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DISTRICT III

August 5, 2025

To:

Hon. Sarah M. Harless
Circuit Court Judge
Electronic Notice

Cherie Norberg
Clerk of Circuit Court
Eau Claire County Courthouse
Electronic Notice

Ana Lyn Babcock
Electronic Notice

Kathleen E. Wood
Electronic Notice

You are hereby notified that the Court has entered the following opinion and order:

2024AP547-CR State of Wisconsin v. Amber F. Jacobson (L. C. No. 2021CF135)

Before Stark, P.J., Hruz, and Gill, JJ.

Summary disposition orders may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

Amber Jacobson appeals a judgment convicting her, based upon a no-contest plea, of possession with intent to deliver heroin (>10-50g), as a party to the crime. Jacobson contends that evidence seized during a traffic stop should have been suppressed[1] because law enforcement (1) lacked reasonable suspicion to seize Jacobson, who was a passenger in the

[1] WISCONSIN STAT. § 971.31(10) (2023-24) authorizes an appeal from a suppression ruling following a guilty or no-contest plea.

All references to the Wisconsin Statutes are to the 2023-24 version.

vehicle; and (2) lacked reasonable suspicion to extend the traffic stop to conduct a canine sniff of the vehicle for drugs.

Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21. We affirm on the grounds that Jacobson forfeited the first issue raised on appeal and that the record supports the circuit court's determination of reasonable suspicion on the second issue.

As background, the parties do not dispute that (1) Jacobson was a passenger in a vehicle driven by Jacob Restad; (2) law enforcement had reasonable suspicion to initiate a traffic stop of Restad's vehicle based upon a discrepancy between the vehicle description and the license plate registration; (3) law enforcement seized both Restad and Jacobson while investigating the vehicle registration issue; (4) law enforcement extended the duration of the traffic stop after the vehicle registration issue had been resolved, in order to conduct a canine sniff of the vehicle; and (5) the canine alerted on the vehicle, leading to a search of the vehicle and the discovery of drugs and drug paraphernalia.

Jacobson moved to suppress evidence seized during the search of the vehicle. When asked at the suppression hearing about the scope of the motion, Jacobson's counsel confirmed the two issues Jacobson was raising: (1) whether there was reasonable suspicion to extend the stop; and (2) whether Jacobson's phone was improperly seized without a warrant after she had been released from the stop. Jacobson proceeded to file a posthearing suppression brief that set forth those same two issues with headings in its argument section.

Although Jacobson made several isolated assertions throughout her suppression brief that she had been unlawfully seized, she did not develop those assertions into a cohesive, separate

argument that the initial seizure of her person was unlawful or that a separate determination of reasonable suspicion, apart from the facts related to Restad, was required to extend her own detention. *See* ***Schwittay v. Sheboygan Falls Mut. Ins. Co.***, 2001 WI App 140, ¶16 n.3, 246 Wis. 2d 385, 630 N.W.2d 772 ("A party must raise an issue with sufficient prominence that the [circuit] court understands that it is called upon to make a ruling."). We conclude that by explicitly telling the circuit court that she was raising only two issues and proceeding to focus on those two issues in her suppression brief, Jacobson forfeited any additional suppression issues. We will therefore address only Jacobson's argument that suppression was required because the traffic stop was impermissibly extended based upon the totality of the circumstances, including Restad's behavior.

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. Harris***, 2017 WI 31, ¶9, 374 Wis. 2d 271, 892 N.W.2d 663. We will independently determine, however, whether the facts found by the court satisfy applicable constitutional provisions. ***Harris***, 374 Wis. 2d 271, ¶9.

The constitutional provisions at issue here are the Fourth Amendment to the United States Constitution and article 1, section 11 of the Wisconsin Constitution, which each prohibit unreasonable searches. *See* ***State v. Dearborn***, 2010 WI 84, ¶14, 327 Wis. 2d 252, 786 N.W.2d 97. It is constitutionally permissible under the Fourth Amendment for a law enforcement officer to briefly detain an individual for investigative questioning when there exists a reasonable suspicion, based upon specific and articulable facts together with rational inferences drawn from those facts, that criminal activity may be afoot. *See* ***Terry v. Ohio***, 392 U.S. 1, 21-22 (1968). An investigatory stop "must be temporary and last no longer than is necessary to effectuate the

purpose of the stop." ***Florida v. Royer***, 460 U.S. 491, 500 (1983). If during an investigatory stop, an officer becomes aware of facts sufficient to give rise to a reasonable suspicion that the person has committed or is committing a distinct offense, however, the purpose of the stop may expand and the length of the stop may be properly extended to investigate the new suspicion. ***State v. Colstad***, 2003 WI App 25, ¶19, 260 Wis. 2d 406, 659 N.W.2d 394.

