions he would be taken to the Belleville police station for field sobriety testing. Doyle stated simply that he understood. Doyle was not told that he was under arrest at this time and was not placed in handcuffs.

¶5 The deputy then escorted Doyle to the back of the squad car, patted him down for weapons, placed him in the rear seat of the vehicle, and transported him to the police station. During the drive to the police station, the deputy asked Doyle some questions about when he began drinking. Doyle answered the questions.

¶6 The police station was approximately three to four miles from the accident scene. When they arrived at the station, the deputy escorted Doyle to a large conference room that also doubled as an interview room and administered

the field sobriety tests. The police officer stood nearby in front of the open conference room door and observed the tests. The deputy administered the horizontal gaze nystagmus (HGN), walk-and-turn, and one-leg stand tests. After observing several cues of intoxication, the deputy administered a preliminary breath test (PBT). The PBT revealed Doyle had a blood alcohol concentration of .15. The deputy then arrested Doyle for OWI.

¶7 Doyle filed two separate motions to suppress evidence of his intoxication and the statements he made to the deputy while being transported to the police station. Following an evidentiary hearing the court issued an oral decision denying Doyle's motion. Doyle filed a motion for reconsideration, which the court also denied. Doyle subsequently pled no contest to the OWI charge and the court entered a judgment of conviction. Doyle appeals.

Standard of Review

¶8 When reviewing a motion to suppress evidence, we will uphold the circuit court's findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2); ***State v. Eckert***, 203 Wis. 2d 497, 518, 553 N.W.2d 539 (Ct. App. 1996). However, we will independently determine whether the facts found by the circuit court satisfy applicable constitutional provisions. ***State v. Ellenbecker***, 159 Wis. 2d 91, 94, 464 N.W.2d 427 (Ct. App. 1990).

Discussion

¶9 The issues on appeal are whether Doyle was illegally arrested when he was transported from the accident scene to the police station, and whether questioning by the deputy while transporting Doyle constituted a custodial interrogation for ***Miranda*** purposes.

¶10 A temporary detention of a person following a traffic stop constitutes a seizure within the meaning of the Fourth Amendment and implicates the constitutional protections against unreasonable searches and seizures. ***State v. Williams***, 2001 WI 21, ¶18, 241 Wis. 2d 631, 623 N.W.2d 106. A police officer may temporarily detain a person, under the proper circumstances, for the purpose of investigating possible criminal activity in the absence of probable cause to arrest. *See* ***Terry v. Ohio***, 392 U.S. 1, 22 (1968).

¶11 ***Terry*** is codified in WIS. STAT. § 968.24, which provides that the police may temporarily detain and question an individual "in the vicinity where the person was stopped." The police may, where there are reasonable grounds for doing so, "move a suspect in the general vicinity of the stop without converting what would otherwise be a temporary seizure into an arrest." ***State v. Quartana***, 213 Wis. 2d 440, 446, 570 N.W.2d 618 (Ct. App. 1997). Thus, when a person who is temporarily detained pursuant to ***Terry*** is moved from one location to another, we conduct a two-part inquiry: (1) was the person moved within the "vicinity," and (2) was the purpose in moving the person reasonable. ***Quartana***, 213 Wis. 2d at 446.

¶12 Doyle first contends that the Belleville police station was not in the vicinity of the stop. We disagree.

¶13 The deputy testified that the police station was approximately three to four miles away from where Doyle was detained at the accident scene. In ***Quartana***, we concluded transporting the defendant one mile from his parent's home to the accident scene fell within the definition of "vicinity." ***Id***. at 446-47 (adopting the dictionary definition of "vicinity" as "surrounding area or district" or "locality."). We acknowledge that three to four miles is at the outer limits of the

definition of "vicinity." However, we conclude that such a distance is in the 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. The video of the stop shows that there was nothing but highway and countryside before the deputy reached the Village of Belleville. The first possible place the deputy could have conducted field sobriety tests between the accident scene and the village was a gas station with a large overhang, located less than one minute from the police station. It was reasonable for the deputy to continue to the police station to conduct the tests given the short distance between the gas station and the police station and the weather conditions. The deputy testified that the gas station overhang did not provide sufficient shelter from the elements to properly conduct the field sobriety tests. Doyle presented no evidence to counter the deputy's opinion. Under these circumstances, we conclude that the transport occurred within the vicinity for purposes of WIS. STAT. § 968.24.

