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DISTRICT IV

June 20, 2018

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

2017AP1222-CR State of Wisconsin v. Ilyas V. Ibragimov (L.C. #2016CF373)

Before Lundsten, P.J., Kloppenburg and Fitzpatrick, 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).

Ilyas Ibragimov appeals from a judgment of conviction for possession of THC with intent to deliver. He contends that the circuit court erred in denying his motion to suppress evidence obtained after police stopped his vehicle. 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 (2015-16).¹ We reject Ibragimov’s arguments and affirm.

Officers in Wisconsin Rapids stopped Ibragimov’s vehicle in connection with a drug investigation and found marijuana. Ibragimov filed a motion to suppress, arguing that the officers lacked reasonable suspicion to stop his vehicle. The circuit court denied this motion, and Ibragimov pleaded no contest to possession of THC with intent to deliver. Ibragimov now appeals, arguing that the circuit court erred in denying his motion to suppress.

“[I]n reviewing motions to suppress, we apply a two-step standard of review.” *State v. Scull*, 2015 WI 22, ¶16, 361 Wis. 2d 288, 862 N.W.2d 562. “First, we review the circuit court’s findings of fact, and uphold them unless they are clearly erroneous.” *Id.* “Second, we independently review the application of constitutional principles to those facts.” *Id.*

We take the following facts from the circuit court’s decision denying Ibragimov’s motion to suppress. Police officers in Wisconsin Rapids obtained a warrant to search a residence based on information from a confidential informant about methamphetamine dealing. The informant indicated that the drugs were coming from a Minnesota source. While surveilling the residence shortly before executing the warrant, police observed a maroon Mercury Sable with a green hood and a Minnesota license plate. A few hours later, officers executed the warrant and found drugs and drug paraphernalia inside the home. While the search was underway, officers spotted the Mercury Sable traveling on a perpendicular street. Officers observed the vehicle begin to make a

¹ All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.

turn toward the residence, but then the vehicle turned back and continued along the perpendicular street, away from the police. Officers stopped the vehicle and conducted a dog sniff, which indicated the presence of drugs.²

Ibragimov argues that the police lacked reasonable suspicion to stop his vehicle. For an investigatory stop, an officer must “reasonably suspect, in light of his or her experience, that some kind of criminal activity has taken or is taking place.” *State v. Richardson*, 156 Wis. 2d 128, 139, 456 N.W.2d 830 (1990) (citing *Terry v. Ohio*, 392 U.S. 1, 30 (1968)). Reasonable suspicion for a stop must be based on “specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion.” *Terry*, 392 U.S. at 21.

The circuit court determined that the information known to the officers was sufficient to justify a brief investigatory stop of Ibragimov’s vehicle. In making this determination, the circuit court pointed to the following facts:

- Officers had information that a Minnesota source was supplying drugs to the residence;
- Officers found drugs and drug paraphernalia in the residence;
- Officers had observed Ibragimov’s vehicle with a Minnesota license plate at the residence earlier in the day; and

² At that point, according to the criminal complaint, Ibragimov admitted that there was marijuana in the vehicle. These additional facts are not relevant to our analysis because Ibragimov only challenges the officers’ decision to stop his vehicle.

- While executing the search warrant, officers saw Ibragimov's vehicle approach the residence but then change direction, as if to avoid the officers.

The circuit court determined that while each of these facts, standing alone, had an innocent explanation, they established reasonable suspicion when taken together.

Ibragimov argues that the circuit court overstated the significance of various facts. Specifically, Ibragimov contends that the fact that police found drugs during the search of the residence is not relevant, while Ibragimov's presence at the home and the fact that his vehicle had a Minnesota plate are not indicative of criminal activity. Ibragimov relies on *State v. Young*, 212 Wis. 2d 417, 429, 569 N.W.2d 84 (Ct. App. 1997), in which officers conducted an investigatory stop after observing two individuals engaging in a "short-term contact" on the sidewalk in "a high drug-trafficking residential neighborhood." We reversed the circuit court's denial of the defendant's motion to suppress, concluding that this "ordinary, everyday occurrence during daytime hours in a residential neighborhood" did not give rise to reasonable suspicion of criminal activity. *Id.*

We disagree that our decision in *Young* applies in this case. Here, officers found drugs during the execution of the search warrant, and they had reason to believe that the drugs were coming from Minnesota. In light of this information, the presence of a vehicle with a Minnesota license plate at the residence shortly before the drugs were found is part of the totality of the circumstances giving rise to reasonable suspicion. See *State v. Post*, 2007 WI 60, ¶13, 301 Wis. 2d 1, 733 N.W.2d 634 ("The reasonableness of a stop is determined based on the totality of the facts and circumstances"). These facts gained increased significance when officers subsequently observed the same vehicle apparently avoiding the residence while police were

present. In short, this series of events goes far beyond the ordinary, everyday occurrence in *Young*.

Ibragimov further argues that the fact that he did not complete the turn toward the residence is innocent behavior that is not indicative of criminal activity.³ At the hearing, Ibragimov testified that he slowed down at the intersection and saw several squad cars and people with flashlights. The circuit court agreed that even an innocent driver might choose to avoid an area with so much police activity. However, the court concluded that, when combined with the other indications that the vehicle may be connected to drug activity, Ibragimov's actions gave officers reason to suspect that Ibragimov was avoiding police, which in turn made it reasonable for officers to conduct a brief investigatory stop. The alternative possibility that the driver's behavior was innocent does not render the stop unreasonable. *See State v. Begicevic*, 2004 WI App 57, ¶7, 270 Wis. 2d 675, 678 N.W.2d 293 (in situations involving competing inferences it is "the essence of good police work ... to freeze the situation" in order to "sort out the ambiguity").

Finally, Ibragimov argues that the circuit court ignored significant facts in making its determination. He contends that the circuit court should have considered the fact that officers

³ Ibragimov also points to various facts that undermine the reliability of the officers' observation that his vehicle made a partial turn, such as the fact that the officers were sixty feet away and did not see a turn signal. However, as explained above, we uphold the circuit court's findings of historical fact unless they are clearly erroneous. *See State v. Scull*, 2015 WI 22, ¶16, 361 Wis. 2d 288, 862 N.W.2d 562. Here, we do not understand Ibragimov to be arguing that the circuit court clearly erred in finding that the officers observed the vehicle begin to turn but then continue the other way. Such an argument would fail in light of our deferential standard of review. *See State v. Young*, 2009 WI App 22, ¶17, 316 Wis. 2d 114, 762 N.W.2d 736 (2008) ("[I]t is well settled that the weight of the testimony and the credibility of the witnesses are matters peculiarly within the province of the [circuit] court acting as the trier of fact." (quoted source omitted)).

“had absolutely no indication who the owner of the Mercury Sable was or who [Ibragimov] was.” He also contends that the circuit court ignored the fact that officers had seen a different vehicle with Minnesota plates at the residence during previous surveillance activity. In its response, the State points to additional facts that support reasonable suspicion about this particular vehicle and its driver. Specifically, while executing the search warrant, officers were told that the driver of the Mercury Sable was named Eli, and that Eli planned to return to the residence later that evening. This information, in connection with the other facts known to officers, was sufficient to establish reasonable suspicion that the driver of this particular vehicle with a Minnesota license plate was avoiding police when he turned back and drove away from the residence. Accordingly, under the totality of the circumstances, we conclude that the stop was reasonable.

Upon the foregoing reasons,

IT IS ORDERED that the judgment is summarily affirmed pursuant to WIS. STAT. RULE 809.21.

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

Sheila T. Reiff
Clerk of Court of Appeals