Here, the circuit court made the following relevant factual findings. First, before effectuating the stop, the officer observed driving behavior by Restad that "appeared to be evasive." Second, upon making contact with Restad, the officer noted that Restad "appeared to be nervous, fidgety, and … overly cooperative, seeming to wish to get the traffic stop over fairly quickly." Third, Restad "seemed somewhat resistant to [allowing the officer] to look inside of the vehicle to obtain the VIN number." Fourth, when one of the vehicle's doors was open, the officer saw what he believed to be "a corner-cut part of a bag" in Restad's vehicle that the officer deemed to be "consistent with drug use or bags used to carry drugs." Fifth, while the officer was in his squad car conducting record checks, he noticed Restad and Jacobson "engaging in furtive movements" in the vehicle. Sixth, the officer discovered during the record checks that Restad had an open drug case and a drug history.

Jacobson contends that the circuit court's findings that Restad was driving "evasively," that the officer observed a "corner-cut" baggie in Restad's vehicle, and that Jacobson and Restad engaged in "furtive movements" were all clearly erroneous. However, each of these findings was based directly upon the testimony of the arresting officer and the video from his squad car's dashboard camera.

With respect to Restad's driving, the officer testified that, after his squad car pulled behind Restad's vehicle at a stoplight, "[T]he vehicle was in the turn lane to go onto Hastings Way northbound and then made a last-minute lane change to go east on Clairemont Avenue. Then the vehicle turned onto Otter Road and into the Kwik Trip parking lot on Otter Road." The officer further testified, "[I]f somebody's trying to avoid law enforcement, they may make a last-minute lane change or change direction of travel."

With respect to the plastic, the officer testified:

> I did observe a small piece of plastic that to me, based on my training and experience, it looked like it was twisted like it came from a "corner-cut," which is part of a plastic bag used to hold drugs.
>
> ….
>
> It's where drugs are put in a plastic bag, and then it[']s twisted and—or tied in a knot, and the excess bag is torn off, so the piece I had observed, just a crinkled small, piece of plastic that looked like it came—could have come from one of those.

With respect to Jacobson's and Restad's movements in the vehicle, the officer testified: "There was a lot of furtive movement, a lot of moving around by both Jacobson and Restad as if they were hiding items, reaching around the front area under the seat."

Jacobson points out that the lane change was lawful, the crinkled piece of plastic could have been from something other than a corner-cut baggie (particularly since it had no apparent drug residue on it), and Restad and Jacobson could have been searching for documents the officer had requested. Law enforcement officers are not required to rule out possible innocent explanations for evasive behavior or other suspicious conduct before initiating an investigatory stop, however. Rather, resolution of any ambiguity about whether the observed conduct is

innocent or linked to criminal activity is the very purpose of the detention. ***State v. Anderson***, 155 Wis. 2d 77, 88, 454 N.W.2d 763 (1990). The fact that the circuit court drew negative inferences from the behavior the officer testified to having observed does not render its findings clearly erroneous.

In sum, the specific, articulable facts found by the circuit court here support a reasonable suspicion that Restad and Jacobson were attempting to hide drugs in the vehicle. The facts that Restad attempted to evade the squad car, was nervous and resistant to opening the vehicle's door, and he and Jacobson appeared to be trying to hide something, were all indicative of having contraband in the vehicle. The additional facts that Restad had an open drug case and had what appeared to be a corner-cut baggie in his vehicle suggested that the contraband could be drugs. We therefore conclude that the circuit court properly denied the suppression motion.

Upon the foregoing,

IT IS ORDERED that the judgment of conviction is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that this summary disposition order will not be published.

Samuel A. Christensen
Clerk of Court of Appeals