

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 ground that there was no constitutional violation because law enforcement already had probable cause to arrest Markham before they removed him from the scene.

The following facts are undisputed for the purposes of this appeal. In response to a citizen's complaint of reckless driving, Officer John Radke of the Hobart-Lawrence Police Department stopped Markham's vehicle just outside of a casino parking lot. Officer Matthew Prokash of the Hobart-Lawrence Police Department responded to the same call and arrived at the scene just as Radke stopped Markham's vehicle. Prokash made contact with Markham and could detect an odor of marijuana coming from the vehicle. Markham admitted that he had smoked marijuana in the vehicle on the way to the casino and that there was marijuana in the vehicle.

While speaking with Markham, Prokash noticed that Markham had red, glassy eyes and slurred speech. Prokash ran a driver's license check and discovered that Markham had six prior operating a motor vehicle while intoxicated (OWI) convictions. At that point, although he believed he already had enough evidence to arrest Markham for operating a motor vehicle while under the influence of a restricted controlled substance, Prokash decided to conduct an additional OWI investigation.

Because it was cold outside, Prokash asked Markham to go inside the casino to conduct field sobriety tests. Markham agreed. Prokash patted down Markham, handcuffed him, placed him in the back seat of his squad car, and drove him about 100 yards to a private entrance to the casino, where a security guard admitted Prokash and Markham to the building. Prokash then

escorted Markham into a private hallway in an employee-only area of the casino, where he conducted the field sobriety tests.

After observing multiple clues of intoxication during the field sobriety tests, Prokash asked Markham to take a preliminary breath test. Markham agreed and provided a breath sample that showed an alcohol concentration of 0.068%. Markham then admitted that he had been drinking, and Prokash informed Markham that he was under arrest.

After being charged with multiple offenses arising from the incident, Markham filed three motions to suppress evidence collected during and after the traffic stop, all of which the circuit court denied. In his opening brief,² Markham challenges only the court's ruling that Prokash did not violate Markham's constitutional rights when he moved him away from the scene of the traffic stop to conduct the field sobriety tests.

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. Popke*, 2009 WI 37, ¶10, 317 Wis. 2d 118, 765 N.W.2d 569. We will, however, independently determine whether the established facts satisfy applicable constitutional provisions. *Popke*, 317 Wis. 2d 118, ¶10.

It is constitutionally permissible for a law enforcement officer to briefly detain an individual for investigative questioning in a public place when there exists a reasonable

² Markham raises additional arguments in his reply brief, asserting that compelling him to provide a breath sample and performing the field sobriety tests constituted an unconstitutional search and seizure of evidence from his person. We need not address issues that are raised for the first time in a reply brief, however, and we decline to do so here. See *Schaeffer v. State Pers. Comm'n*, 150 Wis. 2d 132, 144, 441 N.W.2d 292 (Ct. App. 1989).

suspicion, based upon specific and articulable facts together with rational inferences drawn from those facts, that criminal activity may be afoot and that action would be appropriate. *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968). Such a temporary detention for questioning must be conducted “in the vicinity” of the public place where the person was stopped. WIS. STAT. § 968.24. Law enforcement may move the detained person to another place within the vicinity, however, if they have a reasonable purpose for doing so. *State v. Quartana*, 213 Wis. 2d 440, 446, 570 N.W.2d 618 (Ct. App. 1997); § 968.24. Additionally, law enforcement may move the detained person beyond the vicinity of the stop if the investigation produces probable cause for arrest. *State v. Blatterman*, 2015 WI 46, ¶28, 362 Wis. 2d 138, 864 N.W.2d 26.

Here, Markham contends that Prokash violated *Quartana* when he transported Markham in handcuffs from the scene of the traffic stop to the casino hallway. However, Markham does not dispute that his admission to Prokash that he had smoked marijuana while driving his car provided probable cause to arrest Markham for possession of marijuana and operating a motor vehicle with a restricted controlled substance in his blood. *See* WIS. STAT. § 346.63(1). Therefore, the *Quartana* vicinity limitation rule applicable to temporary investigative stops did not apply. Quite simply, if, as Markham contends, transporting him to the casino hallway in handcuffs exceeded the permissible scope of a *Terry* stop and became tantamount to an arrest, that seizure was constitutionally justified by probable cause to arrest Markham.

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