¶14 Doyle argues that the deputy did in fact have reasonable alternatives to transporting him to the police station. Specifically, Doyle maintains that certain field sobriety tests could have been performed in the squad car, such as the alphabet test, the counting test, finger-to-nose test, and the HGN.[5] However, the deputy testified that his routine was to conduct the tests he conducted in this case:

[5] Doyle also suggests that the deputy could have requested a preliminary breath test (PBT). To request a PBT, a police officer must "ha[ve] probable cause to believe" a person has operated or is operating a motor vehicle while intoxicated. WIS. STAT. § 343.303; *see* ***County of Jefferson v. Renz***, 231 Wis. 2d 293, 317, 603 N.W.2d 541 (1999) (probable cause to administer a PBT refers to "a quantum of proof that is greater than the reasonable suspicion necessary to justify an investigative stop … but less than the level of proof required to establish probable cause for arrest"). However, Doyle does not address whether the officer had probable cause to request a PBT in the absence of any other field sobriety tests. This argument is therefore insufficiently developed to consider here. *See* ***State v. Pettit***, 171 Wis. 2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992).

the one-leg stand, walk-and-turn, and the HGN tests. Obviously, the first two of these could not have been conducted in the squad car. In any event, the choice of which tests to perform was the deputy's alone acting within his professional discretion, and was not unreasonable under the circumstances. Further, the deputy testified that the alphabet, finger dexterity, the count-down, finger-to-nose tests are not part of the standardized battery of field sobriety tests. Doyle does not direct us to any authority that requires a law enforcement officer to conduct non-standardized field sobriety tests in order to avoid moving an OWI suspect to another location to conduct the standardized tests, and we are not aware of any such requirement.

¶15 Turning to the second inquiry under ***Quartana***, we conclude the purposes for moving Doyle to the police station were plainly reasonable. As we have discussed, the detention occurred in the middle of a snowstorm, rendering the roads and the roadside unsafe to conduct the field sobriety tests. It was cold and very windy; the deputy testified the winds were blowing approximately twenty to twenty-five miles per hour. It would have been unreasonable to conduct the field sobriety tests on the roadside under these extreme conditions. The deputy told Doyle that, because of the hazardous weather, he was being taken to the Belleville police station "for his [own] benefit." We note that convenience and safety are both reasonable reasons to transport a suspect to a different location to continue an investigation. *See* ***Quartana***, 213 Wis. 2d at 448. Because of the hazardous weather, it was both safer and more convenient for the deputy to administer the field sobriety tests at the police station. We hold that the "reasonable purpose" requirement of the ***Quartana*** test was satisfied in this case.

¶16 Doyle next argues that he was in custody for ***Miranda*** purposes when he was placed in the squad car and transported to the police station, and

therefore questioning by the deputy while transporting Doyle constituted unwarned custodial interrogation contrary to ***Miranda***. Therefore, according to Doyle, certain inculpatory statements he made to the deputy while being transported should be suppressed. We disagree.

¶17 We note first that our conclusion above that the transport of Doyle to the police station for field sobriety tests did not transform the stop into an arrest is not dispositive of the question of whether ***Miranda*** warnings were required. Even during a ***Terry*** stop, a defendant may be considered in custody for Fifth Amendment purposes and thus be entitled to ***Miranda*** warnings. *See* ***State v. Morgan***, 2002 WI App 124, ¶16, 254 Wis. 2d 602, 648 N.W.2d 23. However, assuming for the sake of argument that Doyle was in custody under the Fifth Amendment and that the questioning by the deputy violated ***Miranda***, we conclude that the statements elicited from Doyle were cumulative and non-prejudicial. Doyle objects to admission of the following exchange:

> Deputy: Were you drinking at the bars then or—
>
> Doyle: Yeah.
>
> Deputy: Yeah.
>
> Doyle: I didn't have a fricking truck for a week and a half.
>
> Deputy: Oh, no. What time did you start drinking this morning?
>
> Doyle: It wasn't this morning.
>
> Deputy: This afternoon?
>
> Doyle: Unfortunately. Yeah, it's fricking horrible out. I'm sorry.

¶18 The deputy was already aware of most of this information when he questioned Doyle in the squad car. The only new inculpatory information derived from this questioning was *when* Doyle began drinking. The deputy had already suspected Doyle of operating a motor vehicle while intoxicated based on observing Doyle's bloodshot eyes, his slurry speech, the odor of intoxicants emanating from his breath, his unsteadiness on his feet, and Doyle's admission prior to being transported that he had been drinking at a bar and that he had been driving. The remaining pieces to the puzzle were the field sobriety test results and the PBT results. Considering the totality of the circumstances, the additional information of when Doyle began drinking added little if anything to the deputy's investigation. We fail to see how Doyle was prejudiced by this information.

Conclusion

¶19 For the foregoing reasons, we uphold the circuit court's denial of Doyle's motion to suppress and affirm the judgment of conviction.

By the Court.—Judgment and order affirmed.

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